

support for justice

a guide for people with a
disability, their support
professionals, family carers,
friends and advocates





Inclusion Designlab is Inclusion Melbourne’s centre for policy, research and development. Our vision is to bring together people with an intellectual disability, community organisations, and the world’s leading disability researchers to develop cutting-edge models of practice, choice and citizenship.

We do this by developing, trialling, and implementing new systems of support and communicating our insights through a range of publications and media. We are also significant contributors to public policy and government inquiries. Our products and services are used by families, collegiate organisations and a range of other sectors.

Visit inclusiondesignlab.org.au for more about our work.

Support for Justice proudly supported by:



Inclusion Designlab thanks Victoria Police and Villamanta Disability Rights Legal Service for their contributions to the Support for Justice project.

Suggested citation: Lewis Gargett, A, Despott, N & Williamson, Z (2018).

Support for justice: A guide for people with a disability, their support professionals, family carers, friends and advocates. Melbourne: Inclusion Melbourne. ISBN: 978-0-9922717-4-9

This publication may not be reproduced without the prior written permission of Inclusion Designlab or Inclusion Melbourne.

VALID

The Victorian Advocacy League for Individuals with Disability (VALID) is the peak organisation in the Victorian disability sector representing adults with an intellectual disability and their families. VALID is run by and for people with disability and family members. VALID has particular expertise in networking and providing information to people with disability and families across the state.

VALID is committed to the vision of an Australian nation in which people with a disability are empowered to exercise their rights – as human beings and as citizens – in accordance with the United Nations Convention on the Rights of Persons with Disabilities. VALID strives to realise its vision through a range of strategies that work to empower people with disabilities to become the leaders of their own lives.

VALiD supported a team of self-advocates to review the content in this publication and provide valuable feedback about the Support for Justice project.

The support for justice pilot was funded by: Victorian Legal Services Board Grants Program and Gawith Foundation



people with disability and justice 4

step 1 – making decisions about your life

building individual agency 8 you can make decisions about your life 9

step 2 – understanding rights, responsibilities and decision making

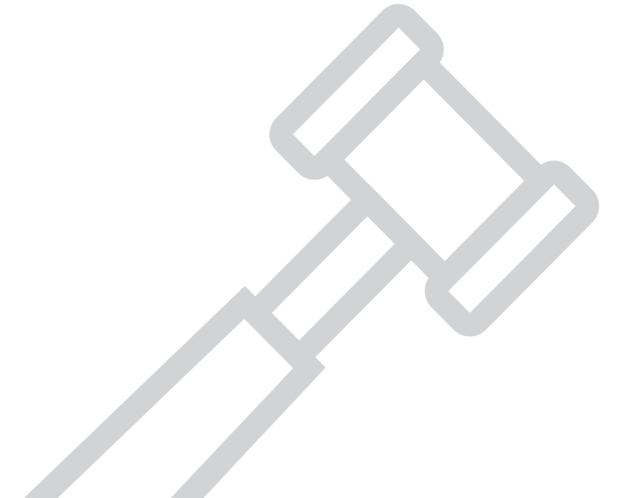
what is the law? 12 what is ‘the law’? 13
 law in our lives 14
 making the law work 16 what happens when people don’t follow the law? 17
 the legal system 18 legal system overview 19
 court 20 decisions about the law are often made in court 21
 police station 22 the police can help you 23
 lawyers / legal assistance 24 lawyers can help you 25

step 3 – getting legal assistance

getting legal assistance 28 legal assistance 29
 where can you get legal assistance?
 Victoria Legal Aid (VLA) 30 how to get legal help 31
 where can you get legal assistance?
 Community Legal Centres (CLCs) 32 how to get help from lawyers 33
 private law sector and pro bono 34 at Community Legal Centres (CLSs) 33
 how to get help from private lawyers 35

other resources

crime and police 28
 sexual assault 39
 witness services 39
 victims of crime 40
 rights, agency and citizenship 40
 guardianship and OPA 41
 consumer rights and law 41
 rights and practice toolkit 42
 glossary 46
 getting legal assistance – summary 48

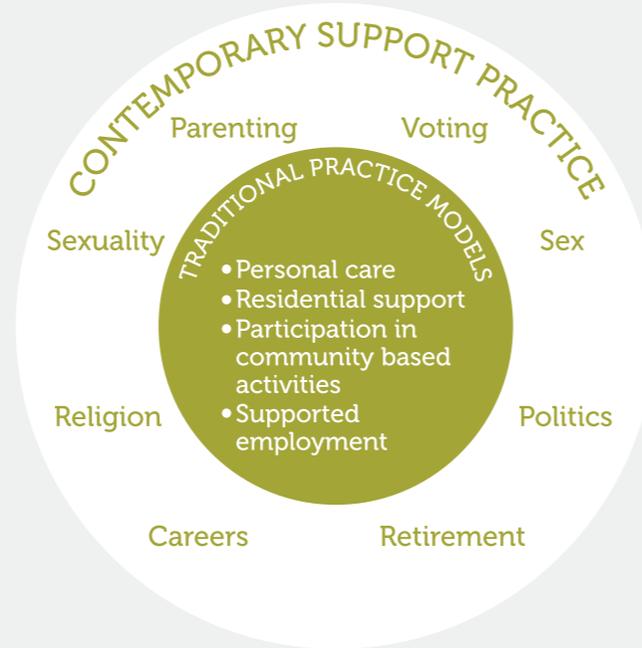


preface

Inclusion Melbourne supports people with intellectual disability to experience social inclusion and belonging in their local communities with meaningful employment in regular workplaces, education and training. Our model incorporates engaging natural supports such as family members or volunteers and supporting people to experience and obtain meaningful social roles.

This approach to inclusive support is aligned with the Disability Act 2006 (Vic), the UN Convention on the Rights of Persons with Disabilities (2006), the National Disability Insurance Scheme Act (2013), Victorian Human Service Standards and evidence based practices such as Person Centred Active Support.

This means that sex, politics, religion, and legal access are domains of life to which people with disability should have full access. However people with intellectual disability have traditionally been shielded from genuine self-driven engagement with these domains. Ironically, the structure of the disability sector, organisational support practices and professionals working in intersecting areas have usually driven this shielding effect due to perceived risks and assumptions about capacity.



You've heard of practice – legal practice, medical practice, best practice, evidence based practice.

Did you know there is also disability support practice?

This publication aims to bridge the gap between the disability support and legal assistance sectors by:

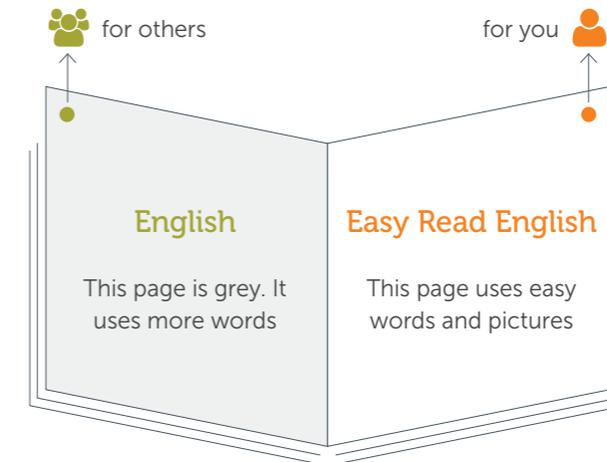
1. building the legal literacy of people with intellectual disability and their support networks.
2. modelling the application of contemporary support practices that can be used by professionals from both the disability and legal assistance sectors to promote access to justice.

how to read this book

Support for Justice is designed for supported reading. It works best if a person with a disability and a supporter read it together.

Most of the left-hand pages are written in plain language. The right-hand pages are written using easy-to-read language. This means that the text uses larger letters and there are pictures or diagrams to assist supported readers.

Supporters should read or skim the left-hand pages before making a time to support a person with disability to read the right-hand pages. In most cases, the ideas on the left and the right are the same.



You will see this picture  next to words you may not understand. There is a glossary at the back of the book. The glossary tells you what these words mean.

To watch videos or read this book online, go to www.inclusiondesignlab.org.au/justice

people with disability and justice

We know that people with disability are more likely than other members of the community to have life experiences that bring them in to contact with the law. They are more likely to be involved in criminal activity or be victims of crime. For example it is widely accepted that women with intellectual disability are more vulnerable to sexual assault¹. One research study found that people with intellectual disability were 3 times more likely to be victims of physical assault, sexual assault or robbery².

People with intellectual disability are also more likely to experience discrimination and face barriers to accessing their rights and entitlements through the legal system. This is the case across all areas of life including family and relationships, housing, and money matters.

It has been reported^{1,3,4} that reasons for this include:

- appropriate support is not provided in the system or the person does not access the supports that are available
- people with a disability and their support networks have limited knowledge of the law and the legal system
- other people make assumptions about the capacity of the person to participate in legal processes (e.g. provide evidence)
- people with disability are afraid that no-one will believe or listen to them - often this is based on past experiences
- other people in the system do not realise that a person has an intellectual disability and therefore needs extra support

People with intellectual disability generally experience a lack of support for making everyday decisions. It is therefore not surprising that they experience barriers to reporting crime, engaging lawyers, contesting fines, or reporting sexual assault.

Given we know this is the situation, it follows that supporting people with intellectual disability to exercise their legal rights and responsibilities is an important part of their daily support.

This guide suggests three steps for supporting a person with intellectual disability to exercise their legal rights and responsibilities:

1. building individual agency
2. understanding rights, responsibilities and decision making
3. supported legal assistance

You have a right to be included in everything that happens in your life. There might be things that are hard to do on your own. These could be:

Making decisions at home.

You can choose things like:

- what you have for lunch
- what clothes you wear
- what time you go to bed



Managing money.

This includes things like:

- keeping a record of how much money you have in your bank account
- keeping a record of how much money you have spent
- paying bills



Reporting a crime.

If someone does something wrong to you can tell the police things like:

- someone hurts your body on purpose
- someone steals something that belongs to you
- someone does something sexual to you that you don't want

You might have questions about how to do these things or why you need to do them.

Other people might tell you that you can't do these things.

But it is your right to do these things if you want to, even if you need help to do them.

So people around you can help you do these things.

You can ask for help from:

- friends or family
- disability support professionals
- people in your circle of support



step 1 – making decisions about your life



building individual agency

We all face many decisions every day. Many of these are influenced by the law (see page 12). Understanding the law and getting advice about options can help us make decisions that:

- protect our rights
- enact our responsibilities
- resolve situations

Lawyers are best placed to provide this information and advice as they have an in depth knowledge of the law and system. **Step 3** of this guide explains the legal assistance services available in Victoria and how to get help from lawyers.

However, before anyone can make a decision, they need to understand that as an individual person they have the right to agency. This means they have the confidence to express their feelings, make decisions and have their voices heard by the right people at the right time.

Developing a sense of agency is a long-term process that is different for each person. For some people, it involves progressively learning about their right to choice, such as being able to speak up when they are given insufficient options. For others, it is about learning to voice their preferences when working with support professionals. For people who are unhappy with the status quo, it may be about declaring that "I need things in my life – or my community – to change".

If you are a disability support professional you are likely to have received training on how to understand how a person with disability can be supported to become a decision maker. This will have been through training in Person Centred Active Support, Supported Decision Making, Choice – making, Positive Behaviour Support or similar practices.

Some of the foundational principles of these approaches are:

- the necessary support for individual circumstances is provided
- with time and support people can build decision making capacity
- opportunity to experience a wide range of options is required for people to make self-driven choices

These principles of supported decision making are an important first step for supporting a person with intellectual disability to exercise their **rights** and **responsibilities** as citizens in our society.

For more information on building individual agency with Active Support visit the Every Moment has Potential website www.activesupportresource.net.au to access online modules developed by Grey Stanes Disability Services and La Trobe University.

you can make decisions about your life

When you make decisions you can think about:

- what you like
- how you feel
- who is important to you

You can tell other people what you want.

For example: If you live in a house with other people with a disability and you don't like things that the staff do you can complain.

It is your right to choose what you eat, who you spend time with, and who helps you look after your personal needs.

You can choose what things to do during the day. You can choose to do things that you think are interesting.



If you like watching sport you could go to the local football match.



If you like talking to other people you could work at a shop or a café. If you like reading on your own you could visit the local library.

You can think of your own ideas and tell other people.

Sometimes you might need some help to make difficult decisions. Other people can help you make difficult decisions.

It is ok to take time to think about what you want and what you need. Other people should:

- listen to what you say
- help you to think of ideas
- help you to try new things

step 2 – understanding rights, responsibilities and decision making



what is the law?

Most of us probably can't remember how we first started to learn about the law. Many of our life experiences have been influenced by the law and thus have shaped our understanding of what the law is.

For example an early interaction with the law could have been meeting a member of the police and learning about their job. At school we might have learnt about the government, parliament and how laws are made. Newspapers, television shows and radio programs regularly feature stories that involve the law.

A simple way of describing 'the law' is as a set of rules that are made and enforced by a government.

But we know that the law is actually more complex than a set of rules that must be obeyed. Living in a democratic society that is governed by the 'rule of law' means everyone has the right to be safe, free and can express their opinion about the type of community we live in. We can influence the laws that are made by politicians through voting in elections and submitting feedback to parliament*.

We also understand that this means that every single one of us, as a citizen, has **rights** and **responsibilities**. We have **rights** to enjoy the freedoms and entitlements that the laws give us, and we have a **responsibility** to respect other people's rights. In this way the law could be described as the fundamental bedrock of our society and is deeply influential on the lives that we lead.

For 'the law' to enable everyone to live freely together and in harmony we need a system for:

- creating laws that reflect the opinion and needs of the community
- monitoring how the laws affect the rights of every citizen
- enabling people to defend or claim back their rights
- enforcing consequences for those who do not follow the law

We have a right to have input to those laws through voting. For more information, see our other resource **I Can Vote** at: www.inclusiondesignlab.org.au/voting

A person with intellectual disability also needs to have an understanding of these foundational principles of law.

People with intellectual disability are more likely to have legal matters in their lives or are more likely to experience barriers to protecting their rights. At the same time it is unlikely that people with intellectual disability have the same opportunities to learn about the law through their education and life experiences.

Actively discussing these ideas and building legal knowledge is therefore an important step towards supporting full participation in citizenship, rights and responsibilities in our society.

what is 'the law'?

It is important for people to work well together. That's what being happy and being part of a community is all about.

Everyone needs to respect each other and treat each other well.



The people who run our country, the **government**, has decided there are some things that are not good to do. This is because they may hurt you, hurt others or make life hard.

To keep people safe the government has made rules about these things. These rules are called laws.

Obeying the law is a safe and good way to be in the community. It is important that we do not hurt other people or do things that can make life harder for someone else. Everyone has a **responsibility** to follow the laws.

The law also says that everyone has **rights**. We have the right to:

- be included in our community
- be treated as an equal no matter our skin colour, abilities, where we come from or who we are sexually attracted to
- feel safe
- feel free to live your life the way you want to as long as you don't hurt other people

We can choose the people who make the laws by **voting in elections**.

If you think that a law is not fair you can vote for someone that you think would make a better law.

If you want to know more about voting in elections you can:

- talk to a friend, family member or support person
- read the book **I Can Vote**

law in our lives

There are laws about so many things in our lives.

In Australia and most other countries there are laws.

On this page we look at the laws that affect a trip from home to work.



Tenancy laws about what the person who owns the house (landlord) and the person who lives in the house (renter) has to do – for example:

- The renter needs to tell the landlord if something needs to be fixed
- The landlord needs to fix things in the house
- The renter must not damage the house on purpose



Road laws that people driving cars and people walking along the street (pedestrians) need to follow for example:

- Road signs tell you who can go first
- Traffic lights tell you when to stop and when to go
- Speed limits tell you how fast you can go



There are laws about travelling on public transport:

- Fares – you have to pay to use the tram, train and bus
- Infringements – fines for people who don't pay to use the tram, train or bus
- The tram, train and bus companies have to provide safe and reliable transport



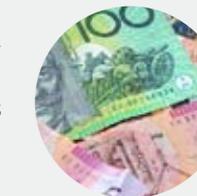
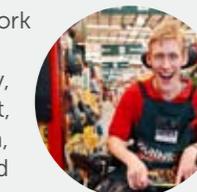
Consumer laws about what people need to do when they sell something. For example they have to make sure what they sell:

- Is safe – the milk in the coffee is fresh
- Is real – real coffee and not just coffee syrup
- Matches what the shop said it was when they sold it



There are laws about employment for example:

- Work safety – employers have to provide a safe workplace
- Rights at work like equal opportunity, recruitment, termination, bullying and harassment
- Pay rates – the money paid to someone is fair for the work that they do



making the law work

It can take a long time and hard work to make or change laws. New laws or proposed changes to laws are presented in parliament, debated by politicians and amended until the majority of politicians in that government agree that the law is necessary and appropriate. This process is long and complicated because there are many things that need to be considered for a law to actually be effective and produce the intended outcome for all citizens. Our politicians have a responsibility to make sure that what is written in law achieves the intended outcome but does not unfairly affect some members of the community or remove their rights.

For a law to be effective:

- people need to know about the law and thus be aware of situations or activities that would break that law
- people need to understand the law
- people need to accept it and regard it as an appropriate measure to produce the intended outcome (the majority of people at least)
- the law must remain stable or unchanged as much as possible – it is not fair on citizens if laws are constantly changing
- the law needs to be applied consistently in all environments and to all people
- the law needs to be enforced

This means of course that we need to have a system for applying and enforcing the law – or in other words a justice and legal system.

There is more information about what the legal and justice system in Victoria on the following pages.

A quick note on criminal law and civil law

The law is often divided into the two broad categories of criminal law and civil law. Criminal law is distinguished as laws that have a legal punishment attached such as jail or community service. Crimes are usually behaviours that are considered unsafe and harmful to other people.

Civil law covers a wide range of areas but broadly speaking is related to disputes between two individuals or organisations. Examples include discrimination law, family law, and consumer law.

This guide has included some specific information about criminal law and the criminal justice system in response to the overrepresentation of people with intellectual disability in this system.

However we strongly suggest that people with disability are supported to engage with the legal system to exercise their rights and resolve civil matters as well – see the information on seeking legal assistance (page 28).

what happens when people don't follow the law?

Everyone needs to know what the laws are so they know what they can and can't do.

If someone doesn't do what the law says then there needs to be **consequences**  so they stop doing it or don't do it again.

These are some of the consequences. The things that might happen if people break the law in Australia:



1. Community service



2. Get a fine



3. Pay money to someone they have hurt



4. Go to jail

In Victoria the police, judges, and lawyers work together to decide when a law has been broken and what should happen.

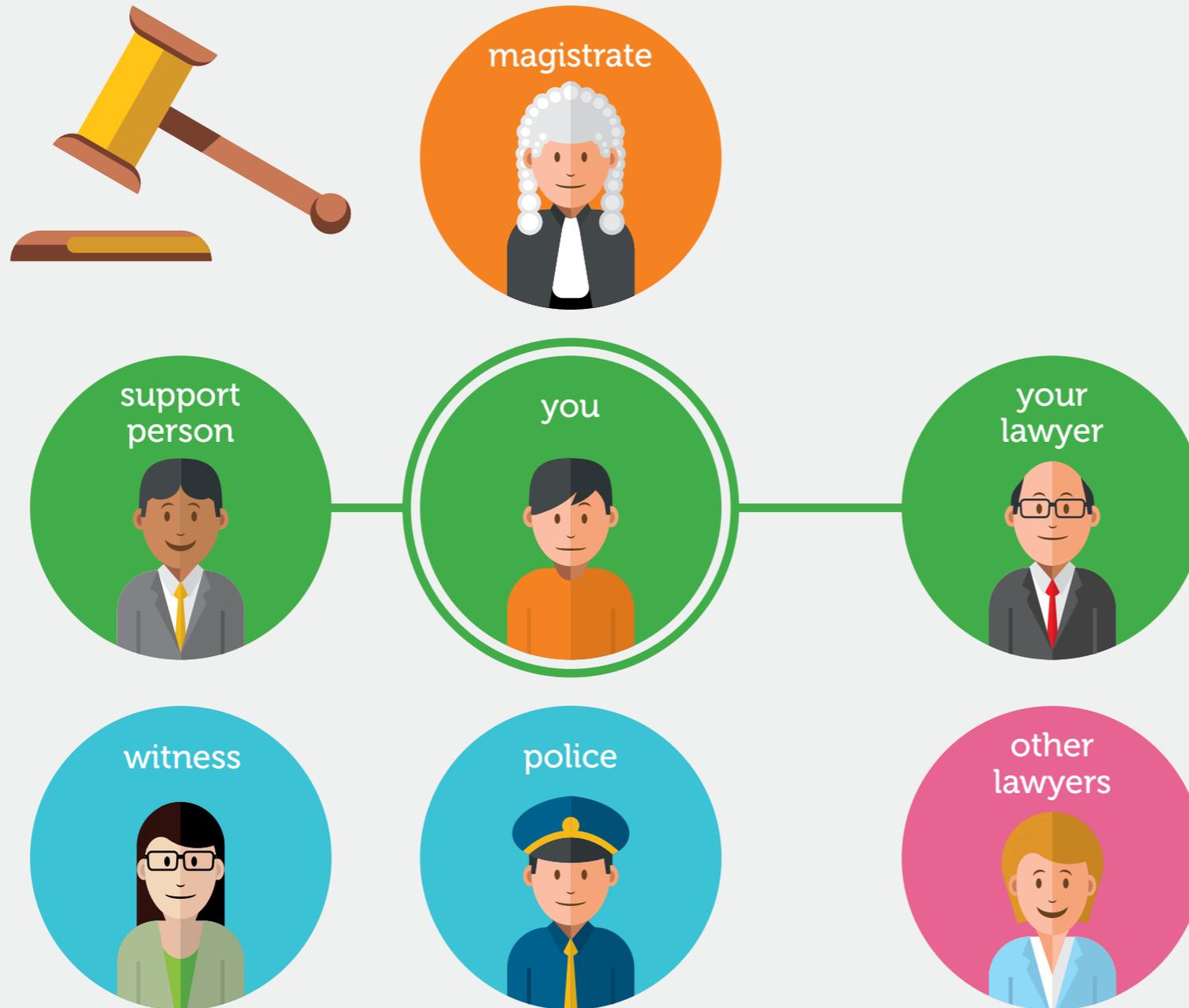
There is more information about what they do on the next pages.

the legal system

Often decisions about the law are made in court.

If you have been accused of a crime, you may have to go to court.

This picture shows people involved in the legal system and other people that might be in a courtroom.



a typical courtroom

legal system overview

Below is a brief overview of the legal system and who is usually in the courtroom:



You can find more detailed information about the people in the legal system from page 20 through to page 35



court

There are different types of court in Victoria. Different types of case are heard in each court. It depends on the laws that are involved in the case and how complicated the case is.

For information on the different courts and the types of cases that are heard in each:

- visit the Court Services Victoria website www.courts.vic.gov.au
- download a copy of the Victoria Law Foundation's booklet Victoria's Legal System from www.victorialawfoundation.org.au/publication/victorias-legal-system

Most cases that go to court in Victoria are heard in the Magistrates' Court. The Magistrates' Court has 52 offices in Victoria. In the Magistrates' Court there is one judge who hears the case and makes decisions.

Judges are responsible for hearing the evidence and making decisions about a case based on the law. They are responsible for managing the proceedings during a court hearing.

Magistrates' Court Assessment and Referral Court List – is a specialist court for people with cognitive impairment or mental illness who are accused of committing a crime.

Hearings in this court are less formal and the staff help to connect the accused person with other services. To be included in this court you must meet certain criteria. If you want to know find out how to be included on the ARC list:

- visit Assessment and Referral Court List website www.magistratescourt.vic.gov.au/court-support-services/assessment-and-referral-court-list-arc

Speak to your lawyer or call
Victoria Legal Aid Legal Help
1300 792 387

disability support

Disability Access Bench Book – this is written by the Judicial College of Victoria for judges and:

- outlines what the law says about the rights of people with disability in court
- includes recommendations for things a judge can do in court hearings to make it easier for a person with disability e.g. including lots of rests during the hearing for someone who finds it difficult to concentrate

decisions about the law are often made in court

You may need to go to court if:

- you think someone else broke the law – e.g. you are witness to a crime and report it to police
- someone else thinks you broke the law – e.g. the police have charged you with a crime

If you do have to go to court you will need to talk to the judge. It is important that you have someone with you to help you understand how a court room works. There is more information about how to get help later in this book.

The judge decides when someone has broken the law and what should happen. For example they might:

- tell someone they have to do community service
- tell a boss to make sure a person with disability has the things they need to do a job
- send someone to jail



magistrate

The person in charge

Listens to information

Makes decisions based on the law

Decides what should be done if someone breaks the law

police station

Victoria Police investigate crimes and enforce the law.

Police talk to people that they think can help them solve crimes. This is called a police interview.

disability support

Independent Third Persons Program – this is a program provided by the Office of the Public Advocate. www.publicadvocate.vic.gov.au/our-services/volunteer-programs

These volunteers:

- sit with a person with a cognitive impairment, including people with an intellectual disability when they are interviewed by police
- help explain the law and other information
- help the person contact family members, lawyers or other support
- help the person to understand the questions – this might mean asking the police to say the question again in a different way
- request breaks during the interview if needed

The police must contact an ITP if they are asked to by the person or someone close to them like family, staff or an advocate. It is preferred that this person is from the Independent Third Person (ITP) Program. The police will contact OPA to arrange an ITP volunteer.

Police officers should raise the option of an ITP with a person with a disability, particularly if the person is not aware of the ITP program.

sexual offences and child abuse investigation teams (SOCIT)

These are special teams of police officers who investigate sexual assault and child abuse.

If you want to report a sexual abuse case to police ask to speak to the SOCIT team.

To learn more about SOCIT, visit the SOCITs and Multidisciplinary Centres (MDC) page on the Victoria Police website, www.police.vic.gov.au

the police can help you

You may need to go to the police station if:

- you think someone else broke the law – e.g. you reported a crime to police
- someone else thinks you broke the law – e.g. the police have charged you with a crime

If you are a person with an intellectual disability you have the right to have someone sit with you while the police talk to you. They will explain what is happening to you and will help the police to ask questions you understand. The police can call the Office of the Public Advocate (OPA) to get someone to do this. These people have been trained to do this job.

It is the police's job to help you feel safe and to make sure you have the support that you need during a police interview.



police officer

Enforce the law

Help victims of crime

Arrest people who commit a crime

Police talk to these people:

A suspect – a person the police thinks has committed a crime

A witness – a person who saw somebody else commit a crime

A victim – a person who is hurt when another person commits a crime

lawyers / legal assistance

A lawyer has been to university and understands the law and the legal system.

Lawyers have in depth knowledge of the law and the legal system and what can be done to help people with disability in the system.

disability support

Legal Assistance – the Australian government pays for lawyers to help people who need it the most. This includes people with disability.

Duty Lawyer – these lawyers work in courts and help people who cannot afford to bring a lawyer with them to court.

The best way to ensure that duty lawyers can help on the day is to contact Victoria Legal Aid before the court appearance date (see page 30).

There is detailed information about the legal sector and the role of lawyers and legal assistance later in the book.

The need for strong links between disability support and legal assistance is very obvious in the court setting.



The decisions made in a court hearing could have a profound impact on a person's life.

The right support before, during and after a court hearing is therefore crucial for accessing justice.

Disability support professionals:

Contact **Victoria Legal Aid**
1300 792 387

or a Community Legal Centre before the court appearance date to ensure a duty lawyer can assist on the day.

Legal assistance professionals:

If further support after a court appearance is required contact the **Department of Health and Human Services Disability Intake and Response**
1800 783 783

or the

National Disability Insurance Agency
1800 800 110

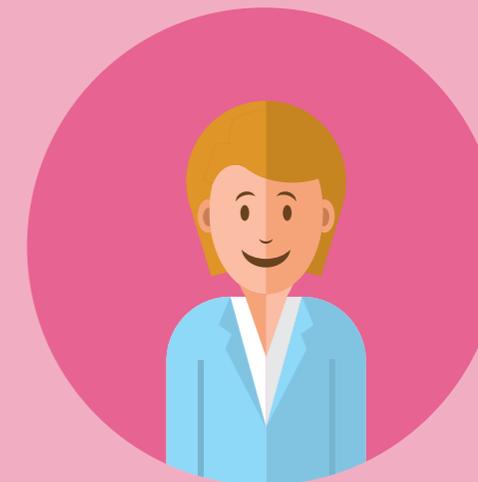
lawyers can help you

A lawyer has gone to university and understands the law and the legal system.

Lawyers can give you legal advice. This means they help you with laws.

Lawyers can support you if you need to go to court.

There is more information about how to get help from lawyers later in this book.



other lawyers

Helps you with laws

Gives you advice

Supports you in court

They can give advice about:

What to do

Documents and information that will help fix a legal problem

Help people with a disability



getting legal assistance

Some situations have very obvious legal implications. These may include being questioned by police, being a victim of a crime such as sexual assault, or attending court.

But there are many other life situations where understanding the relevant laws, the legal **rights** and **responsibilities** and what to do to exercise those rights can help. These could include times of financial stress, family break down or being treated unfairly because of disability.

what is legal assistance?

The **legal assistance** sector includes independent not for profit services that provide legal support and advice. Many people find legal matters confusing and don't understand their legal rights and responsibilities or what to do to exercise their rights.

Without in depth knowledge of the law and the legal system it can be very difficult to resolve an issue. In some situations having access to a lawyer is a fundamental right.

For these reasons the Australian government provides funding for these services to provide free legal assistance to people who need it the most, including people with a disability.

There are four key players in the Victorian legal assistance sector:

- Victoria Legal Aid
- Community Legal Centres
- Victorian Aboriginal Legal Services (VALS)
- Family Violence Prevention Legal Services (FVPLS)

For the purpose of this guide – improving access to justice for people with disability – we have focused our advice on accessing services from Victoria Legal Aid and Community Legal Centres.

Inclusion Melbourne acknowledges that Aboriginal and Torres Strait Islander peoples experience extra barriers to enjoying their rights and are over-represented in the criminal justice system. In matters involving Aboriginal and Torres Strait Islander peoples a culturally appropriate service is paramount. In these situations we recommend contacting:

Victorian Aboriginal
Legal Services
www.vals.org.au
1800 064 865

Aboriginal Family Violence
Prevention Legal Services
www.fvpls.org
1800 105 303

legal assistance

If you feel confused or don't understand everything about laws – don't worry!

Most people get confused about laws.

A lawyer can help you with many things.

A lawyer might be able to help when you (see below) :

There are so many laws!

Even lawyers don't know everything about all the laws. Lawyers ask each other questions about laws all the time.



1. Need to talk to police



2. Need to go to court



3. Think something is not right



4. Think something is unfair

Lawyers go to university and study the law. They know a lot about laws and what can be done to fix problems.

So lawyers agree that laws are confusing! It is their job to explain things in a way that you understand.

where can you get legal assistance? Victoria Legal Aid (VLA)

Victoria Legal Aid is an independent government funded organisation who provide legal assistance services.

The Legal Help phone service provides general legal advice over the phone and is available to everyone. Victoria Legal Aid also provides individualised legal support to people who need it the most.

People with disability are included as priority clients, so it is important to explain you are calling about a matter that involves a person with intellectual disability. This may open up options and services that are not available to the general public.

The Legal Help lawyer will ask some questions about the situation and the person seeking assistance and then will explain what services Victoria Legal Aid can provide in the specific circumstances. They may refer the phone call to another section of the organisation or another service, such as a Community Legal Centre, to provide more specialised legal assistance.

Support staff and family members can talk to the Legal Help lawyers on behalf of a person with intellectual disability. The service includes a call back option so if there is a long wait you can leave a name and number and a lawyer will call you back when they are available.

Use the principles of graded assistance from Person Centred Active Support to guide the amount of support provided when contacting Legal Help. (See page 43 for further detail on PCAS).

The best way to contact Victoria Legal Aid is to call the Legal Help phone line on **1300 792 387** or online at www.legalaid.vic.gov.au

how to get legal help

The government pays for lawyers to help people.

Victoria Legal Aid is a service that provides **legal assistance**  for free to people who need it. This includes people with disability.

A lawyer will answer the phone and ask some questions about you. They will ask you if you have a disability.

The lawyer will tell you what help they can give you. They might tell you to go to a **Community Legal Centre**  because they think they will be able to help you more.

There is more information about Community Legal Centres later in this book.

If you don't understand what the lawyer on the phone is saying then tell them that you don't understand.

It is the lawyer's job to make sure you understand everything they say to you. If you find it hard to understand on the phone then ask for an appointment to see a lawyer.

You can also ask someone else to talk to the lawyer for you if you want. Remember that it is the lawyer's job to help you.

It might seem difficult or unfair that they ask you to tell them about your disability. The lawyers ask this question because:

- people with disability can get more help from Victoria Legal Aid than other people
- there are special laws for people with disability that might help to fix your problem

If you tell the lawyer you have a disability it means they can give you the best help.

You can call Victoria Legal Aid on **1300 792 387**



where can you get legal assistance? Community Legal Centres (CLCs)

These are independent community organisations that provide free legal services.

The Federation of Community Legal Centres has a directory and information about all of the community legal centres in Victoria www.fclc.org.au

- **Generalist CLC's** provide services in their local area. To find the nearest centre visit the Federation of Community Legal Centres website or call them on (03) 9652 1500
- **Specialist CLC's** focus on a particular groups of people or areas of law: **Victorian Aboriginal Legal Services** and **Aboriginal Family Violence Prevention Legal Services** are included as specialist CLC's.

There are two disability specialist CLC's in Victoria:

- Villamanta Disability Rights Legal Service
- Disability Discrimination Legal Service

Villamanta Disability Rights Legal Service
www.villamanta.org.au

This specialist CLC has a focus on disability-related legal matters and they prioritise matters that are about the rights of people with intellectual disability. Their lawyers have expertise in disability law. They have worked with many clients with intellectual disability and understand the problems in the legal and justice systems that make it difficult for people with intellectual disability get the same outcomes as other people.

They have a freecall Legal Advice Line **1800 014 111** between 1-3pm Monday to Friday.

This line is only for people with disability and their support network (including advocates, friends/family and support staff). As they focus on disability-related legal matters they might suggest another service is more appropriate for your question and provide you with information about how to contact that service.

Their website also has freely available resources including an easy read guide about the legal rights of people with intellectual disability in Victoria.

Disability Discrimination Legal Service
www.ddlsaustralia.org

This CLC focuses on the discrimination of people with disability. In Victoria there are laws that state people with disability can't be treated differently to someone else because of their disability. The lawyers at Disability Discrimination Legal Service are experts in these laws and can provide advice about situations you think involve discrimination.

They can also give advice about how to report discrimination. In some situations they will provide a lawyer to run a legal discrimination case.

They can be contacted on (03) 9654 8644

how to get help from lawyers at Community Legal Centres (CLCs)



A Community Legal Centre is an office with lawyers who provide **legal assistance** for free to the people who live in the neighbourhood.

Find the closest Community Legal Centre to your home:

Call (03) 9652 1500

There are two Community Legal Centres that have lawyers who only work with people with disability.

**Villamanta
Disability
Rights Legal
Service**

This centre has lawyers who have helped a lot of people with intellectual disability.

You can talk to one of their lawyers on the phone.

Call 1800 014 111

**Disability
Discrimination
Legal Service**

If you think someone has treated you badly because you have a disability then that is wrong.

Victoria has laws that say you can't do that. The lawyers at this centre can tell you what to do.

Call (03) 9654 8644

private law sector and pro bono

Lawyers who work in private law firms can also be contacted directly for advice. Their fees will vary depending on the firm they work at and the type of work that will be involved in your case.

Most lawyers offer a free initial consultation, and some lawyers will offer a 'no win no charge' service, particularly if there is a good chance of success. Under this arrangement you only pay the lawyer fees if the case is successful.

The **Law Institute of Victoria (LIV)** has a directory on their website of private lawyers who offer a free 30 minute initial consultation. This can be searched by location, type of legal issue, name of firm or area of law.

www.liv.asn.au/Referral

Justice Connect is an organisation that links people who are ineligible for legal aid but cannot afford a private lawyer with pro-bono legal assistance.

You can access their referral service through their website:

www.justiceconnect.org.au/get-help/referral-service

or you can call them on (03) 8636 4400.

private lawyers:

You can pay for a private lawyer to help you. The **Law Institute of Victoria** website has the names and phone numbers of lawyers who talk to you for free the first time you meet with them:

www.liv.asn.au/Referral

If you want to ask a private lawyer to give you free legal assistance (pro bono legal assistance) call **Justice Connect** on (03) 8636 4400.

how to get help from private lawyers

There are also lawyers who work at **private law firms**.

If you go to a private lawyer you will pay for the help and advice they give you.



Some private lawyers ask for more money than others. It can cost a lot of money to use a private lawyer. Many people decide that using a private lawyer costs too much money.

But most lawyers will talk to you for free the first time. The Law Institute of Victoria website has the names and phone numbers of lawyers who will do this:

Visit the Law Institute of Victoria online at www.liv.asn.au/Referral

Sometimes lawyers at private law firms will work for free. This is called **pro-bono legal assistance**. There are lots of people who ask for pro-bono legal assistance. The lawyers can't help everyone so they choose to help people who need it the most.

This means they might say that they can't give you pro-bono legal assistance.

If you want to ask a lawyer to give you free legal assistance you can call Justice Connect on (03) 8636 4400





crime and police

We know that people with intellectual disability are more likely to be involved in crime and the justice system. This is because they are more vulnerable as victims of crime, particularly sexual assault (see page 39). We also know that people with disability are over-represented as offenders in the justice system. It is thought that this could be due to³:

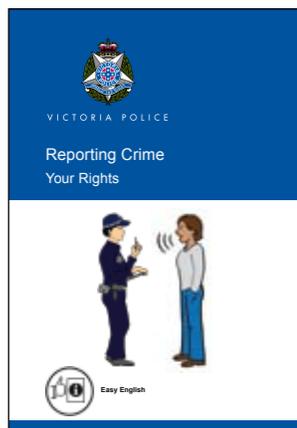
- Incorrect stereotypes and assumptions about people with intellectual disability made by police and others in the justice system
- Social and economic disadvantage experienced by people with intellectual disability – they are more likely to experience homelessness, unemployment or have limited education
- People with intellectual disability being more likely to get caught up in crime through impulsive behaviour or being convinced by others

It is therefore vital that a person receives appropriate support when required to interact with police and the justice system.

supporting a victim of crime

There are easy English resources available on the Victoria Police website:

- Reporting Crime: Your Rights
- Reporting sexual assault
- How to make a complaint against police



- How to report a missing person
- Family Violence: What Police Do?

www.police.vic.gov.au

Victims of Crime (Department of Justice and Regulation) have some easy read fact sheets titled:

- Violent Crime
- Victim Impact Statements
- The Victims Register

www.victimsofcrime.vic.gov.au

supporting a person who is accused of committing a crime

Being approached or questioned by police is a very confusing and disorientating experience. It is particularly important that a person understands everything that is said during a police interview as how they respond could be used as evidence.

The Office of the Public Advocate provides an Independent Third Person program. These volunteers sit with a person with disability when they are interviewed by police and support them to understand the process and access their rights.

It is the police officers' job to contact the Independent Third Person program and ask for a volunteer to come to an interview with a person with disability

www.publicadvocate.vic.gov.au/our-services/volunteer-programs

sexual assault

It is a troubling truth that people with intellectual disability are more likely to be victims of sexual assault. It is hard to get clear statistics on exactly how many people with intellectual disability are affected by sexual assault. This is partly because it is a widely accepted belief that many of these assaults are never reported.¹⁵ Research has shown that women with intellectual disability are overrepresented in police data as victims of sexual assault.⁶

People who rely on others to support them with their day to day care are particularly vulnerable and it is deeply concerning that a recent government enquiry reported that "sexual abuse appears to be widespread in the disability sector"⁷.

Supporting a person with disability to access appropriate support and seek justice after sexual assault is one crucial step towards changing this reality.

The Centre Against Sexual Assault has a series of easy read resources the process of reporting and recovering from sexual assault.

There are 8 titles in the series:

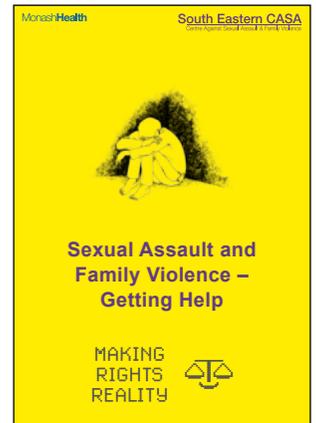
- Crisis Care After Sexual Assault
- Having a Health Check After Sexual Assault
- Making a Statement to Police
- Counselling After Sexual Assault
- Going to Court
- Money to Help You After Sexual Assault
- Sexual Assault and Family Violence – Getting Help
- Sexual Assault: When Sex is Not Ok

These can be downloaded or ordered (hard copies) from the CASA website:

www.secasa.com.au/services/making-rights-reality-for-sexual-assault-victims-with-a-disability

The Victoria Police Sexual Offences and Child Abuse Investigation Teams (SOCIT) are specialist teams within the police force who handle sexual assault cases. If reporting a sexual assault crime ask to speak to local SOCIT team.

Victoria Police also have an easy read guide on reporting sexual assault to police (see page 49).



witness services

If a person witnesses a crime, such as an assault or theft, they can get support from:

The Witness Assistance Service at the Office of Public Prosecutions:

www.victimsandwitnesses.opp.vic.gov.au/witnesses/witness-assistance-service

Child Witness Service:

www.victimsofcrime.vic.gov.au/going-to-court/child-witness-service

victims of crime

People with a disability are often unaware that they have the right to apply for assistance from the Victims of Crime Assistance Tribunal (VOCAT) after an act of violence has been perpetrated against them.

Many legal services and private lawyers assist with VOCAT applications, including South Eastern Centre Against Sexual Assault (SECASA) in partnership with Springvale Monash Legal Service.

Easy language materials are available at:

www.victimsofcrime.vic.gov.au/easy-english-resources

The Victorian Intermediaries pilot program commenced in July 2018. It matches intermediaries with vulnerable people, including witnesses and victims.

Email: intermediariesproject@justice.vic.gov.au
or Call (03) 9194 2991 for more information.

rights, agency and citizenship

This guide has included some foundational information about the law, rights and responsibilities. These concepts can be complex, particularly if people have not had the opportunity to learn and talk about them before. Ongoing learning and support can bring about real changes in daily lives.

These are some other organisations and resources that can continue to support a person to build personal agency, knowledge of their rights and active citizenship. This list is not exhaustive and we welcome information about other resources.

Villamanta Disability Rights Legal Service booklet **Your Rights Your Choices** – an easy to read book about legal rights for people with intellectual disability in Victoria:

VALID (Victorian Advocacy League for Individuals with Disability) – this organization is focused on advocating for the rights of people with disability in Victoria and support a network of peer support groups.

www.valid.org.au
Call (03) 9416 4003
Freecall 1800 655 570 (Rural Victoria only)

Self Advocacy Resource Unit (SARU) – a network of self advocacy group and numerous resources on rights and agency.

www.saru.net.au
Call (03) 9639 6856



guardianship and OPA

Office of the Public Advocate – the Victorian Public Advocate is responsible for promoting and protecting the rights of people with disability. In situations where no other guardian is appointed the Public Advocate is legally empowered to serve as a guardian. The Office of the Public Advocate (OPA) provides advice and advocacy services about all rights for people with disability.

Their advice line is:
1300 309 337

OPA also have comprehensive information about guardianship and powers of attorney available on their website.

Their publication **Side by Side: A guide to appointing supportive attorneys** includes an easy English fact sheet.

www.publicadvocate.vic.gov.au



consumer rights and law

As active members of our community we consume goods and services daily. Understanding that we have rights as consumers before we make a purchase is an example of exercising personal agency. We are aware that we have the right to seek compensation if we are not satisfied with the quality of products or services that we have paid for.

A person with intellectual disability living in our community will also be an active consumer but may not have had the same opportunity to learn about their rights as a consumer. They are also potentially vulnerable to be exploited by misleading sales tactics and scams.

Consumer Affairs Victoria is the unit in the Victorian Government (Department of Justice and Regulation) responsible for public education about consumer law and monitoring and enforcing consumer law.

Their website includes information about consumer and business rights and responsibilities.

www.consumer.vic.gov.au

The Consumer Action Law Centre is a specialist Community Legal Centre that focuses on consumer law.

www.consumeraction.org.au

rights and practice toolkit

Mental capacity – is a term used to describe a person’s cognitive ability to make decisions. It is often incorrectly viewed as synonymous with legal capacity. The conflation of these concepts has led to denials of legal capacity across the world.

Legal capacity – is the recognition of a person as a rights holder on an equal basis with others. Legal capacity is a universal human right granted to all citizens on an equal basis, simply because they are a member of the human race. It is not dependent on a person’s mental capacity. Where a person’s legal capacity is denied, they are not recognised as a person before the law, and therefore are not legally entitled to the same human rights as other citizens.

According to Article 12 of the UNCRPD, people who need support to exercise legal capacity have a right to be provided with such support. This support is sometimes called supported decision making or support for decision making.

Guardianship – If a person is determined to not have capacity a guardian is appointed to make decisions on their behalf.

Guardianship is a complex and specialist area of law. There are disability advocates and human rights experts who dedicate their careers to ensuring that these laws are applied appropriately and in ways that do not deny a person with intellectual disability their rights to participate in decision making about their own lives.

A person with disability who has an appointed guardian can still contribute to making decisions. Inclusion Melbourne, RMIT and a partnership of advocacy organisations produced the It’s My Choice toolkit in 2013 to create a framework for understanding choice and decision making. Principles 5 and 6 are particularly relevant to people with intellectual disability who want to participate in legal decision making.

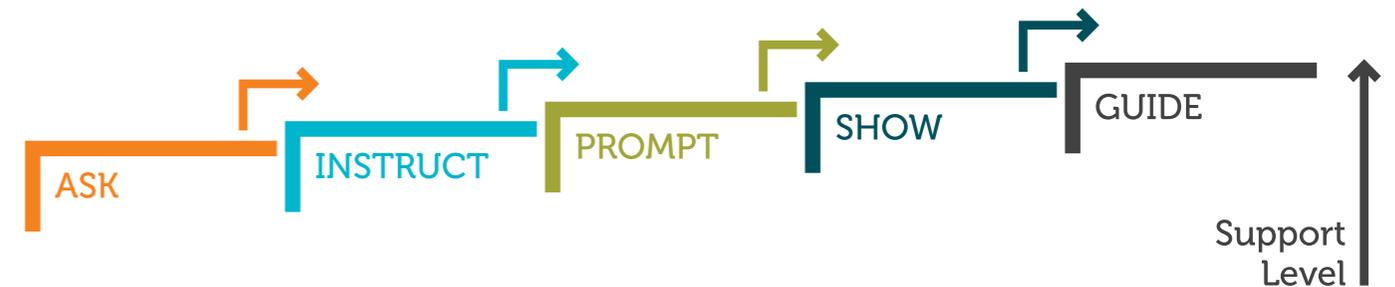
Visit www.inclusiondesignlab.org.au/choice to learn more about choice.

The chart below sets out some of the practices and techniques that are available to direct support professionals and support organisations. The next few pages will outline those practices that can be used to support a person to engage with the legal and justice system.



person centred active support

Person Centred Active Support is one of the most important evidence based practice models available to disability support organisations at the current time. It is a model that places the person at the centre of organisational planning, organisational processes, staff training, scheduling, and interpersonal relationships. “Every moment has potential” is a central theme of Active Support, ensuring that people with intellectual disability are supported to experience genuine engagement and capacity building in all activities – from household activities, to social recreation, in employment and education, and in accessing the community. The principles of Active Support allow a person with intellectual disability – whether mild or profound – to grow their skills and build stronger relationships



Graduated support – or graded assistance – is one small element of Person Centred Active Support. It is employed when supporting people to develop and use skills for daily life, for example, in verbally prompting a person to make dinner or guiding the person with hand-on-hand support while preparing dinner. However, it also applies to using transport, shopping, education, and even voting, relationships and other areas of citizenship. Broadly, Active Support is a person centred practice model that stands apart from other forms of practice, such as those models that instead place staff, carers or resources at the centre of practice. Support organisations that employ Person Centred Active Support will be more likely to view the people they support as citizens of their local community with legal rights and responsibilities.

If you want more information visit the Every Moment has Potential website www.activesupportresource.net.au to access online modules developed by Grey Stanes Disability Services and La Trobe University.

support for choice

For most of us, decision making skills are developed from our earliest years, through childhood, adolescence, school life and then throughout our personal and professional lives as adults. Inclusion Melbourne, RMIT and a group of advocacy organisations produced the It's My Choice! toolkit in 2013 to train people in decision making and choice for people with intellectual disability.

There were 9 principles of choice and you can read more about them at www.inclusiondesignlab.org.au/choice. Principles 5 and 6 are particularly relevant to people with intellectual disability who need to build stronger awareness of their legal rights and responsibilities and actively participate in legal decision making.. Person Centred Active Support and Circles of Support both embody these principles:

Principle 5

My choices are likely to be greater and more 'expansive' where I have more knowledge and experience to inform my choices. Building knowledge and experience is important to making choices informed by past experience.

Principle 6

My personal experiences may be limited by money, experience or what is possible. Nobody is completely free to choose and pursue any choice they wish. What is important is whether the limitations I experience are reasonable or not.



Together, these two principles tell us that people can make better and more complex decisions when they are supported to have new experiences and to distinguish between new options. This principle suggests that the experience of being involved in making decisions, even in situations where a guardian is appointed, can help build decision making capacity.

Principles 6 also tells us that some of the barriers that prevent people from having new experiences and making new choices are unacceptable. It is our job as supporters and advocates to challenge these barriers.

glossary

Community Legal Centres (CLCs): These organisations have lawyers who provide free help to people who live in the local neighbourhood. There are two CLCs that have lawyers who only work with people with disability (see page 32 - 33).

Consequences: These are things that happen when people don't do what the law says. Consequences help to make sure people follow the law. In Australia, some examples are going to jail or paying money (a fine).

Crime: Some of the laws, or rules, are about things called crimes. Crimes are usually things that will hurt other people. Some examples are stealing, hitting someone and sexually assaulting someone. Crimes are serious. There are punishments for crimes.

Court: This is where decisions are made about the law. In court judges decide if a law has been broken and what the consequences should be.

Elections: This is when you vote for the people that you think will do the best job of running the local community, state or country. Most people vote by going to a polling station on election day. To find out more read **I Can Vote**. www.inclusiondesignlab.org.au/voting

Government: Our country is run by people called politicians. Together these politicians make up the government.

Human Rights: An organisation called the United Nations has made a list of things that every person needs to have a good life. These are called human rights and every person should have these things no matter who they are. Some of the human rights are:

- we have a right to food
- we have a right to live in a safe house
- we have a right to be free
- we have a right to be safe

The Australian government has signed a letter that says it agrees with these human rights.

Laws: These are rules about things that we have to do. The people running our country make these rules. If you think a rule or law is not right or unfair you can vote in elections for people that you think will make better rules.

Legal assistance: The government pays for lawyers to help people who need it the most. This includes people with disability. Lawyers know a lot about the law and what can be done to fix problems

Legal rights: When people talk about legal rights they are talking about the things that our laws say every person should have. For example, the law says that every child in Australia needs to go to school because they have a right to learn.

Private law firms: These are offices that have lawyers who charge money for their help and advice.

Pro-bono legal assistance: This is when a private lawyer works for free because they know that someone can't afford to pay them.

Responsibilities: These are things that we need to do. When people talk about legal responsibilities these are things that the law says we need to do.

Sexual assault: This when someone makes you do something sexual that you don't want to do. Sexual assault is a crime. You can tell the police if this has happened to you.

Victoria Legal Aid: This organisation has lawyers who provide free help and advice in Victoria (see page 30 - 31 for information on how to get help).

references

1. Kelly M, Nicholson S & de Krester H. (2012). Making Rights Reality: Access to justice for sexual assault survivors with cognitive impairment. Melbourne: Federation of Community Legal Centres. www.fclc.org.au/projects
2. Wilson, C. & Brewer, N. (1992). The incidence of criminal victimisation of individuals with an intellectual disability. Australian Psychologist 27(2) p 114 – 117.
3. Victorian Parliament Law Reform Committee (2013). Inquiry into access to and interaction with the justice system by people with an intellectual disability and their families and carers. www.parliament.vic.gov.au/57th-parliament/lawreform/article/1461
4. Australian Human Rights Commission (2014). Equal before the law: Towards disability justice strategies. www.humanrights.gov.au/equal-law-towards-disability-justice-strategies
5. Goodfellow, J & Camilleri, M. (2003). Beyond belief, beyond justice: The difficulties for victim/survivors with disabilities when reporting sexual assault and seeking justice. Footscray: Disability Discrimination Legal Service
6. Murray, S. & Powell, A. (2008) Sexual assault and adults with a disability: Enabling recognition, disclosure and a just response. ACSSA Issues 9 (September 2008).
7. Parliament of Victoria Family and Community Development Committee (2016). Inquiry into abuse in disability services : Final Report. p.3. www.parliament.vic.gov.au/fcdc/inquiries/article/1851

recent publications



circles of support

Guide for family carers, friends and advocates who want to start a Circle of Support.



your dental health

a guide to oral hygiene, dental health and the dental system for people with a disability, their families and carers.



it's my choice! toolkit

guide to decision making and planning tools for people with disability, families, advocates and organisations.



i can vote

A guide for voters with intellectual disability, their family carers, friends, advocates and support professionals.

getting legal assistance – summary

Victoria Legal Aid

Victoria Legal Aid is a service that provides legal assistance for free to people who need it. This includes people with disability.

You can call Victoria Legal Aid on 1300 792 387

Remember:

- people with disability can get more help from Victoria Legal Aid than other people
- there are special laws for people with disability that might help to fix your problem

If you tell the lawyer you have a disability it means they can give you the best help.



general help

Community Legal Centres

A Community Legal Centre (CLC) is an office with lawyers who provide legal assistance for free to the people who live in the neighbourhood.

Find the closest Community Legal Centre to your home:

You can call FCLC on (03) 9652 1500

Or visit FCLC online at www.fclc.org.au



Disability specialist CLCs

Villamanta Disability Rights Legal Service

This centre has lawyers who have helped a lot of people with intellectual disability. You can talk to one of their lawyers on the phone.

Call 1800 014 111

Disability Discrimination Legal

The lawyers at this centre can tell you what to do if someone has treated you badly because of your disability.

Call (03) 9654 8644

In matters involving Aboriginal and Torres Strait Islander peoples a culturally appropriate service is paramount. In these situations contact Victorian Aboriginal Legal Services:

Call 1800 064 865 or visit www.vals.org.au

Aboriginal Family Violence Prevention Legal Services:

Call 1800 105 303 or visit www.fvpls.org

Police

Victoria Police have easy English resources which are freely available through their website titled:

- Reporting crime: your rights
- Reporting sexual assault
- How to make a complaint against police
- How to report a missing person
- Family Violence: What Police Do?

www.police.vic.gov.au

Independent Third Persons (ITP) Program – these are volunteers through the Office of the Public Advocate (OPA) who come to police interviews. The police should call the ITP when they know that they are interviewing a person with an intellectual disability.

Call the OPA on 1300 309 337



VICTORIA POLICE

other help

Sexual assault

If you have experienced sexual assault contact the Centre Against Sexual Assault. They can help with counselling and advice for reporting it to police.

They also have easy English resources about sexual assault and what to do.

www.casa.org.au



When reporting sexual assault to police ask to talk to the Sexual Offence and Child Abuse Investigation Team.

For carers and supporters

If sexual assault occurs in care you must also contact the Department of Health and Human Services and complete an incident report.



A digital version of this poster is available online at www.inclusiondesignlab.org.au/justice



67 Sutherland Road, Armadale, VIC 3143

T. 03 9509 4266 | F. 03 9576 0378

E. projects@inclusiondesignlab.org.au | W. inclusiondesignlab.org.au