

# Disability Worker Registration Board of Victoria and Victorian Disability Worker Commission

## Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

### Introduction

1. The Victorian Disability Worker Commission (the Commission) and the Disability Worker Registration Board of Victoria (the Board) welcome the opportunity to contribute to the work of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Royal Commission). We hope that the recognition of the unacceptable and disproportionate rates of harm experienced by Australians with disability will be the catalyst for real and positive change in the lives of people with disability.
2. As regulators of Victoria's disability workforce through the Disability Worker Regulation Scheme (the Scheme) which commenced on 1 July 2020, the Commission and Board are uniquely placed to provide perspectives on how the regulation of the disability workforce can contribute to the safety of people with disability. The Board and Commission aim to increase their contributions to the safety and wellbeing of Australians with disability by sharing with the Royal Commission the learnings gained through their successes and challenges encountered at this early stage in the implementation of the Scheme.
3. The Scheme is still in its foundation phase, due in part to the impact of the COVID-19 pandemic. After a state of emergency was declared in Victoria on 16 March 2020, a phased implementation of the Scheme was necessary. The Disability Service Safeguards Code of Conduct (the Code) came into force on 1 July 2020. The registration aspect of the Scheme was postponed by 12 months, with applications for registration open from 1 July 2021. The first registration period commenced 1 October 2021.

### The rationale behind the establishment of the Scheme

4. The Scheme was developed in response to the 2016 Victorian Parliamentary Inquiry into Abuse in Disability Services (the Inquiry), which found a long history of widespread abuse and neglect of people with disability in Victoria.<sup>1</sup>
5. The Inquiry was conducted in parallel with another investigation into abuse within the disability sector undertaken by the Victorian Ombudsman.<sup>2</sup> Both inquiries followed a series of revelations in 2014 about incidents of serious abuse and neglect across disability service providers in Victoria.
6. The Inquiry investigated why abuse in the disability service context is not reported or acted upon and how it can be prevented. The Inquiry determined that more effective safeguards and oversight measures were needed to ensure disability workers deliver high-quality care.<sup>3</sup> As part of the Victorian Government's response to the Inquiry, the *Disability Service Safeguards Act 2018* (Vic) (DSS Act) was passed, and the Scheme created.
7. In 2022, six years on from the Inquiry, Respect Victoria's report *'No More Excuses' – Primary Prevention of Violence Against Women with Disability* highlighted the important role that disability workers play in the primary prevention of violence against people with disability. The training and upskilling of disability

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<sup>1</sup> Family and Community Development Committee, Parliament of Victoria, *Inquiry into abuse in disability services: Final Report* (Final report, May 2016).

<sup>2</sup> This investigation by the Victorian Ombudsman resulted in the publication of a two-part report: Victorian Ombudsman, *Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight*, 2015; and Victorian Ombudsman, *Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – incident reporting*, 2015.

<sup>3</sup> Family and Community Development Committee, Parliament of Victoria, *Inquiry into abuse in disability services: Final Report* (Final report, May 2016) 193.

workers increases the capacity of disability workers to understand what constitutes violence, and to support their clients to understand and identify violence carried out against them.<sup>4</sup>

### About the Scheme

8. The Scheme was established under the DSS Act for the purpose of ensuring that disability workers across Victoria provide safe and high-quality disability services to people with disability.<sup>5</sup> The DSS Act establishes the Scheme entities: the Board, the Commission, and the Victorian Disability Worker Commissioner (the Commissioner). Together, these statutory bodies administer the Scheme.
9. In regulating the disability workforce, the Scheme has two main functions:
  - safeguarding and compliance by educating the disability workforce on the Code and enforcing compliance with the Code through its complaints and notifications mechanism, and
  - promoting the professionalisation of the workforce by developing voluntary registration standardsThese two functions are outlined in further detail below.

### Scope of the Scheme

10. The Scheme is the only one of its kind across all Australian jurisdictions: federal, state and territory. The Scheme applies to individual workers who provide disability services, and regulates **all** disability workers, regardless of whether they are registered under the Scheme and the source of funding for the services they provide.
11. This is significant as the majority of Victorians with disability are not eligible for NDIS-funded disability services. Of the 1.1 million of Victorians with disability, 32 per cent sometimes or always require disability support services.<sup>6</sup> However, only 10 per cent of Victorians with disability are NDIS participants.<sup>7</sup> Accordingly, a significant percentage of Victorians with disability receive disability services outside of the NDIS. This is in the context of an increasing number of Victorians with disability<sup>8</sup> and therefore demand for disability services.
12. Universal application of the Scheme is vital, given the segmented and diverse composition of Victoria's disability workforce including the growth in the proportion of sole practitioners and disability support workers who provide services via online platforms. Although the number of disability workers is unknown, just over 130,000 people have been granted NDIS worker screening clearances in Victoria since February 2021.<sup>9</sup>
13. The National Skills Commission's 2021 *Care Workforce Labour Market Study* (the Study) has highlighted that the broader care and support workforce provides services across disability as well as aged care and veteran care programs.<sup>10</sup> The Study also highlighted the rapid increase in workers that is, and will continue to be, necessary to meet demand for disability services, the highly casualised nature of the workforce, and retention issues across the sector.<sup>11</sup>

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<sup>4</sup> Sutherland G, Krnjacki L, Hargrave J, Vaughan C, Llewellyn G & Kavanagh A. *No More Excuses: Final report - primary prevention of violence against women with disability* (Final report, March 2022) 46-48.

<sup>5</sup> Sections 1(a)(1) and 1(a)(v) of the *Disability Service Safeguards Act 2018* provide for the registration and regulation of disability students. This component of the Scheme is yet to be implemented.

<sup>6</sup> Australian Bureau of Statistics, *Disability, ageing and carers, Australia: summary of findings* (Catalogue No. 4430.0, 24 October 2019).

<sup>7</sup> Australian Bureau of Statistics, *Disability, ageing and carers, Australia: summary of findings* (Catalogue No. 4430.0, 24 October 2019).

<sup>8</sup> Australian Bureau of Statistics, *Disability, ageing and carers, Australia: summary of findings* (Catalogue No. 4430.0, 24 October 2019).

<sup>9</sup> NDIS Quality and Safeguards Commission, *NDIS Quality and Safeguards Commission Activity Report 1 July to 30 September 2022* (Activity report, 30 September 2022) 10.

<sup>10</sup> National Skill Commission, *Care Workforce Labour Market Study*, (Report, September 2021) 10.

<sup>11</sup> National Skill Commission, *Care Workforce Labour Market Study*, (Report, September 2021) 10.

14. Expansion of the workforce is essential but a rapid increase in numbers comes with risks to quality of services provision. For example, less experienced workers may provide unsafe services to people with a disability. In tandem with growth in workforce is an increasing need to ensure that the workforce is equipped with the skills and knowledge to provide safe and high-quality disability services, so that people with disability have confidence in the disability services they use as well as access to safeguards.

## Safeguarding and compliance

### Disability Service Safeguards Code of Conduct

15. The Scheme requires all (registered and unregistered) disability workers in Victoria to comply with the Code. The Code is the NDIS Code of Conduct.<sup>12</sup> This alignment promotes consistency in worker obligations, regardless of whether the disability services are funded through the NDIS or not.

16. Workers who provide services that might otherwise fall outside the coverage of the NDIS include:

- education support officers;
- mental health workers;
- aged care workers;
- Victorian Department of Families, Fairness and Housing-employed disability workers (such as those providing services to people with a cognitive disability in the criminal justice system, or to non-Australian citizens)<sup>13</sup>;
- Traffic Accident Commission (TAC) funded workers; and
- disability employment services.

17. The Scheme's coverage has provided an avenue for complaint handling and person-centred resolution of matters beyond the scope of regulation of NDIS funded services. Examples include regulatory action under the Scheme in relation to education support officers in schools and a TAC funded worker providing disability services.

18. The Scheme also fills a regulatory gap as regulatory action can be taken against workers who provide non-NDIS funded disability services where a worker may also be subject to regulatory action under the NDIS. For example, a disability worker subject to regulatory action by the NDIS Quality and Safeguards Commission would still be able to provide non-NDIS funded disability services. This means a person receiving non-NDIS funded disability services may unknowingly receive services from a disability worker who is subject to regulatory action by the NDIS Quality and Safeguards Commission.

19. Under the DSS Act, the Scheme's safeguarding powers are not limited to enforcement measures where harm has already occurred. The Board and Commission are empowered to take measures that are educative and have preventative as well as protective aims, including:

- the ability to counsel disability workers, which to date the Commission has implemented by educating workers on the Code and their obligations under the DSS Act;<sup>14</sup> and
- a mandatory notifications framework, which places positive duties on employers and disability workers to notify the Commission of instances of certain 'notifiable conduct'.<sup>15</sup>

20. In addition, the DSS Act allows for the Board to set registration standards that apply to registered disability workers.<sup>16</sup> Registration standards set out obligations that registered workers are required to meet in order to be granted and maintain registration under the Scheme. Most recently the Board has set a continuing

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<sup>12</sup> Section 5 of the *Disability Service Safeguards Regulations 2020* (Vic) prescribes the NDIS Code of Conduct for this purpose.

<sup>13</sup> Eligibility for an NDIS package requires that the service user be an Australian citizen, hold a permanent visa, or a Protected Special Category visa.

<sup>14</sup> Defined in section 58 of the *Disability Service Safeguards Act 2018*.

<sup>15</sup> Section 33 of the *Disability Service Safeguards Act 2018*.

<sup>16</sup> Section 138 of the *Disability Service Safeguards Act 2018*.

professional development (CPD) standard, which requires completion of 10 hours of CPD per registration period. This standard seeks to ensure upskilling and continuous education of the registered disability workforce. Registration standards are outlined further below.

### Complaints and notifications under the Scheme

21. Complaints may be made by anyone who has concerns about the professional conduct of a disability worker.<sup>17</sup> The DSS Act defines a **disability worker** as a worker who directly provides a disability service to a person with a disability, or a person who manages or supervises a worker who directly provides a disability service.<sup>18</sup> The obligation to report notifiable conduct applies to disability workers and their employers, and in relation to disability students and education providers.

### Regulatory action under the Scheme

22. The DSS Act sets out range of regulatory tools that are available for use by the Board and Commission. The Commission is able to take regulatory action in relation to unregistered disability workers (all disability workers in Victoria who are not registered) and the Board is able to take action with respect to workers that have voluntarily registered under the Scheme.

23. The DSS Act distinguishes between the regulation of registered and unregistered disability workers. The Board deals with complaints and notifications in relation to **registered** workers,<sup>19</sup> while the Commission and the Commissioner handle complaints and notifications in relation to **unregistered** workers. The Board has not yet received any complaints or notifications in relation to registered workers. The Commission and the Commissioner have exercised their regulatory powers in response to complaints and notifications about unregistered workers on a number of occasions since the Scheme commenced.

24. The DSS Act provides for specific regulatory tools in response to complaints and notifications. For notifiable conduct, these tools include:

- counselling;
- issuing of cautions and undertakings;
- requiring a worker to undergo a health or performance assessment;
- suspension of registration under the Scheme;
- conditions placed on registration;
- interim prohibition orders and prohibition orders.

25. For complaints, the same regulatory tools are available, with additional options to settle a matter by agreement and conciliation by the Commission.

26. Where a worker poses a serious risk and it is necessary to take action to protect the health, safety or welfare of an individual or the public, then responsive action can be taken to prevent a worker from providing disability services while the matter is investigated. The Board can take immediate action against registered workers.<sup>20</sup> The Commissioner can impose an interim prohibition order in relation to unregistered workers for a period of up to 12 weeks before or during the course of the Commission conducting an investigation.<sup>21</sup> Prohibition and interim prohibition orders are published on the Commission's website. To date, the Commissioner has made 17 interim prohibition orders against a total of 6 unregistered disability workers, and one prohibition order.<sup>22</sup>

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<sup>17</sup> Section 33 of the *Disability Service Safeguards Act 2018*.

<sup>18</sup> Section 3(1) of the *Disability Service Safeguards Act 2018*.

<sup>19</sup> Section 9(1) of the *Disability Service Safeguards Act 2018*.

<sup>20</sup> Section 74 of the *Disability Service Safeguards Act 2018*.

<sup>21</sup> Section 130 of the *Disability Service Safeguards Act 2018*.

<sup>22</sup> The number of interim prohibition orders as at 23 December 2022. The Commission maintains an up to date register at: <https://www.vdwc.vic.gov.au/prohibition-orders>

## Collaboration with other regulators and the minimisation of regulatory duplication: information sharing and referral powers

27. The Scheme was designed to operate in a way that streamlines the complaints process for people with disability, their families, carers and advocates, and ensures that issues of misconduct are brought to the attention of relevant regulators. The Scheme operates in a co-regulatory environment and interacts with other entities responsible for registration, complaints-handling, enforcement and information management. To allow for these interactions in the context of both safeguarding and registration functions, the DSS Act provides information sharing and referral mechanisms with relevant regulators and bodies in the disability sector.
28. To facilitate necessary interactions with relevant bodies and to enable the Board and the Commission to fulfil their functions, the DSS Act allows the Board to refer complaints for investigation or other actions.<sup>23</sup> For example, the DSS Act requires the Board or Commission to refer a complaint or notification to the NDIS Quality and Safeguards Commission where that complaint or notification concerns a worker who is a registered NDIS provider or is employed or engaged by a registered NDIS provider.<sup>24</sup> The Commission has referred to the NDIS Quality and Safeguards Commission all complaints and notifications that fall within this category. Conversely, the Commission has received referrals from the Commissioner for Children and Young People, the Mental Health Complaints Commissioner and the Disability Services Commissioner where matters received by those bodies relate to conduct of disability workers.
29. The DSS Act also allows the Commission to share and receive relevant information from appropriate entities when considering a complaint or notification,<sup>25</sup> and to allow the Board and Commission to receive information from other regulators, in order to make informed decisions about the registration and regulation of disability workers in Victoria. For example, the Board may decide that an applicant is unsuitable for registration if their registration as a disability worker or health practitioner in another jurisdiction is suspended or cancelled, they are subject to a prohibition or banning order, or any previous practice experience is insufficient.<sup>26</sup> This assessment may require information from other agencies.
30. To complement their statutory information sharing powers, the Board and Commission have a number of memoranda of understanding that set out arrangements for reciprocal information sharing between themselves and other entities, and regularly meet with co-regulators. These mechanisms ensure that workers posing a risk may be monitored and if appropriate, subject to regulatory action under all applicable regulatory schemes. It also ensures there is no regulatory uncertainty over the confidentiality of information, and that information is shared in an efficient and timely way.

### *Case study: Regulatory action in the form of counselling and referral aided by information sharing*

31. The Commission received a notification from an employer about an unregistered disability worker who was also a registered nurse. The worker provided medical and personal care in a supported independent living accommodation setting. The notifier alleged that the worker had not followed a service user's medical support plan and administered incorrect medication.
32. The Commission assessed the service provider's investigation report, the medical support plans and the worker's response. The Commission considered that the conduct was inconsistent with the Code and was able to take action. In this instance, the Commission counselled the worker on their obligations as a disability worker to follow medical support plans and maintain accurate, up-to-date records.<sup>27</sup> The Commission also referred the matter to the Australian Health Practitioner Regulation Agency (Ahpra).<sup>28</sup>

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<sup>23</sup> Sections 41(1)(a)(iv) and 100(2)(e) of the *Disability Service Safeguards Act 2018*.

<sup>24</sup> Sections 46, 52 and 70 of the *Disability Service Safeguards Act 2018*.

<sup>25</sup> Sections 66(5) and 39(6) of the *Disability Service Safeguards Act 2018*.

<sup>26</sup> Section 156 of the *Disability Service Safeguards Act 2018*.

<sup>27</sup> Disability worker counselled under section 67(a)(i) of the *Disability Service Safeguards Act 2018*.

<sup>28</sup> Referral made under section 67(a)(ii) of the *Disability Service Safeguards Act 2018*.

Ahpra advised that it had placed training requirements on the worker's practice because of the notification.

## Registration

### Registration and workforce professionalisation

33. The registration aspect of the Scheme provides a mechanism to strengthen and professionalise the disability workforce across Victoria and improve the safety of disability services. Relevant objectives and guiding principles of the DSS Act are: 'strengthening the safeguards for those persons with a disability who access disability services'<sup>29</sup> and ensuring that people with disability can 'choose disability workers with the values, skills and qualifications that meet their needs'.<sup>30</sup>
34. Registration is voluntary and is open to all disability workers who provide disability services in Victoria. Under the Scheme, individual workers are registered, rather than service providers. Registration is open to workers who deliver NDIS and non-NDIS funded services. The application process involves a positive assessment of a disability worker's qualification and experience as a disability support worker, as well as assessing their suitability to provide services as a disability worker. This is a more extensive and proactive assessment than that involved in NDIS worker screening, which is primarily based on a national police check.
35. As stated above, under the DSS Act the Board can set registration standards which applicants are required to satisfy to register and to maintain registration.<sup>31</sup> To date, the Board has set three standards in the areas of English language competency, criminal history, and most recently, continuing professional development (CPD). In the course of the 2022-2023 registration period, registered disability workers must complete 10 hours of CPD. The CPD standard has been set so that disability services are provided by workers whose knowledge is current, so that workers can be confident that they possess the necessary skills to provide disability services safely and ultimately to improve the quality of services delivered to people with disability..
36. By requiring disability workers to satisfy these registration standards, disability workers can demonstrate their skill, knowledge, experience, and commitment to providing high quality disability services. Registration benefits individual workers and the disability workforce as a whole by providing an avenue for this critical workforce to gain recognition for the professional services it provides. This is reflected by the fact that a registered disability worker can use the legally protected title of 'registered disability support worker' or 'registered disability practitioner' depending upon the division under which they are registered.
37. Victoria's disability workers are seeing the value in registering under the Scheme, as evidenced by the number of workers who have applied for registration in the first two years of the Scheme's operation since registration opened on 1 July 2021. The second registration period has recently commenced and 487 disability workers are currently registered.<sup>32</sup> Of the workers who registered in 2021-22, 80 per cent renewed their registration. These disability workers are seeking to have their skills and expertise recognised and are committing to their own personal professional development by undertaking at least 10 hours of CPD related to disability each year.
38. The DSS Act provides further scope for the Board to set additional registration standards including in relation to recency of practice, scope of practice, and applicants' mental and physical health.<sup>33</sup> Developing additional standards has the potential to further professionalise the disability workforce. It also allows for standards to be set of specialist areas of practice. The introduction of additional standards aimed at professionalisation must be balanced against the impact that this may have on a worker's choice to adopt

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<sup>29</sup> Section 6(b) of the *Disability Service Safeguards Act 2018*.

<sup>30</sup> Section 7(1)(g) of the *Disability Service Safeguards Act 2018*.

<sup>31</sup> Section 138 of the *Disability Service Safeguards Act 2018*.

<sup>32</sup> As at 29 December 2022. For current registration numbers the Board keeps an up to date register of registered disability workers, accessible at: <https://portal.vdwc.vic.gov.au/publicregister/home>

<sup>33</sup> Section 138 of the *Disability Service Safeguards Act 2018*.



these standards through voluntarily registering with the Scheme. The DSS Act requires the Board to consult with stakeholders in the development of any future standards or amendments to existing standards to inform the design and implementation for the workforce and disability sector.<sup>34</sup>

39. The DSS Act also makes provision for the Board to set approved accreditation standards and programs of study. An accreditation standard is a standard used to assess whether an approved program of study<sup>35</sup> provides an individual who completes the course with sufficient knowledge, skills and attributes to practise as a disability worker.<sup>36</sup> The registration of disability students is a component of the Scheme that is yet to be implemented.
40. These provisions enable applicants to demonstrate that they satisfy the qualification requirements for registration as a disability support worker (subject to other eligibility criteria, including assessment as a suitable person to hold registration and registration standards requirements).
41. In addition, if the Board decides to set accreditation standards and approve programs of study, then any student enrolled in one of those programs will be considered a registered disability student under the DSS Act. The Board and Commission have various functions with respect to registered disability students, which includes managing complaints and notifications about disability students.

### Future direction and opportunities

42. As mentioned above, the COVID-19 pandemic has impacted the operationalisation and implementation of the Scheme. The COVID-19 pandemic has been a time of considerable uncertainty for those most vulnerable in the community including people with disability, and the disability workforce who were necessarily focussed on prioritising their health and safety in challenging circumstances including a severely reduced workforce due to high proportion of workers being required to isolate.<sup>37</sup> With the easing of some of these pressures, the Commission seeks to build on opportunities to engage with people with disability and the disability workforce, including by more face-to-face engagement with stakeholders. This is one area that will be prioritised going forward as implementation of the Scheme continues.<sup>38</sup>
43. The Commission and Board are committed to increasing awareness and understanding of the Scheme which is still in its foundational stage. This includes further awareness about the scope of the Board and Commission's regulatory remit to consider issues related to the conduct of the disability workforce, and the opportunities that voluntary registration and a more professionalised workforce provide to the workforce and people with disability.
44. Consultation on all aspects of the Scheme including registration standards is vital to ensure that registered disability workers possess attributes that are important to people accessing disability services. The Board and Commission continue to engage with and listen to the perspectives of people with disability to ensure the Scheme is implemented in a person-centred way.

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<sup>34</sup> Section 140 of the *Disability Service Safeguards Act 2018*.

<sup>35</sup> An approved program of study is defined in section 3(1) of the DSS Act and relates to:

- 1) courses delivered through education providers that are approved by the Board (under DSS Act section 149(1)) for the purpose of registration (or endorsement of registration) as a disability worker; and
- 2) a program of study that is approved for the purpose of registration of persons as disability students.

<sup>36</sup> Accreditation standard is defined in section 3(1) of the *Disability Service Safeguards Act 2018*.

<sup>37</sup> Royal Commission in Violence, Abuse, Neglect and Exploitation of People with Disability, *The impact of and responses to the Omicron wave of the COVID-19 pandemic for people with disability issues paper* (Issues paper, 25 March 2022).

<sup>38</sup> Victorian Disability Worker Commission and Disability Worker Registration Board of Victoria, *Victorian Disability Worker Commission and Disability Worker Registration Board of Victoria Corporate Plan 2002-24* (Corporate Plan, October 2022).

45. Consultation carried out by the Victorian Government prior to the Scheme's inception informed establishment of a voluntary, rather than mandatory, registration scheme. In considering the type of regulatory model that the Scheme should adopt, the views of some people with disability affirmed the importance of ensuring that choice and control be at the centre of any regulatory scheme.<sup>39</sup> Specifically, that people with disability should retain the choice and have control over whether to engage a registered or unregistered disability worker. The design of the Scheme took these views into account and developed a voluntary model for registration of Victorian disability workers. However, if workers are not *required* to register, it follows that there will be disparate standards across the workforce. A registered workforce that is required to demonstrate skills and qualifications will likely reduce the risk of harm, unintentional or otherwise, to all people with disability and increase the capability of the workforce. From a regulatory perspective, if all disability workers are not required to be registered, these benefits are less likely to be fully realised.
46. The Scheme has recently commenced the second year of registration. As the Scheme continues to mature, the Board and Commission will continue to consider these perspectives, including through continued engagement and consultation. There may also be opportunities for Government to require registration as a matter of policy in certain areas, for example for those workers that are funded by government to support the most vulnerable people with disability<sup>40</sup> and workers in higher risk areas of service delivery.

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<sup>39</sup> Victorian Parliament, *Parliamentary Debates*, Legislative Assembly, 25 July 2018, 2345 (Martin Foley, Minister for Housing, Disability and Ageing).

<sup>40</sup> Statement of Expectations from Anthony Carbines MP, Minister for Disability, Ageing and Carers to the Disability Worker Registration Board of Victoria, 26 April 2022: [SOE - DWRBV.pdf \(vdwc.vic.gov.au\)](https://www.vdwc.vic.gov.au/soe-dwrby)