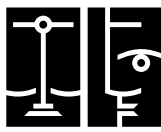


What Should the Law
Say About People with
Intellectual Disabilities
Who are at Risk of
Hurting Themselves
or Other People?

Discussion Paper
in Easy English



Victorian
Law Reform
Commission



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What this booklet is about



This booklet asks some questions about what should happen in situations where people with intellectual disabilities are likely to hurt themselves or other people. It also talks about people with acquired brain injuries, and people who have more than one disability, such as a person with an intellectual disability as well as a mental illness.

This booklet asks you whether you think the law should be different for people with disabilities who are likely to hurt themselves or other people, from the law for people who don't have disabilities.

Sometimes people with disabilities hurt themselves or other people because they are not able to understand what they are doing.

The law is not very clear about what should happen in these situations. That's why this booklet asks you if the law needs to change.



The law is much clearer about what should happen if the person has a mental illness (or a psychiatric disability), instead of an intellectual disability or an acquired brain injury.

The law says that if people have mental illnesses things can be done to stop them hurting themselves or other people.



These things can include making people go and stay in hospital until they are no longer likely to hurt anyone, or making them take medication to stop them hurting other people. The law says that this can be done even if the person with the mental illness doesn't agree to it.

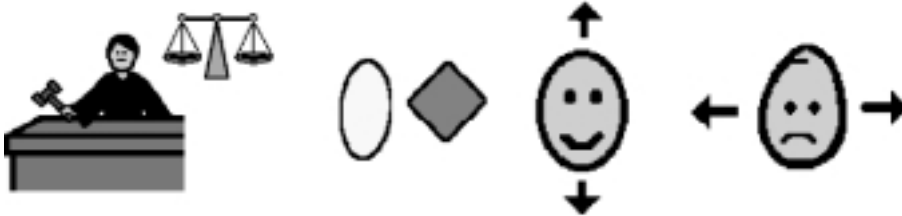


But before this can happen to someone with a mental illness, the law says that a tribunal (which is like a court) must check and be sure that there is no better way of stopping the person with a mental illness from hurting people.



But this law only applies to people with a mental illness and only if the mental illness is the reason why the people are hurting themselves or other people. If people have a different disability, and it's because of that disability that they are hurting themselves or other people, then the law is not so clear.

We want to know if the law should change so that people with other disabilities can also be made to live somewhere, or to receive services they don't want to receive, if this is likely to stop them from hurting themselves or other people in the future.



If the law is going to change, then we want to know who should be able to make the decision that people with disabilities have to live somewhere they don't want to live, or to receive services they don't want. We also want to know who should make the decision that people are likely to hurt themselves or other people.

If the law is going to change, it has to respect the rights of people with intellectual disabilities. It also has to protect everyone's safety. We want to know how to make sure that the law does both of these things.

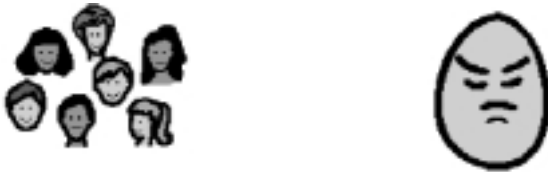


We want to hear your ideas on these things.

SOME PROBLEMS WITH THE LAW NOW

There are a few problems with the law not being clear about what should happen to people with intellectual disabilities who might hurt themselves or other people.

People get treated unfairly



One of these problems is that sometimes people with intellectual disabilities get told that they have to live in places where they don't want to live, or to use services that they don't want to use, but there are no laws for checking that this happens in a fair way.

This is wrong, because it can mean that people don't get their rights.

There's no real consent



Another problem is that sometimes everyone pretends that the person with the intellectual disability has agreed to live somewhere, or to receive a service, when really they haven't agreed at all. This sometimes happens when people say yes to services only because they think they have to say yes, or because they don't understand what they are saying yes to.

This is wrong, because it means that people are treated like they have consented to something, when they haven't really consented at all.

Guardians make the wrong sorts of decisions



Another problem is that sometimes guardians tell people with intellectual disabilities that they have to live somewhere, or that they have to use a service, to stop them hurting other people. This might not be the sort of thing that a guardian should do. A guardian's job is to make decisions that are to protect the person who has the disability, not really to protect other people.

This is wrong, because it means that the rights of the person with the disability are sometimes ignored.

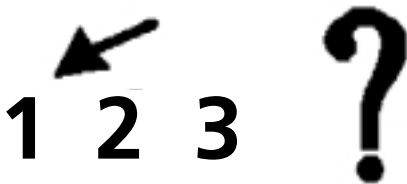
To fix up these problems, we might need some new laws.

WHAT SHOULD THE NEW LAW SAY?

If we are to have new laws that might make it possible to force people with intellectual disabilities to use services that they do not want to use, in order to stop them hurting themselves or other people, then there are a few questions that need to be answered.



The first question is:



What are some of the principles that the new law should be based on?

We think that if there are new laws they should be based on principles that help make sure that people with disabilities get their rights.

Some ideas for the principles that the new laws should be based on include:

- People with disabilities should get whatever support they need to be part of the community.

- People with disabilities should receive services that help them have a decent quality of life.
- When people with disabilities get support, the support should respect their rights and freedoms.
- Services for people with disabilities should help keep them safe from abuse and safe from being exploited.
- Services for people with disabilities should help keep other members of the community safe from being hurt.

We want to know if you think that there are other principles that are also important for the new laws to be based on.

The second question is:

1 2 3 ?

How can we make sure that the new laws are fair and do not discriminate against people with disabilities?



This is a difficult question to answer. It is especially difficult if it means that people with disabilities end up living in places where they do not want to live, or use services that they don't want to use, when this doesn't happen to people who do not have disabilities.



Some people might think that it is always unfair to treat people with disabilities differently to people who do not have disabilities.



But other people might think that sometimes it can be fair to do this because some people with disabilities might not be able to stop hurting themselves or other people. Or they might not be able to understand what they are doing.



If we do not have special laws for those people, then they might end up even worse off – by hurting themselves, or by getting into serious trouble with the police, even though they did not understand that what they were doing was wrong.

It might be fair to have the new law if it stops people being worse off. But we need to know who should make the decision that people are not able to understand that they are hurting other people. And we need to know who should make the decision that people need to go and live somewhere, or to receive a service, to stop them from hurting themselves or other people.

If the new law says that some people with disabilities must receive services that they don't want to receive, because that is the only way to stop them hurting themselves or other people, then we have to be sure that the services are going to help the people who have the disabilities. It should help them understand the difference between right and wrong. This might be another way of making sure that the new law is fair. But we need to know who should decide whether or not the service is helping the person.

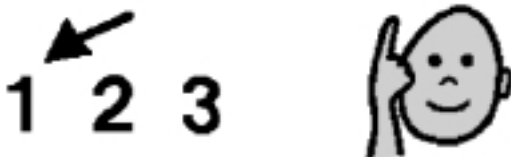


We also think that someone should keep checking to make sure that people are getting the help they need, and that they are in the right place. It would be wrong for people to get put somewhere and then to be forgotten about. But we need to know who should check up and decide whether or not the place is still the right place for the person to be.

And we also think that it is important that people are not told to live somewhere they do not want to live, or to receive services they don't want, unless everything else is tried first. Sometimes people might be hurting themselves or other people only because no one is listening to them, or giving them the help they need. But we need to know who should make the decision that everything else has been tried first.

To sum up, there might be a few ways of making sure that the new law is fair:

- First, we have to make sure that it is used only for people who are not able to understand what they are doing when they hurt themselves and other people.



- Second, we have to make sure that whenever the law forces people to live somewhere they don't want to live, or to use services they don't want to use, that the services are going to help people to learn the difference between right and wrong, and to stop hurting people.



- Third, we should make sure that the laws keep checking on people to make sure that they are being helped and that they are not just put away and forgotten about.



- Fourth, we need to make sure that the new laws are only used after everything else has been tried first.



We want to know what you think about whether or not we need new laws and, if so, how we can make sure that the new laws are fair.

The third question is:

1 2 3 ?

Who should the new law be for?



If we think that there might be some good reasons for having new laws, we need to be careful in saying who the new laws are for.

There are two main ideas for this:

- The laws could say that they are for people with any sort of disability that stops them from understanding about hurting themselves or other people.
- The laws could say that they are only for people who have specific disabilities that are written down in the law, such as intellectual disabilities and acquired brain injuries, or people who have more than one disability.

We also have to think about what we mean when we use the term 'intellectual disability'. If we are going to use this term in the new laws, then we have to say how we will decide whether or not people have intellectual disabilities.

There are two ideas for this:

- The new law could say that intellectual disability means having an IQ of 70 or less. This is what the law says now when it says who is eligible for intellectual disability services.
- Instead of talking about IQ scores, the new law could talk about people's ability to understand the difference between right and wrong, and how to stop hurting themselves or other people.

We want to know who you think the new laws should apply to, and how decisions should be made about whether or not someone fits under the new laws.

The fourth question is:

123 4 ?

How can we tell if someone is likely to hurt themselves or other people?



If the new laws are to stop people hurting themselves or other people, then we need to be clear what we mean by this.

We need to decide if there should be different laws to stop people hurting themselves from the laws that stop people hurting others.

We also need to make sure that the laws only apply to people who are likely to seriously hurt themselves or others. The laws should not apply to people who might only hurt themselves or someone else in a very small way.

One problem with this is that it can be very hard to tell for sure if people are going to hurt themselves or other people. Sometimes service providers or family members might over-react, and think that people with intellectual disabilities are going to hurt themselves or someone else, when in fact this might never happen.

So we need to find good ways of working out whether or not it is really likely that the person will hurt anyone at all. This means working out who should make this decision, and how it should be made.

To do this, we need to say who should assess the people with the disabilities to decide whether or not it is likely that they will hurt themselves or other people. We also need to say how people will be assessed. Who should be able to say that people need to be assessed to see if they are likely to hurt themselves or other people?

There are a few ideas for this:

- A single professional, such as a psychologist or a doctor
- A group of professionals
- It could be different from one situation to the next, depending on what was best in that particular case.

We want to know who you think should be able to make the decision that people are likely to hurt themselves or other people.

And we want to know how you think they should be able to come to that decision.

The fifth question is:

1234 5 ?

Who should make the decision that people have to live somewhere they don't want to live, or receive services they don't want to receive, so as to stop them from hurting themselves or other people?



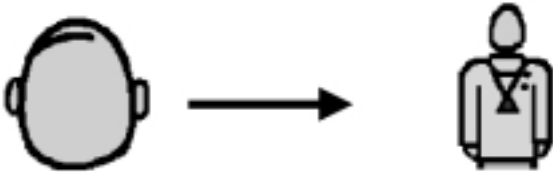
Once someone has said that people with intellectual disabilities are likely to seriously hurt themselves or other people, a decision has to be made about whether or not the best thing to do is for those people to live somewhere safe, or to receive some sort of service, that will stop anyone from getting hurt.

We think that whoever makes that decision should be someone who can listen to all sides of the story, including from the people with the disabilities themselves. It also has to be someone who will take the people with the disabilities seriously.

There are a few ideas for this:



- It could be a single person, such as a guardian or a doctor or a psychologist.



- It could be a tribunal, which is like a court but not quite as strict or formal (the Guardianship Board is an example of a tribunal).



- It could be a court.



Some of these people might know a lot about disability.
Some of them might not.

We want to hear your ideas about who should be able to make decisions that people with disabilities need to go to live somewhere safe, or to receive services, to stop them from hurting themselves and other people.

The sixth question is:

12345 6 ?

What sorts of places should people be made to live in if the law says that they are likely to hurt themselves or other people?



In the past, people with intellectual disabilities often got put into institutions when someone thought that they might hurt themselves or other people.

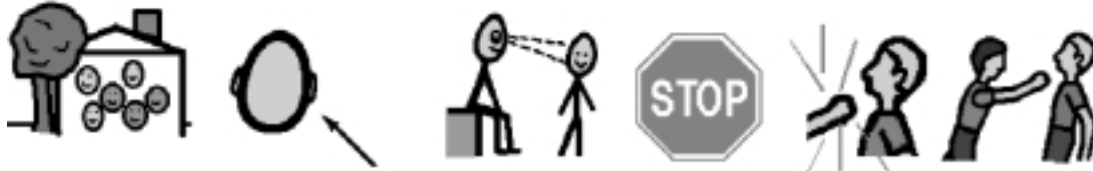
If the new laws say that people have to go to places where they will be helped, and where they will learn about the difference between right and wrong, then it will be important to find the right place.

This will be different for every person.

There are a few different ideas for where people might have to go and live:



- Somewhere like an institution or a Community Residential Unit where people can be watched and stopped from hurting themselves or other people.



- In their own homes but still be watched and helped so that they learn not to hurt themselves or other people.



There will need to be ways of making sure that people get as many of their rights as possible, wherever they are living.

We want to know your thoughts on what sorts of places people should live in when they are likely to hurt themselves or other people.

We also want to know your thoughts on how to make sure that people get as many of their rights as possible when they are living in places that are stopping them from hurting themselves and other people.

HAVING YOUR SAY

We want to hear what you have to say about the things that are in this booklet.

There are lots of ways you can tell us what you think about the things that are in this booklet.

You can fill out your answers to the questions on the following pages and send them into us.

You can ring us and tell us what you think about the things that are in this booklet.

You can come along to one of the community forums that we are running. If you want to know more about these forums, give us a call on 1300 666 555 and we can give you more details.

You can come along to a focus group for people with disabilities. If you want to know more about these focus groups, give us a call on 1300 666 555 and we can give you more details.



QUESTIONS ABOUT THIS BOOKLET

If you want to, you can write down your answers to these questions, tear these pages out of the booklet and send them to us. This is one way of telling us what you think of the things that are in this booklet.

1. Do you think that it is a good idea to have new laws about people with disabilities who are likely to hurt themselves or other people?

2. If we have new laws, what are some of the principles that they should be based on?

3. If we have new laws, what are some of the ways of making sure that they are fair for people with disabilities?

4. If we have new laws, who should they apply to?

5. How should decisions be made about whether or not people fit under the new laws?

6. Who should be able to make the decisions that people with disabilities are likely to hurt themselves or other people?



7. Who should make the decision about what happens to people with disabilities who are likely to hurt themselves or other people?

8. What sorts of places should people live in to stop them from hurting themselves and other people?

9. How do we make sure that people with disabilities still get as many of their rights as possible even if they are living somewhere they don't want to live?

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