

# National Disability Services Submission Tasmanian Disability Inclusion Bill

September 2023

## About National Disability Services

National Disability Services (NDS) is Australia's peak body for non-government disability service organisations, representing more than 1100 non-government service providers. Collectively, NDS members operate several thousand services for Australians with all types of disability. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Commonwealth governments. We have a diverse and vibrant membership, comprised of small, medium and larger service providers, supporting thousands of people with disability. Our members collectively provide a full range of disability services, from supported independent living and specialist disability accommodation, respite and therapy, to community access and employment. NDS is committed to improving the disability service system to ensure it better supports people with disability, their families and carers, and contributes to building a more inclusive community.

## About this submission

NDS welcomes the opportunity to provide input into the Tasmanian Disability Inclusion Bill 2023.

This submission aims to bring together feedback provided to NDS by disability service providers and people with disability.

## Executive Summary

National Disability Services' (NDS) vision is for an inclusive Australia where all people with disability live safely and equitably. To achieve this people with disability need to access the right supports, at the right time, from the right people, services and systems. The introduction of the National Disability Insurance Scheme (NDIS, the Scheme) transformed and continues to transform the lives of many people with disability in Australia. It is a landmark reform, one of the “most important global innovations in disability rights of the past few decades,”<sup>1</sup>. The NDIS has seen issues related to people with disability become part of the national discourse.

The updating of the Tasmanian Disability Services Act 2011 to a Disability Inclusion Act both acknowledges the changes that the NDIS has brought about and considers Australia's Disability Strategy 2021-2031. This has been well-received by disability service providers.

The disability sector is currently in a state of anxious anticipation with findings from both the NDIS Review and the Disability Royal Commission due to be handed down in the coming months. NDS is expecting these findings to be comprehensive and to include numerous recommendations which Governments will need to consider and respond to.

NDS is aware that there are arguments to pause the progression of this Bill, in order to accommodate any amendments arising from the NDIS Review and the Disability Royal Commission. However, it is the view of NDS that the legislation should proceed for the following reasons. First, both the NDIS Review and Disability Royal Commission will take some time to analyse and consider any legislative changes that might be needed. Second, Tasmania's disability framework for action – Accessible Island 2018-2021 – is already well out of date. This bill mandates that the State must have a Tasmania Disability Inclusion Plan moving forward. If progression of this bill were paused, development of the Tasmania Disability Inclusion Plan would also be delayed, which is far from ideal. As the state with the highest rate of disability in the country, it is incumbent on the state to have a current disability inclusion policy, to inform the design and delivery of essential government services and policies for people with disability throughout the state.

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<sup>1</sup> Duffy S & Brown M (2023) Redesigning the NDIS: An international perspective on an Australian disability support system. Sheffield: Citizen Network Research pg 7 accessed 29 August 2023 <https://citizen-network.org/library/redesigning-the-ndis.html> .

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# Summary questions – proposed by Department of Premier and Cabinet (DPaC)

## Part 1 Preliminary

1. *Do the objects, principles and definitions in the Act better reflect human rights and inclusion?*

The principles and definitions in the Act are an improvement on the Disability Services Act 2011 and appear to better align with the human rights expressed within the United Nations Convention on the Rights of Persons with Disability (UNCRPD). The focus on human rights and inclusion is also well aligned to the [Australia's Disability Strategy](#) which provides an overview of the commitment of all Australian governments to make the community more inclusive and accessible.

NDS welcomes the addition of the opening statement which makes it clear that the principles need to be considered if decisions are being made or actions taken regarding the Act. In particular, the recognition of intersectionality and the strengthened rights-based language are consistent with contemporary disability policy.

## Part 2 Disability Inclusion Planning

2. *Will the Disability Inclusion Planning requirements contribute to the advancement of human rights and inclusion?*

Legislation which articulates a strong commitment to the human rights of Tasmanians with disability is welcomed.

NDS is keen to contribute to the development of the Tasmanian Disability Inclusion Plan and looks forward to seeing the development of measures for achieving the objectives of the Act. A Tasmanian Disability Inclusion Plan should also serve as an important vehicle to house some of the anticipated recommendations from the Disability Royal Commission and NDIS Review, such as building inclusivity and foundational services into mainstream supports which are the responsibility of the State Government.

The clearly articulated timeframes, review periods, public availability of plans, and processes around submitting and reporting for both the Tasmania Disability Inclusion Plans and Disability Inclusion Action Plans are more detailed than equivalent mechanisms in many other states.

With regards to defined entities completing Disability Inclusion Action Plans, it would be advantageous to articulate at which level the inclusion plans must be endorsed at and how they could be linked to other existing annual review processes already embedded into identified entities. This would work towards making inclusion planning everyone's responsibility, rather than having the potential situation where entities just nominate a 'disability committee' to do all the 'disability work'. Noting the machinery of Government, and thus the potential difficulties articulating these requirements,

NDS welcomes the role of the Disability Commissioner in disability inclusion planning guideline development and the ability for entities to consult with the Commissioner when making these plans.

NDS also encourages the State Government to consider how it will work with government business entities and similar organisations to ensure that these important areas of service delivery support the inclusion of people with disability, not only as directors, employees and contractors of these entities, but also as consumers.

NDS encourages the Tasmanian Government to consider implementing compulsory consultation with people with disability and including both internal and external stakeholders with disability in the development of defined entities' Disability Inclusion Action Plans.

A key point to be articulated in defined entities' Disability Inclusion Action Plans is what they are doing to diversify their workforce and ensure they employ people with disability. It will be pertinent to make sure this is well measured and monitored as not only does it help to make a more inclusive Australia, but it also makes financial sense. The NDIS is contributing to the economic wellbeing of Australia and recent research identified that more than 250,000 jobs have been created; for every dollar invested in the scheme \$2.25 flows back into the Australian economy.<sup>2</sup>

In this context, NDS reminds the State Government that it is also a significant purchaser of services and products which means that the Government through positive procurement policies that are applied to first tier contractors and sub-contractors create an expectation that these companies will support disability inclusive practices such as training and employing people with disability and/or purchasing from social enterprises that specialise in employing people with disability. Proactive procurement policies send a strong message to the community that disability inclusive practices that support the rights of people with disability is a responsibility and opportunity for everybody and every business.

NDS welcomes the inclusion of Disability Impact Assessments in this legislation. However, they must be genuine, well considered and include the voice of people with disability. Again, ensuring that the office of the Disability Commissioner can help to develop guidelines and principles to support this practice will be paramount to ensure it is genuine and truly aligned to the UNCRPD.

### Part 3 Disability Inclusion Advisory Council

#### 3. *Are there any changes you would make to the proposed functions or the structure of the Disability Inclusion Advisory Council?*

NDS welcomes the addition of the legislated Disability Inclusion Advisory Council and believes the Council has a critical role to play in ensuring that the goals and strategies of the Tasmanian Government, particularly in the area of disability policy, are informed by people with disability. NDS believes meetings held at regular

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<sup>2</sup> Per Capita (2021). False Economy: The economic benefits of the National Disability Insurance Scheme and the consequences of government cost-cutting. Teamwork Works campaign. Accessed 20 December 2022.

intervals that encapsulate the functions of both the current Premier's Disability Advisory Council and Ministers Disability Advisory Council would provide a good opportunity to ensure strong representation from people with lived experience of disability is considered in policy and decision making, as well as promoting the inclusion of people with disability in all levels of governance.

#### Part 4: Tasmanian Disability Inclusion Commissioner

4. *Are the proposed functions and powers of the Disability Inclusion Commissioner sufficient to promote inclusion and improve quality and safeguarding protections?*

NDS welcomes the introduction of the Tasmanian Disability Inclusion Commissioner and the opportunity it brings to provide assistance and systemic advocacy for people with disability. Having the Commissioner monitoring and reporting in relation to the Tasmanian Disability Inclusion Plan is a good opportunity to drive and realise the plan, rather than have it sit as 'a whole of Government plan' with no driver.

It will be important to ensure that any investigations undertaken by the Commissioner are complimentary not duplicative - of existing processes, and education may be required for both people with disability and providers regarding 'which issue goes where'. However, NDS welcomes the Commissioner's power to accept complaints and reports and refer these on to other bodies as appropriate, as this enables a much-needed "no wrong door" approach to reduce barriers for people with disability speaking up about their experiences.

#### Part 5: Disability Services Standards

5. *Is it important to retain a requirement for all providers to follow the National Standards for Disability Services and is it clear who these standards apply to?*

The introduction of the NDIS changed the landscape in which people with disability access services. In 2023, a significant proportion of disability services and disability service providers are not registered with the NDIS Quality and Safeguards Commission. Notwithstanding any specific recommendations that may come from either the NDIS Review or the Disability Royal Commission, adherence to standards of practice that protect the rights of individuals and promote outcomes for people with disability are critical; they drive improved service quality.

The National Standards for Disability Services provide a good framework for all Tasmanian disability services to work to, regardless of their NDIS registration status. It is important, however, that services who are already NDIS registered are not required to report against the National Standards for Disability Services for any purposes in this Act as this could be duplicative and diverts limited resources away from service provision to regulatory compliance

NDS supports the general requirement under the new Act, that all providers comply with the National Standards for Disability Services. Should there be a requirement for non NDIS registered disability service providers to demonstrate that they meet the National Standards for Disability Services, there will likely be a need for an educative function as well as the compliance function. Service users of these services would

also benefit from knowing that non adhering to the National Standards for Disability Services creates an actionable mechanism for complaint for service users.

It is imperative that all individuals who provide disability supports to NDIS participants must undergo a NDIS Worker Screening Check. However, improvements are needed to the NDIS Worker Screening process to ensure that it is accessible and timely. It is appropriate that all disability service providers, regardless of NDIS registration status, comply with Tasmanian Government requirements for 'Working with Vulnerable People'. This check is an important part of the quality assurance process to ensure the safe delivery of disability supports.

Part 6: Senior Practitioner, Part 7: Regulation of Restrictive Practices, Part 8: Appointed Program Officers and Part 9: Independent Persons

- 6. Will the authorisation of restrictive practices process, and roles and functions of the Senior Practitioner, Appointed Program Officers and independent persons provide better quality, protections and safeguards for people with disability?*

NDS had hoped that the introduction of the National Disability Insurance Scheme Quality and Safeguards Commission – and the framework in which it operates – would help drive greater consistency in how and when restrictive practices are used across Australia, ultimately driving a reduction in their use. The authorisation of restrictive practices remains in the jurisdiction of the states and territories and differences in regulatory frameworks concerning restrictive practices continue to exist across jurisdictions. National consistency in the understanding and application of restrictive practices may be a recommendation to come out of the NDIS Review and/or the Disability Royal Commission and is a goal outlined in the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Services Sector<sup>3</sup>. Difference across jurisdictions has resulted in inconsistent knowledge and expertise on restrictive practices across the country and is particularly concerning for those providers who operate across multiple jurisdictions. NDS encourages the State Government to continue to work with interstate and national agencies to ensure national and rational consistency that achieves safe standards of practice while not creating overly burdensome and bureaucratic processes.

Senior Practitioner

NDS welcomes the proposed model in which the Senior Practitioner, an expert in restrictive practice and behavioural support planning, is the single pathway for authorisation of restricted practice. The articulation for the need for the Senior Practitioner to have an ongoing role in education and the potential development of guidelines is a positive step for disability service providers.

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<sup>3</sup> [Proposed National Framework for Reducing the Use of Restrictive Practices in the Disability Service Sector \(the 'National Framework'\) \(dss.gov.au\)](https://www.dss.gov.au)



### Regulation of Restrictive Practice

Disability service providers have been calling for streamlining and solidification of processes with regards to restrictive practice. The aligning of the definitions of restrictive practice with the NDIS Act 2013 and the NDIS Restrictive Practices and Behaviour Support Rules 2018, including the updating of the definition to include chemical restraint, is welcomed.

Within the legislation it appears that the Senior Practitioner's decisions are only applicable in disability services or by disability service providers. In terms of consistency for both the individual and those developing behavioural support plans and seeking approval of restrictive practices, expansion of applicability should be considered.

The proposed model is well aligned to the UNCRPD and the *National Disability Insurance Scheme Act 2013*. With the inclusion of the Appointed Program Officers, and specifically with the Independent Persons, people with disability are assumed to have capacity to determine their own best interests and make decisions that affect their own lives, and are supported to exercise choice and control.

### Appointed Program Officers

It is important to ensure that any restrictive practices used by disability service providers are done in accordance with the authorisation and conditions provided by the Senior Practitioner. Thus, the introduction of the Appointed Program Officer (APO) appears to be a sensible legislative inclusion.

NDS is keen to ensure that disability service providers are heavily consulted when the Senior Practitioner develops guidelines to support the role of the APOs, as the APOs will be employees of the disability service providers. The implementation of these new roles may be cumbersome and time-costly for providers and small and medium size providers may not have enough staff to accommodate this additional responsibility in the way envisaged by the legislation. NDS would like to see an opportunity for funding of these roles - especially in the context when providers should be NDIS registered and there is currently nothing in the NDIS cost modelling that would account for the costing of this position. Noting that Tasmania has a current workforce shortage, it will be imperative that creative solutions to realise the APO role (such as sharing or co-appointing APOs across services) are not excluded by legislation.

### Independent Persons

The introduction of an Independent Person again appears to be a supportive measure to ensure the safety, wellbeing, and health of a person with disability in the context of restrictive practice. It is important that the individual can choose this person to help ensure their voice is heard.

It is important that the Senior Practitioner is responsible for approving an Independent Person to prevent situations where family members may assume they fulfill this role, when in fact they may not represent the individual's best interests. It will be important for disability service providers to ensure they work closely with the

Senior Practitioner to help them understand the context in which behavioural support plans are being proposed and/or implemented.

#### Part 10: Funding

7. *Are the conditions for the Minister to fund activities in relation to the objects of this Act clear?*

[Australia's Disability Strategy](#) outlines the commitment and obligations of all governments to provide and make reasonable adjustments to mainstream and targeted services, supports, and infrastructure systems to people with disability. Although the NDIS now funds a significant proportion of disability services, it does not fund everything, nor everyone with a disability – gaps remain in pockets of service provision, advocacy, and research, as well as a critical shortfall in services for people with disability who do not qualify for the NDIS. Thus, it is positive to see the legislated inclusion of a mechanism that provides financial assistance for purposes consistent with the objects of this Act.

As the Peak body for disability service providers, NDS continues to assist providers to navigate ongoing change (such as the implementation of new legislation) and to further our vision of an inclusive Australia where all people with disability live safely and equitably. To achieve this, people with disability need to access the right supports, at the right time, from the right people, services and systems. NDS helps providers to deliver safe, quality, and timely services.

#### Part 11: Authorised Officers

8. *Do you think the role, functions and provisions made for Authorised Officers are clear?*

Authorised Officers are an existing mechanism within Tasmanian disability legislation. Their role and function is clearly articulated in the bill.

NDS provided a submission to the review of the Disability Services Act 2011, which included the recommendation of the establishment of a Community Visitor Scheme (CVS) for disability in Tasmania. This could have operated logically within the Office of the Disability Inclusion Commissioner or the Office of the Senior Practitioner. Disability CVSs currently operate in all Australian states except Tasmania and Western Australia. CVSs are an effective part of the safeguarding regime for people with disability – including the protections they provide from abuse, neglect, and exploitation. Disability service providers recognise the value of a different perspective on the ground and value the observations that Community Visitors can provide as an extra level of scrutiny. These observations help service providers continuously improve and ultimately create better outcomes for the most vulnerable people with disability. While the NDIS Quality and Safeguards Commission is the new national regulatory body for registered NDIS providers, they do not provide the same on-the-ground practical support to improve the safety and quality of services that a community Visitor Scheme can deliver. A Commonwealth review of the schemes found that that CVSs for disability have a broader scope than the NDIS and

have a contribution to make to the NDIS Quality and Safeguarding Framework<sup>4</sup>. The review also recommended that CVSs, where they exist, should continue to be provided by states and territories. The review noted support for community visiting as a key mechanism to achieve independent oversight of institutional settings both within the disability service system and in mainstream settings such as justice and health. The review also noted that adequate funding is required to deliver this.

The value of the CVS is also highlighted in the 2020-21 Annual Report of the Victorian Community Visitors Scheme<sup>5</sup>. In this year, despite several months of lock down due to COVID-19, there were 337 active Community Visitors who visited 1467 facilities and identified more than 500 issues in Victoria. There were 51 referrals to the Disability Services Commissioner for abuse allegations. Some states operate with volunteer Community Visitors with others employing Community Visitors. It is essential that all Community Visitors are selectively recruited, undertake safety checks, complete (and regularly update) training in how to conduct themselves in the role, and follow policies and procedures for the success of the scheme.

Unannounced, they visit group homes, institutions and supported residential boarding houses and write a brief report at the conclusion of the visit which details who they have spoken to, what documents they have looked at, any issues of concern, as well as good practices they have observed. NDS propose that the Community Visitor Scheme could be housed in the Office of the Disability Commissioner (to be established). Community Visitor Schemes are empowered under state disability acts or separate legislation to perform their role. NDS proposed similar powers be enshrined in the Tasmanian legislation as a result of the review of the Disability Services Act 2011.

## Part 12: Appeals, Part 13: Offences and Part 14: Miscellaneous

### 9. Are there any provisions made in Parts 12-14 that require further clarification?

#### Part 14 – Miscellaneous. 73 (1)

Allied health professions, especially those who are self-employed, do not appear to be covered under the listed information-sharing entities or specified persons. Allied health professionals and those working under their direction, such as Allied Health Assistants, work closely with people with disability and their families. Although some may be providing funded disability supports (thus covered under the Act's definition of disability service or disability service provider) this may not cover those who offer (for example) health services, that people with disability may utilise.

#### Schedule 1 – Provisions in Respect of Membership and Meetings of Disability Inclusion Advisory Council- Part 2 – 4 (1) Remuneration and conditions of appointment

The bill states 'A member is entitled to be paid such remuneration and allowances as the Minister determines'. This could benefit from refining as it is inconsistent with the UNCRPD and the object (c) of the bill, 'recognising the importance of advocacy in

<sup>4</sup> [https://www.dss.gov.au/sites/default/files/documents/02\\_2020/pdf-version-community-visitors-review\\_0.pdf](https://www.dss.gov.au/sites/default/files/documents/02_2020/pdf-version-community-visitors-review_0.pdf)

<sup>5</sup> [Community Visitors Annual Report 2020-2021 - Office of the Public Advocate](#)

promoting the rights of people with disability'. It does not provide a good example of establishing a framework for a whole of government approach to accountability and transparency in relation to disability inclusion. As for other paid employment, there should be clear guidelines regarding remuneration, which do not need to be specifically articulated in this bill but could be referenced. For example, 'a member is entitled to be paid such remuneration and allowance as per a proposed standardised State Service guideline, which recognises the important of lived experience'.

