

Annual Report

Senior Practitioner

Community and Disability Services

July 2022 to June 2023



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Publisher:
Department of Premier and Cabinet

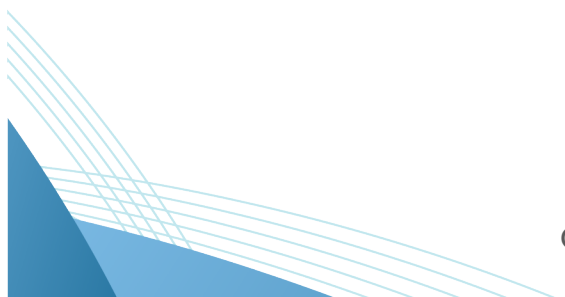
ISBN:
ISBN Number: 978-1-925906-45-5

Date:
August 2023

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I Executive Summary

As outlined in the *Disability Services Act 2011* (Tas), (the Act) the Senior Practitioner must provide to the Secretary by 1 September each year a report consisting of:

- (a) information on the performance of the functions, and the exercise of the powers, of the Senior Practitioner during the previous financial year
- (b) data relating to the use of restrictive interventions during the previous financial year.

It is also a requirement of the Act that a report provided to the Secretary under Section 31 must not enable a person with disability to be identified.

Finally, the Secretary must ensure that a copy of the report provided to the Secretary under Section 31 is available to the public at an electronic website of the Department for at least twelve months after it is so provided. The Senior Practitioner's reports are available at

<https://www.dpac.tas.gov.au/divisions/cpp/community-and-disability-services/office-of-the-senior-practitioner>

The report outlines the activities conducted by the Senior Practitioner to make recommendations about the provision of specialist disability services as well as the regulation of the use of restrictive interventions. This report details the data relating to the use of restrictive interventions from 1 July 2022 to 30 June 2023.

The data indicates some trends that require further examination and the development of guidelines and standards in accordance with best practice in the disability sector as related to the incidence of use of restrictive interventions.

The report concludes with some areas identified as priorities to assist the sector to provide improved services for those living with disability during the next reporting period.

In this reporting period there were increases in both applications from disability service providers seeking approval to use restrictive interventions and their reports on the unauthorised use of restrictive interventions. This increase in activity is an encouraging sign that the efforts of the Office of the Senior Practitioner and the NDIS Quality and Safeguards Commission (NDIS Commission) to raise awareness about the importance of protecting the rights of people with disability when restrictive intervention is needed is having a positive effect.

2 NDIS Quality and Safeguards Commission

The NDIS Commission has been operating in Tasmania since 1 July 2019.

The Commission has a number of functions and responsibilities including:

- registering and regulating NDIS providers and overseeing provider quality.
- monitoring compliance with the NDIS Practice Standards and NDIS Code of Conduct.
- responding to concerns, complaints and reportable incidents.
- advising providers on in-house complaints management and supporting participants to make a complaint.
- advising providers on incident management systems and how to report serious incidents to the NDIS Commission.
- working with people with disability, NDIS providers and workers to improve their skills and knowledge.
- monitoring the use of restrictive practices and educating providers and participants about behaviour support strategies.
- working with states and territories to design and implement nationally consistent NDIS worker screening.
- providing market oversight by monitoring changes in the market that need attention.
- sharing information with other regulatory bodies.

NDIS registered providers in Tasmania are operating under two separate legislative and regulatory frameworks – namely the *National Disability Insurance Scheme Act 2013* and associated Rules, as well as the *Tasmanian Disability Services Act 2011*. In relation to the use of restrictive interventions, NDIS providers need to report their use to the NDIS Commission monthly if authorised and recorded in a behaviour support plan or weekly if unauthorised or not in a behaviour support plan (a reportable incident). Where a restriction is not in the scope of Tasmania’s legislative authorisation requirements (e.g., use of chemical restraint) the action remains a reportable incident to the NDIS Commission until a behaviour support plan is developed.

The Office of the Senior Practitioner (OSP) continues in its role under section 6 of the Act, including the facilitation of approvals for the use of restrictive interventions and works with the NDIS Commission to further the goal of reducing and eliminating the use of restrictive interventions.

3 Processing of Applications

3.1 Background

A disability services provider or a funded private person must not carry out, in relation to a person with disability who is under their care or control, a restrictive intervention unless there is in force an approval under section 38 or section 42 of the Act.

Section 4 of the Act provides a definition of restrictive intervention as follows:

“restrictive intervention means any action that is taken to restrict the rights or freedom of movement of a person with disability for the primary purpose of the behavioural control of the person but does not include such an action that is –

(a) taken for therapeutic purposes; or

(b) taken to enable the safe transportation of the person; or

(c) authorised under any enactment relating to the provision of mental health services or to guardianship”.

Part 6 of the Act provides for the regulation and monitoring of restrictive interventions. The Act separates ‘restrictive interventions’ into two categories – ‘environmental restrictions’ and ‘personal restrictions.’

Personal restrictions can only be approved by the Tasmanian Civil and Administrative Tribunal (TASCAT) under section 42 of the Act and they are also able to approve the use of environmental restrictions under the same section of the Act.

The Secretary of the Department of Premier and Cabinet Tasmania can only approve environmental restrictions under section 38 of the Act.

Under Section 36 of the Act a restrictive intervention that has not been authorised is only allowed to be used if: a) the action is used to protect a person from harm; and b) the action used is the least intrusive type of restriction; c) the Senior Practitioner is notified as soon as practicable after use of the action; and d) the action is not used again for 72 hours.

3.2 Secretary Approvals for Restrictive Interventions

A disability services provider or funded private person may apply to the Secretary for approval to carry out, in relation to a person with disability, a type of restrictive intervention that is an environmental restriction.

The Secretary can only approve an application if the Secretary is satisfied that consultation has occurred with the person with disability or a person nominated by the person, any persons who have expertise in the carrying out of the proposed intervention and with the Senior Practitioner.

Before granting an approval, the Secretary must be satisfied that the restrictive intervention will be carried out only to ensure the safety, health or wellbeing of the person or other persons and that the restriction is the least restrictive alternative available in the circumstances.

In reaching a decision whether to grant an approval the Secretary must have regard to several issues (detailed under section 38) including the best interests of the person with disability, any alternative methods reasonably suitable to address the situation, and the nature and degree of risk to the person with disability. Approvals are only valid for three months.

Secretary Approvals – Environmental Restrictions 1 July 2022 to 30 June 2023 (2021-22 in brackets)	
Number of individuals with approvals	70 (66)
Total number of approvals	238 (201)
Number of ceased applications	16 (8)
Number of Providers (applicants)	28 (27)

Table 1: Number of Secretary Approvals for 2022 – 2023 period.

Table 1 shows there were seventy (70) individuals subject to the use of an approved environmental restriction during the 2022-23 financial year which is 6% more than the last reporting period (66). The number of approvals during this reporting period (238) also rose compared to the 2021-22 financial year (201). The large numbers of approvals compared to individuals reflects the requirements of the Act that the approval period for the use of environmental restrictions is only 3 months and therefore individuals had multiple approvals during the 2022-23 financial year. The Act also requires each disability support provider to apply to use a restrictive intervention and it is common for individuals to be supported by more than one provider. This data shows increases of 18% for approvals granted and 3% in the number of providers making applications compared to the previous reporting period.

Reasons for approvals not being renewed (applications ceasing) were predominantly due to approvals being transferred to the Tribunal (n=7); restriction no longer required (n=5); death of the individual (n=2); and the individual’s change in circumstances (n=2).



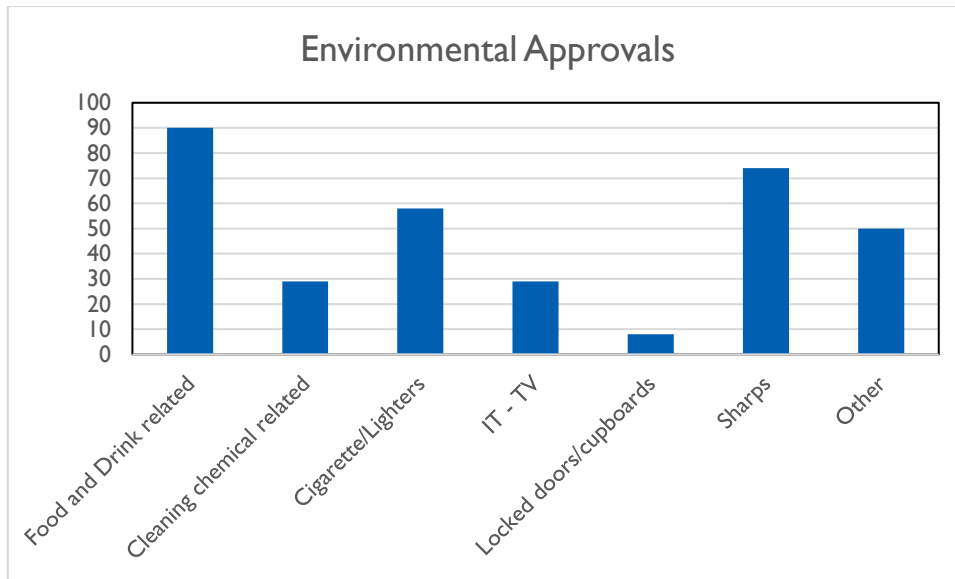


Figure 1: Breakdown of type of environmental restriction approved for 2022 – 2023 period.

Figure 1 shows that the most common types of approved environmental restrictions used by providers in the current reporting period were restricting access to food (27%), sharps (22%), cigarettes (17%), electronic devices (8%), and cleaning products (9%).

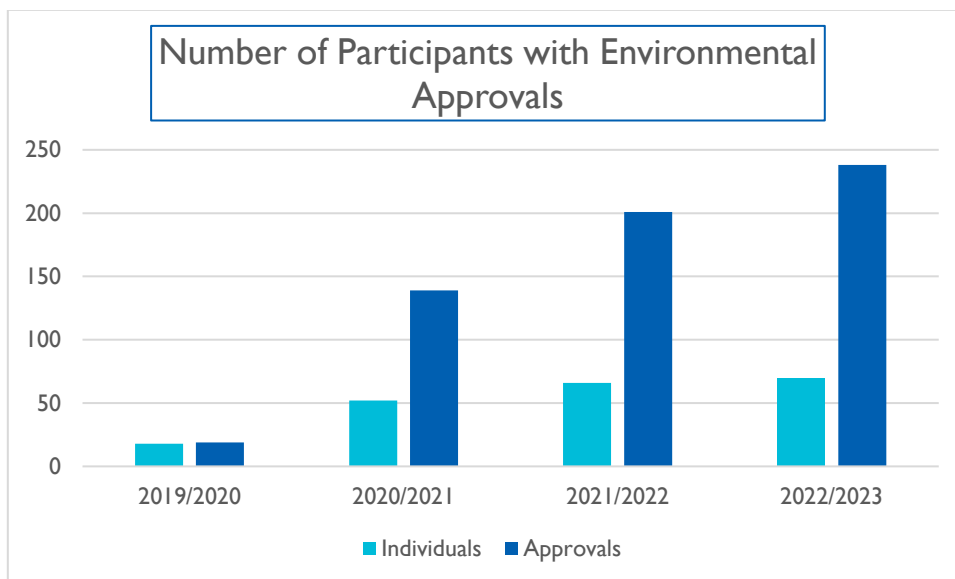


Figure 2: Numbers of environmental restriction approvals and participants over time.

Figure 2 shows the trend over time in approvals being granted by the Secretary and the number of individuals subject to the use of environmental restrictions. This graph confirms the data shown in Table 1 and shows a growing increase in both approvals and individuals since the start of operation of the NDIS Commission in June 2019.

It is likely that the safeguarding activities of the NDIS Commission (e.g. compliance notices) have led to an increased awareness by NDIS providers about the use of restrictive interventions and the need to obtain authorisation.

Since July 2019 the OSP has had a small team (4 FTE compared to 1 FTE previously), with practice consultants based in the 3 major regions of the state in addition to the Senior Practitioner. The substantive occupant of the Senior Practitioner position (Charley Hodgson) unexpectedly died in October 2022. The practice consultants continued to perform the core functions of the OSP during the current reporting period including its information and education activity (see section 3.6). Raised awareness due to this activity would also account for the ongoing growth shown in Figure 1.

3.3 Tasmanian Civil and Administrative Tribunal Approvals

A disability services provider or funded private person may apply to the Tribunal for approval to carry out, in relation to a person with disability, a type of restrictive intervention that is either a personal restriction or an environmental restriction. The application must contain a statement from the Senior Practitioner as to why he or she is of the opinion the Tribunal ought to grant the approval sought.

An approval can only be granted if the Tribunal has consulted with the person with disability or a person nominated by the person and any persons who have expertise in the carrying out of the proposed intervention. The Tribunal also needs to be satisfied that the type of restriction being considered is for the safety, health or wellbeing of the person and is the least restrictive on the person's freedom of decision as practicable.

Table 2 (below) shows that one hundred and seven (107) individuals were subject to the use of personal restrictions that were approved. This compares to a figure of seventeen (79) individuals in the previous reporting period. The data below also shows that the number of applications approved by the Tribunal were higher (129) than in the previous reporting period (99).

Tribunal Orders – Personal Restrictions 1 July 2022 to 30 June 2023	
Number of individuals with approvals	107 (79)
Total number of approvals	129 (99)
Number of ceased applications	6 (1)
Number of Providers	32 (24)

Table 2: Applications approved by Tribunal.

The larger number of approvals (129) compared to individuals being subjected to the use of personal restrictions (107) reflects the fact that the Act requires each disability support provider to apply to use a restrictive intervention. In the current reporting period 16% of individuals with approvals were supported by more than one provider. This data above represents increases of 35% for individuals and 30% for approvals compared to the previous reporting period.

Of the six applications that were not renewed: two ceased as the restrictions were no longer required; one NDIS participant moved to a different support provider; and three applications were not renewed as the NDIS participants were deceased.



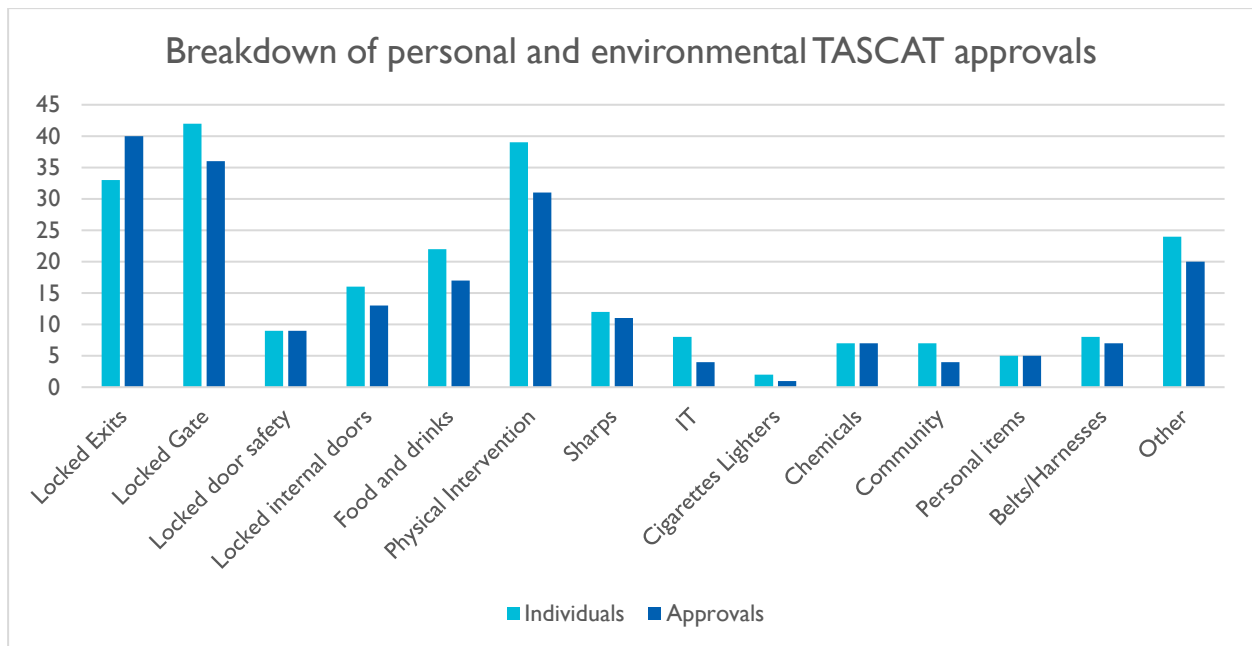


Figure 3: Breakdown of type of restrictive intervention approved by the Tribunal for 2022-2023.

Figure 3 shows that the most common types of Tribunal-approved restrictive interventions used by providers in the current reporting period were locking exits (19%), locking gates (18%) and physical intervention (15%).

Section 42 of the Act enables the Tribunal to approve the use of environmental restrictions as well as personal restrictions and in this reporting period the OSP has increasingly used this provision to manage its significant workload by processing environmental restrictions that are being used with personal restrictions.

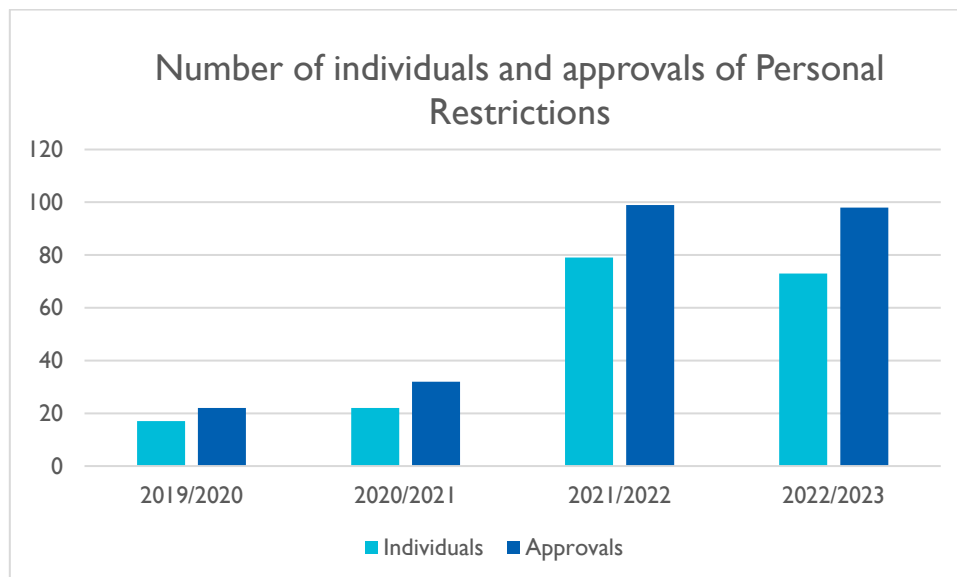


Figure 4: Number of individuals and restrictive interventions approved by the Tribunal for 2022-2023.

Figure 4 shows the trend over time in applications that have been approved by the Tribunal and the number of individuals subject to the use of restrictive interventions from 2019 to 2023. Similar

to Figure 2, this graph shows a strong correlation between the growing increase in both approvals and individuals and the start of operation of the NDIS Commission in June 2019. As with the data relating to Secretary approvals, the considerable increase in Tribunal approvals and individuals subjected to restrictive interventions can be explained by the safeguarding activities of the NDIS Commission (see previous section) and the expansion and increased activity of the OSP team.

3.4 Unauthorised Restrictive Interventions

It may be a defence to the offence of using an unauthorised restrictive intervention if certain conditions are met. Included in those conditions is the need for the Senior Practitioner to be notified by the disability services provider or funded private person as soon as practicable after a restrictive intervention is carried out. Table 3 (see below) shows those unauthorised interventions notified during the reporting period.

Type of restrictive intervention	Personal	Environmental	Personal and Environmental	Overall Total
Accommodation	531 (775)	273 (213)	40 (10)	844 (998)
Community Access	160 (170)	10 (13)	0	170 (183)
Respite	284	24	4	312
In Home	4	0		4
Other	5	1		6
Total	984 (945)	308 (236)	44 (10)	1,336 (1181)

Table 3: Reports of unauthorised use of restrictive interventions (2021-22 in brackets).

The total of 1,336 incident reports for 2022/2023 represents a 13% increase in reporting when compared to the previous reporting period. Of these reports 74% were personal restrictions compared to 26% for environmental restrictions. This data reflects the reality of supporting people with complex needs in that physical intervention to keep people safe is usually unplanned whilst environmental restrictions are more likely to be planned with appropriate approvals obtained.

An additional contributing factor is the length of time needed to authorise a personal restriction through the Tribunal compared to the authorisation of environmental restrictions through the Secretary.

The main function of reporting unauthorised restrictive interventions is to monitor regular usage on an individual basis. In this regard the OSP was able to identify 28 individuals where unauthorised restrictions were being used regularly and worked collaboratively with the disability services provider to gain authorisation for the actions being used.

Of note in this reporting period is that a total of 31 service providers notified the OSP about using an unauthorised restrictive intervention compared to 29 in the previous reporting period representing a 6% increase in engagement of the sector (see section 4.2 for a further discussion about reporting 'unauthorised use').



3.5 Consultations

The OSP team responded to and gave advice in relation to 683 (1083) enquires relating to restrictive interventions and related topics in the current reporting period. This is a significant decrease compared to the previous reporting period. The table below shows the number of consultations in common categories of enquiry.

Type of consultation	Number of Consultations
Site visits	40
Personal	187 (353)
Environmental	100 (256)
Use of medication	47 (79)
Policy	132 (204)
Therapeutic	45 (101)
Positive behaviour support	69 (48)
Transport	44 (42)
Audit	8
Overall Total	672 (1083)

Table 4: Breakdown of category of consultations (2021-22 in brackets).

Both categories of restrictive intervention show significant decreases in enquiries when compared to the previous reporting period (47% for personal & 60% for environmental). The decrease of available OSP staff since October 2022 was possibly a contributing factor.

The increased visibility and activity of the OSP has led to disability service providers and behaviour support practitioners to seek advice about topics over and above the use of restrictive interventions and this includes guidance about positive behaviour support (PBS) and feedback relating to policy/procedure issues and documentation.

3.6 Information and Education

2022-2023 saw the OSP present 74 information sessions to 44 groups and organisations across the state. These organisations were predominantly disability service providers but also included TAFE, behaviour support practitioners, aged care providers and support coordinators. This activity was a slight increase in the number of sessions and groups compared to the previous reporting period, 71 and 38 respectively. In addition, the total number of people who attended increased slightly from 745 (2021/22) to 752 (2022/23).

The core work of the OSP is reviewing and processing applications, the increase in applications in 2022-23, and the loss of the substantive occupant of the Senior Practitioner position resulted

in the OSP needing to respond to requests for information and education rather than being able to proactively offer sessions to the sector.

OSP has started to develop 'online' recordings of key training aspects that can be accessed via the OSP webpage.

Topics requested by and presented to providers, behaviour support practitioners and support coordinators were predominantly 'Restrictive Interventions and Rights' with a number of requests for 'Positive Behaviour Support' from TasTAFE (nursing, disability support & aged care).

4 Key Issues

4.1 Unauthorised use of a restrictive intervention

During this reporting period the OSP has continued to work with the Commission to ensure consistency of reporting of unauthorised use of restrictive interventions across the sector.

4.2 National Action Plan – Developing the NDIS Specialist Behaviour Support Market

The aim of the National Action Plan is to ensure that NDIS participants with behaviour support needs have timely access to quality specialist behaviour support services in a robust provider market. Tasmania endorsed the Action Plan in December 2020 and during this reporting period the OSP continued two projects to support Objective 3 of the Plan, namely '*Build behaviour support provider and practitioner capability – improving quality of behaviour support.*' These are described below:

1. **Development of Interim Behaviour Support Plans (DIP)** - A short, practical program that help people learn the basic skills they need to write simple Interim Behaviour Support Plans (iBSPs) relating to the use of chemical restraint.

During 2021-2022 the DIP program only attracted a small number of participants. The lack of demand for the DIP program from disability providers has led the OSP to only run the program on request and no requests were received during 2022-2023.

2. Communities of Practice

The OSP initiated the creation of two Communities of Practice (CoP) groups (South & North West) in the 2019-2020 reporting period and since then has consolidated operations into one state-wide meeting held via MS teams. Most members are behaviour support practitioners and average attendance is 55 (range 40-86) per monthly meeting. This equates to approximately 60% of all practitioners registered in Tasmania. The NDIS Commission's Assistant Director for Behaviour Support in Tasmania is a regular attendee and provides the group with the opportunity to discuss any issues that members have with the operation of the NDIS Behaviour Support Rules.

The OSP has developed terms of reference for the CoP and outlined its purpose as follows:

- Engage in joint activities and discussions, provide assistance to each other and share information.

- Build relationships that enable members to learn from each other.
- Work together to develop a shared repertoire of resources: experiences, stories, tools, ways of addressing recurring problems (i.e. a shared practice).
- “Wisdom of the group” where knowledge is shared around any changes to the NDIS and NDIS Commission.

Activities that have occurred over the current reporting period include:

- Presentations of case studies.
- Specialist topics for discussion (e.g., sensory assessments /intervention, unregistered providers, rewards programs).
- Guest speakers (e.g., NDIA on PACE, Forensic disability, music therapy, communication, Disability Commissioner).

During the end of the last reporting period the OSP developed a short survey to operationalise the aims of the terms of reference and gauge from members how well the CoP is meeting their needs.

Response rate was 77%. Those who participated in the survey indicated they have a high regard for the CoP in terms of knowledge gain and value to their practice (68%), to a lesser degree see the online resources as useful and intend to increase their contribution to CoP discussions over time.

4.3 Improving behaviour support plan quality (IBSPQ) program

Towards the end of the 2021-2022 reporting period the OSP designed a program where practising behaviour support practitioners in Tasmania could engage in professional development and research activities designed to improve the quality of their behaviour support plans (BSPs). The IBSPQ program consisted of a one-day workshop (in August 2022), 3 post workshop ‘presentations’ where practitioners were encouraged to discuss various aspects of the workshop content at a deeper level. In the 2023/2024 reporting period, it is proposed to give practitioners the opportunity to take part in a research study where data will be collected relating to knowledge acquisition and behaviour support plan (BSP) evaluation.

The IBSPQ program is a collaboration between the Tasmanian OSP, the Queensland Department of Seniors, Disability Services, Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP), the Tasmanian branch of the Australasian Society for Intellectual Disability (ASID) and the NDIS Commission. It aims to enhance the capacity of the Tasmanian behaviour support sector to develop effective BSPs.

4.4 Residential Aged Care

On 1 December 2020, Residential Aged Care (RAC) providers delivering services to NDIS participants in their facilities became NDIS registered providers. This means that RAC providers supporting NDIS participants are required to meet the obligations of the *NDIS Act 2013* and *NDIS*

(*Provider Registration and Practice Standards*) Rules 2018, in relation to the NDIS participants they support.

In relation to the use of restrictive practices (as defined in the *NDIS Restrictive Practices and Behaviour Support Rules 2018*), RAC providers are also required to report the use of restrictive practices to the NDIS Commission, take reasonable steps to obtain behaviour support plans (interim then comprehensive) and seek authorisation from state and territory bodies for their use.

During the current reporting period RAC providers and behaviour support practitioners have contacted the OSP to discuss the use of restrictive interventions when supporting NDIS participants residing in the RAC facility and 3 applications to authorise the use of restrictive interventions have been approved. In addition, the Senior Practitioner has met with other RAC providers and ascertained that no restrictions were being used when supporting NDIS participants. The OSP will continue this work in the next reporting period.

4.5 Reference Groups

During this reporting period the Senior Practitioner was invited to become a member of two Reference Groups as follows:

Expert advisory group on the Primary Health Care Enhancement for People with Intellectual Disability

The Advisory Group will assist Primary Health Tasmania to support the development and implementation of several co-design approaches to deliver a range of projects to support better health outcomes for people with intellectual disability in Tasmania. The advisory group meets bi-monthly via MS-teams.

Advisory group members will:

- Assist in the identification of best practice activities that can maximise existing resources and support for young people with intellectual disability to transition to adult services.
- Support a mapping exercise of current workforce and service providers.
- Identify and advise where modifications are required to improve and enhance the interface with public hospitals, NDIS, primary and secondary care providers.
- Identify and consider other activities that may be commissioned to improve the coordination of care for people with intellectual disability, raise awareness of services and increase workforce capability.
- Contribute to the development of intellectual disability specific Tasmanian Health Pathways.
- Provide feedback to assist with the national evaluation of the Primary Care Enhancement for People with Intellectual Disability Program.

The Roadmap Implementation Governance Group (RIGG)

The RIGG is a governance group that the Commonwealth Department of Health established in November 2021 to oversee and provide advice on the implementation of the National Roadmap

for Improving the Health of People with Intellectual Disability (the Roadmap). Members of RIGGs meet monthly via MS-teams.

The aims of the RIGG are:

- Oversee implementation of the Roadmap.
- Provide advice on implementation of the Roadmap and the actions within it.
- Consult with people with intellectual disability and their families and carers.
- Provide guidance on strategies to mitigate implementation challenges that arise, if required.

5 Priorities for 2023 -2024

As a result of the increase in applications during this reporting period and the reduced number of OSP staff, a number of priorities identified in 2022-2023 have been held over into the next reporting period. These include:

- Providing special assessment and other assistance where there is risk of harm or use of a restrictive intervention and no clinicians are available.
- Developing information and education presentations on Individual Planning, Active Support and Replacement Behaviour.
- Providing on-going monitoring and review of actions deemed for 'therapeutic purposes' or 'safe transportation'.
- Developing 'online' information and education resources.

5.1 Disability Inclusion Bill 2023

The Senior Practitioner will continue working with all relevant stakeholders in the next reporting period to advance the human rights of people with disability and to create a safe and inclusive Tasmania for people with disability. The Disability Inclusion Bill proposes changes to the position of the role of the Senior Practitioner and the authorisation of restrictive practices. The proposed Act will more fully align with existing NDIS legislation and contemporary practices in disability support.

5.2 Residential Aged Care (RAC)

The OSP will continue to work with the NDIS Commission to engage with RAC providers who have yet to seek authorisation for any restrictive interventions they are implementing when supporting NDIS participants. The Senior Practitioner will develop a communication strategy to inform and implement this work in the next reporting period.

5.3 Fact/information sheets

In the next reporting period Fact sheets and the Policy and Procedures for use of Restrictive Interventions will be reviewed to incorporate the content of a nationally agreed position on practices that present high risk of harm to NDIS participants.



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