

Your Say

Advocacy Tasmania

Submission from Your Say Advocacy Tasmania ('Your Say Tas')
regarding the review of the *Disability Services Act 2011* (Tas)

December 2021

Introduction	2
Topic 1: Inclusion, Accessibility and Leadership	2
Overhaul of the Act's objects.....	2
Disability Advisory Council.....	3
Case study: Gary Wilson (he/him)	4
Topic 2: Principles which support the rights of people with disability	5
Case study: Erika Green (they/them).....	7
Case study: Louisa Franklin (she/her)	7
Topic 3: The DSA, NDIS and other national disability programs	8
Need for Independent Advocacy	8
Case study: Gary Wilson (he/him)	9
Case study: Jennifer Clark (she/her)	9
Topic 4: Quality and safeguards	10
Overlap with the NDIS Quality and Safeguards Commission.....	10
Case study: Alex Smith (they/them)	11
Quality and Safeguards for services outside of the NDIS	12
Topic 5: Regulation of providers	13
Case study: Rebecca Crawford (she/her).....	14
Topic 6: Creating a Tasmanian Disability Commissioner	14
Topic 7: Supported decision making and consultation	15
Case study: Judy Rees (she/her)	17

Introduction

Your Say Tas is an independent not-for-profit organisation that provides client-directed advocacy services to older people, people with a disability ('PWD'), people living with mental illness, and people who use alcohol and other drugs. Your Say Tas welcomes the opportunity to make a submission to the State Government regarding the review of the *Disability Services Act 2011* (Tas) (the 'DSA'). Our submission is informed by the directly reported client experiences and will comment on each discussion topic outlined in the September 2021 Discussion Paper, with a focus on human rights and the need to explicitly legislate the right for people with disability to access independent advocacy services.

Case studies included in this submission have been anonymised. They may include the experiences of more than one individual, or details not affecting the outcome of the issue may have been changed, in order to protect the identities of the individuals concerned.

Topic 1: Inclusion, Accessibility and Leadership

There are several ways that the DSA could contribute to the inclusion of PWD in Tasmania's social, economic, civic, political and cultural life. First, the objects of the Act need to be overhauled to include the principles of inclusion and accessibility at the core of the Act. Second, the DSA should establish a robust Disability Advisory Council.

Overhaul of the Act's objects

Inclusion and accessibility are not currently included in the objects of the DSA. Amending the Act's purposes to incorporate inclusion and accessibility would ensure that they are at the forefront of the legislation governing service provision. In considering an overhaul of the DSA's objects, it is useful to look at legislation from other Australian jurisdictions where these are included in the objects. For example, section 4(a) of the *Disability Act 2006* (Vic) states that one of the objectives of the Act is to 'advance the inclusion and participation in the community of persons with a disability'.¹ A similar object should be added to the Tasmanian DSA to ensure that it governs the legislation. The *Disability Inclusion Act 2014* (NSW) also has comprehensive objects,

¹ *Disability Act 2006* (Vic), s4(a).

which provide further examples of ensuring a focus on human rights at the core of the Act. These include:

- (a) to acknowledge that people with disability have the same human rights as other members of the community and that the State and the community have a responsibility to facilitate the exercise of those rights
- (b) to promote the independence and social and economic inclusion of people with disability
- (c) to enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports and services
- (d) to provide safeguards in relation to the delivery of supports and services for people with disability and
- (e) to support, to the extent reasonably practicable, the purposes and principles of the *United Nations Convention on the Rights of Persons with Disabilities* ('UNCRPD').

Disability Advisory Council

Your Say Tas supports the establishment of a Disability Advisory Council under the DSA similar to the Victorian Disability Advisory Council (VDAC) established in Victoria by section 11 of the *Disability Act 2006*.² VDAC consists of 8 to 14 members appointed by the Minister for Disability Ageing and Carers,³ and the Minister is responsible for ensuring that appointed persons reflect the diversity of people with disability, reflect the cultural and indigenous backgrounds of persons with disability, have appropriate skills knowledge and experience in matters relating to disability, and in so far as possible have personal experience of disability.⁴ The Minister must ensure that a majority of the VDAC are PWD.⁵

Tasmania currently has the Premier's Disability Advisory Council (PDAC), chaired by the Premier. However, the above selection criteria for members of VDAC are much more robust in ensuring

² *Disability Act 2006* (Vic), s11.

³ *Ibid*, s11(2).

⁴ *Ibid*, s11(3).

⁵ *Ibid*, s11(4).

the centering of voices of people with lived experience of disability than is currently required by PDAC Membership of PDAC is more broad ranging, and includes PWD, parents and family members of PWD, people who are involved in service provision, education or advocacy, people who are connected to PWD through involvement in community organisations, practitioners, clinicians or researchers in areas relevant to the lives of PWD.⁶ This clearly provides for a range of persons to be appointed to PDAC with an array of interests and has no requirement for the majority of PDAC to be PWD.

The DSA should establish a Tasmanian Disability Council with robust selection criteria for members which ensures a majority of members have lived experience of disability. People with disability are the experts in providing insight into issues faced regarding inclusion and accessibility in the community. The proposed Disability Advisory Council should retain the role of the present PDAC in reporting of the implementation of the disability action plans of government agencies,⁷ but its role should be broadened to include providing proactive advice to government to increase participation for people with disability in all areas of the Tasmanian community.

Case study: Gary Wilson (he/him)

Gary Wilson, a client of Your Say Tas, required support to speak with his employment manager, as they did not understand his position regarding his working hours and provision of support. Gary believed that his skills were not being properly utilised and was regularly not being given his requested number of hours per week of work. Gary's main concern was that his employer wanted him to have a support worker with him whenever he was working, although Gary did not feel that he needed one. Gary's NDIS plan also did not provide sufficient funding for support hours for work purposes, so he had to be frugal with those support hours. Gary felt that he was the best judge of when he needed support, not his manager. Gary contacted Your Say Tas for support with the issue, and he was supported by an advocate at a meeting with his employer. The advocate reiterated that Gary did not want his employer to assume that he can't do something due to his disability and if they do have concerns, that they are to talk to Gary first.

⁶ Premiers Disability Advisory Council, Terms of Reference, July 2021, p3.

⁷ Department of Communities Tasmania, Premiers Disability Advisory Council Terms of Reference, updated July 2021, p2.

The advocate supported Gary to say that he did not want to utilise his NDIS support hours unnecessarily and would like to be listened to. Following the meeting, Gary was satisfied and felt that the issue was communicated effectively. This case study demonstrates that PWD need to be treated as the expert in their own lives, which is at the core of inclusion.

Topic 2: Principles which support the rights of people with disability

Your Say Tas supports the inclusion of a Charter of Rights for PWD included as a schedule to the DSA, overseen by the Disability Commissioner (detailed in topic 6). Further, there are several provisions in the Victorian *Disability Act 2006* that could be incorporated into the Tasmanian DSA to ensure the rights of PWD are supported. A number of these principles are relevant to supporting persons with disability to make decisions by building their capacity and the capacity of their support persons (detailed in topic 7). These include:

- persons with a disability have the same rights and responsibilities as other members of the community and should be empowered to exercise those rights and responsibilities;⁸
- Persons with a disability have the same right as other members of the community to—
 - (d) exercise control over their own lives;
 - (e) participate actively in the decisions that affect their lives and have information and be supported where necessary, to enable this to occur;⁹
- that disability services should advance the inclusion and participation in the community of persons with a disability with the aim of achieving their individual aspirations;¹⁰
- that disability services should maximise the choice and independence of persons with a disability;¹¹
- that disability services should consider and respect the role of families, carers and other persons who are significant in the life of the person with a disability;¹²

⁸ *Disability Act 2006* (Vic), s5(1).

⁹ *Ibid*, s5(2).

¹⁰ *Ibid*, s5(3)(a).

¹¹ *Ibid*, s5(3)(c).

¹² *Ibid*, s5(3)(h).

- that disability services should acknowledge the important role families and carers have in supporting persons with a disability;¹³
- that disability services should acknowledge the important role that families have in assisting their family member to realise their individual physical, social, emotional and intellectual capacities;¹⁴
- that disability services should, where possible, strengthen and build capacity of families and carers who are supporting persons with a disability;¹⁵
- that disability services should be provided in a way which reasonably balances safety with the right of persons with a disability to choose to participate in activities involving a degree of risk.¹⁶

The principles in the DSA also need to be amended to include the right to housing as covered by the UNCRPD. The DSA currently makes vague references to rights based around “the right to receive the care and support they need over their lifetime” (s5(1)(b)), but does not mention housing, despite this being a fundamental right underpinning security for the PWD to be empowered to realise the majority of their other rights. The below case studies highlight deficiencies in the current DSA principles contrary to the UNCRPD, specifically:

- Article 28(1) outlines the right of PWD to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions. It also outlines the requirement that state parties shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability;¹⁷ and
- Article 28(2) outlines the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability It also outlines the requirement that state parties shall take appropriate steps to safeguard and promote

¹³ Ibid, s5(3)(i).

¹⁴ Ibid, s5(3)(j).

¹⁵ Ibid, s5(3)(k).

¹⁶ Ibid, s5(3)(n).

¹⁷ UNCRPD, Article 28(1).

the realization of this right, including measures to ensure access by persons with disabilities to public housing programmes.¹⁸

Case study: Erika Green (they/them)

Erika was a client of Your Say Tas who sought advocacy support to communicate with housing supports. Erika has an acquired brain injury, back injury and experiences mental illness and was living in precarious conditions with their family. These conditions had a detrimental effect on their physical and mental health and relationship with their family. Erika receives a Disability Support Pension and is eligible for NDIS. Erika was waiting for social housing for over 6 months despite being listed as priority 1 status and placing no restrictions on location. Erika was offered a one-bedroom property, however as it was not suitable for their family, they were forced to reject it. An advocate worked with Erika for several months to establish positive communication channels with appropriate supports.

Case study: Louisa Franklin (she/her)

Louisa moved to Tasmania from interstate approximately two years ago and has been homeless or living in precarious conditions since that time. Louisa has PTSD and sought Your Say Tas' assistance to access emergency accommodation that was funded in her NDIS plan. Louisa accessed homeless shelters however she experienced problems in these shelters due to her PTSD and feelings of 'being taken advantage of'. Louisa spent many nights sleeping in the bush and in huts, where she had been 'cold and terrified'. Louisa accessed short-term accommodation through her NDIS plan, however longer and mid-term accommodation could not be obtained due to a lack of social housing availability.

When considering legislated rights and underlying principles for PWD, these rights must be enforceable more broadly within the community than just through state-funded disability services. The pathways to enforce these rights further need to be accessible, timely and provide effective remedies. It is also important that independent support is funded and freely available

¹⁸ UNCPRD, Article 28(2).

to help PWD navigate the process of having breaches of their rights made right, including by independent advocacy, counselling, and legal services.

Topic 3: The DSA, NDIS and other national disability programs

It is important for the DSA to retain what appears to be a very broad power to provide assistance for services to a person with disability under section 13. The state government needs to be responsible for the gap that occurs when people with a disability are not eligible for the NDIS and the current state-offered supports (such as HACCC) are not adequate to address their needs. See below Jennifer Clark's case study. The DSA must also retain the broad power to make grants under section 14. This should be expanded to specify that funding/grants must be available for consumer representative bodies (such as Disability Voices Tas) and advocacy services. Currently, whilst the state government funds advocacy services, it does not have an explicitly legislated obligation to do so. There is also no legislated right to access independent advocacy for PWD, as occurs for other population groups, such as those accessing aged care services. Without such a legislated right for a person with disability to have an advocate, people with disability face additional barriers to accessing advocacy support, particularly in group home settings, where advocates can be denied access and the ability to provide independent support.

Need for Independent Advocacy

While independent advocacy is not itself a safeguarding mechanism, it is a critical support for the human rights of PWD and the effectiveness of any safeguarding mechanisms which exist. Whilst Tasmania has historically enjoyed a relatively high availability of independent disability advocacy when compared to other states, there remain critical barriers in facilitating access to that advocacy for PWD. Although the National Standards for Disability Services encourages the right of PWD to independent advocacy, there is no complaint mechanism or other recourse when the standards are not upheld. The importance of access to advocacy, especially independent advocacy, is highlighted in the NSDS, NDIS Act, NDIS Rules (Complaints Management and Resolution) and in the existing DSA. However, none of these frameworks explicitly place the obligation on providers to facilitate access to advocacy, either in terms of enforceability or what "facilitating access" looks like in practice.

A comparison may be drawn to the rollout of the Charter of Aged Care Rights in recent years across government-funded aged care services. Since the creation and implementation of an explicit charter of rights, which lays out the core rights of any person accessing aged care services including the right of access to advocacy, the rate at which older persons have been able to access independent advocacy to address the issues they experience has increased significantly. We recommend the creation and implementation of an equivalent legislated Charter of Rights for PWD accessing services in Tasmania. It would be appropriate for the Disability Commissioner to have oversight of regulatory actions or complaints made under such a charter. The case studies told below highlight the vital need for advocacy in supporting people with disability to have their voices heard and rights respected.

Case study: Gary Wilson (he/him)

Gary lives with cerebral palsy and is a full-time wheelchair user. Gary first contacted Your Say Tas over five years ago and since then, we have assisted Gary with over twenty advocacy issues across a wide range of areas. This has included accessing and utilising the NDIS, accessing employment and supporting Gary to resolve employment issues and providing support at meetings with service providers and medical practitioners.

Whilst Gary is an extremely competent and can advocate for himself, he finds that the presence of an advocate, or sometimes simply an email from the advocate to the appropriate person, will often result in achieving his desired outcome. Often what can happen when Gary tries to resolve an issue without an advocate is that he says all the same things than an advocate would say, but is not listened to and feels insulted. He has expressed significant frustration that an advocacy presence is required to have his voice heard. The quantity of Gary's advocacy issues alone highlights the important role of an advocate and the need for consistent funding to advocacy organisations, underpinned by the explicit right to advocacy legislated in the DSA.

Case study: Jennifer Clark (she/her)

Jennifer has a complex health condition that gives rise to a high demand for a range of services including, but not limited to, medical treatment, domestic assistance, social support, and mental health services. Jennifer has been attempting to access the NDIS for over four years and her

access request has been refused several times including an application to the Administrative Appeals Tribunal. Throughout this process, Your Say Tas has assisted Jennifer to access disability supports through the state government. Jennifer is currently accessing domestic and social support through the HACC program. However, Jennifer is only receiving around two hours personal care per fortnight in a situation where she requires significantly more care to adequately meet her needs.

Jennifer has also independently sought out and utilised other support programs within the community, but even combined these supports do not adequately meet her high level of care needs. In Jennifer's experience, the issue is not only the lack of services available but the fact that the services that are available through the state government are understaffed and provided on a limited time basis. On several occasions we have provided Jennifer with information and assistance for social and mental health supports. Jennifer has expressed extreme frustration and regular suicidal ideation because of her difficult position. Jennifer's situation highlights the concerning gap that arises when people with a disability are not (or not yet) approved for NDIS services and the state government does not have adequate services available to meet their needs.

Jennifer's HACC-funded disability supports are delivered by a service provider that also provides NDIS supports. Jennifer states that her support staff frequently comment on the injustice of her situation, saying that she is "more disabled" than the majority of their NDIS clients but receives a lower standard of care due to insufficient funding.

Topic 4: Quality and safeguards

Overlap with the NDIS Quality and Safeguards Commission

It is critical that the quality and safety provisions of the DSA are able to support the function of the NDIS Quality and Safeguards Commission ('NDIS QSC'), as well as other NDIS quality and safety measures, through the adoption of a "catch-all" approach. Many clients experience significant confusion regarding the various mechanisms for complaint, as well as around the perceived independence of the NDIS Quality and Safeguards Commission from the NDIA.

Your Say Tas clients often report low confidence in the NDIS QSC either in terms of whether their complaint will fall within its scope, fear that the NDIS QSC is linked to the NDIA and that the client will experience retribution for complaint, or simply concern that the NDIS QSC's complaints handling mechanism will not be effective. These concerns are most commonly based on misunderstanding of the NDIS QSC's role and function. Whilst technically the NDIS QSC is often positioned to address the client's complaint effectively, safely and appropriately, concerns of this type still frequently prevent clients from raising complaints.

It would be appropriate for the DSA to empower a regulatory and complaints mechanism, in the form of a Disability Commissioner, to accept all service or discrimination-related complaints from PWD for initial investigation. Please see the recommendations below regarding the Commissioner under topic 6. Cases that are determined to fall under the scope of the NDIS Quality and Safeguards Commission or another existing regulatory body could then be referred on for action as a "warm handover". It would be appropriate for the DSA to also support scope overlap with Equal Opportunity Tasmania in a similar fashion; many clients report difficulty in understanding whether what they have experienced constitutes discrimination, even when they are clear that their rights have been breached. The ability for PWD to identify and access a clearly independent rights-based complaints mechanism, that could either take action itself or refer issues on after initial investigation, would vastly improve the accessibility of quality and safety mechanisms for PWD in Tasmania.

Case study: Alex Smith (they/them)

Alex's NDIS provider is not an NDIS registered service provider, and issues have arisen over the correct pathway for complaint when Alex sought to speak up about problems that they had experienced. While Alex initially made inquiries about the NDIS QSC, they were told by a number of people in their life (including service providers) that their complaint was outside of the NDIS QSC's scope. Alex was required to persevere through several layers of misinformation before ultimately discovering that they could indeed take the complaint to the NDIS QSC.

Due to a lack of other service providers appropriate to Alex's needs, and significant fear of reprisal, Alex found making a complaint challenging. They also require a third party to act as

intermediary for their complaint due to the highly sensitive and traumatic nature of the content. Alex reported feeling very uncertain about going to the NDIS QSC at all, as they worried that complaining might impact their NDIS Plan funding.

If there was a body established under the DSA - such as a Disability Commissioner - that was able to initially accept a broad spectrum of complaints for investigation and then refer on to the NDIS QSC (or another body) if necessary, Alex would have been able to have their complaint addressed much sooner, and with more confidence in the independence of the process. The DSA could also support the provision of independent advocacy to act as communication intermediaries for Alex's complaint.

[Quality and Safeguards for services outside of the NDIS](#)

It is common in Tasmania for a single disability service provider to provide both NDIS-funded and state-funded disability supports, as in the above case study of Jennifer Clark. There are numerous mechanisms for quality and safeguarding for services outside the NDIS that would be appropriate to implement under the DSA, including a Disability Commissioner, an Official Visitor Scheme for disability services, and a legislated right to access to independent advocacy (as distinct from the Official Visitor role).

Our clients tell us of experiences issues around discrimination and rights violations that rarely occur in isolation. Even where a particular complaint may fall under the scope of the NDIS QSC, it is likely that investigation may uncover other rights breaches occurring in a person's life that are outside of the NDIS QSC's jurisdiction to act upon. It is critical that effective investigative and regulatory mechanisms exist for these issues to be referred to. Current mechanisms do not adequately protect individuals accessing services outside the NDIS (see Topic 5, Regulation of Providers, and Case Study: Rebecca Crawford).

An Official Visitor Scheme for disability would be most effective if it were to be empowered to make frequent, unannounced visits to the premises of any services either offering accommodation or personal care support (such as in centre-based daytime support services) to

people with disability. The Victorian Community Visitor model, which makes use of volunteer programs to ensure a high frequency of site visits, provides a strong basis for an equivalent program in Tasmania, but could be strengthened further by the explicit inclusion of centre-based daytime support services.

The inclusion of centre-based daytime support services is vital to fully support the rights of PWD to not be subject to violence, abuse, neglect or exploitation. The 2020-2021 Annual Report from the Office of the Senior Practitioner states that there were 180 reported incidents of unauthorised restrictive practices in community supports over 2020-2021.¹⁹ Given that this relies on self-reporting by providers, and when compared to anecdotal reports from our clients, we consider it likely that this number significantly underrepresents the actual rate of incidents.

Many clients report that communication between daytime supports and families or home supports is poor. In instances where clients experience barriers with communication and/or speech, it is common for clients to struggle to speak up about their experiences. They may be reluctant to disclose abuse or neglect in the service setting where it occurs due to trauma or fear of punishment. Conversely, some PWD may actually be more likely to disclose in the setting which creates a physical prompt of their memories of their experiences. An Official Visitor Scheme that could attend the premises of both centre-based and accommodation supports would allow the Official Visitor to both directly witness conditions in centre-based supports and maximise the opportunity for PWD to speak up about their experiences.

Topic 5: Regulation of providers

The current version of the DSA is vague and lacks critical detail regarding who regulates service providers as there is no independent regulating body. It would be appropriate for an independent regulatory body and the NDIS QSC to run in parallel. It is important for the DSA to regulate providers who are not specialist disability services but provide services to people with disability, such as the Housing Tasmania disability stream. The DSA could provide standards of

¹⁹ Tasmanian Government Department of Communities, Office of the Senior Practitioner Annual Report 2020-2021, August 2021, p14.

accountability for delivery of supports and a process for addressing breaches via a local independent regulating authority (such as the Disability Commissioner – refer to topic 6). This would provide accountability for non-NDIS registered service providers. The DSA also needs to establish an Official Visitors Scheme. Disability services should not be able to deny access to critical support services, including advocacy support.

Case study: Rebecca Crawford (she/her)

Rebecca was involved in a motor vehicle accident and is supported through MAIB. She has an acquired brain injury and physical injuries. Rebecca sought support from Your Say Tas to liaise with her service provider regarding her support limitations. Her service provider placed a restrictive daily limit on her access to supports, and such limits counteracts her goals. The advocate supported her to communicate with the service provider, who remained resistant to change the daily limit. Rebecca asked the advocate to submit a complaint on her behalf. The service provider had a complaints process however they do not have an external regulator nor an independent regulator. As such there is no one beyond them to enforce the regulations or appeal any decisions.

Topic 6: Creating a Tasmanian Disability Commissioner

Your Say Tas supports the establishment of a Tasmanian Disability Commissioner under the DSA, with powers similar to that of the Victorian Disability Commissioner as set out in the *Disability Act 2006*.²⁰ The Commissioner should have a broad power to accept complaints and refer them on to other agencies such as the NDIS QSC or Anti-Discrimination Commissioner where required. This would increase accessibility for people with disability to make complaints about services if they were able to be funneled through the Disability Commissioner and referred onto other agencies where required. It is important that the Commissioner has the scope to handle complaints relating to services that are not NDIS-registered disability services and relating to services that are not specialised disability services but do provide services to people with disability. As discussed above, the DSA should also include a Charter of Rights for PWD which is

²⁰ *Disability Act 2006* (Vic), s16.

overseen by the Commissioner. It is imperative that the Tasmanian Disability Commissioner is authorised to receive complaints regarding children with disability.

The Independent Review of the Public Trustee report released on 30 November 2021 recommends that 'the Government appoint the Disability Services Commissioner to an oversight role for represented persons with a grievance.'²¹ The overwhelming number of stories where people have been negatively affected by the guardianship system and Public Trustee, set out further below in topic 7, highlight the importance of a pathway being implemented for PWD with a grievance about service provision. It is imperative that service providers are held accountable to PWD, and a Disability Commissioner is a framework for ensuring that pathway to accountability.

Topic 7: Supported decision making and consultation

The current DSA expects providers to consult wherever possible with the individual and their families, friends, carers and advocates regarding participation and inclusion. However, there are no penalties or guidelines/frameworks on how this is to be achieved. The DSA needs to ensure that the views of the individual are prioritised and that providers are not preferencing those of family or friends (and must make all efforts to ensure that the individual wants the particular family/friends/carers consulted or included in supported decision-making). This can be achieved by implementing supported decision-making provisions and including supported decision-making as a core principle of the DSA.

The Your Say Tas client experiences with the guardianship and administration system illustrated below that lead to the independent review of the Public Trustee in 2021, highlight why a supported decision-making framework and a shift away from substitute decision-making is vital to protect the rights of PWD.

On 10 June 2021, the State Government announced an independent review into the conduct of the Public Trustee following concerning reports from Tasmanians, including Your Say Tas, about the guardianship system from the hospitals through to the Guardianship and Administration

²¹ Bugg AM QC, Damian, Independent Review of the Public Trustee Report, recommendation 7.1

Board (GAB), the Public Guardian and Public Trustee. The stories were distressing and demonstrated the failings of this system in their role to support our most vulnerable Tasmanians. What was consistent across the stories reported was the lack of support and communication from the key institutions mentioned above to the represented person and/or their trusted persons. These organisations are supposed to protect our most vulnerable, however these stories demonstrated that this was far from the truth.

Many Your Say Tas clients were not consulted about the making of an application to the GAB, nor were they consulted by their appointed administrator or guardian. Their wishes were not sought or respected and they were not provided with opportunities to develop their decision-making capacity. These client experiences demonstrate that supported decision-making options are not considered prior to the appointment of a substitute decision-maker, which should be an option of last resort. The Independent Review of the Public Trustee, released on 30 November 2021, notes that 'the responses [to the Review] lead me to conclude that for 26 years the Public Trustee has genuinely misunderstood the duties of an administrator under section 57 [of the *Guardianship and Administration Act 1995*]'²²

Tasmanians deserve the right to receive support from person/s that they trust and have an opportunity to know personally, and who will communicate with them regarding their wishes and decisions to be made. Not only is such support more personalised and accessible for the person concerned, but it also provides greater opportunity for people with disabilities to have control over their life and work to increase their independence. Supported decision-making has been long discussed and supported by prominent Australian institutions for many years. For example, The Australian Law Reform Commission Report 124, published in 2014, supports formal supported decision-making models across the country that empower people to have decision-making ability with appropriate support to do so.²³

The NDIA assumes that if needed, each participant will have access to a self-appointed supported decision-maker and have introduced policies that rely on this assumption. The NDIA views

²² Bugg AM QC, Damian, Independent Review of the Public Trustee Report, p24

²³ Australian Law Reform Commission, ALRC Report 124, August 2014, *Equality, Capacity and Disability in Commonwealth Laws*, p92.

Victoria and Tasmania as one jurisdiction, and as Victoria has a successful supported decision-making scheme in place, they operate on the assumption that Tasmanians also have access to such a scheme. In Victoria, supportive attorneys and guardians are available to anyone who wishes to have a trusted support person formally appointed to assist them in making decisions. Supportive attorneys and guardians can support a person to access information from, and community with organisations and take reasonable steps to make action their decisions. Critically, the supportive attorney/guardian *cannot* make decisions on behalf of the person, as an administrator or guardian is able to do. Your Say Tas supports legislative instruments regarding supportive attorneys and guardians equivalent to those in place in Victoria to be included in the Tasmanian *Powers of Attorney Act 2000* and *Guardianship and Administration Act 1995*. Should these be implemented in the upcoming reforms of the guardianship framework, the DSA should be updated to reflect the role and importance of supportive attorneys.

Case study: [Judy Rees \(she/her\)](#)

Judy Rees sought assistance from Your Say Tas following the appointment of the Public Trustee as her administrator. Judy had received no contact from the Public Trustee until Judy's friend Miriam supported Judy to engage with Your Say Tas and Judy's advocate facilitated contact between Judy and her client account manager. Judy had the benefit of having a very supportive friend in Miriam who assisted Judy to understand communications from the Public Trustee and stood up for her rights. Judy's experience with the Public Trustee was negative but she was supported greatly by Miriam to advocate for her rights and understand what was done with her possessions. This is in stark contrast to other client experiences who often do not have a hands-on supportive friend to assist them and end up with very little to no contact from the Public Trustee.

Conclusion

What we aim to have demonstrated in this submission is the urgent need for sweeping changes to the *Disability Services Act 2011* to ensure that people living with disability in Tasmania have access to effective, appropriate and supportive services that are informed by their own experiences to the greatest extent possible. This must start with the introduction of key principles

consistent with the *United Nations Convention on the Rights of Persons with Disabilities*, for which all legislative provisions within the Act must uphold.

These changes must recognise the diverse and meaningful contribution that people with disability already make to the Tasmanian community, and how their contributions could be further developed and recognised with the introduction of an Act informed by our submission. The changes must consider the interaction between NDIS and non-NDIS disability services, formal and informal support networks and the role of, and the need for external regulatory bodies such as a Disability Services Commissioner.

Finally, as an advocacy organisation that has been providing support to people with disability for over 30 years, we strongly support the introduction of an explicitly legislation obligation to fund and provide access to independent disability advocacy services to ensure that all people with disability can access independent, free and professional advocacy support throughout their lives.

We look forward to the implementation of an Act that, in the words of the Minister of Disability Services, Sarah Courtney, 'provides a contemporary vision for a safe and inclusive Tasmania for people with disability.' We welcome any further opportunities for consultation regarding this review.