



OFFICE OF

**The Senior
Practitioner**

Annual Report

July 2023 to June 2024



Author: Senior Practitioner

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1 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 2023 to 30 June 2024.

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 reports on the unauthorised use of restrictive interventions. The increase in activity is an encouraging sign that the efforts of the Office of the Senior Practitioner (OSP) 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 required, continue to have a positive effect.

2 NDIS Quality and Safeguards Commission

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

The Commission has several 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 providers in Tasmania are operating under two separate legislative and regulatory frameworks 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 registered 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 which includes, or removes, the restriction.

The 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 2023 to 30 June 2024
(2022-23 in brackets)

Number of individuals with approvals	75 (70)
Total number of approvals	258 (238)
Number of ceased applications	18 (16)
Number of individuals with approvals	28 (28)

Table 1: Number of Secretary Approvals for 2023-2024 period.

Table 1 shows there were 75 individuals subject to the use of an approved environmental restriction during the 2023-24 financial year which is 7% more than the last reporting period (70). The number of approvals during this reporting period (258) also rose compared to the 2022-23 financial year (238). 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 for 90 days and therefore individuals had multiple approvals during the 2023-24 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 8% for approvals granted and a similar number of providers to the previous reporting period making applications.

Number of applications ceasing (N=18) increased by 12.5% over the previous reporting period and were due to:

- providers ceasing to support the individual (n=9)
- restrictions no longer being required (n=8)
- approval being transferred to TASCAT (n=1).

Environmental Restriction Approvals

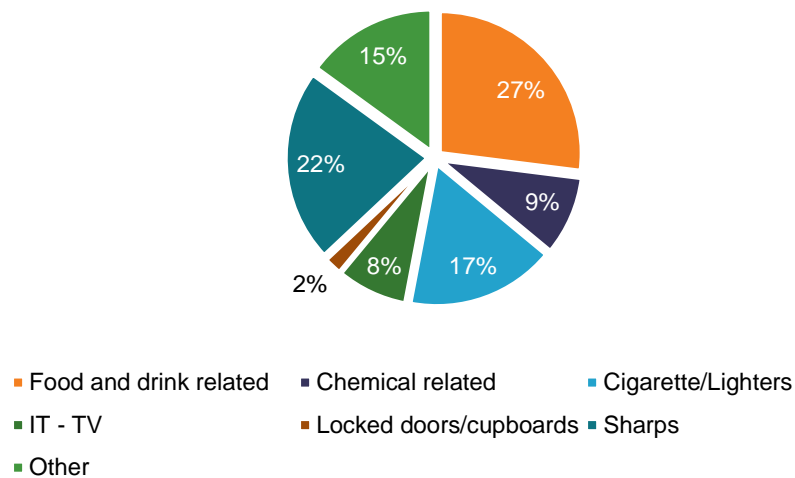


Figure 1: Breakdown of type of Environmental Restriction Approvals for 2023 – 2024 period.

Figure 1 shows that the most common types of approved environmental restrictions used by providers in 2023 -2024 were restricting access to:

- food (27%)
- sharps (22%)
- cigarettes (17%)
- cleaning products (9%)
- electronic devices (8%)
- locked cupboards (2%)
- other (15%) including restricting access to keycard, clothing, hotplate, and fixing furniture to the floor.

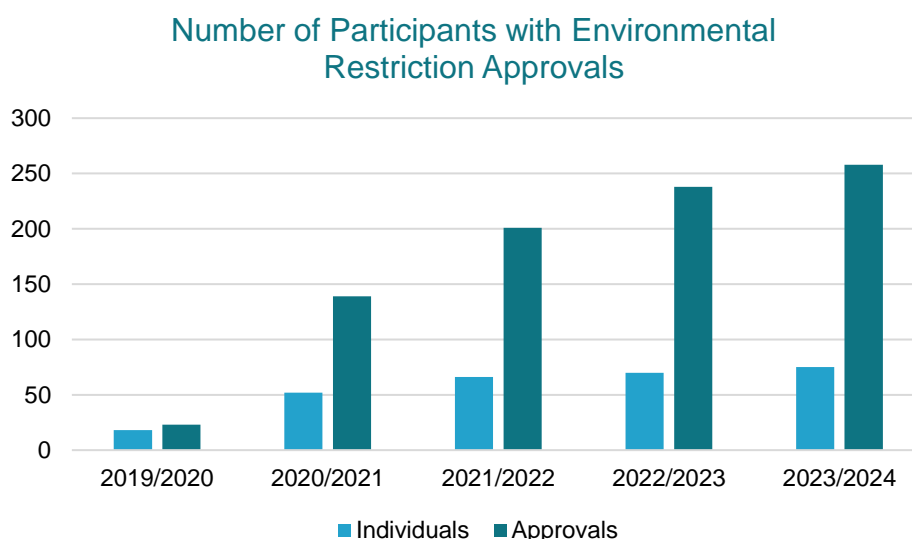


Figure 2: Comparison of environmental restriction approvals and participants between 2019-2024.

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 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) and ongoing training by the Office of the Senior Practitioner has increased awareness by NDIS providers about the use of restrictive interventions and the need to obtain authorisation. Raised awareness due to this activity would also account for the ongoing growth shown in Figure 2.

3.3 Tasmanian Civil and Administrative Tribunal Approvals

A disability services provider or funded private person may apply to the specialist Tribunal at TASCAT 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 recommending why he or she is of the opinion the Tribunal ought to grant the approval sought. Approximately 88% of applications are changed following discussions between the disability services provider, behaviour support practitioner, and the OSP.

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 108 individuals were subject to the use of approved restrictions, an increase of 1% compared to the previous reporting period (107)
- an increase of 2% in the number of applications approved by the Tribunal in 2023-2024 (132) compared to the previous reporting period (129).

Tribunal Orders – Personal and Environmental Restrictions

1 July 2023 to 30 June 2024

Number of individuals with approvals	108 (107)
Total number of approvals	132 (129)
Number of ceased applications	10 (6)
Number of Providers	33 (32)

Table 2: Applications approved by the Tribunal.

The larger number of approvals (132) compared to individuals being subjected to the use of personal restrictions (108) reflects the fact that the Act requires each disability support provider to apply to use a restrictive intervention. In the current reporting period 15% of individuals with approvals were supported by more than one provider. The data above represents slight increases of 1% for individuals and 3% for approvals compared to the previous reporting period.

Of the ten applications that were not renewed: six ceased as the restrictions were no longer required and four NDIS participants moved to a different disability support provider.

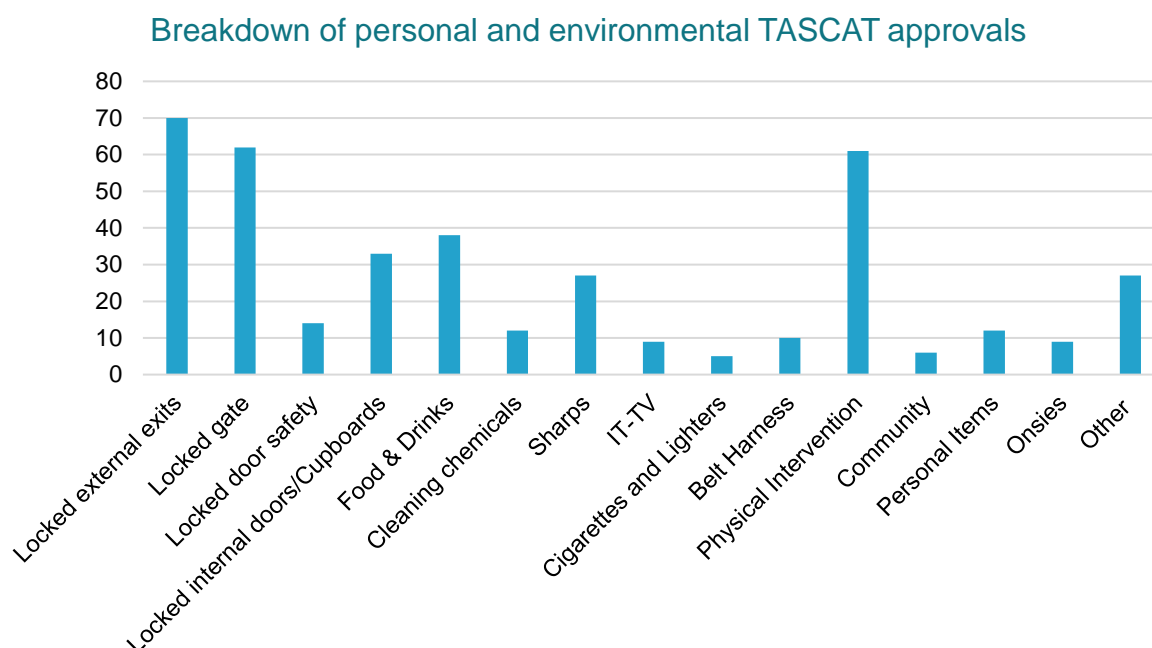


Figure 3: Breakdown of type of restrictive intervention approved by the Tribunal for 2023-2024.

Figure 3 shows that the most common types of Tribunal-approved restrictive interventions used by providers in the current reporting period were locking external exits (17%), locking gates (16%) 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 used this provision to minimise the regulatory burden for providers and achieve efficiencies for the OSP.

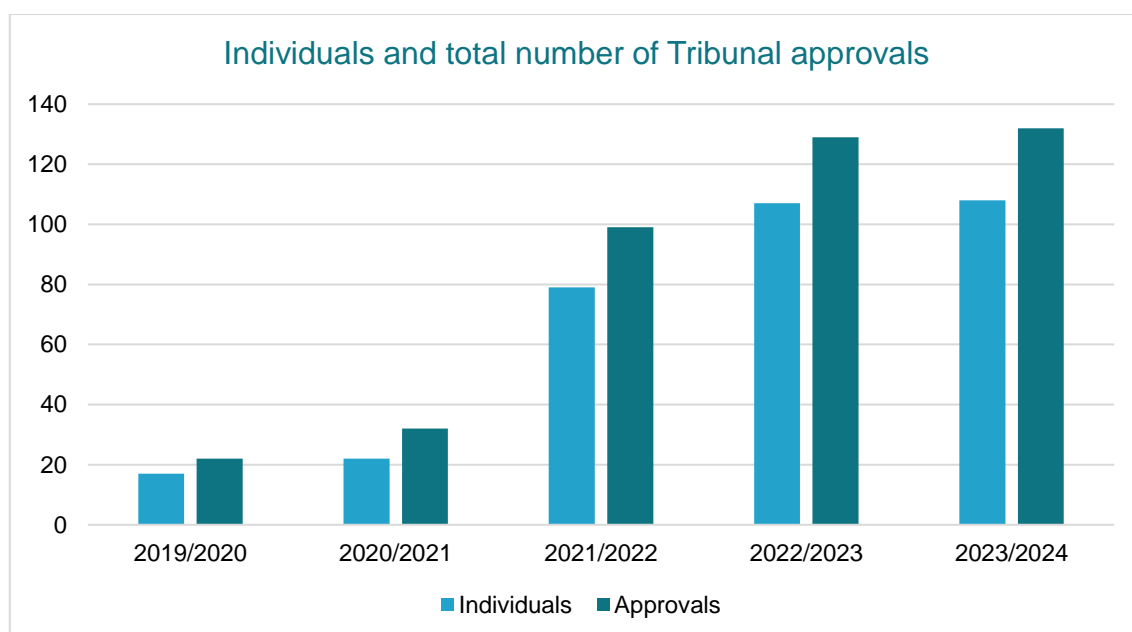


Figure 4: Comparison of number of individuals and restrictive interventions approved by the Tribunal for 2019-2024.

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 between 2019 to 2024. Like Figure 2, this graph shows an increase since 2019 in the number of individuals with authorised restrictive practices and in the number of approvals.

3.4 Unauthorised Restrictive Interventions

Under Section 36 of the Act, 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 2023-2024.

The OSP received 892 reports detailing the use of 1756 unauthorised restrictive practices (URPs). A report often includes the use of more than one restriction during an incident. The total of 1756 represents a 24% increase when compared to the 2022-2023 period. Of the reports received 84% were personal restrictions compared to 16% for environmental restrictions. This proportional data reflects the reality of supporting people with complex needs, in that physical interventions are sometimes required in situations where the immediate safety and wellbeing of persons must be prioritised, in contrast to environmental restrictions that are more likely to be planned with appropriate approvals obtained.

Individual reports of unauthorised use of restrictive interventions
(2022-23 in brackets).

Type of setting	Personal	Environmental	Personal and Environmental	Overall Total
Accommodation	539 (531)	61 (273)	370 (40)	970 (844)
Community Access	310 (160)	37 (10)	11 (0)	358 (170)
Respite	199 (284)	20 (24)	17 (4)	236 (312)
In Home	153 (4)	25 (0)	2 (0)	180 (4)
Other	12 (5)	0 (1)	0 (0)	12 (6)
Total	1213 (984)	143 (308)	400 (44)	1756 (1336)

Table 3: Individual reports of unauthorised use of restrictive interventions (2022-23 in brackets).

The main function of reporting unauthorised restrictive interventions is to monitor regular usage on an individual basis. In this regard the OSP can identify individuals where unauthorised restrictions were being used regularly and worked collaboratively with the disability services provider and behaviour support practitioner to reduce, eliminate, or gain authorisation for the restriction being used. A contributing factor to the use of unauthorised restrictive practices is the length of time needed to authorise a personal restriction through the Tribunal compared to the authorisation of environmental restrictions through the Secretary. Authorisation of environmental restrictions generally occur within 2 weeks, whereas authorisation of personal restrictions generally occurs within 12 weeks.

In this reporting period a total of 36 service providers notified the OSP about using an unauthorised restrictive intervention compared to 31 in the previous reporting period, representing a 15% increase. During 2023-2024 additional NDIS registered and unregistered providers entered the market. NDIS data indicate a minimum 38% increase in NDIS registered providers in Tasmania over 2023-2024. Data in relation to unregistered providers is unknown however six previously unknown unregistered providers sought authorisation for the use of unauthorised restrictive practices in 2023-2024.

3.5 Consultations

The OSP team responded and gave advice in relation to 1602 (672) telephone and email enquires relating to restrictive interventions and related topics in the current reporting period, representing an overall increase of 138% compared to the previous reporting period. Table 4 below shows the number of consultations in common categories of enquiry.

During 2023-2024, each disability service provider using approved restrictive practices was allocated to a member of the OSP, as their primary contact. The increase in consultations, and subsequent decrease in need for training (see 3.6), is likely attributable to the provider-centric support. The increased approachability of the OSP has led to disability service providers and behaviour support practitioners supporting persons with disability 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.

Breakdown of category of consultations
(2022-23 in brackets)

Site visits by request	64 (40)
Personal	560 (187)
Environmental	355 (100)
Use of Medication	79 (47)
Policy	254 (132)
Therapeutic	87 (45)
Positive Behaviour Support	131 (69)
Transport	67 (44)
Audit	5 (8)
Overall Total	1602 (672)

Table 4: Breakdown of category of consultations (2022-23 in brackets).

3.6 Information and Education

In 2023-2024 the OSP presented 57 information and education sessions to 40 groups and organisations across Tasmania. These groups and organisations were predominantly disability service providers but also included TasTAFE, behaviour support practitioners, aged care providers and support coordinators. This activity was a decrease in the number of sessions and groups compared to the previous reporting period, 74 and 44 respectively. In addition, the total number of people who attended decreased from 752 (2022/23) to 518 (2023/24). Information and education were also provided during monthly Communities of Practice (see 4.1.1).

The core work of the OSP is reviewing and processing applications. The allocation of a primary contact person to disability support providers and the significant increase in consultations likely attributed to the reduced demand for education. Topics requested by and presented to providers, behaviour support practitioners and support coordinators were predominantly 'Restrictive Interventions and Rights' with several 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 one project to support Objective 3 of the Plan, namely *‘Build behaviour support provider and practitioner capability – improving quality of behaviour support.’* This is described below.

4.3 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 70 (range 50-98) per monthly meeting. This equates to approximately 60% of all practitioners registered as practicing primarily in Tasmania. A representative from the NDIS Commission generally attends and provides the group with the opportunity to discuss any issues that members have with the operation of the NDIS Behaviour Support Rules.

Activities that have occurred over the current reporting period include:

- presentations of case studies.
- specialist topics for discussion (e.g., line of sight; dignity of risk and capacity of decision making; Meal management capacity; chemical restraint).
- guest speakers (e.g., behaviour support, mealtimes, and restrictions; Dental and Oral Health project; Office of the Independent Regulator; Director of Engagement NDIS Commission).

In addition, the OSP facilitate monthly face-to-face peer support for behaviour support practitioners in the North and North-west of Tasmania. Following consultation with CoP members, peer support for practitioners in Hobart is being organised.

Toward the end of the reporting period the OSP distributed a short survey to gauge how well the CoP and the Office of the Senior Practitioner is meeting member's needs.

In relation to professional experience working in behaviour support:

- 10% of CoP members had less than 1 year experience in the sector
- 26% had 1-2 years of experience
- 52% had 3-6 years of experience
- 13% had more than 6 years of experience.

In relation to practice:

- 3% were employed as contractors
- 26% were employed in a large Tasmanian-based practice
- 35% were employed as a sole trader or employed in a small practice
- 35% were employed in a nationwide organisation.

CoP members were also asked about satisfaction in their ability to contact the NDIS Commission (33%) and the Office of the Senior Practitioner (86%) for clarifications or queries. Overall, CoP members indicated a high regard for the CoP in terms of knowledge gain and value to their practice.

4.3 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.

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. This led to 7 applications to authorise the use of restrictive interventions approved. The OSP will continue this work in the next reporting period.

4.4 Reference Groups

During this reporting period the Senior Practitioner was a member of four Reference Groups as follows:

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

The Advisory Group assisted 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 met bi-monthly via MS-teams. The project completed on 30 June 2024.

Advisory group members:

- Assisted in the identification of best practice activities that could maximise existing resources and support for young people with intellectual disability to transition to adult services.
- Supported a mapping exercise of current workforce and service providers.
- Identified and advised where modifications were required to improve and enhance the interface with public hospitals, NDIS, primary and secondary care providers.
- Identified and considered other activities that could be commissioned to improve the coordination of care for people with intellectual disability, raise awareness of services and increase workforce capability.
- Contributed to the development of intellectual disability specific Tasmanian Health Pathways.
- Provided 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 Senior Practitioner represented Tasmania until June 2024 when the Department of Health nominated as the Tasmanian representative.

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.

The Right Direction: Strengthening participant and provider Connections to improve Behaviour Support Outcomes

The Right Direction: Strengthening participant and provider connections to improve behaviour support outcomes project, is a national project commissioned by the NDIS Quality and Safeguards Commission (NQSC) to co-design, test, and deliver resources to support communication and consultation with people with disability

concerning their behaviour support plans and any proposed or actual use of regulated restrictive practices. The Senior Practitioner is a member of the Advisory Group who meet bi-monthly providing strategic advice throughout the project and assistance with planning the launch and dissemination of the final products.

Senior Practitioner Leadership Group.

The Senior Practitioner is a member of the Senior Practitioner Leadership Group, a committee chaired by the Senior Practitioner, NDIS Commission. The primary purpose is to a practice-focused collective developing contemporary evidence-based best practice advice, aligned with the Convention on the Rights of People with Disability, regarding behaviour support and the reduction and elimination of restrictive practices in the NDIS and to achieve National consistency. Meetings are held quarterly with meeting locations rotated through the States and Territories.

5 Priorities for 2024 -2025

5.1 Disability Rights, Inclusion and Safeguarding Act 2024

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.

Under the new Act, the role of the Senior Practitioner is elevated to that of decision maker for the authorisation of restrictive practices used by disability service providers and regulates the use of restrictive practices by disability service providers, including but not limited to:

- authorising, overseeing, and reporting on the use of restrictive practices
- regulating the use of restrictive practices by disability service providers
- promoting the reduction and elimination of the use of restrictive practice to the greatest extent possible
- providing guidelines and directions in accordance with best practice, including education, advice and information on restrictive practices and the use of behaviour management techniques that may obviate or minimise the need for restrictive practices.

The Act aligns with existing NDIS legislation and contemporary practices in disability support and there will be a focus on implementation of the new Act. In addition the Act will introduce several new measures for Tasmania, including:

- creating the position of a Tasmanian Disability Commissioner – the first for Tasmania;
- establishing a mechanism for the formal inclusion of people with disability in leadership through the creation of a Disability Inclusion Advisory Council;
- promoting a social model of disability and the human rights expressed within the United Nations Convention on the Rights of Persons with Disability (UNCRPD) and Australia's Disability Strategy (ADS);
- formalising requirements relating to consultation, planning, and reporting of progress in delivering actions through a legislated Tasmanian Disability Inclusion Plan and associated action plans for defined entities such as Government Departments and GBEs;
- making provision for a Community Visitor Scheme to be established in the future in response to a recommendation from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability;
- many measures in the Bill align with the recommendations handed down by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

5.2 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 changes in the Disability Rights, Inclusion and Safeguarding Act 2024 and to reflect the contents of nationally agreed positions on restrictive practices.

5.3 Continuing Priorities

Developing information and education presentations on Individual Planning, Active Support and Replacement Behaviour.

Developing 'online' information and education resources.



Office of the Senior Practitioner

Department of Premier and Cabinet

Phone 0428 197 474

Email seniorpractitionerdisability@dpac.tas.gov.au

<https://www.dpac.tas.gov.au/>