

2021 Review of the Disability Services Act 2011

Consultation Outcomes Summary Report

September 2022



What **you** have
to say is
important!

Please contact us if you need assistance to access or read this report:

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Minister's Message

I would like to start by saying thank you to everyone who participated in this consultation process for the review of the *Disability Services Act 2011* and for the time and effort they put into taking part. I am delighted with the level of participation we have seen, particularly from people with disability.

Before we started, we asked people with lived experience about the best ways to consult with the disability community, and we did our best to follow this advice. We are learning more and more about how to consult, and we will look carefully at what worked or didn't work this time.

One of the things I have learnt from conversations I've had with people with disability, is that people want to be involved in decisions and conversations that affect them. And the community has lots to say when given the opportunity. I want to make sure we continue to increase the number of people who take part in consultations and live up to the message we used in this consultation – **what you have to say is vitally important!**

I have read the feedback provided with great interest. There has been many well-thought-out suggestions and we will use this advice in deciding what we do next.

For me, there are some very clear messages about access and inclusion and the role the Tasmanian Government needs to play as a leader in this – for every Tasmanian with disability. I was also very encouraged that so many people supported the creation of a Tasmanian Disability Commissioner and had ideas about what this role should do. I also heard many suggestions about improving the quality and safety of services.

We are now in a good place to know what we need to do to create contemporary legislation for Tasmanians with disability. We will now get to work and will continue to involve and consult all our stakeholders as we move forward.

The Hon Jo Palmer MLC

Minister for Disability Services



Introduction

The Review

The Tasmanian Government is committed to building a more equitable, inclusive and accessible state. Communities Tasmania is undertaking a review of the Disability Services Act 2011 (DSA) to examine how the DSA can support people with disability through high quality and safe services and how the DSA could support Tasmania to meet national and international commitments.

Review environment

The review of the DSA is occurring during a time of considerable reform and change, at a national and local level, to support the rights of people with disability and to make Australia more inclusive. These national and local activities include:

- the release of Australia's Disability Strategy 2021-2031 (ADS)
- Targeted Action Plans under the ADS in the five key areas of employment, community attitudes, early childhood, emergency management and safety.
- development of the next iteration of Accessible Island: Tasmania's Disability Framework for Action 2018-2021
- Protect and Respect Older Tasmanians: Tasmania's Elder Abuse Prevention Strategy 2019-2022
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability
- review of the NDIS Quality and Safeguarding Framework and national work to align the regulatory frameworks covering disability, aged care and veteran's support
- implementation of Principles for Nationally Consistent Authorisation of Restrictive Practices
- legislative review of the Tasmanian Mental Health Act (2013) and the Guardianship and Administration Act (1995)
- Review of the Public Trustee (Tasmania)
- Tasmanian Parliament Legislative Council: Report on Disability Services in Tasmania.

Consultation

The first phase in the Review has been to consult with people with disability and their families and carers; service providers; advocates and services that support people with disability; Tasmanian Government agencies and independent statutory authorities; and the broader Tasmanian community.



The Summary Report

This summary report focusses on reporting on the consultation outcomes – these are a summary of what we heard in the consultation and what we need to consider in the future. This summary report is a shorter version of the Full Report.

The following abbreviations are used in this Report:

- **‘DSA’** means the *Disability Services Act 2011*
- **‘NDIS’** is the National Disability Insurance Scheme
- **‘NDIA’** is the National Disability Insurance Agency
- **‘UNCRPD’** is *United Nations Convention on the Rights of Persons with Disabilities*
- **‘ADS’** refers to *Australia’s Disability Strategy 2021-2031*
- **‘Accessible Island’** refers to *Accessible Island: Tasmania’s Disability Framework for Action 2018-2021*
- **‘MDCG’** refers to the Minister for Disability Services’ Consultative Group

Please let us know if you need assistance to access or read this report.

Related Documents

The following documents are available from the [DSA Review webpage](#):

- DSA Review Consultation Outcomes – Full Report
- DSA Review Consultation Outcomes – Summary Report (This Report)
- DSA Review Consultation Outcomes – Easy Read
- DSA Review Discussion Paper



About the Disability Services Act 2011

The DSA describes how individuals with disability, disability service providers, and researchers are funded. It also provides the rules for the approval and conduct of restrictive practices.

The DSA covers specialist disability services that are:

- funded by the Tasmanian Government
- provided directly by the Tasmanian Government or
- registered with the National Disability Insurance Scheme (NDIS) in Tasmania.

The DSA is supported by the *Disability Services Regulations 2015*, which are aligned with the *National Standards for Disability Services*.

There has been a lot of change in specialist disability services since the DSA began in January 2012.

The biggest change was the start of the NDIS.

This meant:

- a new law came into power with the *NDIS Act 2013*
- the Australian Government became responsible for the delivery of nationally consistent, specialist disability services
- all eligible people in Tasmania were able to use the NDIS from 1 July 2019 and
- the way speciality disability services are funded has changed.

Disability support providers no longer receive funding directly from the Tasmanian Government. Instead, eligible people receive funding so they can have choice and control over the support and care they need to help achieve their goals and aspirations.

The *NDIS Act 2013* has also changed the way specialised services to people with disability are delivered.

The NDIS Act sets out:

- supports and requirements for providers and
- national rules for the quality of services, safety, and overall experiences of people with disability.

If you are interested in reading the DSA or the Disability Services Regulations (2015) the documents are available on the Tasmanian Legislation website. [View - Tasmanian Legislation Online](#)



How we consulted

We started by writing a [discussion paper](#) (PDF) to help our stakeholders to share their ideas about what needs to change in the DSA and to ask questions about what needs to be added to the DSA.

The discussion paper was published in both Plain English and Easy Read formats. If you are interested in reading it, the Discussion Paper is still available on the [DSA Act 2011 Review webpage](#).

Submissions were invited from members of the public, community groups, advocates and the broader community from October 2021 and closed December 2021. Consultation activities closed at the end of March 2022.

We asked an independent consultant, Annie Curtis Consulting, to assist us in a Community Consultation with people with disability, family, carers, advocates, and disability providers to help make sure consultation for people with lived experience was accessible and inclusive. Annie Curtis Consulting used a range of activities including booths at disability expos, online open forums, in person and online group focus sessions and in person and online individual conversations. A report from the community consultation is available from the [DSA Act 2011 Review webpage](#). The information collected in the community consultation was considered in writing this report.

A Tasmanian Government Reference Group was established to engage with government stakeholders including the Anti-Discrimination Commissioner, Commissioner for Children and Young People, the Ombudsman and the Health Complaints Commissioner.

The Minister's Disability Consultative Group (MDCG) has been an important partner in the Review. They have shared lots of ideas about the design of the consultation and have also provided feedback on the discussion topics. We have also shared information about the Review with the Premier's Disability Advisory Council (PDAC).

We advertised the DSA Review on the internet, on social media, on the radio and the newspaper. We also asked organisations and interested people to share information about the DSA Review with their networks. We set up a web page, email address and set up a free 1800 number.



I. Inclusion, accessibility and leadership

Introduction

The Tasmanian Government is committed to supporting the rights of people with disability as set out in [Australia's Disability Strategy \(ADS\)](#) and the [United Nations Convention on the Rights of Persons with Disabilities \(UNCRPD\)](#). This commitment seeks to improve the lives of all Tasmanians with disability, their families and carers, and to provide leadership for a community-wide shift in attitudes.

Accessible Island: Tasmania's Disability Framework for Action 2018-2021 sets out Tasmania's commitments and is currently being updated to align with the ADS.

The purpose of the ADS is to:

- provide national leadership towards greater inclusion of people with disability
- guide activity across all areas of public policy to be inclusive and responsive to people with disability
- drive mainstream services and systems to improve outcomes for people with disability
- engage, inform and involve the whole community in achieving a more inclusive society.

In March 2018 the UN Committee on the Rights of Persons with Disabilities adopted [General Comment 6 on Article 5: Equality and non-discrimination](#). This comment sought to clarify Inclusive Equality as the model on which the UNCRPD is built. Inclusive equality includes:

- (a) a *fair redistributive* dimension to address socioeconomic disadvantage
- (b) a *recognition* dimension to combat stigma, stereotyping, prejudice and violence and to recognise the dignity of human beings and their intersectionality
- (c) a *participative* dimension to reaffirm the social nature of people as members of social groups and the full recognition of humanity through inclusion in society
- (d) an *accommodating* dimension to make space for difference as a matter of human dignity.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability has also undertaken consultation relating to promoting inclusion and shifting community attitudes. The results of this consultation are published in the [Overview of Responses to the Promoting Inclusion Issues Paper](#). In this consultation people with disability described an inclusive society as one that:

- recognises and enforces human rights
- adopts meaningful practices of co-production and co-design
- embeds universal design to ensure full accessibility
- provides culturally competent and safe services
- recognises the social model of disability, and
- promotes a sense of belonging.



What we asked

To start the conversation about Inclusion, Access and Leadership we asked the following questions:

- *How could the DSA be changed to advance and drive the inclusion of people with disability in the Tasmanian community?*
- *In what ways could the DSA contribute to inclusion of people with disability in the social, economic, civic, political and cultural life of Tasmania?*
- *What role could the DSA have in driving action and removing barriers in areas like community attitudes, employment, discrimination and in access to mainstream supports including education, health, transport and housing?*

What we heard – Consultation Outcomes

- Focus on inclusion and access by changing the name of the Act.
- Include a whole of government commitment to Australia's Disability Strategy and Accessible Island. Include rules about consultation, planning and reporting of progress in delivering actions.
- Include an inclusion and access principle and a principle relating to consultation in government planning.
- Commit to improving the inclusiveness of mainstream supports by promoting disability awareness, standards and targets.
- Strengthen links to human rights and transformative equality through the creation of a Charter of Rights for People with Disability.
- Include people with disability in leadership by legislating a Disability Advisory Council.
- Enhance equality by improving community attitudes and understanding about people with disability.
- Broaden the definition of 'disability' in the DSA to include all people with disability.
- Respond to findings of the Disability Royal Commission.
- Make the Act itself accessible, Easy Read and understandable. Develop tools to assist in understanding the Act.



2. Principles which support the rights of people with disability

Introduction

It is intended that the DSA principles form the foundation for everything covered by the DSA. The principles are important in guiding the behaviour of people using the DSA. The principles were updated in 2018 and reflect the UNCRPD and are like those included in the *NDIS Act 2013*. The guiding principles outlined in the ADS also reflect the human rights principles of the UNCRPD.

What we asked

To start the conversation about Principles which support the rights of people with disability we asked the following questions:

- *Do the DSA Principles reflect an up-to-date way of describing disability and the ways in which people with disability live and are supported?*
- *Do the DSA Principles need to change and if so, how?*

What we heard - Consultation Outcomes

- The existing DSA principles were broadly supported.
- Frame the objects of the Act and review the principles so that they are driven by the human rights contained within the UNCRPD and the ADS. Including concepts relating to inclusion, accessibility, individual autonomy, self-determination, and choice and control.
- Include a principle relating to supported decision making.
- Apply the principles to all services including mainstream services.
- Strengthen the principles to reflect the intersectionality of disability with other individual characteristics.



3. The DSA, NDIS and other national disability programs

Introduction

The current DSA sets out the rules for disability service providers and were needed when the Tasmanian Government managed funding (before the NDIS). Some of the rules in the DSA are no longer needed because the NDIS has been the main way of delivering specialist disability supports for people with disability since 2019. The [NDIS Applied Principles and Tables of Support](#) set out responsibilities between the NDIS and other service systems.

The Australian Government has responsibility for the NDIS and other disability programs including Information, Linkages and Capacity Building (ILC) and Disability Employment Services. The Australian Government is also responsible for aged care and veterans support services.

What we asked

To start the conversation about the interaction of the DSA with the NDIS and other national disability programs we asked the following questions:

- *What does the DSA need to include to work with Australian Government funded programs? For example: the NDIS, ILC and Disability Employment Services.*
- *What rules need to be in the DSA for services which are still funded by the Tasmanian Government? For example, the Tasmanian Government still funds advocacy services.*
- *What other rules in the DSA do we need to keep, change, or add?*

What we heard - Consultation Outcomes

- Define the relationships, responsibilities and interfaces of Tasmanian and Australian Government services and provide information to make these less complex to understand and the system easier to navigate.
- Gather evidence and improve understanding about who is accessing services or falling in gaps.
- The DSA should apply to all services including mainstream, community-based, or disability specialised.
- Continue to provide for services, including mainstream services, for those who are not eligible for or have been unable to access NDIS supports.
- Continue to support advocacy services and fund them at a level, which allows them to meet demand.
- Ensure there is a structure to facilitate funding of services including quality and safeguarding arrangements.
- Complement and consider interoperability with existing regulatory and planning frameworks.



4. Quality and safeguards

Introduction

The DSA includes the principle that people with disability have the same right as other members of Australian society to be respected for their worth and dignity and to live free from abuse, neglect and exploitation.

The safeguards in the DSA need to be updated to complement and support safety and quality systems already in place for the NDIS, including the NDIS Quality and Safeguards Commission (NDIS Commission).

Safeguards can be informal and formal. Informal safeguards include self-advocacy and the protections that accompany personal capacity building, such as supported decision making, peer or advocacy support. Formal safeguards include legislative and administrative requirements, policies and practices, organisational culture, complaint processes and regulation of service providers.

The Tasmanian Government continues to be responsible for defined quality and safeguarding arrangements including:

- ensuring relevant policy, guidelines and frameworks are in place that protect the rights of people with disability
- quality and safeguarding arrangements for services for people with disability delivered through service systems outside the NDIS, such as in-kind supports and matters, which fall outside the role of the NDIS Commission.

The DSA provides:

- the legislative basis for the regulation and authorisation of restrictive interventions within the Tasmanian service delivery context, Restrictive Interventions are defined as any practice or intervention that restricts the rights or freedom of movement of a person with disability, and
- for the appointment of Authorised Officers.

The DSA is supported by the *Disability Services Regulations 2015*, which are aligned with the *National Standards for Disability Services*. The *National Standards for Disability Services (2013)* define quality services as those that include a focus on providing positive outcomes for people who use services. All disability service providers operating in Tasmania must comply with the *Disability Services Regulations 2015*.

The Tasmanian Government has undertaken a separate consultation process to analyse the processes used for the authorisation of restrictive practices. The *Summary Report* (PDF) from this consultation and the *Communities Tasmania response to the recommendations* (PDF) will be considered as part of the DSA Review.

In recognition of the critical role that independent disability advocacy services play in helping to ensure people with disability can enjoy the same rights as anyone else, the Tasmanian Government funds three specialist disability advocacy services. These include Speak Out, Your Say Advocacy Tasmania and the Association for Children with Disability.



What we asked

To start the conversation about quality and safeguards we asked the following questions:

- *How could the DSA support quality and safeguarding without duplicating the NDIS or NDIS Quality and Safeguards Commission?*
- *How could the DSA provide quality and safeguarding for services that are not part of the NDIS?*
- *Are there other roles or tools which would offer additional quality and safeguarding protections for Tasmanians with disability?*

What we heard – Consultation Outcomes

Note: *Comments relating to quality and safeguarding arrangements were provided across several of the DSA Review discussion topics. Where the feedback fits better it has been included in other parts of the report e.g. in sections summarising feedback on Regulation and the Disability Commissioner.*

- Consider the additional outcomes in the Summary Report and the Communities Tasmania response to the Review of state-based authorisation processes for the use restrictive practices.
- Implement quality and safeguarding protections that complement rather than duplicate existing safeguards and which provide a system that is easy to navigate.
- Develop the capacity of quality and safeguarding systems to cover non-registered and mainstream providers.
- Consider introducing a community visitor scheme as a protective or oversight mechanism.
- Align the definition and regulation of restrictive practice with the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*.
- Align the regulation of restrictive practices in all settings where they are used, e.g. education settings or out of home care.
- Allow information sharing between quality and safeguarding arrangements to protect vulnerable persons from the risk of harm.
- Reduce the risk of abuse, neglect and exploitation through community education to positively inform attitudes about people with disability.



5. Regulation of providers

Introduction

The Tasmanian Disability Services Regulations have applied to all disability providers in Tasmania since 2015. The Regulations provide a standard that a disability provider must meet in respect of the rights of a person with disability. The Regulations have a focus on human rights, person-centred approaches, and promoting choice and control on the services accessed by people with disability. The Regulations reflect the National Standards for Disability Services.

The NDIS Code of Conduct, NDIS Practice Standards and NDIS registration process cover many of the same areas as the national standards. Some people with disability receive supports from providers, including community and government providers, who are not registered with the NDIS. The NDIS Code of Conduct applies to all NDIS providers, registered and unregistered, and all persons employed or engaged by an NDIS provider.

What we asked

To start the conversation about regulation of providers we asked the following questions:

- *As the National Standards for Disability Services cover local providers, does the DSA need to continue to include regulations about the delivery of supports for people with disability?*
- *Are the Regulations still required or do the NDIS Code of Conduct and the NDIS Practice Standards do the same job?*
- *What other regulation might be required and what role could the DSA have in oversight of non-NDIS services?*

What we heard - Consultation Outcomes

- Ensure accountability and adherence to minimum standards through the regulation of registered and non-registered providers of services to people with disability.
- Clarify and promote regulatory arrangements for different categories of providers, including registered NDIS providers, unregistered NDIS providers, mainstream and other providers supporting people with disability.
- Improve accountability for service providers who are working with people with disability but who do not define themselves as disability providers.
- Consider implementation of a single compliance framework for all providers regardless of funding source or jurisdiction (e.g. NDIS, Tas. Gov. or other).
- Avoid duplication of existing regulatory frameworks and standards.



6. Tasmanian Disability Commissioner

Introduction

The Tasmanian Government has committed to establishing a Tasmanian Disability Commissioner. This role would promote the safety, health and wellbeing of people with disability. This role would help to ensure people with disability receive the inclusive and accessible supports and services they need, including individual supports and other Tasmanian Government services.

What we asked

To start the conversation about a Tasmania Disability Commissioner we asked the following questions:

- *What types of things would this role do?*
- *What powers could they have?*

What we heard - Consultation Outcomes

- The role should be apolitical and independent with the ability to influence policy through a seat at the table of decision making in Tasmania.
- The role is ideally filled by a person with a lived experience of disability and that the role is supported by people with lived experience.
- The functions of the commissioner should complement other protective mechanisms and complaints pathways to minimise duplication. These include roles and functions of the *Disability Discrimination Act 1992 (Aust)*, the *Tasmanian Anti-Discrimination Act 1998* and the *Health Complaints Act 1995*, *Ombudsman Act 1978*, and *Commissioner for Children and Young People Act 2016*.
- The following functions were suggested. That the commissioner:
 - accept complaints from people with disability, their families and carers about services that are both registered NDIS providers and unregistered NDIS providers
 - provide a referral pathway to agencies including the NDIS Quality and Safeguards Commission, Ombudsman or Anti-Discrimination Commissioner
 - resolve a broad range of complaints such as reports or allegations of abuse, neglect and exploitation of people with disability that do not involve an NDIS provider/ NDIS-registered disability services
 - have broad powers to accept complaints, directly refer or resolve complaints, investigate complaints, prosecute and to share information
 - provide support, increase disability awareness and promote the rights of all Tasmanian people with disability through systemic advocacy, education and training



- undertake research and develop informed advice by gathering data and evidence to support service models and/or highlight gaps and issues in service delivery
- increase accountability and regulatory oversight by upholding the rights of people with disability; and
- monitoring performance against minimum standards for access and inclusion for people with disability including for agreed disability action plans.
- Resource the commissioner adequately to ensure that the role can effectively perform the functions.
- Governance of the commissioner utilises existing groups and committees to form an advisory and consultation structure.
- Undertake co-design and further consultation with people with disability to inform the role, powers and functions of the Disability Commissioner.



7. Supported decision making

Introduction

The principles in the DSA uphold the rights of people with disability to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives, to the full extent of their capacity. The principles promote the inclusion of people with disability in decision-making that affects them, and where possible supports people with disability to make decisions for themselves.

The conversation about supported decision making is most frequently framed within the context of Article 12 of the UNCRPD and is broadly interpreted as a rejection of substitute decision making in favour of processes which recognise and respect the individual's legal capacity.

What we asked

To start the conversation about supported decision making we asked the following questions:

- *Does the DSA have a role in promoting supported decision making or ensuring that substitute decision makers, disability and other service providers act in the best interests of people with disability when it comes to making informed decisions?*

What we heard - Consultation Outcomes

- Introduce a supported decision-making framework to strengthen the human rights of people with disability.
- Review the interoperability of all Tasmanian Legislation relating to decision making and decision-making capacity.
- Enable the capacity of people with disability to build their decision making and self-advocacy capacities.
- Include carers as part of the supported decision-making process where appropriate.
- Ensure the availability of supported decision-making supports without conflict of interest.
- Note: The addition of a principle relating to supported decision making is included under the consultation outcomes relating to Principles of the Act (see Chapter 2 of this report).



8. Consultation Policy and Practice

Introduction

The DSA, and commitments like Accessible Island, promote the principle that people with lived experience of disability must be included in the design and decisions about the services which support them.

Some other parts of Australia include minimum standards for consultation in their legislation or require the preparation of disability impact statements for new initiatives and developments.

What we asked

To start the conversation about including the voices of people with disability we asked the following questions:

- *How can the DSA better ensure that the voices of people with disability are listened to and people with disability are at the centre of decisions made by the Tasmanian Government?*
- *Could the DSA include stronger guidance about who, when, on what issues, and how people with disability are included in consultations?*
- *What could be included in the DSA to encourage consultation?*

What we heard - Consultation Outcomes

- Establish standards for consultation with people with disability before major planning or policy decisions that will impact on the lives of people with disability are made at all levels of Government.
- Include a feedback loop for people with disability after consultation to demonstrate how their input has been included or considered.
- Develop the capacity of disability led organisations to participate in consultations and represent the interests of people with disability.



Where to from here...

Thank you to everyone who provided feedback in the consultation.

Your participation means that we are much better informed about what Tasmanians with disability and our other stakeholders think needs to happen to make Tasmania a safe and inclusive place to live.

The feedback included in this report will feed into further analysis by the Tasmanian Government about how the Disability Services Act needs to change.

We have provided advice to the Government for their consideration of the next steps in the review of the *Disability Services Act 2011*.

We know that this will be a complex task but we are committed to creating a contemporary piece of legislation that celebrates the strength, diversity and experience of Tasmanians with disability.

An Easy Read version of the report is also available.

We will make the information available to people who participated in the consultation.



Department of Communities Tasmania

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