

# Review of the Disability Services Act 2011

Discussion Paper

September 2021



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





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# Minister's Message

The Tasmanian Government is committed to making Tasmania a place where people with disability can participate in our economic, social, political and community life.

Above all else, we want Tasmania to be a safe place for all Tasmanians and for Tasmanians with disability to live free from abuse, neglect and exploitation.

This is why we have committed to establishing a Disability Commissioner. This important role will act as an independent body, providing a free and confidential complaints resolution process with the aim of continuous improvement in the delivery of support and services for people with disability.

The *Disability Services Act 2011* has provided a strong foundation for the provision of disability services in Tasmania. However, the Act is 10 years old and in that time many things have changed, most notable of these is the introduction of the National Disability Insurance Scheme (NDIS) in 2019.

We need a piece of legislation that provides a contemporary vision for a safe and inclusive Tasmania for people with disability.

To make this happen we need to hear from people with disability, families, carers, advocates, disability support providers and the Tasmanian community.

Your input will help to create an Act that reflects the strength, diversity and experience of all Tasmanians with disability.

I strongly encourage you to get involved and have your say.

The Hon Sarah Courtney MP  
Minister for Disability Services



# Introduction

The Tasmanian Government is committed to building a more equitable, inclusive and accessible state.

Communities Tasmania is reviewing the *Disability Services Act 2011* so that it can achieve better results for people with disability:

- through high quality and safe services and
- by supporting national and international commitments.

In this document the terms:

- **'we'** means Communities Tasmania or the Department of Communities Tasmania
- **'DSA'** means the *Disability Services Act 2011*
- **'paper'** or **'discussion paper'** means this paper you are now reading.

## What is a review?

A review is talking to people about the DSA and finding out:

- what is good and we should keep
- what is old and needs updating
- what is new that we need to add.

## This discussion paper

This discussion paper has been written to help us find out what you think by:

- sharing some ideas about what might need to change
- asking questions about new things that could be added.

This paper is available in an Easy Read version from the [DSA review webpage](#)

This paper will help us talk with, and hear from, people with disability and their families, advocates, and carers about what is important to them.

We will also use this paper to hear from providers and services who support people with disability, the Tasmanian Government and anyone in the Tasmanian community who wants to share their ideas.

Please let us know if you need assistance to access or read the document.



# About the Disability Services Act 2011

This section talks about the purpose of the DSA and why we think it needs to change.

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 and
- 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 delivering nationally consistent, specialist disability services and
- 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](#)



# Discussion Topics

We have organised our ideas and questions into seven discussion topics.

## Topic 1 – Inclusion, accessibility and leadership

- If something is inclusive it means everyone can take part.
- If we say we are committed, it means we agree with an idea or action. It also means we will do things to support that idea or action.
- The Tasmanian Government is committed to supporting the rights of people with disability as set out in the [National Disability Strategy](#) and the [United Nations Convention on the Rights of Persons with Disabilities](#).
- This commitment seeks to improve the lives of people with disability, their families and carers, and to provide leadership for a community wide shift in attitudes.
- This commitment includes the 1 in 4 Tasmanians who report that they have a disability, not only those who are NDIS participants.
- Tasmania has shown leadership in supporting this commitment through plans such as [Accessible Island: Tasmania's Disability Framework for Action 2018-2021](#) and in the [Disability Action Plans](#) of Tasmanian Government Departments.
- In most other parts of Australia commitments are included in disability related legislation. Until now, inclusion and accessibility have been in the Principles in the DSA but have not been its core purpose.

### 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?

## Topic 2 – Principles which support the rights of people with disability

- The DSA includes principles linked to the UN Convention on the Rights of Persons with Disabilities. The DSA principles are similar to the ones included in the NDIS Act (2013).



- The DSA principles form the basis of everything covered by the DSA and are important in guiding the behaviour of people using the DSA.

### 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?

## Topic 3 - The DSA, NDIS and other national disability programs

- The DSA sets out the rules for disability service providers. These rules applied when the Tasmanian Government managed funding (before the NDIS).
- This means the same rules for service providers aren't needed in the DSA anymore.
- The NDIS has been the main way of delivering specialist disability supports for people with disability since 2019.
- The Australian Government also manage other disability focussed programs like the Information, Linkages and Capacity Building program (ILC) and Disability Employment Services.

### 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?

## Topic 4 – Quality and safeguards

- 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. This principle is supported by rules which ensure that supports are safe and of high quality.
- 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 National Quality and Safeguards Commission.
- Some jurisdictions have additional quality and safeguarding roles like community visitors, authorised officers or Disability Commissioners.



- The DSA includes rules relating to Restrictive Interventions. Restrictive interventions are defined as any practice or intervention that restricts the rights or freedom of movement of a person with disability.
- The NDIS Rules identify five types of restrictive interventions: these are seclusion, chemical restraint, mechanical restraint, physical restraint, and environmental restraint. The DSA definitions are defined differently, and chemical restraint is not currently included.
- We already know that we need to change parts of the DSA relating to Restrictive Interventions to bring it up to date.
- We have done a separate targeted review and we have researched current best practice around Restrictive Interventions. This work has helped us to identify some things which need to change.

## 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?

## Topic 5 – Regulation of providers

- The Tasmanian Disability Services Regulations (the Regulations) have applied to disability providers in Tasmania since 2015. The Regulations reflect the National Standards for Disability Services.
- The Regulations provide a standard that a disability service provider must meet in respect of the rights of a person with disability who is a consumer of their services. 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 address six areas:
  - rights
  - participation and inclusion
  - individual outcomes
  - feedback and complaints
  - service access, and
  - service management.



- The NDIS Code of Conduct, NDIS Practice Standards and NDIS registration process cover many of the same areas. There is duplication between the Tasmanian and National frameworks for achieving safety and quality in disability supports.
- Some people with disability receive supports from providers who are not registered with the NDIS and from other community and Government providers. The NDIS Code of Conduct applies to unregistered providers, however, the oversight role of the NDIS Quality and Safeguards Commission is limited when it comes to unregistered providers.

### 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?

## Topic 6 – Creating a Tasmanian Disability Commissioner

- The Tasmanian Government has committed to establishing a Tasmanian Disability Commissioner.
- This role would promote the safety, health and wellbeing of people with disability.
- We think 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.
- An amendment to the DSA would be one way to create and describe this type of role.

### Questions:

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

## Topic 7 - Supported decision making and consultation

- 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 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.

## 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?
- 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?

## Your ideas?

- You may have other ideas about what needs to be in or out of the DSA not covered by these topics.
- If there are issues or questions about the DSA that are important to you that don't appear here, we want to know about them.

## Questions:

- What else do you think we need to know about so that Tasmania's future disability legislation can help to make things better for people with disability?
- What needs to be in the DSA to make these ideas happen?
- What else should included in the DSA?



# How to get involved?

We want there to be different ways for people to get involved so that they can choose a way which suits them best.

**There are two ways to get involved and you can do both if you want to:**

## 1. Register your interest

To participate in the consultation, you or your organisation should register your interest.

Anyone is welcome to register.

Once you register you will receive information about consultation opportunities and updates on the Review.

You can register by emailing [DSAReview2021@communities.tas.gov.au](mailto:DSAReview2021@communities.tas.gov.au) or phoning 1800 431 211.

You can opt out later if you want to.

We acknowledge that not everyone we want to talk to will be able to register and we will reach out to groups who will find it more difficult to register.

### **When?**

You can register now.

We will know more about timelines once we have an external consultant appointed.

## 2. Provide feedback on the discussion paper

You can read and write a submission responding to some or all of the questions.

Anyone can make a submission to the Review.

Please use the seven discussion topics in this document as a starting point.

You can be as creative as you like. A submission can be made in any way that you feel comfortable. This could be a written statement, a conversation by telephone, email, or a video.

You can send your submission to 1800 431211 or email to [DSAReview2021@communities.tas.gov.au](mailto:DSAReview2021@communities.tas.gov.au).

We will let you know when we receive your submission.

### **When?**

You can make a submission **now** and submissions will close on **15 December 2021**.



# How we will consult

This section gives information on how we will conduct consultations.

We want people with disability to be involved in designing the consultation.

We want to make it as easy as possible for people with disability to participate in the consultation.

We have listened to feedback that we need to do more to consult with people with disability.

The consultation will include people with disability, families, carers, providers of disability support, advocates and the wider community. We will also consult with stakeholders who are part of Government. We will use this discussion paper as the starting point.

The consultation process will:

- engage and consult with people with disability
- respect that people with lived experience of disability are experts
- include people with disability and other stakeholders in the design of the consultation
- include feedback from people with lived experience of disability in the consultation
- use consultation methods which address diversity and ensure equity in participation
- be flexible in the approach used and if needed, adapt the design of the consultation to suit participants
- monitor participation of different stakeholder groups to make sure no-one who wants to participate misses out
- include people with disability in shaping the findings from the consultation.

We will also work to raise awareness about the Review and encourage stakeholders to participate.

We have written this discussion paper to provide scope for the DSA Review. It provides information about what we want to find out. We view this discussion paper as a starting point.

We will advertise the DSA Review through the Tasmanian media, through organisations we know are used by people with disability, as well as peak organisations and advocacy organisations.

We also encourage you to share information about the Review with others you think will be interested.



# What will happen after the consultation?

We will consider what people tell us and write a report to summarise what we found out during the consultation.

The Government will consider the feedback in the report and publicly outline what the next steps will be.

We will produce an Easy Read version of the report and make this information available to people who participated.

**Department of Communities Tasmania**  
Disability and Community Services – DSA Review Project

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