Restrictive Practices Authorisation Pathway

**What We Heard Closure Report**

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# Introduction

Under the National Disability Insurance Scheme (NDIS) states and territories retain responsibility for the legislative and policy frameworks that authorise the use of restrictive practices.[[1]](#footnote-1)

The NDIS Quality and Safeguards Commission (NDIS Commission) has the statutory function of oversight and regulation of the use of behaviour supports, and oversight of the implementation of restrictive practices, in the NDIS.[[2]](#footnote-2)

The then Department of Communities Tasmania (Communities Tasmania) engaged JFA Purple Orange to undertake an independent analysis of Tasmania’s authorisation processes for the use of restrictive practices across the funded disability sector, including the role of the Senior Practitioner. JFA Purple Orange provided the *Review of state-based authorisation processes for use of restrictive interventions: A consultation for the Government of Tasmania* (Report) to Communities Tasmania in August 2021.

The analysis identified aspects of the current authorisation pathway that work well, areas of limitation and opportunities for enhancement, with many stakeholders expressing their desire to see a redesign of the current authorisation pathway.

In February 2022 the then Communities Tasmania released the [Review of State-based Authorisation processes for use of Restrictive Interventions: A consultation for the Government of Tasmania](https://www.dpac.tas.gov.au/__data/assets/pdf_file/0026/247193/Review-of-Statebased-RI-Summary-Report-Feb-2022.pdf) (Summary Report) and [Review of State-based Authorisation processes for use of Restrictive Interventions: A consultation for the Government of Tasmania Recommendations – Communities Tasmania Response](https://www.dpac.tas.gov.au/__data/assets/pdf_file/0027/247194/Communities-Tasmania-Response-Review-of-Statebased-RI-Feb-2022.pdf) (Communities Tasmania Response).

Communities Tasmania’s response included the commitment to developing a best practice single pathway model based on the experience and successful approaches in other jurisdictions and in consideration of the recommendations and model proposed by JFA Purple Orange.

The authorisation pathway for restrictive practices is being progressed alongside the review of the Tasmanian *Disability Services Act 2011* (the Act) and the establishment of Tasmania’s first Disability Commissioner.

Whilst the Act refers to restrictive interventions, this document uses the national term of restrictive practices.

Following extensive consultation Government has committed to the development of a new disability act to replace the Tasmanian *Disability Services Act* (2011). To inform this, it is important to look at the recommendations made for authorisation of restrictive practices, the national context and an effective model for restrictive practice authorisation in Tasmania.

Across February to September 2022 the then Communities Tasmania consulted with Supported Independent Living and Community Participation providers, behaviour support practitioners, Office of the Senior Practitioner, state and territory colleagues, NDIS Commission and Department of Justice.

Through this consultation we heard support for streamlining the model to a single pathway and inclusion of an accessible independent review/appeal mechanism. We also heard divergent views and positions regarding both the panel approach and whether consent is required from the individual, or their guardian, prior to the implementation of restrictive practices.

This document provides a summary of the consultation and outlines a contemporary restrictive practice authorisation model that:

* aligns with national requirements; and
* is appropriate and sustainable within the Tasmanian context, whilst upholding the rights and protections of people with disability.

# Who we spoke with

Following receipt of the JFA Purple Orange Report, the then Communities Tasmania sought initial views from the Tasmanian Civil and Administration Tribunal (TASCAT) and Senior Practitioner. These views assisted to inform Communities Tasmania’s Response.

TASCAT suggested the inclusion of safeguarding elements in a single pathway and raised the matter of consent for the implementation of restrictive practices not being included in the proposed model. TASCAT also reflected their understanding of some jurisdictional authorisation processes differed to those outlined in JFA Purple Orange’s Report. This feedback informed Communities Tasmania’s response, particularly regarding Recommendation 2, and prompted the then Communities Tasmania to reach out to state and territory colleagues to gain further insights of the different authorisation approaches operating across the nation.

During August and September 2022, the then Communities Tasmania consulted with the following stakeholders on a possible single linear pathway, using a panel approach, for the authorisation of restrictive practices:

* Supported Independent Living (SIL) and Community Participation providers and Behaviour Support Practitioners, through two virtual roundtables facilitated by National Disability Services Tasmania.
* Office of the Senior Practitioner (OSP).
* State and Territory – Policy staff and/or Senior Practitioner:
  + Australia Capital Territory
  + Western Australia
  + New South Wales
  + Victoria
* Department of Justice (DoJ).
* NDIS Quality and Safeguards Commission (NDIS Commission).

# What we asked

## SIL Providers, Community Participation Providers, Behaviour Support Practitioners, Office of the Senior Practitioner

### Panel Approach

* What benefit do you see in this approach?
* What barriers might you anticipate in adopting a provider panel approach?
* What are the risks government needs to consider?
* What role should the Office of the Senior Practitioner (OSP) have in provider panels?
* Is there a role for the Tasmanian Civil and Administrative Tribunal (TASCAT)?
* Are there alternative panel approaches we haven’t considered?

### Independent Review

* What elements does the Tasmanian Government need to consider in ensuring there is independent review built into the authorisation pathway?
* What might this look like?
* What are some of the possible pathways for independent review?

### Office of the Senior Practitioner

* What do you believe are benefits of the Senior Practitioner having a quality assurance process for behaviour support plans?
* Are there any foreseeable barriers?
* What risks do you believe government might need to consider?

### Reports, plans and data collection

* What might need to be considered in the implementation of an online portal for reporting to the Office of the Senior Practitioner?
* What barriers are foreseeable?
* What risks might the Tasmanian Government need to consider?

### Supported Decision Making

* What should the Tasmanian Government consider in relation to supported decision making and consent?
* What are the benefits of implementing a supported decision-making framework in the process?
* Should a supported decision-making framework be embedded in legislation or implemented as policy?
* What resources might support the work of panels and practitioners?

## State and Territory – Policy or Senior Practitioner

* What elements of the jurisdiction’s restrictive practice authorisation process work well, what does not, what should the Tasmanian Government consider in the development of a single pathway best practice model for the authorisation of restrictive practices?
* Where in place, what is the jurisdiction’s experiences and views with a panel approach?

## Department of Justice

* Is the proposed approach and thinking aligning with and complementary to the Department of Justice work, specifically the Guardianship and Administration Act revisions?

## NDIS Quality and Safeguards Commission

* What are the elements the Tasmanian Government should consider in the development of a single pathway best practice model for the authorisation of restrictive practices?

# What we heard

## Pathway

Stakeholders comment on whether the panel approach was supported or not.

* Most comments talked about the independence of a panel and if that could be achieved, it was noted that:
  + conflicts of interest must be avoided;
  + an appeal process / independent review function must be available and built into the process;
  + participants, their families, or representatives are able to participate to the extent they desire;
  + availability of key people to form the panel, particularly in regional areas may be a challenge;
  + smaller providers, who may not have the available resources or capacity, are supported to successfully participate;
  + participants with limited or no ability to communicate are supported to have a voice through the process;
  + administrative burden is minimised, and processes are not duplicated with the NDIS Commission;
  + there is clarity on who funds the panels;
  + a representative from the state service be a member of the panel;
  + the amount of work required in forming and running a panel may be a potential challenge given the thin market of key staff and current and future workloads;
  + a quality assurance mechanism and the involvement of the Office of the Senior Practitioner were supported as key elements of the pathway;
  + the use of a web-portal like that used by the NDIS Commission would be beneficial;
  + there is need for consistency between Tasmania, the NDIS Commission and the National Disability Insurance Agency;
  + the likely benefit of panels is ensuring collaboration between multiple providers involved in the life of the participant;
  + experience demonstrates decision making is not consistent and can be delayed in a panel model; and
  + market capacity, from the perspective of both implementing providers and behaviour support practitioners, needs to be considered.
* Support for a single pathway that is transparent, enables timely decisions and is inclusive of appropriate processes to protect the individual’s human rights.

State and Territory Analysis revealed:

* An evolving and changeable environment, responding to the commencement of the NDIS and operations of the NDIS Commission was evident from the discussions with jurisdictions.
* Most jurisdictions had or were undertaking reviews and reforms of their restrictive practice arrangements; with most having legislated provisions to guide the approval and use of restrictive practices.
* A behaviour support plan is required to inform the authoriser’s decision.
* Some jurisdictions require reporting of unauthorised restrictive practices, whilst others require unauthorised restrictive practice reports to be provided with the application seeking authorisation of a restrictive practice or have relied on legislative powers to issue Directions.

The NDIS Commission provided insights from across the nation, looking at the barriers for participants, family members and providers to achieving authorisation where there are multiple players. The NDIS Commission noted the panel approach results in time delays, inconsistent decision making, requires investment in education, training and development and were not always assured of independence in the process. Feedback from the NDIS Commission included:

* Support for the Senior Practitioner authorising restrictive practices, as a single point of accountability.
* Support for aligning state restrictive practice definitions with the national regulated restrictive practice definitions and referenced the approach in Northern Territory and Victoria’s legislation[[3]](#footnote-3).
* Support for a 1 plan – 1 person – 1 authorisation approach.
* Suggestion of avoiding a panel format, as the approach is problematic, citing:
  + inconsistent decisions and varied interpretation of what is a restrictive practice;
  + resource intensive and costly;
  + timeliness – impacted by access to independent person, incorrect or incomplete documentation;
  + independence can be difficult to achieve in smaller communities/rural and remote areas;
  + members do not always understand the role (reflected an example where tensions arose with medical practitioner where the panel was seeking/questioning medical practitioner advice); and
  + difficulties in addressing issues where there is not a single body responsible for authorisation, including reviewability of a panel decision.
* Suggestion that Victorian legislation allows for the Senior Practitioner to declare a practice as restrictive even if the practice is not a regulated restrictive practice.
* Suggestion that Victorian process places onus on the Senior Practitioner to offer solution where the Senior Practitioner disagrees with proposed restriction.
* Support for State and Territory authorisation, as the first tier of safeguarding the rights of a person with disability subject to restrictive practices.
* Encouraged the inclusion of prohibited practices within state legislation.
* Encouraged the inclusion of a mechanism that enables the authorisation of some restrictive practices whilst rejecting others within the one behaviour support plan.

### Analysis

Those that were not supportive of the panel approach cited accountability, inconsistent and delayed decision making, and resource intensiveness as key reasons. Similarly, providers and practitioners identified potential resourcing issues considering Tasmania’s thin behaviour support practitioner market and the capacity of smaller providers to participate within their existing resources.

Most stakeholders acknowledged the importance for safeguards to be included within the pathway; all were supportive of the Senior Practitioner being responsible for authorising restrictive practices. All stakeholders supported consistency across national and state requirements.

## Independent Review

* + Stakeholders supported an independent review function, citing:
* the review function must be visibly identified within the process;
* the governance arrangements should be clearly defined; and
* the independent review is a place to raise concerns that fit within the mandate.
* Stakeholder feedback noted:
  + A tiered approach initially appealing to an internal higher position/body than the Office of the Senior Practitioner and then an external body such as the Disability Commissioner or TASCAT.
  + The future role of TASCAT should be an appeals pathway but may be dependent on the role of Tasmania’s Disability Commissioner.
  + The current Guardianship and Administration Act and proposed amendments give the Public Guardian authority to mediate disputes involving advance care directives or disputes involving the actions or proposed actions of private representatives.
* Across jurisdictions, the relevant state or territory Civil and Administrative Tribunal has a role in the appeal/review process, however some do have an option prior to the Tribunal.
* Many jurisdictions have timeframes for which review can be sought.

### Analysis

All stakeholders were supportive of an appeals or review mechanism. Most envisaged a role for TASCAT in the review process, however many suggested a tiered approach with an internal process prior to referral to the Tribunal. Some also suggested the Disability Commissioner may have a role in the review process.

What constitutes a reviewable decision varies across jurisdictions.

## Consent

* Stakeholder feedback reflected views on whether consent is required prior to the implementation of authorised restrictive practices and highlighted complementary work occurring by the State and NDIS Commission.
* Stakeholder feedback suggested:
* The inclusion of ‘person responsible’ within future state disability legislation; the ‘person responsible’ could have the power to consent to the implementation of restrictive practices.
  + Supported decision making could be used in the context of consultation with the participant rather than gaining consent.
* Conversations with other jurisdictions revealed that:
  + Consent of the person with disability is not required in many jurisdictions; rather consultation occurs.
  + Where consent is required, this occurs prior to the restrictive practice being implemented and not as part of the authorisation process.
  + Consultation with the participant occurs during the development of the behaviour support plan rather than during the authorisation process.
* The *Guardianship and Administration Amendment Bill 2023* (Tas) was tabled in the House of Assembly in March 2023. The Bill
  + represents a fundamental shift to a ‘will and preference’ model when making decisions by or on behalf of represented persons; and
  + requires that persons with impaired decision-making are supported to participate in decision-making.
* The NDIS Commission is not supportive of requiring consent for the implementation of restrictive practices because consent, within the context of restrictive practices, is inherently problematic, referencing the Office of the Public Advocate (Queensland) paper*, Improving the regulation of restrictive practices in Queensland; a way forward[[4]](#footnote-4),* which puts forward an argument against consent.
* In the view of the NDIS Commission – Senior Practitioner, requiring consent is contrary to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) Article 12-*Equal recognition before the law*[[5]](#footnote-5). Guardianship is about mental capacity whereas Article 12 refers to the right of equality before the law and is not about mental capacity.
* The NDIS Commission is facilitating an 18-month project (January 2022 to June 2023) *Bringing Supported Decision Making to Behaviour Support*. Project outputs will include resources developed for people with disability, families, Positive Behaviour Support Practitioners and Support Workers.

### Analysis

The topic of consent, within the authorising pathway of restrictive practices, revealed divergent stakeholder views and differing practices and requirements across other Australian jurisdictions.

Aligning with the UNCRPD the [*National Disability Insurance Scheme Act 2013*](https://www.legislation.gov.au/Details/C2022C00206/Download) (Cth), specifically Principles 1 and 2, state that people with disability are assumed to have capacity to determine their own best interests and make decisions that affect their own lives and are supported so that their capacity to exercise choice and control is maximised.

In consideration of the various views, practices and requirements, together with the research referenced by the NDIS Commission, national legislation and advice received regarding consent in the context of restrictive practices, the single linear authorisation pathway will retain the requirement of consultation with the person with disability or a person they nominate.

# The authorisation pathway

The single linear authorisation pathway has been developed in consideration of:

* what we heard during the roundtable discussions and conversations with the NDIS Commission and state and territory Senior Practitioners and Policy people;
* JFA Purple Orange’s recommendations; and
* national requirements.

The single authorisation pathway no longer includes a panel approach and introduces Appointed Program Officers and Independent Persons, whilst elevating the responsibilities of the Office of the Senior Practitioner including decisions for all restrictive practices to the Senior Practitioner.

Refer to attachments 1.1 and 1.2 for the flowchart of the authorisation pathway;

* attachment 1.1 provides the pathway where a restrictive practice has been identified but not used; and
* attachment 1.2 provides the pathway for where a restrictive practice has been used but is not authorised.

The scope of the proposed restrictive practice authorisation includes any person or provider[[6]](#footnote-6) drawing on funds from a NDIS participant’s plan or funded by the Tasmanian Government in a disability support arrangement.

The features of the single authorisation pathway include:

* Appointed Program Officer
* Independent Person
* Office of the Senior Practitioner
* Right to Review

## Appointed Program Officer

* The Appointed Program Officer (APO) undertakes a quality assurance role which includes, but is not limited to, asking if the restrictive practice is needed, has due process been followed, does the behaviour support plan reduce and/or eliminate the restrictive practice and can the restrictive practice be implemented?
* The APO role is undertaken by an employee of the implementing provider/s[[7]](#footnote-7). The APO role sits within a position not directly involved in the implementation of the restrictive practice.
* All APOs are to be approved and registered by the Senior Practitioner.
* The APO role is undertaken in accordance with guidelines issued by the Senior Practitioner.
* APO submits the application to the Senior Practitioner.

## Independent Person

* The Independent Person is responsible for promoting the safety, wellbeing and health of the person with disability.
* The role is to be undertaken within a supported decision-making framework that is specific to the role of Independent Person.
* Participants will access an Independent Person from the register held by the Senior Practitioner.
* The Independent Person cannot be a behaviour support practitioner or a staff member/volunteer of the implementing provider/s.
* The Independent Person can be a guardian, friend, family member or informal carer.
* The Independent Person’s role is complementary to any guardianship arrangements.

## Office of the Senior Practitioner

* The Senior Practitioner:
  + considers all restrictive practice applications;
  + issues guidelines for Appointed Program Officers and Independent Persons;
  + can give providers direction through issuing conditions with the authorisation of restrictive practices;
  + can issue additional directions to a provider to cease a restrictive practice, where the Senior Practitioner observes, audits or enters premises; and
  + can prohibit the use of restrictive practices, or a specified form of restrictive practice on person with disability or NDIS participant.
* The Office of the Senior Practitioner
  + delivers, education and training for providers;
  + delivers, education and training for Appointed Program Officers and Independent Persons; and
  + evaluates the quality of behaviour support plans containing restrictive practices.
* In considering the applications for restrictive practices the Office of the Senior Practitioner may visit to observe, but not duplicate work that is the responsibility of another party.
* The increased monitoring and oversight role of the Office of the Senior Practitioner is anticipated to identify and enable greater sector education opportunities (such as supporting/educating stakeholders to recognise and report restrictive practices) that will contribute to mitigating the risk of any unintended consequences emerging as an outcome of elevating the role and function of the Office.

## Right to Review

A flowchart of the Right to Review process is contained at attachment 1.3.

Decisions that can be subject to review include:

* Registration or appointment of an Appointed Program Officer.
* Registration or appointment of an Independent Person.
* Refusal of registration/appointment of an Appointed Program Officer.
* Refusal of registration/appointment of an Independent Person.
* Cancellation of registration/appointment of an Appointed Program Officer.
* Cancellation of registration/appointment of an Independent Person.
* Authorisation of restrictive practices.
* Conditional authorisation of restrictive practices, including conditions applied to implementing providers.
* Refusal to authorise restrictive practices.
* Direction provided by Senior Practitioner to cease restrictive practice.
* Determination of the Senior Practitioner giving direction to a provider about a practice.

## Policy Settings, Frameworks and Guidelines

* The Senior Practitioner position will be scoped and sized in consideration of the elevated role and responsibility.
* Supported decision making framework for the Independent Person to be developed.
* Regulated restrictive practice definitions are those as stated in the relevant National Disability Insurance Scheme Rules.
* Prohibited practices are as described by the NDIS Quality and Safeguards Commission.
* No exempt practices to be included in future legislation.
* Authorised restrictive practice approval timeframes will be consistent with the NDIS Rules.
* Retain in future disability legislation any restrictive practice described in other legislation (such as the Mental Health Act).
* Enable an option to broaden the scope of the authorisation of restrictive practices in Tasmania’s future disability legislation.
* Participant must be sighted by the Independent Person.
* One behaviour support plan may contain several authorised restrictive practices of differing durations.
* Resolution process to be developed to respond to disputes arising between the Independent Person and the Appointed Program Officer.

## Quality Assurance/Audit

Supporting transparency, accountability and continuous improvement a quality assurance / audit of the restrictive practice authorisation systems should be undertaken at least annually or instigated by the number and/or nature of requests for review of authorisation decisions.

The quality assurance / audit function should be undertaken by an appropriately skilled body, determined by the Secretary, and independent of the Office of the Senior Practitioner. The quality assurance /audit would consider:

* Process compliance with policy, legislation, guidelines etc
* Data
* Record keeping
* Practices are consistent with national principles, NDIS legislation and Rules

## JFA Purple Orange Recommendations and the Principles for Nationally Consistent Authorisation of Restrictive Practices

The pathway incorporates the majority of recommendations made by JFA Purple Orange and will significantly contribute towards Tasmania achieving full compliance with the Principles for Nationally Consistent Authorisation of Restrictive Practices (National Principles).

The development of Tasmania’s future disability legislation will also contribute towards progressing many of JFA Purple Orange recommendations and achieving compliance with the National Principles.

Attachment 2 outlines JFA Purple Orange Recommendations alignment with the single authorisation pathway and Principles for Nationally Consistent Authorisation of Restrictive Practices.

# Attachments

## Attachment 1

### 1.1 Restrictive Practice identified

Yes

Participant secures Behaviour Support Practitioner

Behaviour Support Practitioner develops Plan with Restrictive Practices in consultation with Implementing Provider/s and Participant and Independent Person

Appointed Program Officer considers

* Is the Restrictive Practice needed?
* Is the process correct?
* Plan reduces / eliminates Restrictive Practice
* Restrictive Practice can be implemented
* All required documentation completed

Appointed Program Officer  
 submits application to Office of the Senior Practitioner   
(OSP)

OSP quality assess and make recommendation to Senior Practitioner

Authorised?

Restrictive Practices implemented

Senior Practitioner seeks additional information / amendment and / or proposes alternatives

Yes, without conditions

No

Independent person can seek advice from the OSP

OSP monitors and oversights

Appointed Program Officer Reports to NDIS Commission and Senior Practitioner

Senior Practitioner conditionally authorises and applies specific conditions, reporting and review

Restrictive Practice identified

Further information sought

SP can seek independent advice at their discretion

No

Senior Practitioner (SP) considers Recommendation

Yes, with conditions

OSP Education, Information and Training

### 1.2 Restrictive Practice – Emergency Use

Restrictive Practice used but not authorised

Reported to Appointed Program Officer

Implementing Provider reports to NDIS Commission and Senior Practitioner

Senior Practitioner provides interim authorisation with conditions for the use of the Restrictive Practice

(if satisfied the Restrictive Practice is NOT abuse, neglect, exploitation, violence and is NOT a prohibited practice)

Conditional on

* Behaviour Support Practitioner being engaged
* Continued use of the Restrictive Practice is reported to both the NDIS Commission and Senior Practitioner
* Interim / Comprehensive Behaviour Support Plan with Restrictive Practices is produced and provided following guidelines set out by the Senior Practitioner and consistent with the NDIS Rules

Once behaviour support plan is developed follow process for *Restrictive Practice Identified* to seek authorisation

Office of the Senior Practitioner monitors and oversights compliance with/progression of conditions

### 1.3 Right to Review

Right to Review

* Participant
* Independent Person
* Implementing Provider

Office of the Senior Practitioner  
receives request for review

Decision Reached

(Provide alternative, or support original decision)

Decision Communicated

Satisfied?

Process complete

Escalate to Tasmanian Civil and Administrative Tribunal (TASCAT)

Yes

No

Senior Practitioner could seek alternative view / advice:

* Policy
* Quality and Safeguarding
* Clinical

TASCAT processes apply thereafter

## Attachment 2

### JFA Purple Orange Recommendations alignment with the Single Authorisation Pathway and the Principles for Nationally Consistent Authorisation of Restrictive Practices

Recommendation 1 – Partially Supported

That the Tasmanian Government changes the current dual authorisation pathways to a single authorisation pathway removing the function of the Guardianship and Administration Board[[8]](#footnote-8) from the authorisation pathway

|  |  |
| --- | --- |
| **Pathway** | **Principles** |
| Senior Practitioner has sole responsibility for authorisation of restrictive practices.  One person – one plan | 2. Authorisation arrangements, and the systems surrounding them, should be designed to support positive outcomes for people with disability who are subject to restrictive practices with the objective or reducing and ultimately eliminating those practices  9. Authorisation arrangements are streamlined and take into account the impact of administrative burden on providers enabling resources to be focused on quality service delivery to people with disability |

Recommendation 2 – Fully Supported

That the Tasmanian Government reviews the sequence of steps currently involved in seeking approvals for restrictive interventions and considers a linear pathway where the participant is supported at each step via a behaviour support plan leading to a reduced need for restrictive practices

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| **Pathway** | **Principles** |
| Single linear pathway, requiring a behaviour support plan to accompany the application seeking authorisation.  Independent Person supporting the participant along the pathway.  Senior Practitioner has sole responsibility for authorisation of restrictive practices.  One person – one plan. | 2. Authorisation arrangements, and the systems surrounding them, should be designed to support positive outcomes for people with disability who are subject to restrictive practices with the objective or reducing and ultimately eliminating those practices  4. People with disability and their support networks are actively supported in the decision-making process about the use of restrictive practices, and alternative practices that may improve outcomes for the person with disability through the reduction of their use  9. Authorisation arrangements are streamlined and take into account the impact of administrative burden on providers enabling resources to be focused on quality service delivery to people with disability |

Recommendation 3 – In-Principle Support

That the Tasmanian Government reviews the role, positioning and current reporting structure of the Senior Practitioner and considers elevating this role to bring it into alignment with other jurisdictions that can be considered to use best practice designs

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| **Pathway** | **Principles** |
| Office of the Senior Practitioner roles and responsibilities elevated to be more independent of process.  Roles, responsibilities and powers of the Senior Practitioner provided for in legislation.  At their discretion, the Senior Practitioner can seek independent expert advice. | 1. Authorisation arrangements for the use of restrictive practices on people with disability are provided for in legislation and support the reduction and elimination of restrictive practices as agreed by all Australian Governments  2. Authorisation arrangements, and the systems surrounding them, should be designed to support positive outcomes for people with disability who are subject to restrictive practices with the objective or reducing and ultimately eliminating those practices  5. Authorisation decisions made under state and territory regulatory frameworks are informed by independent advice from experts with relevant training, skills and experience in positive behaviour support and restrictive practices  6. Authorisation frameworks should ensure that any conflicts of interest between key parties involved in decision making on the use of restrictive practices, being people with disability, their support networks, and service providers are effectively mitigated  9. Authorisation arrangements are streamlined and take into account the impact of administrative burden on providers enabling resources to be focused on quality service delivery to people with disability |

Recommendation 4 – In-Principle Support

That the Tasmanian Government considers widening the current legislation under which the Senior Practitioner can operate in order to allow for greater consistency and oversight of restrictive practices across other appropriate settings such as educational, child protection, thereby ensuring a coordinated approach for participants accessing multiple services.

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| **Pathway** | **Principles** |
| Provides the opportunity to broaden the scope of the authorisation requirements. | 1. Authorisation arrangements for the use of restrictive practices on people with disability are provided for in legislation and support the reduction and elimination of restrictive practices as agreed by all Australian Governments  2. Authorisation arrangements, and the systems surrounding them, should be designed to support positive outcomes for people with disability who are subject to restrictive practices with the objective or reducing and ultimately eliminating those practices  3. People with disability who are subject to restrictive practices have the same protections and rights to be free from abuse, neglect and exploitation regardless of their disability, age and where they live. |

Recommendation 5 – In-Principle Support

That the Tasmanian Government positions the Office of the Senior Practitioner as a leader for sector-wide education and capacity building towards a positive context for how people are supported, particularly people most at risk of a service provider using restrictive practices in their support arrangements.

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| **Pathway** | **Principles** |
| Office of the Senior Practitioner’s elevated role and responsibilities will enable greater sector development opportunities, including education relating to the Appointed Program Officer and Independent Persons’ roles. | 2. Authorisation arrangements, and the systems surrounding them, should be designed to support positive outcomes for people with disability who are subject to restrictive practices with the objective or reducing and ultimately eliminating those practices  4. People with disability and their support networks are actively supported in the decision-making process about the use of restrictive practices, and alternative practices that may improve outcomes for the person with disability through the reduction of their use. |

Recommendation 6 – Partially Supported

That the OSP [Office of the Senior Practitioner] role and resourcing include capacity to directly provide specialist input to agencies in relation to alternatives to restrictive practices through positive behaviour support strategies, and to develop other best practice resources that assist service agencies to build capacity.

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| **Pathway** | **Principles** |
| Office of the Senior Practitioner’s elevated role and responsibilities will enable greater sector development opportunities, including education relating to the Appointed Program Officer and Independent Persons’ roles. | 2. Authorisation arrangements, and the systems surrounding them, should be designed to support positive outcomes for people with disability who are subject to restrictive practices with the objective or reducing and ultimately eliminating those practices  4. People with disability and their support networks are actively supported in the decision-making process about the use of restrictive practices, and alternative practices that may improve outcomes for the person with disability through the reduction of their use. |

Recommendation 7 – In-Principle Support

That the Tasmanian Government commit to supporting the OSP to lead a human rights approach to the broader context surrounding a restrictive practices authorisation pathway, including an emphasis on authentic, strengths-based, vision-based approaches to planning that place the person’s vulnerability in the context of building life chances leading to a reduced need for restrictive practices.

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| **Pathway** | **Principles** |
| Dignity of risk and promoting rights underpin the philosophy of the Pathway. | 2. Authorisation arrangements, and the systems surrounding them, should be designed to support positive outcomes for people with disability who are subject to restrictive practices with the objective or reducing and ultimately eliminating those practices  3. People with disability who are subject to restrictive practices have the same protections and rights to be free from abuse, neglect and exploitation regardless of their disability, age and where they live  7. Authorisation arrangements promote independence and dignity of risk while also considering the interests and protection of rights of the person with disability. |

Recommendation 8 – Fully Supported

That the Tasmanian Government change the current definition of restrictive interventions and in doing so refer to the national definition of restrictive practices. We also recommend that as part of this change chemical restraint is included as a category of restrictive practices requiring approval.

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| **Pathway** | **Principles** |
| The Pathway, and future relevant State legislation, will reflect national definitions and relevant NDIS Rules. | 2. Authorisation arrangements, and the systems surrounding them, should be designed to support positive outcomes for people with disability who are subject to restrictive practices with the objective or reducing and ultimately eliminating those practices  9. Authorisation arrangements are streamlined and take into account the impact of administrative burden on providers enabling resources to be focused on quality service delivery to people with disability  10. Commonwealth state and territory governments will continue to work together to apply these principles in practice, using the NDIS governance arrangements to monitor progress in achieving national consistency |

Recommendation 9 – Fully Supported

That the Tasmanian Government require an NDIS Interim Behaviour Support Plan for an interim authorisation period of no longer than six months or an NDIS Behaviour Support Plan, including a complete Functional Behavioural Assessment, for an authorisation period of no longer than 12 months. That there be no authorisations of any duration without a plan; deferring instead to a strict emergency arrangement

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| **Pathway** | **Principles** |
| Where a restrictive practice has been identified but not used, the Pathway requires a behaviour support plan to be developed prior to authorisation. | 2. Authorisation arrangements, and the systems surrounding them, should be designed to support positive outcomes for people with disability who are subject to restrictive practices with the objective or reducing and ultimately eliminating those practices  5. Authorisation decisions made under state and territory regulatory frameworks are informed by independent advice from experts with relevant training, skills and experience in positive behaviour support and restrictive practices  9. Authorisation arrangements are streamlined and take into account the impact of administrative burden on providers enabling resources to be focused on quality service delivery to people with disability. |

Recommendation 10 – In-Principle Support

That the Tasmanian Government implements supported decision-making frameworks within its restrictive practices authorisation processes and lead a national conversation relating to this approach.

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| **Pathway** | **Principles** |
| Independent person supporting the participant along the pathway.  The role of the Independent Person will be undertaken within a supported-decision making framework that is specific to the role. | 2. Authorisation arrangements, and the systems surrounding them, should be designed to support positive outcomes for people with disability who are subject to restrictive practices with the objective or reducing and ultimately eliminating those practices  3. People with disability who are subject to restrictive practices have the same protections and rights to be free from abuse, neglect and exploitation regardless of their disability, age and where they live  4. People with disability and their support networks are actively supported in the decision-making process about the use of restrictive practices, and alternative practices that may improve outcomes for the person with disability through the reduction of their use  7. Authorisation arrangements promote independence and dignity of risk while also considering the interests and protection of rights of the person with disability. |

Recommendation 11 – Fully Supported

That the Tasmanian Government implements a mechanism within the authorisation pathway that provides people living with disability and their families clear access to authentic, independent review processes, separate from original decision-makers.

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| **Pathway** | **Principles** |
| Review process built into the authorisation framework.  Dispute resolution process to respond to disputes arising between the Independent Person and the Appointed Program Officer | 2. Authorisation arrangements, and the systems surrounding them, should be designed to support positive outcomes for people with disability who are subject to restrictive practices with the objective or reducing and ultimately eliminating those practices  6. Authorisation frameworks should ensure that any conflicts of interest between key parties involved in decision making on the use of restrictive practices, being people with disability, their support networks, and service providers are effectively mitigated  7. Authorisation arrangements promote independence and dignity of risk while also considering the interests and protection of rights of the person with disability  8. Decisions made on the use of restrictive practices are able to be reviewed if required through relevant state or territory mechanisms. |

Recommendation 12 – Fully Supported

That the Tasmanian Government continues to explore ways to establish a data capture and reporting mechanism for the conduct of restrictive practices, and that this database is curated by the OSP.

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| **Pathway** | **Principles** |
| The establishment of a data capture and reporting mechanism will be considered within the planning for the implementation of the Pathway. | 2. Authorisation arrangements, and the systems surrounding them, should be designed to support positive outcomes for people with disability who are subject to restrictive practices with the objective or reducing and ultimately eliminating those practices  9. Authorisation arrangements are streamlined and take into account the impact of administrative burden on providers enabling resources to be focused on quality service delivery to people with disability. |

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1. [Tasmania - legislative and policy framework for the authorisation of restrictive practices](https://www.dpac.tas.gov.au/divisions/cpp/community-and-disability-services/office-of-the-senior-practitioner) [↑](#footnote-ref-1)
2. [NDIS Commission – Understanding behaviour support and implementation of restrictive practices](https://www.ndiscommission.gov.au/providers/understanding-behaviour-support-and-restrictive-practices-providers) [↑](#footnote-ref-2)
3. [Disability Act 2006 (legislation.vic.gov.au)](https://content.legislation.vic.gov.au/sites/default/files/2022-03/06-23aa046%20authorised.pdf), page 13 - NDIS (Restrictive Practices and Behaviour Support) Rules means the National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018 (however titled) of the Commonwealth, as in force from time to time, under the NDIS Act; [↑](#footnote-ref-3)
4. [20211005-opa-restrictive-practices-reform-options-paper.pdf (justice.qld.gov.au)](https://www.justice.qld.gov.au/__data/assets/pdf_file/0004/697729/20211005-opa-restrictive-practices-reform-options-paper.pdf) [↑](#footnote-ref-4)
5. [Convention on the Rights of Persons with Disabilities | OHCHR](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities) [↑](#footnote-ref-5)
6. Provider is inclusive of both registered and unregistered NDIS providers [↑](#footnote-ref-6)
7. Implementing providers are providers who are registered under section 73C of the NDIS Act 2013 to provide classes of supports which includes developing behaviour support plans, providing specialist behaviour support or the need to use a restrictive practice during the provision of those supports in relation to a NDIS participant. ([NDIS Commission website](https://www.ndiscommission.gov.au/providers/becoming-registered-provider/understanding-different-types-providers)) [↑](#footnote-ref-7)
8. Superseded by the Tasmanian Civil and Administrative Tribunal – Guardianship Stream [↑](#footnote-ref-8)