



National Disability Services Position Statement on Disability Inclusion and Safeguards Bill 2024

About National Disability Services

National Disability Services (NDS) is Australia's peak body for disability service organisations, representing more than 1000 service providers. Collectively, NDS members operate several thousand services for Australians with all types of disability. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Commonwealth governments. We have a diverse and vibrant membership, comprised of small, medium and larger service providers, employing 100,000 staff to provide support to half a million of people with disability. NDS is committed to improving the disability service system to ensure it better supports people with disability, their families and carers, and contributes to building a more inclusive community.

About this submission

NDS acknowledges and pays respect to the Aboriginal people of lutruwita/Tasmania, and acknowledges their continuing custodianship and connection to land, sea, sky and waterways. NDS also notes the overrepresentation of Aboriginal and Torres Strait Islander people among people with disability, the rate of which becomes even more significant in youth demographics. It is vital that Aboriginal young people are heard and included as we build strategies for the future of Tasmania.

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Background

On 19 June 2024, the Disability Inclusion and Safeguards Bill 2024 (the Bill) was tabled in Parliament by Minister Jo Palmer, MLC. NDS has liaised regularly with the Tasmania Government, since the [2017-18 Review of the Disability Services Act 2011](#), right through to the development of this Bill, including holding numerous forums for disability service providers that ensured they could provide their feedback and have their questions answered. NDS has also provided written feedback on drafts of the Bill and reviews of practice it covers, such as [restrictive practices](#).

The steering committee who oversaw the development of this Bill had broad membership, including stakeholders with disability and a disability provider industry representative who sought regular feedback from NDS.

NDS was pleased to see that [feedback we provided](#) on previous iterations of the Bill has been included. For example, the Bill enables a Community Visitors Scheme to increase the safety of people with disability and for the Office of the Senior Practitioner to provide an authorising environment and an educative role.

NDS members and disability service providers have told us that the existing [Disability Service Act 2011 is not fit for purpose](#), for a variety of reasons including:

- Lacking a clear and accountable pathway for increasing inclusion of people with a disability.
- Definitions of restrictive practice inconsistent with National Disability Insurance Agency Act and Rules and no limitations on the use of chemical restraint in disability settings.
- Complex and non-person centred dual authorisation pathways for restrictive practice involving TasCAT and Secretary of Department of Health where neither pathway has strong clinical oversight or monitoring.
- No legislated requirement for independent support for the person with disability subject to restrictive practice (which is inconsistent with many other States).
- Poor mechanisms for review of decisions made under the Act (largely being limited to the judicial system).
- No explicit prohibited practices leading to the possible use of practices in some settings that are both high risk and a gross violation of human rights.
- No requirement for providers to use input from professionally developed behaviour support plans.
- No opportunity to consider restrictive practice applied to people with a disability across settings other than disability services.

The current Legislation has many inconsistencies to the current funding, authorising and safeguarding and monitoring now required with the current setting creating a high reporting burden for disability service providers and families. NDS has repeatedly raised the issue of the increased burden of reporting unauthorised practices that providers currently face under the new the National Disability Insurance Scheme Quality and Safeguards Commission.

The Disability Service Act 2011 also has numerous inconsistencies with other jurisdictions and with many of the final recommendations of the [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#) (DRC).

Disability Inclusion and Safeguards Bill 2024

NDS Members have shown support for the new Disability Inclusion and Safeguards Bill 2024 for a variety of reasons including:

- Defining Inclusion Principles so the progress of government, service providers and the community can be measured.
- A requirement to empower people with a disability by supporting their decision making, not replacing (substituting) their decision making.
- Clear principles about how we treat children with a disability.
- A requirement that Tasmania has a Disability Inclusion Plan (which is reported to Parliament) and that requires government agencies to have a disability inclusion action plan.
- Establishing a Disability Inclusion Advisory Council, to be chaired by a person with a disability. Members to be paid for their time.
- Introducing a Tasmanian Disability Commissioner, who must be a person with disability.
- Introducing a Community Visitors Scheme (a State specific recommendation from the DRC).
- Enabling increased consistency with DRC recommendations 6.35, 6.36, and 6.40 which relate to restrictive practices.
- Ensuring that there are no practices or places where people with a disability can be excluded by enabling the Senior Practitioner to prescribe practices that are restrictive (i.e. section 5 Interpretation) and by enabling government to prescribe settings where practices must be authorised (i.e. section 7 Meaning of disability services provider).
- Enabling the Senior Practitioner to prohibit practices (section 55).
- Adding new rules about what happens when we limit the human rights of people with a disability (i.e. use a restrictive practice) requiring a disability service

provider to appoint an authorised program officer responsible for ensuring the practice proposed is the least restrictive.

- Legislating annual reporting by the Senior Practitioner on the use of restrictive practices.
- Ensuring that an independent person is appointed to assist the person with disability.

The Bill does not prohibit the regulation of restrictive practices in settings other than disability, however it provides a contemporary and nationally consistent platform from which this work could be developed. NDS understands that it is not possible to have a single piece legislation to cover restrictive practice across all settings, thus this approach is prudent.

The requirements of the Bill for the Government to complete a Tasmanian Disability Inclusion Plan within a year of commencement of the Act, with review every four years, replacing the outdated [Accessible Island framework](#), is a significant step forward and provides a mechanism for DRC recommendations which are still under consideration to be addressed and actioned.

The requirements of entities to complete Disability Inclusion Action plans with clear reporting guidelines and mechanisms for reporting is something the disability sector has been calling on for many years. People with a disability are too quickly excluded in many settings, including health, housing and employment. This is a superior model to other States which will likely be used as a 'benchmark' for policy makers moving forward.

Summary

In summary, NDS supports the Disability Inclusion and Safeguards Bill 2024. NDS recognises that some in the disability community may find the joining of inclusion principles with those of restrictive practices a challenge; we believe that you cannot foster inclusions without also strongly regulating the use of restrictive practices, which by their nature often exclude.

The introduction of a Disability Commissioner's office, the very recent inclusion of a Community Visitors Scheme and the focusing on unified processes for the Restrictive Practice authorising environment are encouraging. Overall, the Bill is well aligned to Australia's Disability Strategy and provides a vehicle to action recommendations from the DRC.

NDS recommends the State Government provides appropriate funding, to ensure the intentions of the Bill can be realised and people with disability can have better outcomes. The Bill introduces changes for Government agencies as well as for providers, all of which will take time to establish and will be best served by an educative and collaborative approach. As the peak body for disability providers, NDS is keen to be part of the reform journey and to support the implementation of this Bill.

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