

BRIEFING FOR THE COMMUNITY SUPPORT AND SERVICES COMMITTEE**Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024****Department of Child Safety, Seniors and Disability Services****Policy intent**

The Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024 (the Bill) makes a range of legislative amendments to implement a reformed framework to enable the authorisation of the use of restrictive practices in specialist disability service environments (National Disability Insurance Scheme (NDIS) supports or services or disability services provided, or funded, by the Department of Child Safety, Seniors and Disability Services (DCSSDS)).

A restrictive practice is any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability. A restrictive practice is used to respond to the behaviour of a person with disability that causes harm to the person or others, and restrictive practices can include physical, environmental, chemical or mechanical restraints or seclusion.

Restrictive practices fundamentally impact the human rights of an individual and it is therefore necessary to ensure strong safeguards in relation to the authorisation of their use. The use of a restrictive practice in accordance with an appropriate authorisation process provides a basis for service providers to be protected in relation to the use of restrictive practices that, in some circumstances, could otherwise give rise to criminal or civil liability.

The fundamental purpose of an authorisation framework for restrictive practices is to ensure there is a process that requires service providers to consider and proactively plan to be able to implement positive behaviour support strategies to ensure the least restrictive mechanism is utilised to keep a person with disability or others around them safe from harm.

The Bill seeks to achieve a contemporary, evidence based best practice approach to the authorisation of restrictive practices that is consistent with nationally agreed principles that are designed to achieve consistency under the NDIS.

The reformed framework introduced by the Bill will provide the process to authorise the use of restrictive practices under the NDIS. This will operate in conjunction with the existing role of the NDIS Quality and Safeguards Commission (NDIS Commission) to regulate the use of restrictive practices under the NDIS.

The Bill contains amendments to the *Disability Services Act 2006* (DS Act), the *Guardianship and Administration Act 2000* (GA Act), the *Public Guardian Act 2014* (PG Act), the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act), and the *Coroners Act 2003* (Coroners Act) to replace the existing guardianship based approach to the authorisation of restrictive practices in Queensland.

Key features of the Bill include:

- Establishing the role of the senior practitioner and the Office of the Senior Practitioner to provide for clinically based decisions in relation to when a restrictive practice should be authorised.
- Creating a more streamlined process for authorisation that reduces complexity and regulatory burden for service providers.

- Expanding safeguards to provide for the authorisation of restrictive practices for:
 - all people with disability (adults and children) while receiving NDIS supports or services or disability services. The current framework applies only to restrictive practices used in these settings in relation to adults with intellectual and cognitive disability; and
 - all forms of regulated restrictive practices under the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* (NDIS (RPBS) Rules), including the locking of gates, doors and windows. Under the existing framework, the locking of gates, doors and windows in response to an adult who does not have the skills to safely exit the premises without supervision is not treated as a regulated restrictive practice under Part 6 of the DS Act, and is instead regulated under the miscellaneous provisions of under Part 8 of the DS Act, which just requires a policy approach to this practice.
- Aligning the formal requirements for behaviour support assessments and the development of behaviour support plans (BSPs) with the requirements in the NDIS (RPBS) Rules. At present, the DS Act prescribes specific requirements for BSPs and behaviour support assessments, in addition to those that exist under the NDIS rules. Aligning these requirements will reduce complexity for providers.
- Removing the requirement for the chief executive of disability services to prepare all BSPs that include containment or seclusion. This will allow these plans to be prepared by market-based providers.
- Providing a regulation making power to prescribe prohibited restrictive practices that cannot be approved by the senior practitioner.
- Vesting the Queensland Civil and Administrative Tribunal (QCAT) with jurisdiction to undertake merits review of authorisation decisions.

The amendments to the Coroners Act expand the reportable deaths in care framework to reinstate coverage for persons who receive disability supports under the Commonwealth Government's Disability Support for Older Australians (DSOA) program. This is consistent with the scope of coverage of the reportable deaths framework that applied prior to the establishment of the NDIS and will mean that any person who becomes aware of the death of a DSOA client (who was not living in aged care or a private dwelling), and who does not reasonably believe that someone else has reported, or is reporting, the death, must report the death to the coroner or police (pursuant to section 7(3) of the Coroners Act).

The Bill also makes consequential amendments to the Coroners Act, DS Act, GA Act, and the *Forensic Disability Act 2011* (FD Act) arising from the introduction of the reformed restrictive practices authorisation framework.

The Bill requires the Minister responsible for the DS Act to review the efficacy and efficiency of the amendments made to the DS Act three years after commencement.

Background and context

In accordance with the agreed roles and responsibilities set out in the NDIS Quality and Safeguarding Framework, states and territories are responsible for the legislative and policy frameworks for authorising the use of regulated restrictive practices in the NDIS.

Queensland has a well-established guardianship-based framework for authorising the use of restrictive practices by relevant service providers with adults with an intellectual or cognitive disability when receiving NDIS supports or services or other disability services (such as state-funded or provided continuity of support or accommodation support and respite services), with a focus on reducing and eliminating their use. The framework under which an authorisation may be obtained for this purpose is contained in part 6 of the DS Act and chapter 5B of the GA Act. [Attachment 1](#) summarises the existing restrictive practices requirements for an authorisation under the DS Act.

The existing framework provides for:

- the approval of containment and seclusion by QCAT;
- the appointment of guardians for restrictive practice matters by QCAT to authorise the use of certain restrictive practices with adults with an intellectual or cognitive disability;
- short-term and general authorisations to be given by one of several decision-makers (including informal decision makers, guardians for restrictive practices matters, the Public Guardian and the chief executive of disability services), depending on the type of practice and length of authorisation sought; and
- the requirement for the chief executive of disability services to prepare BSPs that include containment and/or seclusion.

On 24 July 2020, Disability Ministers agreed to progress work toward greater national consistency based on national principles developed by the NDIS Quality and Safeguards Commissioner (NDIS Commissioner). Queensland provided in-principle support for the national principles, noting the need to properly consider the policy, financial and legislative implications associated with implementation. All other jurisdictions agreed in full to the national principles and completed action plans for progressing towards national consistency.

The former Queensland Productivity Commission, in its April 2021 *Final Report into the NDIS Market in Queensland* (QPC report), emphasised the negative market impacts of Queensland's lack of national consistency, including that it can increase costs and deters market development, and risks harming or undermining the rights of persons with disability.

To ensure proper consideration of the policy, financial and legislative implications associated with implementation of the national principles in Queensland, the Queensland Government undertook the Positive Behaviour Support and Restrictive Practices Review (PBSRP Review).

The PBSRP Review examined:

- Whether any improvements could be made to better align Queensland's restrictive practices authorisation framework with the National Principles and the NDIS (RPBS) Rules.
- The timing and conditions under which the chief executive of disability services would discontinue its current function of preparing all positive behaviour support plans that include the use of the restrictive practices of containment and/or seclusion and devolve this function to the specialist behaviour support market.

To inform the PBSRP Review, in late 2021 and early 2022, DCSSDS conducted stakeholder consultation on ideas for reform. This included the release of a consultation paper and the engagement of Queenslanders with Disability Network to conduct focus groups with people with disability and their families and carers. Further information on the consultation process is included in the explanatory notes for the Bill from page 15.

The Bill implements the key findings of the PBSRP Review and reflects key themes of stakeholder feedback.

The critical need for nationally consistent authorisation processes to promote the reduction and elimination of the use of restrictive practices has been bolstered since the September 2023 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* report was released. The Royal Commission detailed accounts from people with disability who were subjected to a range of inappropriate and unregulated restrictive practices. Similarly, the October 2023 *Final Report of the Independent Review of the NDIS* (released publicly in December 2023) again called for action to promote the reduction and elimination of restrictive practices.

Key amendments in the Bill

Preliminary (clauses 1 and 2)

The Bill commences on a day to be fixed by proclamation. This will allow for commencement following appropriate implementation activities in collaboration with stakeholders.

Amendments to the Coroners Act (clauses 3 to 7)

Reportable deaths in care (clauses 3 to 6)

The Coroners Act is administered by the Department of Justice and Attorney-General. The reportable deaths framework under the Coroners Act is operationalised by the Coroners Court.

At the time Queensland (and other states) transitioned to the NDIS, a number of people with disability that were in receipt of funding for state-funded disability services were for various reasons not eligible for the NDIS. To ensure persons with disability were not disadvantaged by the establishment of the NDIS, state and Commonwealth governments provided for continuity of supports for this cohort of people. Some members of this cohort moved to Queensland's continuity of supports (COS) program – funded by the department in which disability services are provided (currently, DCSSDS).

Other members of this cohort moved to new funding under the Australian Government's COS program. The DSOA program replaced the Australian Government's COS program on 1 July 2021. The Australian Government administers the DSOA program under the authority granted by the *Financial Framework (Supplementary Powers) Regulations 1997*, Schedule 1AB Part 4 Item 470.

The death of a person with disability who was a client of Queensland's COS program is a reportable death in care under the Coroners Act (section 9(1)(a)(ii)). However, the death of a person with disability who is a client of the DSOA program is not a reportable death in care (unless the death is reportable for another reason under the Coroners Act). Prior to the establishment of the NDIS, DSOA clients were covered by the reportable deaths in care framework.

Clauses 4 to 6 of the Bill amend the Coroners Act to expand the reportable deaths framework to reinstate coverage for deaths in care for people in Queensland who receive disability supports under the DSOA program. This means that persons who moved to the DSOA program will again be covered by the reportable deaths framework, consistent with the scope of coverage of the reportable deaths framework that applied prior to the establishment of the NDIS.

Under the Bill, any person who becomes aware of the death of a DSOA client (provided they were not living in aged care or a private dwelling), and who does not reasonably believe that someone else has reported, or is reporting, the death, must report the death to the coroner or police (pursuant to section 7(3) of the Coroners Act). Also, disability service providers who provide disability services or supports under the DSOA program are required to report the death of a DSOA client who was not living in aged care or a private dwelling to a police officer or coroner, regardless of whether anyone else may have reported the death (under section 7(2) of the Coroners Act).

Consistent with the scope of the reportable deaths in care framework for NDIS participants, the death of a DSOA client living in aged care is not a reportable death under the Coroners Act. However, there may be other reasons that the death is reportable, such as if the person died of unnatural causes.¹ Instead, the death of persons who receive residential aged care services is reportable, in certain circumstances, to the Aged Care Quality and Safety

¹ https://www.coronerscourt.qld.gov.au/_data/assets/pdf_file/0009/785763/deaths-of-aged-care-residents-updated-branding.pdf

Commission under the Serious Incident Response Scheme (such as where the death is unexpected).

Also, consistent with the scope of the reportable deaths in care framework for NDIS participants,² the death of a DSOA client living in their own home or with family is not a reportable death (unless for other reasons). That is because the reportable deaths framework is targeted to ensure scrutiny of those environments where systemic issues might arise so that future deaths can be prevented.

The coroner must give a written copy of the findings and comments in relation to the investigation of a death of a DSOA client (under section 9(1)(f)) of the Coroners Act), to the chief executive of disability services and Minister responsible for the DS Act.

Consequential amendments arising from the reformed authorisation framework (clauses 5 to 7)

The Bill also makes consequential amendments to the Coroners Act arising from the introduction of the reformed restrictive practices authorisation framework. This includes changes to the definitions for restrictive practices and private dwelling (under section 9 of the Coroners Act), to carry over the scope of the reportable deaths framework insofar as it applies to NDIS participants.

The Bill also requires the coroner to give the senior practitioner a written copy of the findings and comments made following:

- the investigation of a death in care of a person in relation to whom a regulated restrictive practice was used under a restrictive practice authorisation in effect immediately before the person died; and
- the investigation of a death in care of a person in relation to whom a prohibited restrictive practice was used.

Amendments to the DS Act (clauses 8 to 32)

Clauses 8 to 32 of the Bill amend the DS Act to implement the key findings of the PBSRP Review.

The new restrictive practices authorisation framework

Streamlining authorisation processes

Regulated restrictive practices can include actions that, without lawful justification, may attract civil or criminal liability (for example, trespass to person and deprivation of liberty).

Under the existing framework, the DS Act and GA Act work together to provide a framework for the consent or approval of the use of RP. Sections 189 and 190 of the DS Act provide civil and criminal immunity to relevant service providers (and individuals acting for them) for the use of a restrictive practice, where they act honestly and without negligence, and the use of a restrictive practice is authorised in accordance with the requirements under the DS Act.

To have this immunity, generally, a relevant service provider must:

- ensure an assessment of the person with disability has been undertaken (for containment or seclusion, this must be a multidisciplinary assessment. Only the chief executive of disability services can decide that a multidisciplinary assessment will be conducted);
- prepare a respite/community access plan or positive behaviour support plan for the adult;

² https://www.coronerscourt.qld.gov.au/_data/assets/pdf_file/0010/785764/deaths-of-people-with-a-disability-updated-branding.pdf

- seek approval/consent to use the restrictive practice from the chief executive of disability services, QCAT, the Public Guardian, a guardian appointed by QCAT for a restrictive practice matter or an informal decision maker.

The requirements differ depending on the type of restrictive practice proposed, whether the restrictive practice will be used in respite or general disability support settings, and the proposed length of time the authorisation sought for. A further summary is available at [Attachment 1](#).

Clause 14 of the Bill provides a simplified framework for authorising the use of restrictive practices by making the senior practitioner the sole authorising body. This approach streamlines decision-making process, minimises regulatory impacts on service providers, maximises strong and consistent safeguards for people with disability, and enables an effective focus on human rights and on the reduction and elimination of the use of restrictive practices. It also delivers the reform elements most strongly supported by stakeholders, as identified through consultation. Further, this approach will enable Queensland to achieve full consistency with the national principles.

Establishment of the role of the senior practitioner and the Office of the Senior Practitioner

Clause 27 of the Bill inserts new Part 6AA (senior practitioner) into the DS Act. The purpose of this new part is to establish the role of the senior practitioner, including the functions and powers, and the Office of the Senior Practitioner.

To ensure independence and reduce risks of conflict of interest that may arise where an authorisation decision is made in relation to services provided by DCSSDS, or where DCSSDS is a party to proceedings about an authorisation decision, the Bill provides that the senior practitioner is not under the control or direction of the Minister.

The main function of the senior practitioner, and the senior practitioner's staff, will be to promote the reduction and elimination of the use of regulated restrictive practices by relevant service providers by considering applications for, and giving, restrictive practice authorisations under Part 6 of the DS Act.

The NDIS Commissioner will retain overarching responsibility for driving the reduction and elimination of restrictive practices by overseeing the use of restrictive practices by registered NDIS providers. This includes compliance with the *National Disability Insurance Scheme Act 2013* through the NDIS Commissioner's monitoring and investigation functions.

Expanding the scope of the authorisation framework

Under the existing restrictive practices authorisation framework under Part 6 of the DS Act:

- regulation is limited to restrictive practices to support adults with an intellectual or cognitive disability; and
- the practice of locking gates, doors and windows to prevent physical harm being caused to an adult with a skills deficit is not treated as a regulated restrictive practice for the purpose of Part 6 of the DS Act. Instead, the practice is regulated under Part 8, Division 2 of the DS Act to ensure protection of a person's rights and liberties. These provisions are less onerous than for other regulated restrictive practices, and do not align with coexisting requirements that apply under the NDIS (RPBS) rules.

Clause 14 of the Bill:

- expands the scope of people with disability to whom the authorisation framework for the use of restrictive practices applies to include all people with disability (adults and children) while they receive NDIS supports or services or disability services from a relevant service provider; and

- broadens the type of restrictive practices that come within the framework by adopting the definitions of regulated restrictive practices under the NDIS (RPBS) Rules.

Clause 28 of the Bill removes Part 8, Division 2 of the DS Act, which provides an alternate framework for locking of gates, doors and windows. This means the locking of gates, doors and windows will be considered an environmental restraint and captured by the reformed restrictive practices authorisation framework.

Expanding the scope of the authorisation framework will enable Queensland to achieve full consistency with the National Principles by ensuring that all NDIS participants, including children, are afforded the same level of quality and safeguards when receiving in-scope services. It also achieves alignment with the NDIS (RPBS) Rules, where the use of all regulated restrictive practices by registered NDIS providers to support NDIS participants are subject to the same regulatory requirements.

Aligning formal requirements around behaviour support assessments and the development of a BSP with the NDIS (RPBS) Rules

The NDIS (RPBS) Rules set out the conditions of registration that apply to all NDIS providers who use restrictive practices in the course of delivering NDIS supports, including who can develop BSPs that contain a regulated restrictive practice and how these types of plans are to be developed.

Currently, the DS Act contains unique requirements in relation to how positive behaviour support plans are to be developed and who can develop them for a restrictive practice to be authorised in Queensland, including that only the chief executive of disability services can develop positive behaviour support plans that include the use of containment and/or seclusion. This not only adds a layer of regulatory complexity for providers of NDIS supports or services but may impede the development of the specialist behaviour support market in Queensland.

The Bill amends the DS Act so that a registered NDIS provider, who proposes to use a regulated restrictive practice to support a person with disability in the provision of NDIS supports or services, will be required to develop an NDIS BSP. New section 142 of the Bill provides that NDIS BSPs, for a person with disability, means a comprehensive behaviour support plan or an interim behaviour support plan developed for the person under the NDIS (RPBS) Rules. This removes a layer of complexity for NDIS providers.

For clients of state funded disability services who are not receiving NDIS supports, new Part 6, Division 4 (state BSPs) prescribes requirements for relevant service providers to develop state BSPs. As far as practicable, this division has been drafted to align with the requirements for NDIS supports or services under the NDIS (RPBS) Rules.

Development of BSPs that include containment and/or seclusion

The Bill also amends the DS Act to remove Part 6, Division 3 (containment and seclusion), which contains provisions that provide that only the chief executive of disability services can develop positive behaviour support plans that include containment and/or seclusion.

Instead, new section 175 of the Bill provides that a state BSP must be developed, or reviewed, by a behaviour support practitioner. This will include a state BSP that includes containment and/or seclusion. This is consistent with requirements for NDIS BSPs under the NDIS (RPBS) Rules.

It is intended that over time, DCSSDS will no longer prepare these plans. This will occur according to a phased approach, matched to regional capacity and capability, in consultation with the disability community and sector.

This approach will maintain high safeguards for people with disability, while reducing regulatory complexity for relevant service providers who provide specialist behaviour support services in Queensland. It also delivers the government response to recommendations 48 and 49 of the QPC report by harmonising the definitions of restrictive practices and the formal requirements around the content of positive behaviour support plans with those under the NDIS Quality and Safeguarding Framework and removing the statutory requirement for the chief executive of disability services to develop all BSPs that include containment and/or seclusion.

Prohibition of certain restrictive practices

The NDIS (RPBS) Rules make it a condition of NDIS registration that a registered NDIS provider must not use a restrictive practice prohibited by a state or territory.

New section 142 of the Bill provides for prohibited restrictive practices to be prescribed by regulation. The Bill further provides an application for restrictive practice authorisation may not relate to the use of a prohibited restrictive practice and the senior practitioner must not approve the use of a prohibited restrictive practice.

This approach will ensure restrictive practices recognised as being so harmful that they can never be justified, or are not acceptable practice are not able to be authorised, while providing flexibility to respond to changes at the national policy level.

Vesting QCAT with merits review jurisdiction (clauses 33 to 38)

QCAT's new role

The reformed authorisation framework changes QCAT's jurisdiction from an original jurisdiction (approving the use of containment and seclusion and appointing restrictive practice guardians) to a review jurisdiction for authorisation decisions of the senior practitioner under Part 6 of the DS Act.

In performing this new function under the reformed authorisation framework, pursuant to sections 17 to 24 of the QCAT Act, QCAT will hear the matter afresh, with the purpose of making the correct and preferable decision.

The existing authorisation framework for the use of restrictive practices, under the GA Act, contains robust procedural safeguards to protect the rights and interests of adults with impaired capacity who are the subject of guardianship proceedings in relation to restrictive practices in QCAT.

To protect the rights and interests of persons with disability, including adults with impaired capacity and children, under the new authorisation framework, the Bill imports select appropriate safeguards from the GA Act (in relation to tribunal proceedings for adults with disability), and the *Child Protection Act 1999* Chapter 2A (in relation to tribunal proceedings for children with disability) adapted appropriately for the new jurisdiction. New section 185 of the DS Act (inserted by clause 14) states that the purpose of Part 6, Division 6 is to enable the tribunal to conduct a review in a way that, to the greatest extent possible:

- protects and promotes the rights and interests of the person; and
- takes into account the views, wishes and preferences of the person.

QCAT's jurisdiction

New Part 6, Division 6 of the DS Act confers jurisdiction on the QCAT to review authorisation decisions of the senior practitioner. Review jurisdiction is conferred in relation to 'Part 6 reviewable decisions', as defined in new section 186 (inserted by clause 14).

A Part 6 reviewable decision means:

- a decision of the senior practitioner under section 157 to give a restrictive practice authorisation; or
- a decision of the senior practitioner under section 157 to impose conditions on a restrictive practice authorisation; or
- a decision of the senior practitioner under section 157 to refuse to approve an application for a restrictive practice authorisation; or
- a decision of the senior practitioner under section 172 to cancel a restrictive practice authorisation.

QCAT will not have a review jurisdiction for some other decisions that the senior practitioner may make under Part 6 of the DS Act, including the specific types of decisions listed in new section 187 of the DS Act in the Bill.

QCAT will conduct the review under Chapter 2, Part 1, Division 3 of the QCAT Act and the provisions of the QCAT Act apply to the review proceeding, except to the extent they are inconsistent with a provision in Division 6.

Who may apply for review or be a party

To protect the rights and interests of the person with disability, the Bill provides for a broad range of people, who have a genuine interest in supporting the person, with standing to apply for external review to QCAT (new section 188). There is no requirement for internal review to be conducted before an application for external review can be made.

The following people have standing to apply for external review:

- the relevant service provider to whom the decision relates;
- the person with disability to whom the decision relates (adult or child);
- a relevant person for the person with disability (defined in new section 142);
- a nominated advocate of the person with disability;
- if the person with disability to whom the decision relates is a forensic disability client, a senior practitioner (forensic disability) responsible for the care and support of the person under the FD Act;
- if the person with disability is a child who is a relevant child under the PG Act, the public guardian; and
- any other interested person for the person with disability.

The default parties to the proceeding are the applicant, the relevant service provider and the senior practitioner (new section 188D). Additional persons may also become parties in certain circumstances listed in new section 188D(d) to (g).

Any person who has standing to apply for external review also has the right to elect to become a party to the proceeding up until a certain point in time (section 188E), after which they may apply to QCAT to be joined as a party (section 188F). QCAT may join the person as a party at any time until the matter is finally decided. The right to elect or join as a party is a fundamental safeguard to protect the rights and interests of the person with disability and ensures that QCAT receives all relevant information relevant to the review to ensure the most appropriate decision is made.

The QCAT Act provides for various rights and obligations on parties, including, for example, the obligation to act quickly in any dealing relevant to the proceeding and the right to access the record of proceeding in certain circumstances (subject to any limitation order that may apply)

General provisions for tribunal proceedings

Consistent with the approach under the GA Act for proceedings involving adults with impaired capacity, the Bill:

- ensures the tribunal may request or order all information necessary to make an informed decision about a matter in the proceeding (new section 188G); and
- clarifies which provisions of the QCAT Act do not apply (new section 188H) and how costs are managed (new section 188I) in relation to proceedings.

This ensures protections for persons with disability over and above the more general provisions of the QCAT Act.

Proceedings relating to adults with disability

For proceedings relating to adults with disability, the Bill:

- provides for how proceedings are to be conducted, including how notice of hearings must be provided (s 188L) and how the tribunal for proceedings must be constituted (new section 188M);
- ensures adults with disability cannot be compelled to give evidence (s 188N) and have the right to express their views to the tribunal about matters relevant to the proceeding (new section 188O);
- allows the tribunal to appoint a representative to represent the views, wishes and interests of the adult with disability in the proceeding (new section 188P);
- provides for proceedings to be public (new section 188Q) and enabling information about proceedings to be published, unless ordered otherwise (new sections 188T and 188V);
- allows QCAT to issue limitation orders, similar to the orders it can make in relation to guardianship proceedings.

Proceedings relating to children with disability

For proceedings relating to children with disability, the Bill:

- provides for how proceedings are to be conducted, including how notice of such hearings must be provided (new section 188ZD) and how the tribunal for such proceedings must be constituted (new section 188ZE);
- allows the tribunal to appoint a lawyer (a separate representative) for a child with disability, to act in the child's best interests, having regard to any expressed views or wishes of the child (new section 188ZF);
- ensures children with disability cannot be compelled to give evidence (s 188ZH), and that their separate representative cannot give evidence about a communication between the representative and the child (new section 188ZG);
- ensures children with disability have the right to express their views to the tribunal about matters relevant to the proceeding (new section 188ZI), and that only certain people can be present while these views are expressed (new section 188ZJ);
- requires proceedings related to children with disability to be held in private (new section 188ZK), unless ordered otherwise (new section 188ZL);
- prohibits information given in proceedings or information that is likely to identify a person involved in the proceedings to be published, unless ordered otherwise (new section 188ZM and new section 188ZN);
- allows the tribunal to issue particular types of limitation orders.

Decisions QCAT can make upon review

Pursuant to section 24 of the QCAT Act, in a proceeding for a review of a Part 6 reviewable decision, QCAT may: confirm or amend the senior practitioner's decision; set aside the decision and substitute its own decision; or set aside the decision and return the matter to the senior practitioner for reconsideration, with directions. A Part 6 reviewable decision of the senior practitioner will remain effective throughout the review proceeding, unless QCAT stays the operation of the decision under section 22(3) of the QCAT Act.

Consequential amendments to the GA Act (clauses 33 to 38)

Chapter 5B of the GA Act provides the legislative framework for certain restrictive practices to be authorised by formally appointed guardians for restrictive practice matters, by consent; and the legislative framework for QCAT and the Office of the Public Guardian to authorise containment and seclusion.

The Bill makes consequential amendments to the GA Act to remove the approval processes for restrictive practice matters under Chapter 5B, and to facilitate the operation of the new authorisation framework under the DS Act.

The Bill also provides for transitional arrangements which outline how existing proceedings under Chapter 5B are to be managed, and how relevant information must be exchanged between the tribunal, registrar, Public Guardian and the senior practitioner to facilitate these arrangements.

Consequential amendments to the PG Act (clauses 39 to 47)

The Bill makes consequential amendments to the PG Act to reflect the removal of the approval processes for restrictive practice matters in the GA Act, and to facilitate the operation of the new authorisation framework under the DS Act.

The Bill also:

- creates a new function for the Public Guardian to help a relevant child to initiate or, on the child's behalf, initiate an application to QCAT for a review of an authorisation decision of the senior practitioner under Part 6, Division 6 of the DS Act (clause 41 inserting new section 13(1)(o));
- permits the Public Guardian to provide a copy of a report provided by a community visitor (adult) after visiting a visitable site to QCAT, a guardian or administrator for an adult, or the senior practitioner, if a regulated restrictive practice is being used at the site (clause 43, amendment to section 47(4)(e));
- permits the Public Guardian to provide a copy of a report provided by a community visitor (child) after visiting a child under care staying at a visitable home or visitable site to the senior practitioner, if a regulated restrictive practice is being used in relation to the child at the visitable home or visitable site (clause 44, amendment to section 70); and
- amends the PG Act to add the senior practitioner as a prescribed entity for the purposes of the PG Act, to authorise and facilitate an appropriate exchange of information, including confidential information about a child and a child's circumstances, between the senior practitioner and the Public Guardian to help the Public Guardian perform child advocate functions in relation to relevant children (clause 46, amendment to section 86).

Consequential amendments to the QCAT Act (clauses 48 to 50)

The Bill makes consequential amendments to the QCAT Act by removing the approval processes for restrictive practice matters, and to facilitate the operation of the new authorisation framework under the DS Act.

The Bill also amends the QCAT Act (clause 49, amending section 46) to provide that an application for review of an authorising decision by the senior practitioner under Part 6, Division 6 of the DS Act can only be withdrawn with the leave of the tribunal.

Other amendments (clause 51)

Schedule 1 of the Bill outlines further, technical consequential amendments to the DS Act, FD Act, and the GA Act.

Consultation

Information about stakeholder consultation is provided on pages 15 to 16 of the Explanatory Notes to the Bill.

Fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles under the *Legislative Standards Act 1992*. Potential FLP issues and justifications for the potential breaches are outlined in detail on pages 8 to 15 of the [Explanatory Notes to the Bill](#). These include amendments in the Bill that:

- Authorise the use of regulated restrictive practices, which can be a significant intrusion of the rights and liberties of a person with disability and can present a departure from the principle that a Bill should not adversely affect the rights and liberties of an individual. However, the amendments are considered justifiable as the Bill contains measures to limit the circumstances regulated restrictive practices may be authorised or used, to minimise limitations on a person's rights and liberties;
- Allow confidential information about a person with disability to be obtained or disclosed. This is a potential departure from the principle that a Bill should not adversely affect the rights and liberties of individuals. The amendments are considered justifiable as the access or disclosure of the confidential information serves a specific purpose, which is balanced with appropriate safeguards to prevent misuse of this information.
- Insert offences into the DS Act for: publishing certain information in relation to QCAT proceedings for children with disability; contravening limitation orders; or failing to notify the senior practitioner of changes in relation to particular matters that occur after they have made an application that has not been decided. These amendments may be seen as a potential departure from the principle that a Bill should not adversely affect rights and liberties of an individual. However, it is considered that the new offences are appropriate and reasonable, and the penalty proportionate to the wrong occasioned by the breach.
- Provide that a relevant service provider, or an individual acting for a relevant service provider, is not criminally or civilly liable for using a regulated restrictive practice in relation to a person with disability if the individual acts honestly and without negligence under sections 145 or 146. This is a potential departure from the principle that a Bill should not adversely affect the rights and liberties of individuals, specifically that it should not confer immunity from proceeding or prosecution without adequate justification. It is considered that these amendments are justified as there are sufficient safeguards to ensure that the immunities are only afforded where the use of a regulated restrictive practices complies with the safeguards set out in sections 145 or 146.
- Reference definitions in the NDIS Act and NDIS (RPBS) Rules and therefore references a range of external documents. This may be seen as a potential departure from the principle that a Bill have sufficient regard to the institution of Queensland's Parliament. This is considered justified on the basis that the regulatory framework for the oversight and authorisation of the use of restrictive practices in Queensland reflects the shared functions between the state and the Commonwealth, and the legislative framework for the NDIS stipulated by the Commonwealth Parliament and developed in consultation with states and territories.
- Insert regulation making powers. This may be considered a breach of the fundamental legislative principle that legislation has sufficient regard to the institution of Queensland's Parliament. However, this approach is considered necessary to enable flexibility to prescribe further requirements, if required, to ensure the reformed authorisation framework can operate efficiently and effectively.
- Provide the senior practitioner may delegate a power under the DS Act to a member of the senior practitioner's staff, or a public service officer, who is appropriately qualified to exercise the power delegated. This may be considered a breach of the fundamental legislative principle that legislation has sufficient regard to the institution of Queensland's Parliament. However, it is considered the this is justified as the Bill clearly provides the

delegation of the senior practitioner's powers only in appropriate cases and to appropriately qualified persons.

Compatibility with the *Human Rights Act 2019*

The use of restrictive practices for people with disability can present serious human rights implications and is a matter for thoughtful consideration. Any decisions regarding restrictive practices need careful consideration, taking into account a person's human rights, safety and the right to self-determination. There are times when restrictive practices are necessary as a last resort to protect a person with disability and/or others from harm.

The purpose of the authorisation framework is to ensure, where restrictive practices are required to prevent harm to a person with disability or others, they are used in a way that is least restrictive, are a last resort, and supported by robust behaviour support planning that equips the person with disability, the service provider, and support persons to use alternate strategies that will promote the reduction and/or elimination of the use of restrictive practices.

Any limitations on human rights due to the new framework are consistent with the main purpose of the Bill - to protect the rights of people with disability and prevent harm. The Bill introduces the following safeguards:

- ensuring regulated restrictive practices are only used in line with the new authorisation framework, which requires they only be used as a last resort, for the shortest time possible, and only if they are the least restrictive option;
- using clinical oversight by the senior practitioner so the use of restrictive practices is the least restrictive way of ensuring the safety of people with disability and others; and
- maximising the opportunity for positive outcomes for people with disability and ensuring transparency and accountability about the use of restrictive practices.

The amendments are considered to be compatible with human rights on the basis that the Bill limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019*. The human rights issues and justifications are outlined in detail in [the Statement of Compatibility for the Bill](#).

Restrictive practice requirements

Restrictive practice		Assessment	Plan	Approval / Consent	Plan implementation	Monitoring	Review
Containment or seclusion	General*	Multidisciplinary assessment (Disability Services)	Positive Behaviour Support Plan (Disability Services)	Queensland Civil and Administrative Tribunal	Relevant service provider (support from Disability Services)	Relevant service provider (support from Disability Services)	Queensland Civil and Administrative Tribunal
	Respite or community access service only	Risk assessment (relevant service provider)	Respite/community access plan (relevant service provider)	Guardian for a restrictive practice (respite) matter	Relevant service provider	Relevant service provider	Guardian for a restrictive practice (respite) matter
	Short term approval	—	—	Short term approval (public guardian)	Relevant service provider	Relevant service provider	—
Physical restraint or mechanical restraint	General*	Assessment (appropriately qualified person)****	Positive Behaviour Support Plan (relevant service provider)	Guardian for a restrictive practice (general) matter	Relevant service provider	Relevant service provider	Guardian for a restrictive practice (general) matter
	Respite or community access service only	Risk assessment (relevant service provider)	Respite/community access plan (relevant service provider)	Relevant decision-maker (respite)	Relevant service provider	Relevant service provider	Relevant decision-maker (respite)
	Short term approval	—	—	Short term approval (Chief Executive delegate, Disability Services)	Relevant service provider	Relevant service provider	—
Chemical restraint	General*	Assessment (appropriately qualified person)****	Positive Behaviour Support Plan (relevant service provider, with information from the treating doctor)	Guardian for a restrictive practice (general) matter	Relevant service provider	Relevant service provider	Guardian for a restrictive practice (general) matter
	Respite (fixed dose) Only**	—	—	Relevant decision-maker (respite)	—	—	—
	Community access services (fixed dose) only	Risk assessment (relevant service provider)	Respite/community access plan (relevant service provider with information from the treating doctor)	Guardian for a restrictive practice (respite) matter	Relevant service provider	Relevant service provider	Guardian for a restrictive practice (respite) matter
	Respite or community access service (PRN)	Risk assessment (relevant service provider)	Respite/community access plan (relevant service provider with information from the treating doctor)	Guardian for a restrictive practice (respite) matter	Relevant service provider	Relevant service provider	Guardian for a restrictive practice (respite) matter
	Short term approval	—	—	Short term approval (Chief Executive delegate, Disability Services)	Relevant service provider	Relevant service provider	—
Restricting Access	General*	Assessment (relevant service provider)	Positive Behaviour Support Plan (relevant service provider)	Relevant decision-maker	Relevant service provider	Relevant service provider	Relevant decision-maker
	Respite or community access service only	Risk assessment (relevant service provider)	Respite/community access plan (relevant service provider)	Relevant decision-maker (respite)	Relevant service provider	Relevant service provider	Relevant decision-maker (respite)
	Short term approval	—	—	Short term approval (Chief Executive delegate, Disability Services)	Relevant service provider	Relevant service provider	—

* Where the adult in is receipt of a funded accommodation support package and also has additional respite/community access services, the general rule applies.

** Plan implementation, monitoring and review not required for Chemical Restraint Respite (fixed dose) only.

*** For definitions used in this table please see the Glossary.

**** For assessing an adult with an intellectual or cognitive disability, a person is appropriately qualified if the person has the qualifications or experience appropriate to conduct the assessment. Examples of who might be appropriately qualified persons: behaviour analysts, medical practitioners, psychologists, psychiatrists, speech and language pathologists, occupational therapists, registered nurses, social workers (*DSA 2006, s149*).