

Summary Impact Analysis Statement

Lead department	Department of Child Safety, Seniors and Disability Services
Name of the proposal	Reform of Queensland's statutory authorisation framework for the use of restrictive practices in the NDIS and state disability services under the <i>Disability Services Act 2006</i> .
Submission type (<i>Summary IAS / Consultation IAS / Decision IAS</i>)	Summary Impact Analysis Statement
Title of related legislative or regulatory instrument	Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024
Date of issue	4 June 2024

What is the nature, size and scope of the problem? What are the objectives of government action?

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

On 24 July 2020, Disability Ministers agreed to progress work toward greater national consistency based on *Principles for nationally consistent authorisation processes* (National Principles) developed by the NDIS Quality and Safeguards Commission (NDIS Commission). Queensland provided in-principle support only 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 Ministerial Charter Letter for Queensland's Disability Services portfolio includes a commitment to "...progress work towards nationally consistent authorisation processes for restrictive practices".

To ensure proper consideration of the policy, financial and legislative implications associated with implementation of the National Principles in Queensland, the Department of Child Safety, Seniors and Disability Services (DCSSDS) commenced the Positive Behaviour Support and Restrictive Practices Review (PBSRP Review) in 2020.

The PBSRP Review has also considered the timing and conditions under which DCSSDS is to discontinue its current function of preparing all positive behaviour support plans (PBSPs) that include the use of the restrictive practices of containment and/or seclusion. DCSSDS temporarily retained this role during the NDIS transition in 2019, given concerns about market readiness to commence this function. In its October 2021 response to the former Queensland Productivity Commission's *Inquiry into the NDIS market in Queensland*, the Queensland Government publicly committed to discontinue this monopoly function. For reasons discussed below, discontinuation of this function is dependent on introduction of a more streamlined authorisation framework.

The PBSRP Review recommended that the *Disability Services Act 2006* (DS Act) be amended to replace Queensland's existing guardianship-based framework for the authorisation of restrictive practices with a new administrative framework based on clinical-decision making. The new framework will achieve greater national consistency and alignment with the Commonwealth's legislative framework for the NDIS. The new framework will apply to registered NDIS providers in the provision of NDIS supports or services, as well as DCSSDS or state funded service providers in the provision of disability services.

If the proposed new framework is introduced, all authorisation decisions for the use of restrictive practices with NDIS participants and other people receiving state disability services in Queensland will be made by an appropriately qualified senior practitioner, with the Queensland Civil and Administrative Tribunal (QCAT) having a merits review function. The scope of the new framework will also be expanded to include all NDIS participants (including children). This is broader than the current framework, which is limited to adults with cognitive or intellectual disability.

The existing function of the chief executive of disability services to develop PBSPs that include containment and/or seclusion will be devolved to specialist behaviour support practitioners in the market in a phased approach over a 24-month period based on the market readiness of different regions across Queensland.

What options were considered?

DCSSDS has undertaken extensive analysis to identify the policy option that will best achieve consistency with the National Principles and alignment with the Commonwealth's legislative framework, while also maintaining or increasing safeguards for people with disability.

Between November 2021 and July 2022, analysis and cost modelling was completed on the base case for Queensland's restrictive practices framework and three options for its reform:

- Pure Clinical (recommended option)
 - Under this option, expert clinicians in the Office of the Senior Practitioner would be responsible for authorising all short and long-term applications for the use of restrictive practices.
 - QCAT would be conferred merits review jurisdiction to review all primary authorisation decisions by the senior practitioner. Noting that the senior practitioner would be the sole primary decision-maker, this means QCAT would have full merits review jurisdiction over all primary authorisation decisions.
- Differentiated Market
 - This option vests some authorisation authority in the market in relation to lower risk restrictive practices. The senior practitioner would be vested with responsibility for all other authorisation decisions.
 - All primary authorisation decisions would ultimately be subject to merits review through QCAT. The right to seek review would be direct in the case of decisions by the senior practitioner, or with the intermediate step of internal review by the senior practitioner in the case of decisions by market-based decision-makers.
- Differentiated Tribunal
 - Under this option, expert clinicians in the Office of the Senior Practitioner would authorise all short and long-term applications for the use of restrictive practices, other than containment and/or seclusion. Applications including containment and/or seclusion would continue to be authorised by QCAT
 - All primary authorisation decisions would be subject to merits review – either through QCAT, in the case of decisions by the senior practitioner, or through the QCAT Appeals Tribunal, in the case of decisions by QCAT

Based on the costs/benefits analysis, two potentially feasible reform options were identified – the Differentiated Market and the Pure Clinical options. While the Pure Clinical option was identified as immediately feasible, the analysis and cost modelling identified further consideration of market readiness for reform (market capacity and capability) and sector preparedness to take on some authorisation functions was required to establish feasibility of the Differentiated Market option. Market sounding was then undertaken between April and September 2023. The market sounding found that the Differentiated Market option was not currently viable given current market capacity and capability and confirmed the Pure Clinical model as the immediately viable option.

What are the impacts?

It is envisaged the new framework will enhance safeguards for people with disability and continue to drive the reduction and elimination of restrictive practices.

The existing framework does not allow for full transparency or oversight of authorisation decisions, as decisions made by guardians for restrictive practices are not reviewable by QCAT. Guardians are also not required to be clinically qualified, meaning decision-making may not have sufficient regard to the human rights of people with disability, the importance of using restrictive practices as a last resort only, and the need to promote practices that contribute to reducing and eliminating use over time.

The new framework will also streamline the authorisation processes for relevant service providers. An independent review of Queensland's existing authorisation framework (discussed below) has found that the framework is complex and difficult to navigate, making it especially difficult for new market entrants to understand and comply with. Decision-making under the existing framework is especially complex and time-consuming in relation to applications for the use of containment or seclusion, all of which must be decided by QCAT. As a consequence, DCSSDS has had to continue

preparing all plans involving containment and seclusion pending introduction of a more streamlined authorisation framework. For all other practices and in all other jurisdictions, preparation of these plans is a market function funded by the NDIS. Introduction of a reformed authorisation framework will reduce this burden on the sector and enable DCSSDS to transition all plan preparation to the market.

As noted above, the scope of the new authorisation framework will be broader. This is not anticipated to involve significant additional impacts for affected providers. This is because all providers to be brought into scope of the new framework are already required under Commonwealth legislation to develop and lodge behaviour support plans with the NDIS Commission in order to use restrictive practices, and to report use to the NDIS Commission. Expansion of scope means an additional safeguard—involving authorisation of the use of a regulated restrictive practice in accordance with a behaviour support plan—will be implemented in relation to that use, rather than imposing substantially new obligation on providers.

There will be a transition period where relevant service providers may need in assistance in understanding the new framework. DCSSDS has been funded to undertake transition and implementation activities, both before and after commencement of the new framework, to support affected providers understand and comply with the changed requirements. It is also anticipated the transition will be overall beneficial to affected providers over time, as it will align processes and definitions with those under the NDIS Quality and Safeguarding Framework, Commonwealth legislation, and as noted, will provide a provide a simplified process for providers.

Who was consulted?

DCSSDS considers that the consultation undertaken to date as part of the PBSRP Review is equivalent to a Consultation IAS process and includes the following:

- **An independent review:** In 2020, DCSSDS commissioned Griffith University's Policy Innovation Hub to undertake an independent review of Queensland's restrictive practices framework and consider whether any improvements could be made to better align Queensland's restrictive practices framework with the NDIS QSF, *NDIS (Restrictive Practices and Behaviour Support) Rules 2018* (the NDIS (RPBS) Rules), and National Principles. The Final Report (November 2020) found that Queensland's restrictive practices framework requires significant reform to ensure it is streamlined, easily understood and accessible, aligned with the Rules, and able to meet the National Principles. It also provided three policy options for reform of Queensland's restrictive practices framework.
- **A legislative review:** Simultaneous with the independent review, DCSSDS conducted a legislative review (required under section 241AA of the DS Act) of certain provisions relating to restrictive practices. This included reviewing the provisions relating to the chief executive of disability services conducting multidisciplinary assessments and developing PBSPs that include containment and/or seclusion, and the application of special provisions for the 'locking of gates, doors, and windows' to prevent physical harm being caused to an adult with a skills deficit.
- **Stakeholder consultation:** Over a three-month period from November 2021 to January 2022, stakeholder consultation on ideas for reform (based on the findings of the independent review and the outcomes of the legislative review) took place. Consultation was guided by a consultation paper (including an easy read version produced by the Council for Intellectual Disability) and online resources. It also involved several stakeholder forums with people with disability and their families and carers, stakeholder workshops, online surveys, and written submissions. The consultation revealed broad support for replacement of Queensland's guardianship-based framework with a more streamlined administrative framework based on clinical decision-making, in line with the National Principles. A PBSRP Review Reference Group, consisting of senior representatives of relevant Queensland Government departments and agencies, statutory office holders, legal stakeholders, sector peak bodies and leaders, and PBSRP experts was convened to support stakeholder consultation.
- **Cost modelling:** Between November 2021 and July 2022 analysis and cost modelling of the base case for Queensland's restrictive practices framework and the three options for its reform was undertaken. The three reform options were evaluated against an evaluation framework, based on the National Principles. For comparative purposes and to show the extent of movement towards national consistency achieved by each reform option, BAU was also evaluated against the evaluation framework. Based on the costs/benefits analysis, two feasible reform options were identified: the Differentiated Market model and the Pure Clinical model.

- Market sounding:** Between April and September 2023, a sounding of Queensland's specialist behaviour support market and its readiness for reform in relation to the two potentially feasible options for reform was undertaken (market sounding). Throughout this market sounding, targeted consultation was undertaken with peaks, providers, academics, the NDIS Commission, and DCSSDS. Key areas of enquiry for the market sounding were the capacity and capability of Queensland's specialist behaviour support market to assume responsibility for the preparation of PBSPs that include containment and/or seclusion, as well as the potential for some devolved authorisation decision-making functions should the Queensland Government determine this is the preferred policy approach. The final report found that due to the current capacity and capability constraints within Queensland's specialist behaviour support market, and the risks associated with the Differentiated Market model, the Queensland Government should consider initial reform of the authorisation framework in line with the Pure Clinical model. Following reform of the authorisation framework, the Queensland Government will adopt a phased approach to transferring responsibility for the preparation of PBSPs that include containment and/or seclusion to the specialist behaviour support market.

In addition, DCSSDS will undertake further targeted stakeholder consultation as part of an engagement process occurring in mid-2024, to inform how the reformed framework should operate in practice.

What is the recommended option and why?

It is proposed to reform Queensland's restrictive practices authorisation framework in line with the Pure Clinical model and adopt a phased approach to transferring responsibility for the preparation of PBSPs that include containment and/or seclusion to the specialist behaviour support market. This approach will maintain and enhance safeguards for people with disability, achieve alignment with the National Principles, and ensure reform is matched to current market readiness.

Impact assessment

All proposals – complete:

	First full year	First 10 years
Direct costs – Compliance costs*	The cost of compliance is unable to be quantified but it is expected to be minimal. See below*	
Direct costs – Government costs**	\$8.7 million (in 2026-27)	\$32 million over 10 years from 2026-27 to 2035-36

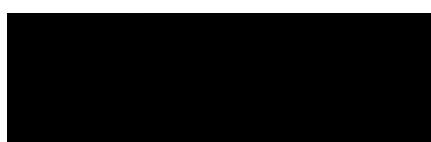
*Noting the new framework will streamline the authorisation framework for existing providers and will not involve substantive new obligations for providers within the expanded scope, the compliance costs are not considered to be significant.

**Modelling of costs to Government was completed as part of the analysis and cost modelling for reform options completed. Government costs represent the difference between the existing restrictive practices authorisation framework continuing to operate (BAU), compared to the proposed reformed restrictive practices authorisation framework (the Pure Clinical model).

Signed



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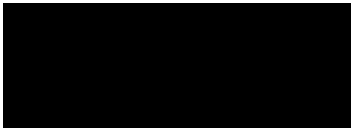
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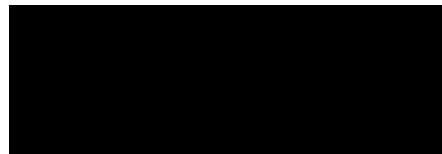
Full Impact Analysis Statement

Lead department	Department of Child Safety, Seniors and Disability Services
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Signed



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1. Executive summary

This Full Impact Analysis Statement (IAS) outlines the Queensland Government's preferred policy position for a reformed authorisation framework for the use of regulated restrictive practices to support people with disability while they receive National Disability Insurance Scheme (NDIS) supports or services or certain disability services provided or funded by the Department of Child Safety, Seniors and Disability Services (DCSSDS).

A comprehensive review of Queensland's positive behaviour support and restrictive practices framework (the Positive Behaviour Support and Restrictive Practices Review) commenced following the development of the *Principles for nationally consistent restrictive practice authorisation processes* (the National Principles) by the NDIS Quality and Safeguards Commission.

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; and
- the timing and conditions under which the chief executive (disability services) would discontinue its current function of preparing all positive behaviour support plans (PBSPs) that include the use of the restrictive practices of containment and/or seclusion and devolve this function to the specialist behaviour support market.

Public consultation (between November 2021 and January 2022) discussed a range of proposed changes to the existing authorisation framework that were centred around the following key themes:

- expanding the scope of Queensland's restrictive practice authorisation process to include all NDIS participants, including children;
- aligning Queensland's restrictive practice definitions with those in the NDIS (RPBS) Rules;
- expressly prohibiting certain forms of restrictive practices;
- more streamlined authorisation process for restrictive practices;
- facilitating greater active participation of people with disability in the authorisation and use of restrictive practices;
- the senior practitioner publishing data on the performance of their functions; and
- QCAT performing a merits review function for authorisation decisions.

Consultation was guided by a consultation paper and online resources, including an easy read version of the consultation paper produced by the Council for Intellectual Disability. Queenslanders with Disability Network (QDN) was engaged to conduct focus groups and gather the views of people with disability and their families and carers. The former Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships also facilitated several stakeholder forums with people with disability, their families and carers, disability and NDIS providers, and peak groups, advocacy organisations, and other bodies. Other consultation methods included online engagement through Queensland Communities (QC) Hub, which allowed people to sign up for forums, complete surveys and provide written submissions.

Consultation findings highlight:

- very high levels of support for expansion of Queensland's authorisation framework to include all NDIS participants and all restrictive practices regulated under the NDIS;
- near unanimous support for a more streamlined administrative model to replace Queensland's current guardianship-based framework;
- strong support for creation of a senior practitioner role;
- strong support for QCAT to function as a merits review body with the power to review all authorisation decisions;
- that any person with disability with whom restrictive practices may be used should have greater active participation in the authorisation and use of those practices.

The PBSRP review sought and considered input from a wide range of people who may be impacted by restrictive practices use, including Aboriginal and Torres Strait Islander peoples. This includes

through the public consultation in 2021 and 2022, and more recently as part of the market sounding. The review has also been supported by the PBSRP Review Reference Group established to provide expert advice on the restrictive practices framework and identified options for reform.

The findings of the PBSRP Review recommended the implementation of a Pure Clinical model, with the use of all restrictive practices authorised by a clinically qualified senior practitioner with QCAT having merits review for all authorisation decisions. It also recommended a phased approach to transferring responsibility for the preparation of PBSPs that include containment and/or seclusion to the specialist behaviour support market.

The Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024 (the Bill) will implement a reformed authorisation framework that aligns with the findings of the PBSRP Review. Key changes will include:

- Replacing the current guardianship-based model with a clinician-based model where the use of all regulated restrictive practices is authorised solely by the senior practitioner, or a delegate, within a central administrative office within government.
- Expansion of the authorisation framework to include all people with disability (adults and children) when receiving NDIS supports or services or state disability services under the DS Act.
- Expansion of the authorisation framework to include all forms of regulated restrictive practices under the NDIS (RPBS) Rules, including the locking of gates, doors and windows in response an adult with a skills deficit.
- Aligning important definitions with the terminology used in the NDIS (RPBS) Rules.
- Ensuring the formal requirements around behaviour support assessments and the content of BSPs are consistent with the requirements for assessments and the development of BSPs in the NDIS (RPBS) Rules to minimise excess administrative overhead.
- Prohibiting by regulation certain restrictive practices.
- Vesting functions in the Office of the Senior Practitioner for driving sector, provider and practitioner understanding of, and effective engagement with, the authorisation framework.
- Vesting QCAT with full merits review jurisdiction over all primary authorisation decisions.

In relation to the existing function of the chief executive of disability services to develop PBSPs that include containment and/or seclusion, this will be devolved to specialist behaviour support practitioners in the market in a phased approach over a 24-month period based on the market readiness of different regions across Queensland.

In arriving at these legislative changes, the Queensland Government has considered the findings of the public consultation, and all other elements of the PBSRP Review, and arrived at decisions that can be demonstrably assessed as the one that delivers the greatest net benefit to Queensland.

The Queensland Government is committed to supporting relevant service providers and people with disability through this period of transition.

2. Background

Reform drivers

The NDIS Quality and Safeguarding Framework

On 1 July 2019, the NDIS Quality and Safeguards Commission (NDIS Commission) commenced operation in Queensland. This represented a fundamental change to how the quality and safeguards around supports for people with disability are ensured across Australia.

In accordance with the agreed roles and responsibilities set out in the NDIS Quality and Safeguarding Framework (QSF), the NDIS Quality and Safeguards Commissioner (NDIS Commissioner) is responsible for the oversight of registered NDIS providers and states and territories are responsible for the legislative and policy frameworks for authorising the use of regulated restrictive practices in the NDIS.

In recognition of the high level of safeguards achieved by the Queensland authorisation framework, minimal changes were made as part of Queensland's transition to the NDIS.

The National Principles

Under the *National Disability Insurance Scheme Act 2013* (the NDIS Act), the NDIS Commissioner

has a behaviour support function to provide leadership in behaviour support and in the reduction and elimination of the use of restrictive practices by NDIS providers. This includes overseeing the use of behaviour support and restrictive practices and assisting states and territories to develop nationally consistent minimum standards for restrictive practices.

On 24 July 2020, Disability Ministers agreed to progress work toward greater national consistency based on *Principles for nationally consistent authorisation processes* (National Principles) developed by the NDIS Quality and Safeguards Commission. Queensland provided in-principle support only 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 National Principles can be summarised as follows:

- Legislation should specify authorisation arrangements for restrictive practices and promote the reduction and elimination of restrictive practices.
- Authorisation arrangements and systems underpinning them should aim for positive outcomes for people with disability subjected to restrictive practices, with a view to reducing and ultimately eliminating those practices.
- People with disability subjected to restrictive practices should have the same protections and rights to be free from abuse, neglect and exploitation, regardless of their disability, age and place of residence.
- People with disability and their support networks should be actively supported in making decisions about the use of restrictive practices.
- Authorisation decisions should be informed by independent advice from experts in positive behaviour support and restrictive practices.
- Authorisation frameworks should ensure any conflicts of interest between key parties involved in decision making are effectively managed.
- Authorisation arrangements should promote independence and dignity of risk, while also considering the interests and protection of rights of the person with disability.
- Decisions made on the use of restrictive practices should be reviewed.
- Authorisation arrangements should be streamlined and take into account the impact of administrative burden on providers.
- The Australian Government and state and territory governments should work together to apply these principles, using the NDIS governance arrangements to monitor progress in achieving national consistency.

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 (Disability Royal Commission) report was handed down. The report detailed many 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 (the NDIS Review) (released publicly in December 2023) again called for action to promote the reduction and elimination of restrictive practices.

Queensland Productivity Commission

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. It found this inconsistency can increase costs, deter market development, and risk harming or undermining the rights of persons with whom restrictive practices are used. Recommendation 48 of the QPC report recommended that Queensland promote clarity and efficiency by harmonising the definitions of restrictive practices and the formal requirements around the content of PBSPs. The Government's October 2021 response accepts this recommendation in full.

The QPC report also found the specialist behaviour support market in Queensland is relatively immature, with a shortage of practitioners capable of preparing PBSPs. While it noted the risks associated with transitioning responsibility for all PBSP preparation to the market, in terms of the quality and timeliness of plans, the QPC report considered that retention of a government monopoly over some service delivery may impair development of the private market over time.

To manage the associated risks, recommendation 49 of the QPC report proposed that the Queensland Government foster development of a private market capable of producing PBSPs of appropriate quality and timeliness by announcing a timetable for removing its statutory monopoly on the preparation of PBSPs including seclusion and containment. Further, as transitional measures, recommendation 49 recommended that the Queensland Government:

- continue to prepare PBSPs as a provider of last resort;
- monitor the adequacy of supply and quality of PSBPs; and
- apply a threshold condition for withdrawal from the preparation of PBSPs that contains objective indicators of both supply adequacy and PBSP quality, and only withdraw from the provision once that threshold is met.

The Queensland Government accepted this recommendation in-principle, noting that, while the Queensland Government is committed to devolving these functions to the market, this should only occur when there is confidence the rights of people with a disability will not be compromised. The response further provides that, consistent with the broader NDIS approach, the goal is for these functions to be market driven with the Queensland Government not providing a provider of last resort function. The Queensland Government response commits to devolve all PBSP development to the market, noting this matter is being considered through the PBSRP review.

The PBSRP Review

To ensure proper consideration of the policy, financial and legislative implications associated with implementation of the National Principles in Queensland, DCSSDS commenced the PBSRP Review.

Figure 1 Timeline of PBSRP Review activities



- **A legislative review:** DCSSDS conducted a legislative review (required under section 241AA of the DS Act) of certain provisions relating to restrictive practices. This included reviewing the provisions relating to the chief executive of disability services conducting multidisciplinary assessments and developing PBSPs that include containment and/or seclusion, and the application of special provisions for the 'locking of gates, doors, and windows' to prevent physical harm being caused to an adult with a skills deficit.
- **An independent review:** In 2020, DCSSDS commissioned Griffith University's Policy Innovation Hub to undertake an independent review of Queensland's restrictive practices framework and consider whether any improvements could be made to better align Queensland's restrictive practices framework with the NDIS QSF, NDIS (RPBS) Rules, and National Principles. The Final Report (November 2020) found that Queensland's restrictive practices framework requires significant reform to ensure it is streamlined, easily understood and accessible, aligned with the Rules, and able to meet the National Principles. It also provided three policy options for reform of Queensland's restrictive practices framework.
- **Stakeholder consultation:** Over a three-month period from November 2021 to January 2022, stakeholder consultation on ideas for reform (based on the findings of the independent review and the outcomes of the legislative review) took place. Consultation was guided by a consultation paper (including an easy read version produced by the Council for Intellectual Disability) and online resources. It also involved several stakeholder forums with people with disability and their families and carers, stakeholder workshops,

online surveys, and written submissions. The consultation revealed broad support for replacement of Queensland's guardianship-based framework with a more streamlined administrative framework based on clinical decision-making, in line with the National Principles.

- **Cost modelling:** Between November 2021 and July 2022,) analysis and cost modelling was completed on the base case for Queensland's restrictive practices framework and the three options for its reform. The three reform options were evaluated against an evaluation framework, based on the National Principles. For comparative purposes and to show the extent of movement towards national consistency achieved by each reform option, BAU was also evaluated against the evaluation framework. Based on the costs/benefits analysis, two feasible reform options were identified, the Differentiated Market model and the Pure Clinical model.
- **Market sounding:** Between April and September 2023, a sounding of Queensland's specialist behaviour support market and its readiness for reform in relation to two potentially feasible options for reform was undertaken (market sounding). Throughout this market sounding targeted consultation with peaks, providers, academics, QCAT, OPG, the NDIS Commission, and DCSSDS was undertaken. Key areas of enquiry for the market sounding were the capacity and capability of Queensland's specialist behaviour support market to assume responsibility for the preparation of PBSPs that include containment and/or seclusion, as well as the potential for some devolved authorisation decision-making functions should the Queensland Government determine this is the preferred policy approach. The final report found that due to the current capacity and capability constraints within Queensland's specialist behaviour support market, and the risks associated with the Differentiated Market model, the Queensland Government should consider initial reform of the authorisation framework in line with the Pure Clinical model. Following reform of the authorisation framework, the Queensland Government should adopt a phased approach to transferring responsibility for the preparation of PBSPs that include containment and/or seclusion to the specialist behaviour support market.

3. Identification of the problem

Queensland's current authorisation framework for the use of restrictive practices to support people with disability does not align fully with the National Principles. It is also inconsistent, and at times duplicative, with the requirements for the use of restrictive practices under the NDIS (RPBS) Rules. A lack of national consistency can risk harming or undermining the rights of persons with whom restrictive practices are used. It also results in complexity and confusion for existing service providers and may operate as a deterrent for new service providers to enter the market.

The key discrepancies between Queensland's current authorisation framework and the National Principles are:

- **Scope:** The framework is limited to adults with an intellectual or cognitive disability and does not safeguard all people with disability (adults and children, irrespective of disability diagnosis) who receive NDIS supports or services or state disability services under the DS Act. This means people with disability are not equally protected.
- **Expertise:** The framework involves different decision makers authorising the use of restrictive practices based on the type of restrictive practice, the length of time authorisation is sought, and the service setting restrictive practices will be used.
- **Conflict of interest:** Guardians for restrictive practice matters have a decision-making role in relation to restrictive practices, which creates a potential perceived conflict with other aspects of their role as a person's guardian. For example, a guardian may be responsible for advocating for the rights of the person with disability, while also authorising the use of practices that can substantially limit those rights.
- **Complexity:** The framework is complex and can be difficult to navigate. This creates complexity and confusion for providers, increasing costs and risk and deterring market development; and
- **Reviewability:** The framework does not allow for full administrative review of all authorisation decisions. There is no avenue for undertaking administrative review of a decision made by a person's guardian. Guardians' decisions can only be reviewed

indirectly, through either a direction hearing or review of their appointment of a person's guardian.

- **Streamlining:** The framework is complex, especially in comparison to other jurisdictions, and can be difficult for people, including guardians and providers, to navigate. This complexity operates as a significant barrier to entry for new service providers.

The key discrepancies between Queensland's current authorisation framework and the NDIS (RPBS) Rules are:

- **Scope:** As above, the framework only applies to adults with an intellectual or cognitive disability, while the NDIS (RPBS) Rules apply to all NDIS participants (including children).
- **Definitions:** The framework does not consider the practice of locking of gates, doors and windows in response to an adult not having the skills to safely exit premises without supervision a restrictive practice for the purpose of part 6 of the DS Act. Instead, this practice is subject to a unique set of regulatory requirements under part 8 of the DS Act. However, under the NDIS (RPBS) Rules, this is considered a regulated restrictive practice (specifically, environmental restraint).
- **Plans:** The framework contains its own unique requirements regarding what must be included in a PBSP before authorisation may be given. While similar requirements apply to the content of behaviour support plans (BSPs) under the NDIS (RPBS) Rules, this adds another layer of complexity for service providers. Further, the framework provides that only the chief executive of disability services can develop PBSPs that include the use of containment and/or seclusion. While under the NDIS (RPBS) Rules all BSPs, regardless of the type of restrictive practice, can be developed by NDIS behaviour support practitioners.

4. Objectives of government action

The objectives of the government action are to:

1. promote the reduction and elimination of the use of restrictive practices in support of people with disability receiving NDIS supports or services or state disability services under the DS Act;
2. move toward greater national consistency in authorisation processes based on the Principles for nationally consistent restrictive practices authorisation processes (the National Principles); and
3. align Queensland's restrictive practices authorisation framework with the NDIS (RPBS) Rules.

5. Options

The three reform options, as well as business as usual (BAU), are outlined below and in *Table 1 Comparison of BAU and Reform Options*.

All reform options, other than BAU, involve:

- Transferring responsibility for preparation of PBSPs that include the use of containment and seclusion to the NDIS market, as is the case in all other states and territories.
- Expanding the scope of the framework to include all people with disability (adults and children, irrespective of disability diagnosis) when receiving NDIS supports or services or state disability services under the DS Act.
- Adopting the definitions of NDIS legislation, and as a result, regulating the practice of 'locking gates doors and windows' as a form of environmental restraint under a legislative framework.

BAU

BAU involves a guardianship-based authorisation framework, with multiple decision makers authorising the use of restrictive practices. Depending on the type of restrictive practice, the length of time authorisation is being sought, and the service setting the restrictive practices are proposed to be used, authorisation for the use of restrictive practices is provided by QCAT, the Public Guardian, the chief executive of disability services, a guardian for restrictive practices matter or an informal decision maker.

The scope of the BAU authorisation framework is limited to adults with an intellectual or cognitive disability who receive NDIS supports or services or disability services under the DS Act. The locking of gates, doors and windows in response to an adult who does not have the skills to leave the premises safely without supervision is not considered a restrictive practice and is subject to a unique set of regulatory requirements.

Relevant service providers are responsible for the development of PBSPs, other than in circumstances where the plan includes containment and/or seclusion. In those circumstances, relevant service providers must apply to the chief executive of disability services to undertake multidisciplinary assessments and develop, or change, PBSPs that includes containment and/or seclusion. QCAT holds appeal jurisdiction for QCAT original decisions through QCAT Appeals Tribunal (QCATA).

While the scope of the BAU authorisation framework is limited to adults with an intellectual or cognitive disability, registered NDIS providers who provide NDIS supports or services in Queensland are still required to comply with the NDIS (RPBS) Rules as a condition of their registration. This means the requirement to undertake behaviour support assessments, develop BSPs, and report use to the NDIS Commissioner applies to the use of all regulated restrictive practices with all NDIS participants (adults and children), including the locking of gates, doors and windows in response to an adult with a skills deficit (considered an environmental restraint).

Differentiated Tribunal model

This option involves a new clinically based administrative framework, with restrictive practices to be authorised by either the senior practitioner for most decision, and QCAT for higher risk decisions. QCAT would have merits review jurisdiction for all authorisation decisions, through either QCAT for decisions made by the senior practitioner or the QCATA for QCAT original decisions.

Differentiated Market model

This option involves a new clinically based administrative framework, with restrictive practices to be authorised by either the senior practitioner or market-based decision-makers, with higher risk decisions by the senior practitioner. The senior practitioner would approve the appointment of all market-based decision-makers based, and have internal review jurisdiction for all market-based decisions. QCAT would have merits review jurisdiction of all senior practitioner decisions, including appointments and internal review of market-based decisions.

Pure Clinical model (the reform approach in the Bill)

This option involves a new clinically based administrative framework, with all use of restrictive practices to be authorised by the senior practitioner. QCAT would have merits review jurisdiction for all authorisation decisions made by the senior practitioner.

Table 1: Comparison of BAU and Reform Options

Activity	BAU	Reforms options		
		Differentiated Tribunal model	Differentiated Market model	Pure Clinical model
Scope	Adults with an intellectual or cognitive disability when receiving NDIS supports or services or state disability services under the DS Act. Does not align with all regulated restrictive practices under NDIS definitions.	All people with disability (adults and children) when receiving NDIS supports or services or state disability services under the DS Act. Alignment with NDIS regulated restrictive practices definitions.	All people with disability (adults and children) when receiving NDIS supports or services or state disability services under the DS Act. Alignment with NDIS regulated restrictive practices definitions	All people with disability (adults and children) when receiving NDIS supports or services or state disability services under the DS Act. Alignment with NDIS regulated restrictive practices definitions
Short term authorisation	OPG/ DCSSDS.	Senior practitioner	Senior practitioner/ Market	Senior practitioner
PBSP preparation	DCSSDS/ Market.	Market.	Market.	Market.
General authorisation	Informal decision maker/ Guardian for RP matter / QCAT (containment/seclusion)	Guardian for RP matter/ QCAT (containment/seclusion)	Senior practitioner/ Market	Senior practitioner
Review authorisation decision	QCAT holds appeal jurisdiction for QCAT original decisions through QCAT Appeals Tribunal (QCATA).	QCAT conferred merits review jurisdiction to review all primary authorisation decisions by the senior practitioner. QCAT holds appeal jurisdiction for QCAT original decisions through QCATA.	Senior practitioner conduct internal review of market decisions. QCAT conferred merits review jurisdiction for senior practitioner decisions.	QCAT conferred merits review jurisdiction to review all primary authorisation decisions by the senior practitioner.
Appointment of guardian for RP matter	QCAT.	N/A	N/A	N/A
Appointment of authorised market decision maker	N/A	N/A	Senior practitioner	N/A
Review market decision maker appointment	N/A	N/A	QCAT.	N/A

6. Impact analysis of the options

Evaluation against the National Principles

The three reform options were evaluated using an evaluation framework based on the National Principles. For comparative purposes, and to show the extent of movement towards nationally consistency achieved by each reform option, BAU was also evaluated against the evaluation framework.

The evaluation of each option is outlined below and in *Table 2 Evaluation of the reform options against the National Principles*. Based on this work, two feasible reform options were identified: the Differentiated Market model and the Pure Clinical model.

BAU

BAU was evaluated as follows:

- **Quality and safeguards:** Meets the criterion. BAU achieves a high level of safeguards with respect to the cohort and practices to which it applies, noting its scope limitations.
- **Participant empowerment:** Meets this criterion, with the existing legislation providing clearly for participants and their caregivers to be engaged at relevant stages in the decision-making process.
- **Operational efficiency:** Does not meet this criterion. Scope limited to some NDIS participants only (i.e. adults with cognitive or intellectual disability), and to some regulated restrictive practices only. Also, high level of complexity due to involvement of multiple different decision-makers depending on restrictive practice type and duration of approval sought.
- **Best practice decision-making:** Does not meet this criterion, due to most short and long term authorisation decisions being made by clinically unqualified guardians (which can include the OPG, but equally a family member or friend of the person with whom the practices are to be used).
- **Transparency and accountability:** Does not meet this criterion. An inherent potential conflict of interest arises in relation to the role of guardians, with guardians having to consent to the use of potentially intrusive and highly constraining practices on behalf of those people with disability whose rights and freedoms they are simultaneously required to promote. Guardians' decisions also not susceptible to full merits review.

Overall assessment: BAU is misaligned with the National Principles. While it achieves a high level of safeguards with respect to those participants and practices within its scope, that scope is limited and cannot be remediated within a guardianship-based approach.

Differentiated Tribunal model

This Differentiated Tribunal model was evaluated as follows:

- **Quality and safeguards:** Meets this criterion. Creation of the Office of the Senior Practitioner provides an important mechanism for promoting provider compliance, continuous improvement in the quality of PBSPs, a sustained focus on reducing and eliminating use, and continuous practice improvement by specialist behaviour support providers.
- **Participant empowerment:** Meets this criterion. Creation of the Office of the Senior Practitioner would provide a mechanism for promoting participant and caregiver involvement in key aspects of decision-making.
- **Operational efficiency:** Partially meets this criterion. While the option achieves full coverage of the scope of participants and practices, there may be issues in relation to the accessibility and timeliness of decision-making.
- **Best practice decision-making:** Partially meets this criterion. While many authorisation decisions would be made by a clinically qualified senior practitioner and delegates, decisions in relation to some of the most complex and sensitive applications would continue to be made by QCAT. QCAT has a wide guardianship jurisdiction and no dedicated resources specialised in restrictive practices matters, meaning it is reliant on third party advice to obtain the clinical expertise necessary to understand the clinical implications of

applications and make evidence-informed decisions. While this advice is currently provided by DCCSDS clinicians under BAU for preparing the PBSPs considered by QCAT (supported by departmental legal officers), it is unclear how QCAT would routinely obtain this advice following the discontinuation of the current function of the chief executive (disability services) in developing all PBSPs that include the use of containment and/or seclusion.

- **Transparency and accountability:** Partially meets this criterion. While the inherent conflicts of interest of BAU and the Differentiated Market model are not present, review of QCAT original decisions would be by way of the QCAT Appeals Tribunal. This creates the risk of there will be delays and increased complexity to obtain a review of a QCAT original decision.

Overall assessment: The Differentiated Tribunal model achieves an appreciable degree of movement towards consistency with the National Principles. However, it also retains some limitations of BAU with respect to the timeliness, accessibility and clinically informed basis of QCAT decision-making.

Differentiated Market model

The Differentiated Market model was evaluated as follows:

- **Quality and safeguards:** Meets this criterion. As with Differentiated Tribunal, creation of the Office of the Senior Practitioner would drive continuous practice improvement and provider compliance.
- **Participant empowerment:** Meets this criterion. As with Differentiated Tribunal, creation of the Office of the Senior Practitioner would provide a mechanism for promoting participant and caregiver involvement in key aspects of decision-making.
- **Operational efficiency:** Partially meets this criterion. While the option achieves full coverage of the scope of participants and practices, applications will remain subject to two separate decision-making pathways and processes depending on the type of practices for which authorisation is sought.
- **Best practice decision-making:** Meets this criterion. All decisions would be made by either qualified clinicians in the Office of the Senior Practitioner, or market-based decision makers with certain minimum qualifications determined by the senior practitioner. Authorisation decisions in relation to the most complex and intrusive restrictive practices would be made by clinicians in the Office of the Senior Practitioner.
- **Transparency and accountability:** Partially meets this criterion. All decisions would be ultimately reviewable by QCAT, but with the added step of internal review by the senior practitioner in the case of decisions by market-based decision-makers. Delegation of some decision-making to the market carries the inherent potential risk of conflicts of interest arising due to market-based decision-makers being engaged or employed by the service providers whose applications they would be responsible for deciding. However, the National Principles and evaluation criteria do not require that no conflicts arise; only that those conflicts are adequately managed. The option was accordingly designed with a number of mitigations in place which it is considered adequately manage the risk of conflict. These include the requirement that market-based decision-makers have minimum qualifications as determined by the senior practitioner and have their appointments approved by the senior practitioner, as well as that their decisions are subject to oversight, audit and review by the senior practitioner. They also include that market-based decision-makers' authority would be limited to lower risk practices only, with all higher risk restrictive practices subject to authorisation by the senior practitioner.

Overall assessment: Differentiated Market achieves a high degree of alignment with the National Principles and adopts and adapts key elements of a number of frameworks in place or proposed in other jurisdictions.

Pure Clinical model (the reform approach in the Bill)

The Pure Clinical model was evaluated as follows:

- **Quality and safeguards:** Meets this criterion. As with the other two reform options, creation of the Office of the Senior Practitioner would drive continuous practice

improvement and provider compliance. In this case, the senior practitioner’s direct involvement in every authorisation decision would significantly enhance this benefit.

- **Participant empowerment:** Meets this criterion. In addition to the benefits associated with creation of the Office of the Senior Practitioner realised in the other two reform options, the direct involvement of the senior practitioner in all decision-making would provide an additional safeguard to ensure participant choice and control was being respected and maximised at each step of the process.
- **Operational efficiency:** Meets this criterion. This option captures the full scope of participants and practices, with all decision-making centralised and streamlined through the Office of the Senior Practitioner.
- **Best practice decision-making:** Meets this criterion. All original decisions would be made by expert clinicians in the Office of the Senior Practitioner.
- **Transparency and accountability:** Meets this criterion. No actual or perceived conflicts of interest would arise, and all decisions would be subject to full merits review through QCAT.

Overall assessment: Pure Clinical achieves full alignment with the National Principles and the highest level of safeguards.

Table 2: Evaluation of the reform options against the National Principles

Evaluation Criteria	Option			
	BAU	Differentiated Tribunal model	Differentiated Market model	Pure Clinical model
Quality and safeguards	Meets this criterion.	Meets this criterion.	Meets this criterion.	Meets this criterion.
Participant empowerment	Meets this criterion.	Meets this criterion.	Meets this criterion.	Meets this criterion.
Operational efficiency	Does not meet this criterion.	Partially meets this criterion.	Partially meets this criterion.	Meets this criterion.
Best practice decision-making	Does not meet this criterion.	Partially meets this criterion.	Meets this criterion.	Meets this criterion.
Transparency and accountability	Does not meet this criterion.	Partially meets this criterion.	Partially meets this criterion.	Meets this criterion.

Compliance costs

Differentiated Market model

The cost of compliance with the Differentiated Market model to the sector are unable to be quantified but it is expected there would be an increase in costs for relevant service providers. A relevant service provider intending to use a regulated restrictive practice would need to appoint a market-based decision maker who would be responsible for providing authorisation for the use of certain types of regulated restrictive practices. It is unlikely this role would be funded by an NDIS amount under current arrangements.

Pure Clinical model (the reform approach in the Bill)

The cost of compliance with the Pure Clinical reform approach to the sector are unable to be quantified but expected to be minimal. This reflects that under the NDIS (RPBS) Rules, registered NDIS providers are already required to undertake assessments and develop BSPs. The requirement to apply for authorisation will not result in a substantial increase in regulatory burden.

BAU

The cost of compliance with BAU arrangements to the sector are unable to be quantified. However, current arrangements are understood to create duplicative requirements for providers, and involve a level of regulatory and administrative complexity that is difficult to navigate.

Government costs

Modelling of costs to Government was completed as part of the analysis and cost modelling for reform options. The below impact on Government represents the differences between the existing framework continuing to operate (BAU), compared to the Differentiated Market model and the Pure Clinical model.

BAU model

Without reform, the existing authorisation model (BAU model) is estimated to cost Government \$13.3 million in 2026-27, and \$183 million over the 10 years from 2026-27 to 2035-36.

Differentiated Market model

It is estimated the Differentiated Market model will cost Government a further \$2.7 million in its first full year of operation (2026-27), and will save Government \$28 million over its first 10 years (2026-27 to 2035-36).

Pure Clinical model (the reform approach in the Bill)

It is estimated the Pure Clinical model will cost Government a further \$8.7 million in its first full year of operation (2026-27), and a further \$32 million over its first 10 years (2026-27 to 2035-36).

Benefits/disadvantages analysis

The following section provides an analysis of the benefits and disadvantages of the current authorisation framework (BAU), alongside the two potentially feasible options for reform that were considered: the Differentiated Market model and the Pure Clinical model.

Issue	Impact group	BAU	Differentiated Market model	Pure Clinical model
Benefits				
Assessment	Industry	The current requirements for assessments are familiar to industry having been in place since 2008.	Both options streamline the requirements for assessments to align with the NDIS (RPBS) Rules. For registered NDIS providers, this will reduce any regulatory impact of navigating the requirements for assessments under both the DS Act and the NDIS (RPBS) Rules. For funded service providers providing state disability services under the DS Act, the requirements for assessments under the reformed authorisation framework will be more streamlined than the current authorisation framework.	
	Queensland Government	The chief executive of disability services would continue to be responsible for deciding whether or not a multidisciplinary assessment of an adult with an intellectual or cognitive disability should be undertaken and, if considered necessary, conduct the multi-disciplinary assessment. DCSSDS is familiar with undertaking this function and has clinicians who are appropriately qualified and experienced in the assessment of adults with an intellectual or cognitive disability.	The chief executive of disability services would no longer be responsible for deciding whether or not a multidisciplinary assessment of an adult with an intellectual or cognitive disability should be undertaken. DCSSDS' effort can be refocused on undertaking activities that are more clearly within the remit of authorisation, noting assessment and the development of plans would normally precede an application for authorisation.	
	Community	The current requirements for assessments are familiar to the community having been in place since 2008.	Community may see streamlining the requirements for assessments to align with the NDIS (RPBS) Rules as beneficial to achieving better outcomes for people with disability.	

Issue	Impact group	BAU	Differentiated Market model	Pure Clinical model
		The community may also be confident in the standard of assessments being undertaken by DCSSDS.		
Positive behaviour support plans (PBSPs)/Behaviour support plans (BSPs)	Industry	Industry may see benefit in the chief executive of disability services being responsible for developing PBSPs that include containment and/or seclusion.	Both options streamline the requirements for the development of BSPs to align with the NDIS (RPBS) Rules. For registered NDIS providers, this will reduce any regulatory impact of navigating the requirements for the development of plans under both the DS Act and the NDIS (RPBS) Rules.	
	Queensland Government	The chief executive of disability services would continue to be responsible for developing PBSPs that include containment and/or seclusion. DCSSDS is familiar with undertaking this function and has clinicians who are appropriately qualified and experienced in developing PBSPs for adults with an intellectual or cognitive disability.	The chief executive of disability services would no longer be responsible for developing PBSPs that include containment and/or seclusion. Instead, all BSPs would be developed by behaviour support practitioners in the specialist behaviour support market. DCSSDS' effort can be refocused on undertaking activities that are more clearly within the remit of authorisation, noting assessment and the development of plans would normally precede an application for authorisation.	
	Community	Community may see the existing legislative function of the chief executive of disability services in developing PBSPs that include containment and/or seclusion as an important safeguard for people with disability.	Community may see the devolution of responsibility for preparing BSPs that include containment and/or seclusion to the market as a move that will promote capacity and capability, and choice and control.	
Authorisation	Industry	The current authorisation framework is familiar to industry having been in place since 2008. Industry would continue only seeking authorisation for the use of restrictive practices to support adults with an intellectual or cognitive disability.	Scope of the authorisation framework expanded to include the use of a regulated restrictive practice to support all people with disability while receiving NDIS supports or services or state disability services under the DS Act.	Scope of the authorisation framework expanded to include the use of a regulated restrictive practice to support all people with disability while receiving NDIS supports or services or state disability services under the DS Act.

Issue	Impact group	BAU	Differentiated Market model	Pure Clinical model
			<p>Authorisation decision would be split between market-based decision-makers and the senior practitioner.</p> <p>Industry may see market-based decision-makers as an opportunity to streamline the authorisation process.</p>	<p>All authorisation decisions would be made by the senior practitioner.</p> <p>Industry may see all authorisation decisions being made by the senior practitioner as an important safeguard for people with disability.</p>
	Queensland Government	DCSSDS, QCAT and OPG are familiar with their existing roles under the current authorisation framework.	Reduction in the volume of authorisation applications to be considered by the senior practitioner.	Direct oversight over the proposed ongoing use of all regulated restrictive practices and ensures consistency in decision-making.
	Community	The current authorisation framework is familiar to the community having been in place since 2008.	The community may see market-based decision-makers as driving the reduction and elimination at a service provider level.	The community may see all authorisation decisions being made by the senior practitioner as an important safeguard for people with disability.
Disadvantages				
Assessments	Industry	<p>For registered NDIS providers, ongoing regulatory impact of having to meet to meet the requirements for assessments under both the DS Act and the NDIS (RPBS) Rules.</p> <p>This means if registered NDIS providers undertook a behaviour support assessment of an adult according to the NDIS (RPBS) Rules, but the adult was not assessed in accordance with the requirements in the DS</p>	<p>For registered NDIS providers providing NDIS supports or services, they are already familiar with undertaking assessments in accordance with the NDIS (RPBS) Rules.</p> <p>For funded service providers providing disability services, there may be a learning curve involved in understanding and complying with the new requirements for assessment.</p>	

Issue	Impact group	BAU	Differentiated Market model	Pure Clinical model
		Act, a decision-maker would be unable to provide authorisation.		
	Queensland Government	The Queensland Government would continue to not achieve full consistency with the National Principles.	There will be a period of adjustment for the senior practitioner in administering a reformed authorisation framework, including determining whether the new requirements for assessment have been met.	
	Community	Community may see the function of the chief executive of disability services being responsible for undertaking multidisciplinary assessments as inhibiting the capability and growth of the specialist behaviour support market.	There will be a period of adjustment for the community to understand the new requirements for assessment.	
Positive behaviour support plans (PBSPs)/ Behaviour support plans (BSPs)	Industry	<p>Under the DS Act, industry is only required to develop PBSPs for the use of a restrictive practice to support an adult with an intellectual or cognitive disability.</p> <p>However, for registered NDIS providers providing NDIS supports or services in Queensland, they must also comply with the NDIS (RPBS) Rules</p> <p>Under the NDIS (RPBS) Rules, where a registered NDIS provider uses a regulated restriction practice to support a person with disability (adults and children), they must undertake a behaviour support assessment of the person with disability and develop a BSP.</p>	<p>For registered NDIS providers providing NDIS supports or services, they are already familiar with developing NDIS BSPs in accordance with the NDIS (RPBS) Rules.</p> <p>For funded service providers providing disability services, there may be a learning curve involved in understanding and complying with the new requirements for the development of state BSPs.</p>	
	Queensland Government	In response to the QPC report, the Queensland Government committed to removing its statutory monopoly on the preparation of PBSPs that include containment and/or seclusion. Failure to	There is a reputational risk to DCSSDS if the chief executive's function in relation to developing PBSPs is removed too early, and the specialist behaviour support market is not sufficiently resourced or skilled to assume this function.	

Issue	Impact group	BAU	Differentiated Market model	Pure Clinical model
	Community	<p>follow through on this commitment would not be seen favourably.</p> <p>Community may see the function of the chief executive of disability services being responsible for developing PBSPs that include containment and/or seclusion as inhibiting the capability and growth of the specialist behaviour support market.</p> <p>Further, community is expecting to see this function devolved in line with the Queensland Government's response to the QPC report.</p>	<p>Community may be concerned that removing the function of the chief executive of disability services being responsible for developing PBSPs that include containment and/or seclusion will lead to poorer outcomes for people with disability.</p> <p>There will also be a period of adjustment for the community to understand the new requirements for the development of NDIS BSPs and state BSPs.</p>	
Authorisation	Industry	<p>Industry would continue to seek authorisation from five separate decision-makers, depending on the type of restrictive practice, the length of time authorisation is being sought, and the particular service setting.</p>	<p>Industry would be responsible for appointing market-based decision-makers to authorise the use of certain types of regulated restrictive practices. This would be an entirely new function, requiring substantial education, and may come at a cost to the provider.</p> <p>Relevant service providers would be required to seek authorisation for all people with disability receiving NDIS supports or services or state disability services under the DS Act. The exceptions to the main scheme in relation to locking gates, doors or windows in response to an adult with a skills deficit, or the use of a restrictive practice in the provision of respite or community access services, will be removed. This means there will</p>	<p>Relevant service providers would be required to seek authorisation for all people with disability receiving NDIS supports or services or state disability services under the DS Act.</p> <p>The exceptions to the main scheme in relation to locking gates, doors or windows in response to an adult with a skills deficit, or the use of a restrictive practice in the provision of respite or community access services, will be removed. This means there will be an increase in authorisation applications that must be made by relevant service providers.</p>

Issue	Impact group	BAU	Differentiated Market model	Pure Clinical model
			be an increase in authorisation applications that must be made by relevant service providers.	
	Government	The current framework does not align with the Government's commitments to work towards greater national consistency in the authorisation of restrictive practices.	Resourcing impacts: Increase in the volume of authorisation applications to be considered by the senior practitioner. Risk if market-based decision-making leads to poor outcomes for people with disability.	Resourcing impacts: Substantial increase in the volume of authorisation applications to be considered by the senior practitioner. There will also be a period of adjustment for DCSSDS in establishing the Office of the Senior Practitioner and administering a reformed authorisation framework.
	Community	The community would be concerned that restrictive practices are being used to support people with disability without the same level of quality and safeguards as in other states and territories.	The community may have concerns about market-based decision-makers providing authorisation for the use of certain types of regulated restrictive practices and see this is a reduction in safeguards for people with disability.	The community may argue that providing for all authorisation decisions to be made by the senior practitioner fails to drive the reduction and elimination at a service provider level.
Overall summary		While on face value it may seem that BAU would have less of a regulatory impact because it only applies to adults with an intellectual or cognitive disability, and contains exceptions to the main scheme in certain circumstances, the reality is far different. For registered NDIS providers providing NDIS supports or services in Queensland, they are already undertaking assessments	It is less clear whether the benefits to be realised from adopting the Differentiated Market model in Queensland outweigh any potential disadvantages. Further consideration would need to be given to market-based decision-makers providing authorisation for the use of certain types of regulated restrictive	The benefits to be realised from adopting the Pure Clinical model in Queensland outweigh any potential disadvantages. While under the Pure Clinical model relevant service providers will have to apply for authorisation for the use of regulated

Issue	Impact group	BAU	Differentiated Market model	Pure Clinical model
		<p>and developing BSPs for the use of a regulated restrictive practice to support all NDIS participants (adults and children, irrespective of the disability). However, they are doing so while navigating dual regulatory frameworks. Continuing on with BAU would fail to realise any potential decreases in regulatory burden.</p> <p>Further, elements of the current authorisation framework are inconsistent with the National Principles, and does not perform as strongly in driving the reduction and elimination of restrictive practices to the extent of the other models.</p>	<p>practices, including how this role would be funded.</p>	<p>restrictive practices to support people with disability while they are in receipt of NDIS supports or services or state disability services the DS Act, the process to be followed is far more streamlined involving an authorisation application to a single decision maker – the senior practitioner.</p>

7. Social impacts

Implementation of the Pure Clinical model, as well as devolution of responsibility for the development of BSPs, will have impacts on people with disability, the specialist behaviour support market and the disability services sector more broadly.

People with disability

The use of restrictive practices represents a significant intrusion of the rights and liberties of a person with disability. It is critical they are only used in very limited circumstances, for the shortest time possible, and as a last resort when they are the least restrictive way of preventing harm to the person with disability or others.

Legal frameworks that provide for the authorisation of restrictive practices provide an important safeguard to ensure that restrictive practices are only used in a planned way, and after other less restrictive options have been considered and implemented.

The Bill seeks to strengthen this process in Queensland by providing for all authorisation decisions to be made by the clinically qualified senior practitioner and delegates, and removing potential conflicts of interest that arise through the current guardianship based approach. The Bill creates an additional safeguard through QCAT's merits review function.

The Bill also requires the senior practitioner to consult with, and consider the views, wishes and preferences of the person with disability in making an authorisation decision, in recognition of the right of all individuals to be active participants in the decisions that impact their lives.

The overall purpose of these enhancements is to achieve the reduction and ultimate elimination of restrictive practices in these settings. During implementation further consideration will occur on how progress towards this goal should be best measured and monitored by the senior practitioner.

Market capacity

The devolution of responsibility for the development of all BSPs will have an impact on the specialist behaviour support market because there will be an increase in demand for the development of BSPs that include containment and/or seclusion.

Anecdotal evidence is that BSPs that include containment and/or seclusion typically require more hours to develop than BSPs that include a restrictive practice other than containment and/or seclusion. Further, that there are less specialist behaviour support practitioners who have existing capability to develop containment and/or seclusion without further training.

A key issue for Queensland is the state's geographically dispersed population and resulting thinness of NDIS market capacity across some regions (market capacity), exacerbated by the under-resourced positive behaviour support sector (market capability). The development of the NDIS market in rural and remote areas of Queensland has been uneven and is a well-known and acknowledged issue.

While this issue is primarily the responsibility of both the National Disability Insurance Agency (NDIA) as market steward, and the NDIS Commission as the entity charged with market oversight of positive behaviour supports and restrictive practices, lack of market capacity in certain Queensland regions, and of market capability generally, makes devolving responsibility for the development of BSPs that include containment and/or seclusion to the market challenging, even if BAU for the authorisation framework were to continue.

As identified by the QPC inquiry, low participant numbers, high provider costs and workforce challenges impede the development of the NDIS market in rural and remote areas. This is particularly apparent in the areas of: supported independent living; positive behaviour supports; and allied health professionals skilled at working with people with complex disability needs.

There is also a risk for people with disability if BSPs that include containment and/or seclusion are unable to be developed in a timely manner or to a high standard.

In recognition of this, the Pure Clinical reform approach will be implemented in a staged approach, including the phased devolution of responsibility for development of PBSPs that include the use of

containment and/or seclusion from the chief executive of disability services to specialist behaviour support practitioners in the market over a 24-month period based on the market readiness of different regions across Queensland. See Implementation below for further information.

Sector readiness

The disability services sector has undergone significant reform since the commencement of the trial period of the NDIS in Queensland in 2016. The scope of services that NDIS providers supply to the Queensland market is wide and varied. And as a constructed market, the NDIS market continues to navigate the transition to, and operating within, a complex legislative, regulatory and policy environment across urban, regional and remote regions. Additionally, NDIS full scheme operating and funding arrangements only commenced in Queensland in October 2020.

Despite the pressures on the NDIS market, stakeholder consultation and the Independent Review found that the sector broadly supports the key elements of the Pure Clinical model.

8. Consultation

Over a three-month period from November 2021 to January 2022, stakeholder consultation on ideas for reform (based on the findings of the independent review) took place. Consultation was guided by a consultation paper (including an easy read version produced by the Council for Intellectual Disability) and online resources.

DCSSDS engaged QDN to conduct focus groups and gather the views of people with disability and their families and carers. Other consultation methods included:

- Online engagement through QC Hub, allowing people to sign up for forums, complete surveys and provide written submissions.
- Department-facilitated stakeholder forums with people with disability, their families and carers, disability and NDIS providers, and peak groups and advocacy organisations and other bodies
- Social media posts on the government sites – Qld Seniors and Deadly Stories
- QDN, NDIS Participants and Providers Australia, and Physical Disability Australia groups shared the consultation on their sites.
- Meetings with the PBSRP Review Reference Group and other interested government members.

Stakeholders were provided the findings of the Ministerial and Independent Reviews and were asked to consider issues regarding possible areas of reform and provide feedback on:

- The expansion of scope of Queensland's existing restrictive practice authorisation process to include all NDIS participants including children NDIS participants.
- Aligning Queensland's restrictive practice definitions with those in the NDIS (RPBS) Rules.
- Prohibition of certain restrictive practices.
- More streamlined authorisation process for restrictive practices (role of senior practitioner or authorised program officer).
- The role of QCAT and moving to review administrative decisions only.
- Facilitation of greater active participation of people with disability in the authorisation and use of restrictive practices.

Consultation posed numerous questions to stakeholders and gave various formats for stakeholders to provide short answer and detailed responses.

Consultation findings

The consultation revealed broad support for replacement of Queensland's guardianship-based framework with a more streamlined administrative framework based on clinical decision-making, in line with the National Principles.

The findings highlight:

- Very high levels of support for expansion of Queensland's authorisation framework to include all NDIS participants and all regulated restrictive practices under the NDIS.

- Near unanimous support for Queensland’s current guardianship-based framework to be replaced with a more streamlined, administrative model.
- Near unanimous support for adopting the nationally standard definitions of restrictive practices under the NDIS (RPBS) Rules.
- Strong support for the ‘locking for gates, doors and windows’ in response to an adult with skills deficit being defined as a restrictive practice.
- Strong support for creation of a senior practitioner role, but split views about the creation of a market-based decision-making role.
- Strong support for QCAT transitioning to a review body with the power to review all primary authorisation decisions.
- Limited support for QCAT retaining a primary authorisation role, noting the barriers to timely and accessible primary decision-making.
- No clear consensus on appropriateness of market-based decision-making.
- All respondents agreed that any person with disability with whom restrictive practices may be used should have greater active participation in the authorisation and use of those practices.

9. Conclusion

The Pure Clinical model delivers the greatest net benefit to Queensland. It achieves full consistency with the National Principles, achieves greater alignment with the NDIS (RPBS) Rules, contains elements that were most strongly supported by stakeholders as identified through consultation, and aligns with the readiness of Queensland’s specialist behaviour support market. It is also largely consistent with the recommendations of the Disability Royal Commission and Independent Review of the NDIS.

10. Implementation

The implementation of the reformed approach (the Pure Clinical model) for the use of regulated restrictive practices to support people with disability while receiving NDIS supports or service or state disability services under the DS Act will comprise two stages.

Stage 1: Implementation of Pure Clinical model

The implementation of the Pure Clinical reform approach to attain a nationally consistent authorisation framework in Queensland is proposed as the first stage of reform. This includes the establishment of the Office of the Senior Practitioner, and a new jurisdiction for QCAT to undertake a merits review function. Stage 1 implementation will formally commence from mid to late 2025, pending the introduction and passage of the Bill.

Stage 2: Discontinuation of chief executive functions associated with preparation of PBSPs that includes the use of containment and/or seclusion

Stage 2 initiates the phased devolution of responsibility for development of PBSPs that include the use of containment and/or seclusion from the statutory responsibility of the chief executive of disability services to the specialist behaviour support practitioners in the market. This will be supported by appropriate market preparedness activities and engagement of the NDIS Commission in relation to market capacity and capability, and be based on geographical regions and current capacity gaps as follows, subject to sector engagement:

- **Phase 1** – transition of responsibility for BSPs for participants within the Brisbane and Moreton Bay regions (to commence immediately on establishment of a senior practitioner Office in Queensland as part of stage 1, from late 2025);
- **Phase 2** – transition of responsibility for BSPs for participants within the North Queensland and Far North Queensland regions (six to 12 months after phase 1 commences, from mid to late 2026); and

- **Phase 3** – transition of responsibility for BSPs for participants within the South East, South West, Sunshine Coast and Central regions (12 months after phase 2 commences, from mid to late 2027).

11. Compliance support

Following the passage of the Bill, an implementation project team across DCSSDS, QCAT and OPG will be established. The Project team will be responsible for implementation and transition activities 12 months either side of the commencement of the reformed framework.

Prior to the commencement of the reformed authorisation framework, implementation activities will include:

- Education and training for the sector on the requirements under the reformed authorisation framework.
- The publication of guidelines to support relevant service providers in relation to making an application for authorisation under the reformed authorisation framework.
- Public messaging about how applications should be made before and after the transition period, and what will happen to applications that have not been decided by the commencement date, in line with the transitional provisions in the DS Act.

Once the reformed authorisation framework has commenced, ongoing transition activities will include:

- Support for the NDIS market, participants and carers, advocacy organisations and other entities to ensure impacted people are equipped to assume new and modified roles and responsibilities and clients understand the changes.
- Monitor any market capacity and capability issues.
- Ongoing liaison with the NDIS Commission: including in relation to regulatory functions, information and data sharing, development and dissemination of resources.

12. Evaluation strategy

The Bill provides for a statutory review of the legislation to be undertaken three years after commencement. This will include consideration of whether the reformed authorisation framework is operating effectively and efficiently.

During implementation, further consideration of the measures and data required to inform this analysis will be considered.