



Disability, Seniors and Carers - Legislative Compliance Strategy

Department of Seniors, Disability Services, and Aboriginal and Torres Strait Islander Partnerships

March 2023

Version: V2.0

Introduction

The Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (the Department) works together with seniors, people with disability, and Aboriginal and Torres Strait Islander communities so they can thrive culturally, socially and economically.

Disability, Seniors and Carers (DSC) within the Department strives to achieve high quality, safe and cost-efficient services for people with disability and seniors.

DSC administers the *Disability Services Act 2006* and the *Guide Hearing and Assistance Dogs Act 2009* and the *Carers (Recognition) Act 2008*¹.

DSC is also responsible for delivering outcomes through service agreements with providers across a range of Disability and Seniors programs and initiatives. It is able to rely on the provisions for the *Community Services Act 2007* to ensure compliance by funded service providers.

See Attachment A for an outline of the compliance provisions under each of these Acts.

The above legislation and the terms and conditions of the service agreements:

- provide an enabling and regulatory framework for funding and delivering disability and seniors services in a way that meet expectations of quality and safety
- promote and protect the rights and safety of seniors, carers, and people with a disability, increasing their wellbeing and encouraging their participation in the community
- ensure people with a disability who rely on guide, hearing or assistance dogs have the same access rights as others to public places and public passenger vehicles and to ensure the quality and accountability of guide, hearing and assistance dog training services, and
- oversee control systems to ensure compliance by departmentally funded organizations and sole traders relating to service agreements, in relation to funding and service quality.

DSC's compliance actions and interventions operate as both proactive checks on legislative compliance, and an escalation point for serious or protracted non-compliance with legislation, and service agreements. This work sits within and supports the Department's broader assurance and enterprise risk-management efforts.

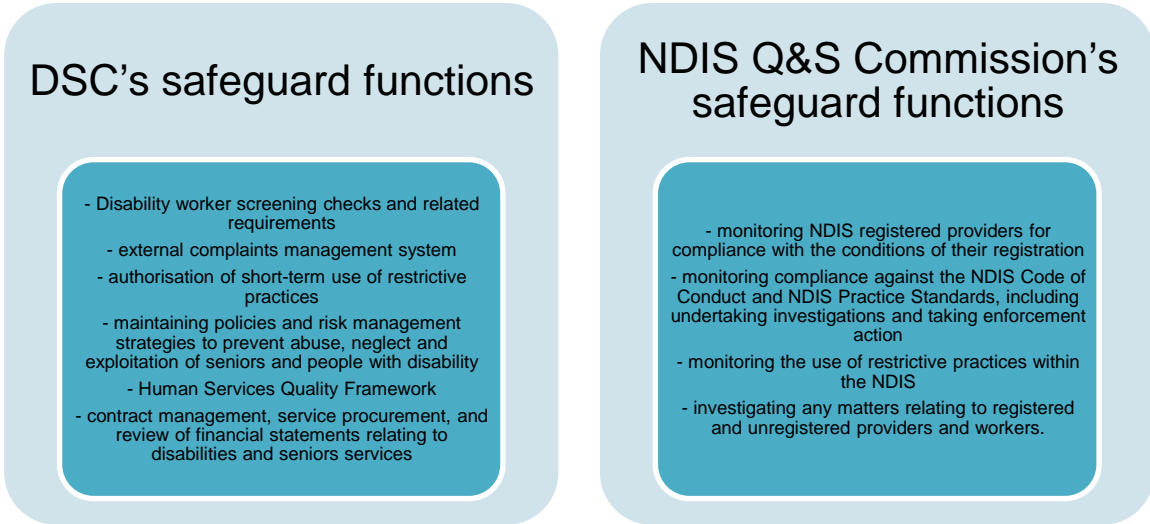
This Strategy is best considered one part of a multi-layered safeguarding, assurance and risk management approach to the provision of seniors and disability services. It fulfils the second tier of monitoring and intervention in the below Compliance hierarchy.

Tier 1 – governance, management and controls **internal** to organisations. This level of monitoring includes the role of Boards, councils, internal controls, risk management and performance and annual reporting.

Tier 2 - external monitoring by regulators and funding bodies. This includes monitoring and assessing financial and non-financial performance of service providers under contracts, receipt and investigation of complaints and actioning any non-compliance concerns. For NDIS services, Tier 2 responsibilities are undertaken by both DSC and the NDIS Quality and Safeguards Commission. Collectively the functions administered create a suite of comprehensive safeguards. This is achieved by the NDIS Quality and Safeguards Commission regulating providers. DSC delivers worker screening, including by monitoring changes in criminal history, and approval of short-term restrictive practice applications.

¹ There are no regulatory provisions under the *Carers (Recognition) Act 2008*, rather the Act provides for the recognition of carers and the important contribution they make to the community.

Tier 3 - independent, external monitoring and investigation by statutory and other agencies, including the Queensland Audit Office, Queensland Ombudsman, Crime and Corruption Commission and Queensland Police Service.



DSC compliance model

DSC has adopted a responsive model of compliance with a focus on education and engagement with stakeholders to promote compliance with the Acts and relevant service agreements, contracts and policies.

The DSC model is represented in figure 1 (Compliance pyramid) which shows how DSC takes a responsive and proportionate approach to compliance, applying the strongest actions to the most serious issues and breaches. It also demonstrates the ability to escalate actions if an initial response does not achieve the intended outcome.

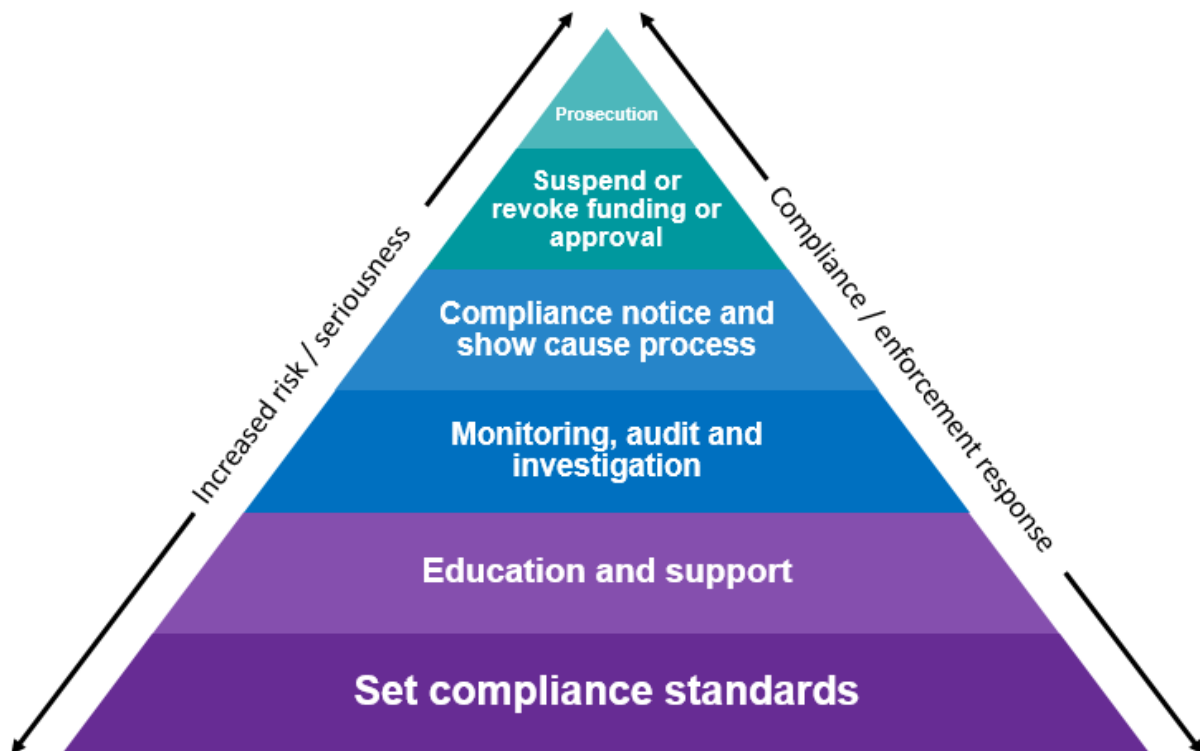


Figure 1: Compliance pyramid

When non-compliance is identified, the response by DSC is proportionate to risk and determined on a case-by-case basis and considers factors such as:

- the impact of the non-compliance on people with disability
- the impact of the non-compliance on seniors
- the willingness and/or ability of the service provider or individual to comply (taking into consideration their level of knowledge around compliance)
- the likelihood of further non-compliance
- compliance history, and
- the level of reputational risk.

The compliance and enforcement actions available to DSC include²:

- administrative - such as education, financial reviews³, formal warning letters, compliance notices, suspension of or revoking funding, suspension or cancellation of approval of an approved trainer or training institution and show cause processes, and
- court-based - such as prosecution⁴.

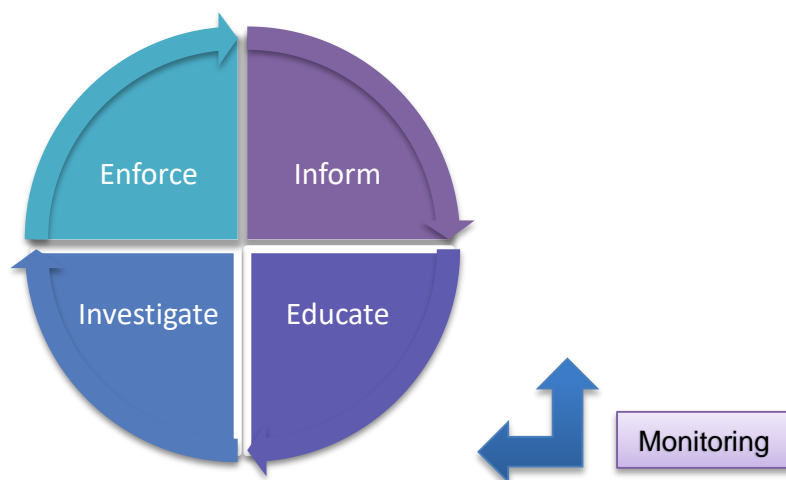
If DSC takes enforcement action, factors such as the nature and severity of the harm caused, the compliance history and cooperation of the entity or subject officer and the deterrence value of the enforcement measure are all considered.

When investigating potential compliance issues with a funded service provider under a service agreement, a cooperative approach should be considered, prior to invoking any powers under the *Community Services Act 2007*⁵.

DSC will seek to educate and inform where genuine attempts at compliance are being made and investigate allegations of serious non-compliance or systemic or repetitive breaches.

Where the Acts prescribe offences and penalties and voluntary compliance activities are not available, DSC is responsible for commencing proceedings that can be applied and enforced by a Court.

The compliance approach



² Where appropriate, referrals to be made to the NDIS Q&S Commission and/or QPS etc.

³ In accordance with Clause 13 of Service Agreement – Standard Terms – Version 1.1 – dated 17 February 2015s

⁴ Under s 206 of the DSA, an offence against this Act is an indictable offence if the maximum penalty for the offence is 500 penalty units or more of 5 years imprisonment or more. Otherwise, an offence against this Act is a summary offence. For the CSA and GHAD Act, an offence against the Act is a summary offence.

⁵ In accordance with section 15 of the CSA, before the Chief Executive or an Authorised Officer exercises a power under the CSA, the Chief Executive or Authorised Officer must consider whether it would be more appropriate to seek the cooperation of the service provider or to use a remedy under a funding agreement instead of exercising the power.

DSC will encourage compliance through informing, educating, investigating and enforcing compliance, while conducting continuous monitoring to identify compliance trends and whether measures of success have been met.

<p>Inform</p> <ul style="list-style-type: none"> • DSC will set compliance standards in line with the legislation and engage with service providers and individuals through various publications and channels of communication to inform them of their compliance obligations. • DSC will promote understanding of obligations under the legislation and the importance of complying, including by publishing Compliance Guidelines.
<p>Educate</p> <ul style="list-style-type: none"> • DSC will educate individuals and service providers on how to improve their levels of compliance through the provision of guidance and advice. • DSC will educate and empower seniors and people with disability with the knowledge they need to advocate for their rights.
<p>Investigate</p> <ul style="list-style-type: none"> • DSC will investigate individuals and service providers in a consistent and risk-based manner to ensure obligations are met. • DSC will conduct risk-based, proactive audits to identify breaches and where breaches are identified, apply the most appropriate intervention or enforcement response. • DSC will undertake complex financial and service quality assessments on funded organisations to recover debt or correct service quality concerns.
<p>Enforce</p> <ul style="list-style-type: none"> • In instances of non-compliance, DSC will ensure each intervention or enforcement response is proportionate to the safety risk and compliance behaviour identified in each circumstance. • DSC will refer matters to external agencies such as the NDIS Quality and Safeguards Commission, QPS, and the Crime and Corruption Commission as appropriate.
<p>Monitor</p> <ul style="list-style-type: none"> • DSC will monitor compliance matters to drive better practice and processes, ensuring service providers are acting according to standards required by the department and to identify whether measures of success have been met. • Regular assessment of performance and financial reporting under contracts as per the terms of the contracts to ensure performance is as planned.

The compliance response

Where a complaint or other information is received, DSC's Complaints Team will be responsible for assessing whether the complaint raises potential compliance issues or a breach of legislation.

If it appears that there are compliance issues or a breach of legislation, the complaint will then be referred to the appropriate DSC unit, who will be responsible for determining the appropriate compliance response. For example, matters that relate to worker screening will be provided to the Worker Screening Compliance and Reporting Team or matters relating to service providers will be provided to the Funding and Service Assurance Team.

Guiding Principles

Consistent	DSC will assess, investigate and enforce compliance consistently across comparable situations. This approach will reduce inconsistency related to enforcement activities and responses.
Effective	DSC will plan and conduct efficient and effective compliance, enforcement and investigative activities and by doing so seek to improve the overall governance of the sector.
Proportionate	DSC will undertake compliance and enforcement activities that are proportionate to the risks and compliance history and behaviour of the individual or service provider.
Fair and transparent	DSC will conduct compliance and enforcement activity in a consistent and transparent manner, based on the principles of procedural fairness and accountability.

Types of response

The proportionate response to non-compliance shown in Figure 1 (the pyramid) is used to discourage non-compliance or where co-operative approaches are not available, to protect seniors and people with disability in Queensland.

The Acts provide the following tools to help identify, manage and respond to non-compliance, including:

- Co-operative Approach (s 15 *Community Services Act 2007*)
- Compliance Notice (s 19 *Community Services Act 2007*)
- Compliance Investigation (s 16 – serious concern *Community Services Act 2007*)
- Proceedings (s 103 *Guide Hearing and Assistant Dogs Act 2009*, Part 7 of *Community Services Act 2007*).

Some actions or compliance tools are alternatives, while others are used in combination. Using a range of tools may often achieve compliance quickly without needing to escalate to more serious enforcement action. However, it is open to DSC to proceed directly with the strongest actions in a particular case.

Examples of **high risk/serious non-compliance** may include:

- the alleged abuse, neglect or exploitation of a client of a service provider
- allegation of a criminal offence against the law of the State or Commonwealth
- repeated breaches of the legislation, despite receiving education and support to comply, and
- the non-compliance is suggestive of a broader systemic issue.

Examples of **medium risk non-compliance** may include:

- the alleged non-compliance may lead to an increased risk of abuse, neglect or exploitation of a client of the service provider, and
- an alleged misuse of funds provided under a funding agreement (that is not an offence against the law of the State or Commonwealth).

Examples of **low risk non-compliance** may include:

- breaches that can be effectively and efficiently dealt with other than by investigation, or behaviour unlikely to impact on the sector or cause client detriment.

Authorised Officers

In order to perform the full range of compliance, inquiry and enforcement functions, officers must be appointed as Authorised Officers under the *Community Services Act 2007* and/or *Guide Hearing and Assistance Dogs Act 2009*. Power to authorise these appointments rests with the Director-General of the Department. Prior to appointment as an Authorised Officer, a person must satisfy the Chief Executive of their suitability for appointment, including providing evidence of their capabilities to conduct investigative functions.

Monitoring Action under the Compliance Strategy

The Compliance Strategy will be reviewed every two years.

Approval

Position	Name	Date
Deputy Director-General	Max Wise	27 April 2023

Review Date: 28 April 2025

Office: Office of the Deputy Director General
Disability, Seniors and Carers

*Version: V2.1
April 2023*

Attachment A – DSC's compliance functions

Disability Services Act - Positive Behaviour Support & Restricted Practices

Part 6 of the DSA relates to positive behaviour support and restrictive practice. Under sections 200D and 200E an Authorised Officer may investigate a breach of Part 6. However, compliance enforcement action cannot be taken unless the service provider is a Funded Entity. Concerns regarding a NDIS non-government service provider should be referred to the NDIS Q&S Commission for it to take appropriate enforcement action. Where non-compliance relates to an individual Accommodation Support and Respite Services (AS&RS) staff member, Responsibility for investigating allegations of non-compliance rests with the department's Ethical Standards area.

Referrals to QPS should also be considered in all cases of alleged unauthorised restrictive practice.

Person harmed by authorised or unauthorised Restrictive Practices	s 139 outlines the principles that service providers should take into account in providing services; and regulates the use of restrictive practice so that the client's human rights are protected, they and others are safeguarded from harm, opportunity for positive outcomes are maximised, the use of restrictive practice is minimised and transparency and accountability in the use of restrictive practice is ensured.
Restricted Practices Approvals	Part 6 Divisions 3, 4 and 5 detail the approvals and consultation required to implement restrictive practices.
Containment or Seclusion	Part 6 Division 3 details the authorisation requirements for the use of containment or seclusion of an adult including approvals and assessments.
Chemical, Mechanical or Physical restraint or restricting access	Part 6 Division 4 details the authorisation requirements for the use of chemical, mechanical or physical restraint or restricting access including approvals and assessments.
Restrictive practices in Respite Services	Part 6 Division 5 details requirements for the use of restrictive practices for respite or community access services.
Information sharing, recording, reporting and confidentiality	Part 6 Division 7 outlines requirements in terms of information sharing, maintenance of records, reporting and confidentiality.

Disability Services Act –

Part 5 of the DSA relates to Disability worker screening and related requirements and reflects the new nationally consistent disability worker screening for the NDIS which commenced in Queensland to improve the safety and quality of services and supports delivered to people living with disability.

Carrying out disability work	Division 2 of Part 5 provides the penalty provisions relevant to individuals and providers who carry out disability work without the required clearance.
Application by exclusion holder prohibited	Section 64 provides that an application by an exclusion holder is prohibited.
Applicant Notice requirements	Applicant must give notice of change in information – s 70 and 104.
Return of cards	Applicant must return card in certain circumstances – s 107 and s 128.

False or misleading information	s 138ZZ Person must not provide information which is false or misleading.
<i>Guide, Hearing and Assistance Dogs Act 2009</i>	
The compliance provisions under the <i>Guide Hearing and Assistance Dogs Act 2009</i> extend to persons exercising control of places of accommodation, public places and public passenger vehicles, trainers and training institutions, identity cards for handlers, trainers and puppy carers, and the screening of approved employee trainers.	
Rights of accompaniment	s 8 and s 9 states people with a disability, Trainers and Carers may be accompanied by guide, hearing, assistance and trainee support dogs
Persons exercising control	s 11 states people with a disability, Trainers and Carers must be provided access to accommodation, public places and public passenger vehicles in accordance with the rights of accompaniment
Approvals of trainers and training institutions	Trainers and training institutions are required to meet the obligations outlined in Part 3 to gain and maintain approval
Identity cards for handlers, trainers and carers	Part 5 details the eligibility, application and requirements of handlers, trainers and carers related to identity cards
Screening trainers	Under s 58, the Chief Executive has powers to obtain information relating to the screening of employee trainers, and requirements of employee trainers
<i>Community Services Act 2007</i>	
The compliance provisions under the <i>Community Services Act 2007</i> can only apply if the department has a funding agreement with the service provider for funding which is the subject of a funding declaration under the <i>Community Services Act 2007</i> .	
Serious Concern	<p>s 16 defines serious concerns as:</p> <ul style="list-style-type: none"> • The funding received by the funded entity is improperly used • The funded entity significantly fails to deliver a funded product or service • An act done or omission made by the funded entity in providing a funded product or service results in harm to an individual • If the funded entity received funding to deliver disability services to which the <i>Disability Services Act 2006</i> applies – the funded entity contravenes a provision of the <i>Disability Services Act 2006</i>