



Engagement Paper

Reforming Queensland's Restrictive Practices Authorisation Framework



Table of Contents

Acknowledgments	2
Cultural acknowledgement	2
General acknowledgements	2
The engagement process	3
Getting involved.....	3
Who do we want to hear from?	3
Making a submission	3
Completing a survey	4
Background.....	5
The Positive Behaviour Support and Restrictive Practices Review	5
Proposed Reforms	6
The Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024.....	6
Key changes proposed.....	6
The Office of the Senior Practitioner	6
Active participation of people with disability.....	7
Consistent safeguards for all people receiving NDIS or state funded disability services:.....	7
Types of restrictive practices regulated under the framework.....	7
Prohibiting certain restrictive practices	8
Behaviour support plans	8
How will this work in practice?.....	9
How will the reforms be implemented.....	10
Questions for you to consider.....	11
About the process	11
About safeguards	13
About implementation.....	14
Additional comments	15
Thank you.....	15
What will happen next?	15
Review Team contact details.....	15
Appendix 1 – Positive behaviour support and restrictive practices review	16
Existing framework.....	16
Reform drivers	16
The review	17
Appendix 2: Authorisation process map	19



Acknowledgments

Cultural acknowledgement

We respectfully acknowledge the Aboriginal peoples and Torres Strait Islander peoples in Queensland as the Traditional Owners and Custodians of this country and acknowledge the cultural and spiritual connection that Aboriginal peoples and Torres Strait Islander peoples have with the land and sea.

We respectfully acknowledge Aboriginal peoples and Torres Strait Islander peoples as unique and diverse peoples with their own rich and distinct cultures. We pay our respects to Elders past and present, as well as the existing and emerging leaders who walk together with us in partnership to improve outcomes for Aboriginal peoples and Torres Strait Islander peoples who live with a disability.

General acknowledgements

The work to develop a reformed authorisation framework for the use of restrictive practices in Queensland has involved consultation and engagement with the disability sector, including peak and representative bodies, governments and, most importantly, people with disability.

In preparing this engagement paper, we acknowledge and respect the critical contributions that people with disability have made to the development of the reformed authorisation framework so far.

We particularly thank the Positive Behaviour Support and Restrictive Practices Reference Group, made up of representatives from government, key statutory office holders and legal stakeholders, sectoral peak bodies and leaders and experts in this field. Their expertise and advice has been critical in shaping the approach to reform.

The engagement process

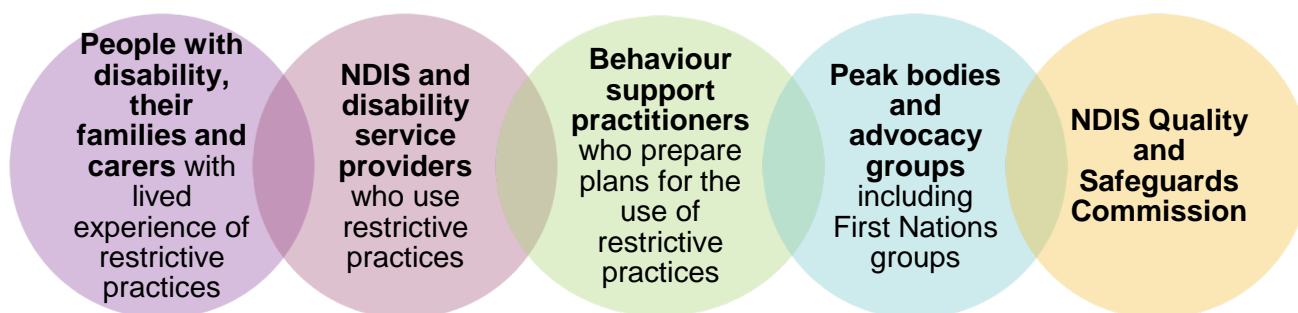
Getting involved

The Queensland Government has introduced the Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024 (the Bill) to implement a reformed authorisation framework for the use of regulated restrictive practices in relation to people with disability when receiving National Disability Insurance Scheme (NDIS) supports or services or state funded disability services from a relevant service provider.

We want to ensure that we:

- hear from these people and their families, behaviour support practitioners, guardians and support providers about what we need to do to make the reformed authorisation framework work for them and how we can support them with changes to the process;
- hear about what specific things we can do to make the reformed authorisation framework work for Aboriginal peoples and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds, and people living in regional and remote areas who will be impacted by the changes;
- gather the thoughts and concerns of other interested people, including parents, guardians, peak bodies, and advocacy groups who may also be impacted by the changes to the authorisation framework.

Who do we want to hear from?



Making a submission

A series of questions are presented in the engagement paper for feedback. You do not need to answer every question. However, we would appreciate all or any feedback to help shape how the reformed authorisation framework is implemented.

You will find ideas to assist you in making a submission throughout this paper. You may wish to comment on all the ideas presented, or only those that interest you. You can make your submission in writing, via email or online.

Email: restrictivepracticesreview@dcssds.qld.gov.au

Mail: Restrictive Practices Review Team, Seniors and Disability Services Strategic Policy and Legislation, Department of Child Safety, Seniors and Disability Services, PO Box 15397, City East Qld 4002

We will not publish your comments without your consent. Please tell us if you agree to your comments being published or used in public documents.



Completing a survey

The questions posed in this paper will be available to answer online if you would prefer to complete the online survey. You do not have to answer every question and you will be able to provide further information if the questions do not cover everything you wish to share.

Online: www.dcssds.qld.gov.au/our-work/disability-services/positive-behaviour-support-restrictive-practices/reforming-the-use-of-restrictive-practices/have-your-say



Background

The Positive Behaviour Support and Restrictive Practices Review

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

In accordance with the agreed roles and responsibilities set out in the 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.

The Australian Government, through the *NDIS (Restrictive Practices and Behaviour Support) Rules 2018* (Cwth) (NDIS Rules) set out the conditions of registration that apply to all registered NDIS providers who use restrictive practices while delivering NDIS supports. It also sets out the conditions of registration that apply to specialist behaviour support providers.

On 24 July 2020, Disability Ministers agreed to progress work toward greater national consistency based on the National Principles developed by the NDIS Quality and Safeguards Commissioner (NDIS Commissioner).

The Department of Child Safety, Seniors and Disability Services (DCSSDS) has been leading the Positive Behaviour Support and Restrictive Practices Review (PBSRP Review) to assess the policy, financial, and legislative implications of moving toward greater national consistency in authorisation processes for the use of restrictive practices in the NDIS and state disability services under the *Disability Services Act 2006*.

This includes examining opportunities to align Queensland's restrictive practices authorisation framework with the NDIS Rules and the *Principles for nationally consistent practices authorisation processes* (the National Principles).

Queensland has a well-established consent-based framework for authorising the use of restrictive practices to support adults with an intellectual or cognitive disability when receiving NDIS supports or services or other state disability services (such as state-funded or provided continuity of support), with a focus on reducing and eliminating their use.

However, there are a number of inconsistencies between Queensland's authorisation framework and the NDIS Rules.

A reformed authorisation framework must balance the need for safety and protection with the impacts on the human rights of the person.

Further information on the PBSRP review and the existing authorisation framework is available at **Appendix 1**.

Proposed Reforms

The Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024

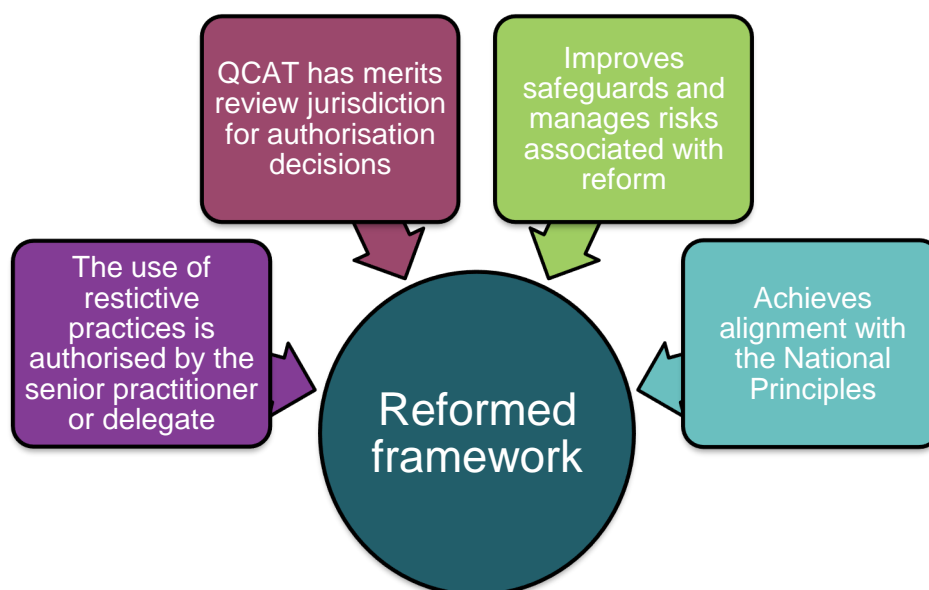
On 14 June 2024, the Minister for Child Safety, Minister for Seniors and Disability Services, and Minister for Multicultural Affairs, the Honourable Charis Mullen MP, introduced the Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024 (the Bill) into the Legislative Assembly.

If passed, the Bill will reform Queensland's restrictive practices authorisation framework. The objectives of the Bill include:

- Promoting the reduction and elimination of the use of restrictive practices in relation to people with disability receiving NDIS supports or services or state disability services under the *Disability Services Act 2006* by considering applications for, and giving restrictive practice authorisations;
- Moving toward greater national consistency in authorisation processes based on the National Principles;
- Aligning Queensland's restrictive practices authorisation framework with the NDIS Rules.

For further advice on the parliamentary process, the Bill and supporting materials (including explanatory notes) follow this link: <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=165&id=4437>.


Key changes proposed



The Office of the Senior Practitioner

The reformed authorisation framework will operate with a dedicated senior practitioner who will make all authorisation decisions in relation to the use of restrictive practices in NDIS and state funded disability services in Queensland. Primary authorisation decisions will no longer be made by guardians, the Public Guardian, relevant decision makers, or the Queensland Civil and Administrative Tribunal (QCAT).

This will streamline the authorisation process and embed independent decision making.



The senior practitioner's main function will be to promote the reduction and elimination of the use of restrictive practices by considering individual applications for, and where appropriate, giving restrictive practice authorisations to relevant service providers (registered NDIS service providers, DCSSDS funded service providers, and other service providers prescribed by regulation). The senior practitioner will also:

- publish data in relation to restrictive practice authorisations;
- monitor and receive complaints about the compliance of relevant service providers with the framework for the use of regulated restrictive practices under Part 6 of the *Disability Services Act 2006*;
- develop and provide information, education and advice about the use of regulated restrictive practices;
- develop guidelines about matters relating to Part 6 of the *Disability Services Act 2006*, including guidelines to support relevant service providers in relation to making applications for restrictive practice authorisations;
- perform any other function prescribed by regulation.

Active participation of people with disability

The Bill recognises the right of people with disability to their autonomy and independence, including the freedom to make decisions about their own lives.

The Bill seeks to maximise opportunities to involve the person with disability and their families and carers in decision making by:

- requiring state behaviour support plans to be developed in consultation with a person with disability and members of their support network (this mirrors requirements for NDIS behaviour support plans under the NDIS Rules);
- requiring the senior practitioner to consult with, and consider any expressed or demonstrated views, wishes and preferences of the person with disability about the proposed use of the restrictive practice. The consultation must happen in a way that is accessible to the person with disability.
- requiring the senior practitioner to consult with relevant persons, which may include the person with disability's family;
- providing that a person with disability and their relevant persons may apply to QCAT to review the senior practitioner's decision.

Consistent safeguards for all people receiving NDIS or state funded disability services:

The current framework only applies to restrictive practices used in NDIS or state funded disability services in relation to adults with intellectual or cognitive disability. The new framework will apply to restrictive practices used by relevant service providers in relation to all adults and children receiving NDIS supports or services, or state funded disability supports or services. This means that the same safeguards will apply to all restrictive practices used in NDIS and state funded disability supports or services.

Types of restrictive practices regulated under the framework

The Bill replaces the existing definitions of restrictive practices under the *Disability Services Act 2006* to align with the regulated restrictive practices defined under the NDIS Rules. This means:

- The locking of gates, doors and windows will be considered as environmental restraints requiring authorisation from the senior practitioner. This reflects that this practice is a regulated restrictive practice under the NDIS rules.
- Better alignment with the NDIS Rules and less complexity for people who need to comply with both the NDIS rules and the requirements under the *Disability Services Act 2006*.

Prohibiting certain restrictive practices

- The NDIS Rules make it a condition of NDIS registration that a provider must not use a restrictive practice prohibited by a state or territory. As a result, NDIS providers that use prohibited restrictive practices may be subject to compliance action from the NDIS Commission.
- In 2019, the Disability Reform Council endorsed a list of prohibited restrictive practices (see page 14). To date, Queensland has not designated any restrictive practices as ‘prohibited’.
- The Bill provides:
 - that the senior practitioner must not approve the use of prohibited restrictive practices; and
 - a regulation making power to declare certain restrictive practices as prohibited.

Behaviour support plans

- The term “positive behaviour support plan” is being replaced with “behaviour support plan” to align with the NDIS Rules.
- Formal requirements for the content of behaviour support plans for NDIS providers will be consistent with the requirements under the NDIS rules to make it easier to comply.
- For state funded disability services, requirements for state behaviour assessments and the content of state behaviour support plans will be more consistent with the requirements for assessments and the development of behaviour support plans in the NDIS Rules.
- All behaviour support plans will be developed and assessed by the specialist behaviour support market for all regulated restrictive practices, including for containment and/or seclusion (rather than requiring that these be prepared by the chief executive of DCSSDS). Over time, DCSSDS will no longer prepare these plans. There will be a phased approach across regions to achieve this.

Market development of behaviour support plans for containment and seclusion

Market sounding results

Market sounding undertaken in 2023 for the PBSRP Review found:

- Market capacity is concentrated in South East Queensland and Townsville, with few or no providers/practitioners in many areas (including Central, North, and Western parts of Queensland).
- There are recruitment and retention challenges, including:
 - attracting and retaining specialist behaviour support practitioners (high turnover), particularly outside of Brisbane/Moreton Bay and South East Queensland;
 - practitioners are likely entering the workforce at ‘core’ level, requiring significant training and supervision (6–12 months).
- For the market to be able to take on responsibility for all behaviour support assessments and preparing plans that include containment and seclusion, there will need to be a phased approach to start in regions with capacity, while others build capacity.



How will this work in practice?

Behaviour support planning

If a relevant service provider believes there is an ongoing need to use a restrictive practice to keep a person with disability or others safe from harm, they must work with a behaviour support practitioner to develop a behaviour support plan for the person. For NDIS participants, the provider will need to follow the NDIS rules in developing these plans. For clients of disability services funded by DCSSDS, the service provider will need to follow the requirements set out in the Bill.

Application to use a restrictive practice

After the behaviour support plan is prepared, the provider will submit an application to use the restrictive practice to the Office of the Senior Practitioner in an approved form, including all required documentation. The senior practitioner or delegate will assess the application (informed by consultation with the person with disability and other critical people) and issue a decision notice to the relevant service provider. If further information is needed to complete the assessment, the senior practitioner will notify the relevant service provider.

Authorisation

If an authorisation is given, the relevant service provider can use the restrictive practice if the safeguards set out in proposed sections 145 or 146 of the *Disability Services Act 2006* are met (and section 147 for containment or seclusion). These include that, each time the restrictive practice is used it is:

- necessary to prevent the person's behaviour causing harm to the person or others; and
- a last resort to prevent harm to the person or others; and
- the least restrictive way of ensuring the safety of the person or others; and
- for the shortest possible time to ensure the safety of the person or others; and
- compliant with the NDIS behaviour support plan or State behaviour support plan for the person.

Noting, the authorisation may also impose conditions.

Merits review

If a person does not agree with the senior practitioner's decision, a person with standing, including the person with disability to whom the decision relates and certain relevant persons in their support network, can apply for a review of a decision through QCAT.

Ending the authorisation

The authorisation will remain in effect until:

- the end of the period stated in the senior practitioner's notice of decision (up to 6 months for an interim behaviour support plan, or 12 months for a comprehensive plan);
- the authorisation is cancelled;
- a new restrictive practice authorisation given to the relevant service provider in relation to the person takes effect.

The senior practitioner may cancel an authorisation if it was obtained by incorrect information, or the relevant service provider has contravened a condition of the authorisation or the *Disability Services Act 2006*. The senior practitioner would first provide a show cause notice to the service provider and seek their views, before cancelling the authorisation. A cancellation decision can also be reviewed by QCAT.

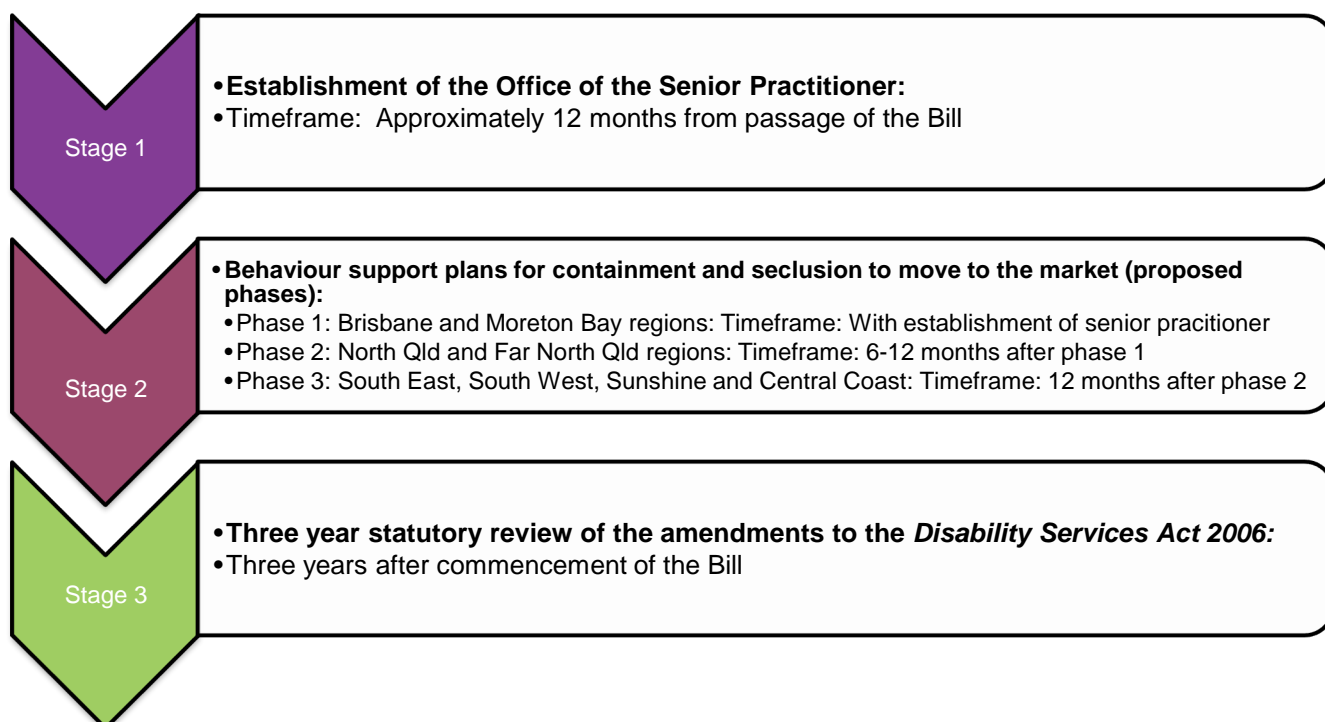
Appendix 2 provides a detailed process map.

How will the reforms be implemented

If the Bill is passed, reforms will be implemented across two stages. This will allow time for the capacity and capability of providers and practitioners to develop across Queensland.

A dedicated team within DCSSDS will lead implementation and engagement activities. This team will work with the people with disability, their family, carers and the sector to ensure everyone is ready for the new framework to commence.

After the framework commences, the Queensland Government will continue to monitor its operation, and after three years, review the efficacy and efficiency of the new framework.





Questions for you to consider

We want to hear from you to inform how the reformed authorisation framework should work in practice and how we can make the implementation process as simple as possible.

About the process

Involvement of people with disability

In deciding an application for restrictive practice authorisation, the senior practitioner must take reasonable steps to consult with, and consider any expressed or demonstrated views, wishes and preferences of, the person with disability about the proposed use of the regulated restrictive practice. The person with disability will also be able to apply to the Queensland Civil and Administrative Tribunal (QCAT) for a merits review of a decision made by the senior practitioner.

This means QCAT will take a fresh look at the relevant evidence and arrive at its own decision. QCAT must make the legally correct decision based on the merits of the case and how the legislation applies in the person's circumstances.

Questions:

1. How should a person with disability be supported to express or demonstrate their views, wishes and preferences about the proposed use of a regulated restrictive practice and behaviour support strategies?
2. Are there any specific measures that can be used to ensure children with disability are supported to express or demonstrate their views, wishes and preferences about the proposed use of a regulated restrictive practice?
3. How can a person with disability from a culturally and linguistically diverse background be consulted and supported to engage with the process in a way that is appropriate to their cultural needs? How can cultural safety be embedded into restrictive practice authorisations?
4. Moving authorisation decisions away from guardians to the senior practitioner may have additional consequences for Aboriginal families and or Torres Strait Islander families:
 - How can Aboriginal peoples and Torres Strait Islander peoples with disability be best supported to engage with and be active participants in the authorisation process?
 - How can the perspectives of Aboriginal peoples and Torres Strait Islander peoples and communities be incorporated into the senior practitioner's process?
5. The Bill requires that a copy of an application made to the senior practitioner be provided to the person with disability. Is there anyone else in the person's support network that should be given a copy?
6. What can be done to support a person with disability to apply to QCAT for merits review?
7. What support will people with disability or members of their support network need to help navigate the new processes and understand their rights under the reformed authorisation framework? For example, would easy read guides explaining key elements of the framework be useful?



Education and advice

One of the senior practitioner's functions is developing and providing information, education and advice about the use of regulated restrictive practices.

Questions:

8. What information should the senior practitioner provide to people with disability, their families and carers?
9. What do you think are the areas where providers and practitioners lack knowledge, skills or understanding about the use of regulated restrictive practices?
10. What is the most helpful way to provide advice to the specialist behaviour support sector?

Publishing data

Another of the senior practitioner's functions is publishing data relating to restrictive practice authorisations. This is not intended to duplicate the NDIS Commission's functions in collecting and publishing data about the use of restrictive practices.

Questions:

11. What data would you like to see the senior practitioner collect and publish about restrictive practice authorisations?

Supporting providers and practitioners

Questions:

12. What support will providers and practitioners need to help navigate the new processes for the reformed authorisation framework?
13. For organisations - how many of your staff currently perform specialist behaviour support functions?
14. What information will staff implementing a behaviour support plan that includes an authorised restrictive practice need to ensure they meet the requirements under the new framework?
15. As plan preparation for containment and seclusion moves to the market, do you think you will need to engage more staff or contract the preparation of plans to an independent specialist behaviour support practitioner?
16. Will you/ your organisation be looking to start preparing behaviour support plans for containment or seclusion? Are there any barriers to you being able to take on this work?



About safeguards

Prohibited restrictive practices

The senior practitioner will not authorise prohibited restrictive practices. The list of restrictive practices that are prohibited will be set by regulation. We want your views on what restrictive practices should be included on this list.

In 2019, Disability Reform Ministers agreed the following list of prohibited restrictive practices:

Specific forms of physical restraint:

- a) The use of prone restraint, which is subduing a person by forcing them into a face-down position.
- b) The use of supine restraint, which is subduing a person by forcing them into a face-up position.
- c) Pin downs, which is subduing a person by holding down their limbs or any part of the body, such as their arms or legs.
- d) Basket holds, which is subduing a person by wrapping your arm/s around their upper and or lower body.
- e) Takedown techniques, which is subduing a person by forcing them to free-fall to the floor or by forcing them to fall to the floor with support.
- f) Any physical restraint that has the purpose or effect of restraining or inhibiting a person's respiratory or digestive functioning.
- g) Any physical restraint that has the effect of pushing the person's head forward onto their chest.
- h) Any physical restraint that has the purpose or effect of compelling a person's compliance through the infliction of pain, hyperextension of joints, or by applying pressure to the chest or joints.

Punitive approaches:

- a) Aversive practices, which is any practice which might be experienced by a person as noxious or unpleasant and potentially painful. For example, threats, deliberate cold baths, applying chilli powder to the hands to prevent biting, sitting on a person to prevent them from self-harming.
- b) Overcorrection, which is any practice where a person is required to respond disproportionately to an event, beyond that which may be necessary to restore a situation to its original condition. This is often used as a punitive measure. For example, a child draws all over their desk at school and they are made to clean the whole classroom.
- c) Denial of key needs, which is withholding supports such as owning possessions, preventing access to family, peers, friends and advocates, or any other basic needs or supports. For example, denying access to basic needs such as toilet paper, sanitary items, stopping a person from seeing their friends or family.
- d) Practices related to degradation or vilification. For example, practices that are degrading or demeaning to the person; and may be perceived by the person or their guardian as harassment are unethical.
- e) Practices that limit or deny access to culture. For example, actions that limit participation opportunities or access to community, culture and language, including the denial of access to interpreters.
- f) Response Cost, which is a punishment of a person who forgoes a positive item or activity because of the person's behaviour. For example, a planned outing is cancelled because the person did not follow the morning routine.

In 2023, the Disability Royal Commission recommended that state and territory governments adopt the list of prohibited forms of restrictive practices agreed by the former Disability Reform Council in 2019 and provide that the use of seclusion on children and young people is not permitted in disability service settings.



Questions

17. Do you agree that the above list of restrictive practices should be prohibited in Queensland? Are there any of the above that you think should not be prohibited? Should any other practices be prohibited?

About implementation

Phased approach to moving the development of all behaviour support plans to the market

A staged approach is proposed for the development of all behaviour support plans (including those that include containment and/or seclusion) to move to the specialist behaviour support market (see pages 8 and 10).

Questions

18. Do you support this occurring in three phases and as per the regions identified?

19. Do the proposed timeframes between the three phases allow enough time for the specialist behaviour support market to adapt and take on this function?

Seeking approval from the senior practitioner to use a restrictive practice

A regulation will provide for transitional arrangements about what will happen to restrictive practice authorisations that are already in place or awaiting approval when the new framework starts. Your feedback is sought about how the proposed new framework will apply in the following situations:


Example 1: A restrictive practice is already authorised under the *Disability Services Act 2006* (old framework) when the new framework starts:

- It is intended that existing authorisations will continue until they would have expired or been due for review under the old framework. For example:
 - if the positive behaviour support plan for the person becomes due for review, the service provider will need to seek approval from the senior practitioner to continue using a restrictive practice under the behaviour support plan, rather than seeking approval from a restrictive practices guardian or QCAT.
 - if the restrictive practice has been consented to by a guardian for a restrictive practice matter, when the guardian's consent ends; or the guardian's appointment comes up for review; or the positive behaviour support plan for the person becomes due for review, the relevant service provider will need to seek approval from the senior practitioner to continue using a restrictive practice.

Example 2: If a restrictive practice has not previously been approved under the old framework:

- It is intended service providers will need to seek approval from the senior practitioner when the new legislation commences. For example:
 - upon commencement of the new framework, the locking of doors, gates and windows will become an environmental restraint. To obtain lawful authority for these practices under the new framework, they will need to be authorised by the senior practitioner. Information and other resources will be made available in the lead up to commencement to ensure providers are ready to make applications on the commencement date.

Example 3: Applications already with the Public Guardian for short-term approval when the new framework starts:

- 
- It is intended that any applications for short-term approval made to the Public Guardian under the old framework will continue to be decided by the Public Guardian. The service provider would need to make an application to the senior practitioner for authorisation to use containment or seclusion on a longer-term basis before the short-term approval expires.

Questions

20. What support will service providers need from the Office of the Senior Practitioner to be ready to make these applications when the new framework starts?
21. Do you have any concerns with the proposed approach for when providers will need to seek an authorisation from the senior practitioner?
22. Would a 12-month period before the new framework commences provide you with enough time to prepare for the new authorisation process?
23. Do you have any feedback or questions about how the transitional arrangements will work?

Additional comments

24. Please provide any additional comments or questions.

Thank you.

Your input is vitally important to make sure the reformed authorisation framework for the use of restrictive practices in Queensland is effective and has strong safeguards for people with disability. We thank you for taking the time to be involved in this important reform work.

What will happen next?

We will use your feedback to implement a robust, efficient, and safe restrictive practices authorisation framework for people with disability in Queensland.

Review Team contact details

Restrictive Practices Review Team
Strategic Policy and Legislation | Seniors and Disability Services
Department of Child Safety, Seniors and Disability Services
E: restrictivepracticesreview@dcssds.qld.gov.au



Appendix 1 – Positive behaviour support and restrictive practices review

Existing framework

Part 6 of the *Disability Services Act 2006* and Chapter 5B of the *Guardianship and Administration Act 2000* (GA Act), provide the framework for authorising restrictive practices used in NDIS and state funded disability support settings. Under the existing framework:

- guardians for restrictive practices matters appointed by QCAT can authorise certain restrictive practices
- short-term and general authorisations can be given by one of several decision-makers (including the Public Guardian and the chief executive, Department of Child Safety, Seniors and Disability Services (DCSSDS)), depending on the type of restrictive practice and length of authorisation sought
- only the chief executive, DCSSDS can develop positive behaviour support plans that include containment and/or seclusion (i.e. physically preventing the free exit of the adult from premises or confining the adult alone, at any time of the day or night, in a room or area from which free exit is prevented in response to the adult's behaviour that causes harm to the adult or others.)
- the approval of containment and seclusion by the Queensland Civil and Administrative Tribunal (QCAT).

Queensland's existing authorisation framework does not apply to the practice of locking of gates, doors and windows used when the adult does not have the skills to safely exit the premises without supervision. Instead, this practice is subject to a less onerous set of regulatory requirements under Part 8 of the *Disability Services Act 2006*, including that the relevant service provider must keep and implement a policy and procedure on locking gates, doors and windows that is consistent with DCSSDS policy and procedures. Under the NDIS Rules, however, this is considered an environmental restraint, and the usual conditions apply, such as an assessment and development of a behaviour support plan.

Queensland's existing authorisation framework has its own unique requirements regarding what must be included in a positive behaviour support plan before authorisation will be given. Under the NDIS Rules, however, this is considered a behaviour support plan. This adds another layer of complexity for providers.

Reform drivers


Principles for nationally consistent restrictive practices authorisation processes

On 24 July 2020, Disability Ministers agreed to progress work toward greater national consistency based on the Principles for nationally consistent restrictive practices authorisation processes (National Principles). The National Principles build on the commitment of all governments to national consistency in restrictive practice regulation under the *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Services Sector* (2014) and the NDIS Quality and Safeguarding Framework.

Working with the Commonwealth Government and other states and territories to progress work towards nationally consistent authorisation processes for restrictive practices is a portfolio priority for the Minister for Child Safety, Minister for Seniors and Disability Services and Minister for Multicultural Affairs.

Final Report into the NDIS Market in Queensland (QPC report)

In its October 2021 report, the former Queensland Productivity Commission emphasised the negative market impacts of Queensland's lack of national consistency. It found this inconsistency



can increase costs, deter market development of relevant services, and risk harming or undermining the rights of persons to whom restrictive practices are applied. The QPC report also found that the positive behaviour support market in Queensland is relatively immature and there is a shortage of providers capable of preparing positive behaviour support plans.

In response to recommendations 48 and 49 of the QPC report, the Queensland Government:

- accepted that the Queensland Government should promote clarity and efficiency in its restrictive practices' regime, in particular harmonising the definitions of restrictive practices and the formal requirements around the content of positive behaviour support plans; and
- accepted in-principle that the Queensland Government should announce a timetable for removing its statutory monopoly on the preparation of positive behaviour support plans that include the use of containment and/or seclusion, and to transition toward market-based private provision of positive behaviour support plans.

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission)

The Disability Royal Commission, in its final report released on 29 September 2023, reinforced the critical need for nationally consistent authorisation processes to promote the reduction and elimination of the use of restrictive practices, having heard a range of evidence about inappropriate use of restrictive practices and national best practice. Key findings and recommendations include:

- People with disability are disproportionately subjected to practices that deny them their autonomy and can have adverse impacts on their health and wellbeing. These include restrictive practices, such as being physically and chemically restrained.
- First Nations peoples with disability are uniquely marginalised in Australia. There are ongoing challenges for First Nations peoples with disability in relation to a lack of culturally appropriate services, lack of funding for remote service delivery and an overall lack of cultural capability.
- States and territories should ensure legal frameworks are in place to reduce restrictive practices, with the aim of elimination. These should be based on a set of national principles that apply across all settings. Legal frameworks should establish or clarify the powers and functions of a senior practitioner, or equivalent role, to oversee and drive down the use of restrictive practices.

State and territory governments should adopt the list of prohibited forms of restrictive practices agreed by the former Disability Reform Council in 2019 and provide that the use of seclusion on children and young people is not permitted in disability service settings.

The review

Legislative review

DCSSDS conducted a legislative review (required under section 241AA of the *Disability Services Act 2006*) of certain provisions relating to restrictive practices. The outcomes of this review included the recommendations that, subject to timing informed by market readiness, the following provisions be removed from the *Disability Services Act 2006*:

- the chief executive's functions in relation to conducting multidisciplinary assessments and the development of positive behaviour support plans that include containment and/or seclusion
- the special provisions about 'locking gates, doors and windows' to prevent physical harm being caused to an adult with a skills deficit. Under the existing framework, these practices are not considered to be regulated restrictive practices, and are subject to separate requirements. However, under the NDIS rules, they are considered a regulated restrictive practice.

Independent review

Simultaneous with the legislative review, in November 2020, DCSSDS commissioned an independent review of Queensland's restrictive practices framework to consider whether any

improvements could be made to better align Queensland's restrictive practices framework with the NDIS Rules and National Principles.

The final report found that Queensland's current restrictive practices framework is inconsistent with the National Principles in key respects, including:



Stakeholder consultation

Stakeholder consultation on ideas for a reformed authorisation framework was conducted between November 2021 and January 2022, guided by a consultation paper. The consultation was broad and included people with disability, their families and carers, NDIS and disability service providers, peak bodies, advocacy organisations and other bodies to gather their views.

Consultation included a mix of face-to-face workshops, online forums, surveys and written submissions.

Consultation findings broadly included:

- Very high levels of support for expanding 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 the creation of a senior practitioner role, but split views about the creation of a market-based decision-making role
- Limited support for QCAT retaining a primary authorisation role, but strong support for QCAT to function as a merits review body with the power to review all authorisation decisions
- Concerns that the creation of market-based decision-making roles is a risk due to inherent conflict of interest.

Appendix 2: Authorisation process map

