

## **QUEENSLAND GOVERNMENT RESPONSE**

### **Community Support and Services Committee**

#### **Report No. 48, 57th Parliament: Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024**

### **INTRODUCTION**

The Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024 (the Bill) amends the *Disability Services Act 2006*, the *Guardianship and Administration Act 2000*, *Public Guardian Act 2014*, *Coroners Act 2003*, and the *Queensland Civil and Administrative Tribunal Act 2009*.

On 14 June 2024, the Bill was introduced into the Queensland Legislative Assembly and referred to the Community Support and Services Committee (the committee) for detailed consideration.

On 2 August 2024, the committee tabled its Report No. 48, 57th Parliament: Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024.

The Queensland Government response to the committee's report is provided below.

### **RESPONSE TO RECOMMENDATIONS**

#### **Recommendation 1**

The committee recommends the Bill be passed.

#### **Queensland Government response**

The Queensland Government notes the recommendation that the Bill be passed and thanks the committee for its thorough and considered examination of the Bill.

#### **Recommendation 2**

The committee recommends the Bill be amended at clause 14 to expand the scope of the proposed framework to include accredited residential services under the *Residential Services (Accreditation) Act 2002*, so that residents who are not participants of the National Disability Insurance Scheme (NDIS) may be protected from unauthorised or inappropriate restrictive practices.

#### **Queensland Government response**

This recommendation is not adopted at this time.

The Queensland Government acknowledges the concerns raised by stakeholders about the need for appropriate safeguards for people with disability living in supported accommodation settings.

As the committee has noted, the Bill's scope is limited to NDIS supports and services, and disability services provided or funded by the Department of Child Safety, Seniors and Disability

Services (DCSSDS). This includes residential services provided by registered NDIS providers delivering supports to NDIS participants in accredited residential services.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) recommended states and territories adopt a senior practitioner model in disability service settings, and after a period of implementation and evaluation, should consider extending the role to the authorisation of restrictive practices in other settings.

As part of its response to the Disability Royal Commission, the Queensland Government has acknowledged the need to undertake further consideration of how the use of restrictive practices across different service settings (including justice, health and education settings) should be regulated, noting each of these settings have their own unique regulatory environments and oversight bodies.

It is also noted the committee's Report No. 44, 57th Parliament: *Inquiry into the provision and regulation of supported accommodation in Queensland* made observations about the use of restrictive practices in supported accommodation settings.

DCSSDS will lead this work in partnership with relevant agencies to consider the policy, legislative and financial implications of regulating restrictive practices in other service settings, including accredited residential services.

### **Recommendation 3**

The committee recommends that clause 168 of the Bill be amended to include an additional ground of cancellation in situations when the senior practitioner has determined, based on the circumstances, rights and wellbeing of the person, that there is no longer a need for the restrictive practice.

#### **Queensland Government response**

This recommendation is adopted.

The Queensland Government will amend the Bill to provide the senior practitioner with an additional ground for the cancellation of a senior practitioner authorisation if they are no longer satisfied the criteria (in new section 158) of the Bill are being met.

### **Recommendation 4**

The committee recommends that the Bill be amended to include a specific offence provision for the use of unauthorised restrictive practices, to ensure there are clear consequences for non-compliance.

#### **Queensland Government response**

This recommendation is not adopted at this time.

The Queensland Government acknowledges there must be clear consequences for the unauthorised use of restrictive practices.

The framework for authorising the use of restrictive practices set by the Bill is intended to work alongside the quality, monitoring, investigations, compliance and enforcement framework set by the NDIS Quality and Safeguarding Framework as agreed under the *Bilateral Agreement between the Commonwealth of Australia and Queensland on the National Disability Insurance Scheme*.

In line with this, the Australian Government, through the NDIS Quality and Safeguards Commission, is responsible for:

- registration and regulation of NDIS providers, including practice standards;
- compliance monitoring, investigation and enforcement action;
- responding to complaints and reportable incidents, including abuse or neglect of a person with disability;
- national oversight in relation to behaviour support and monitoring the use of restrictive practices within the NDIS with the aim of reducing and eliminating such practices.

The NDIS Quality and Safeguarding Framework contains consequences for the unauthorised use of restrictive practices in NDIS supports or services. Registered NDIS providers that fail to meet their conditions of registration can be subject to a civil penalty of 250 penalty units. The NDIS Quality and Safeguards Commissioner (NDIS Commissioner) can also impose other penalties, including banning NDIS providers or workers, and suspending or revoking registration.

The Commonwealth *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* (NDIS RP Rules) make it a condition of registration for all registered NDIS providers that they:

- only use restrictive practices in accordance with state and territory authorisation processes, and
- must not use a restrictive practice that is prohibited by a state or territory.

Further, in accordance with the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018* (NDIS Reportable Incidents Rules), the use of a restrictive practice without authorisation by the relevant state or territory, or not in accordance with a behaviour support plan, is a reportable incident.

Registered NDIS providers are required to notify the NDIS Commissioner of a reportable incident within five business days of becoming aware of the incident. If the incident has resulted in death or serious injury to a person with disability, it must be reported within 24 hours.

Failure by a registered NDIS provider to comply with requirements under the NDIS Reportable Incidents Rules or the NDIS RP Rules, constitutes a breach of a provider's conditions of registration, under the *National Disability Insurance Scheme Act 2013*.

DCSSDS will work with the NDIS Quality and Safeguards Commission to ensure appropriate enforcement and compliance activities are taken in response to reports of unauthorised use, consistent with the current approach.

The Disability Royal Commission also recommended the powers and functions of state and territory senior practitioners should include investigating the use of restrictive practices and the quality of behaviour support planning, either in response to complaints or of its own motion and acting in response to complaints and investigations where appropriate.

As part of its response to the Disability Royal Commission, the Queensland Government will further consider the ongoing role and functions of the senior practitioner, and DCSSDS will continue to monitor the operation of the Bill, including whether appropriate compliance action has been undertaken in response to unauthorised use of restrictive practices.