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

Explanatory Notes

Short Title

The short title of the Bill is the Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024.

Policy objectives

The objectives of the Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024 (the Bill) are to:

1. Promote the reduction and elimination of the use of restrictive practices in relation to people with disability receiving National Disability Insurance Scheme (NDIS) supports or services or state disability services under the *Disability Services Act 2006* (DS Act) by considering applications for, and giving restrictive practice authorisations;
2. Move toward greater national consistency in authorisation processes based on the *Principles for nationally consistent restrictive practices authorisation processes* (the National Principles);
3. Align Queensland's restrictive practices authorisation framework with the *NDIS (Restrictive Practices and Behaviour Support) Rules 2018* (Commonwealth) (NDIS (RPBS) Rules); and
4. Expand the reportable deaths in care framework to reinstate coverage for persons who receive disability supports under the Commonwealth Government's Disability Support for Older Australians (DSOA) program.

Reasons for the policy objectives

Positive Behaviour Support and Restrictive Practices Review

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 NDIS (RPBS) 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). 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.

Working towards nationally consistent authorisation processes is a portfolio priority for the Minister for Child Safety, Minister for Seniors and Disability Services and Minister for Multicultural Affairs.

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

The PBSRP Review examined:

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

The PBSRP Review recommended:

- 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 the Queensland Government.
- Expansion of the authorisation framework to include all people with disability (adults and children) while receiving NDIS supports or services or state disability services.
- 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 behaviour support plans are consistent with the requirements for assessments and the development of behaviour support plans in the NDIS (RPBS) Rules to minimise excess administrative overhead.
- Prohibiting certain restrictive practices.
- Vesting the Queensland Civil and Administrative Tribunal (QCAT) with merits review jurisdiction over all primary authorisation decisions.
- Devolving the responsibility for the development of positive behaviour support plans that include containment and/or seclusion 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.

The Bill implements the key findings of the PBSRP Review, noting the phased approach to devolving responsibility for the development of positive behaviour support plans that include

containment and/or seclusion will be managed as part of transition to the reformed authorisation framework.

Other related reforms

The critical need for nationally consistent authorisation processes to promote the reduction and elimination of the use of restrictive practices has been bolstered by the September 2023 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (DRC) final report. 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.

Achievement of policy objectives

The Bill achieves these objectives by amending:

- the DS Act to implement a reformed authorisation framework for the use of regulated restrictive practices in relation to people with disability when receiving NDIS supports or services or state disability services, including establishing the office and functions of the senior practitioner and vesting QCAT with merits review jurisdiction over all authorisation decisions by the senior practitioner;
- the *Guardianship and Administration Act 2000* (GA Act), *Public Guardian Act 2014* (PG Act), *Coroners Act 2003* (Coroners Act), and the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) to remove the current approval processes for restrictive practice matters and make other consequential amendments;
- the Coroners Act to expand the reportable deaths framework to reinstate coverage for deaths in care for people in Queensland who receive disability supports under the DSOA program; and
- the *Forensic Disability Act 2011* (FD Act) to reflect terminology under the reformed authorisation framework.

A streamlined, clinically based Queensland authorisation framework that is navigable, and embedded within the broader safeguards of the NDIS QSF and NDIS Commissioner, will enable increased compliance and transparency of the use, and support the ultimate reduction and elimination of the use of restrictive practices.

Key components of the Bill

Scope

The Bill expands the scope of people with disability to whom the authorisation framework for the use of restrictive practices applies to include all people with disability (adults and children) while they receive ***NDIS supports or services*** (defined in section 12A of the DS Act) or ***disability services*** (defined in section 12) from a ***relevant service provider*** (defined in new section 140), noting:

- NDIS supports or services are provided by a registered NDIS provider, or another service provider prescribed by regulation for the purpose of section 140 of the DS Act; and
- Disability services are provided by the Department of Child Safety, Seniors and Disability Services (DCSSDS), a ***funded service provider*** (defined in section 14 of the DS Act), or another service provider prescribed by regulation for the purpose of section 140 of the DS Act. Throughout these explanatory notes disability services are sometimes referred to as 'state disability services' to make clear they are not NDIS supports or services.

The Bill also broadens the type of restrictive practices that require authorisation by adopting the definition of regulated restrictive practices under the NDIS (RPBS) Rules. The current framework has less onerous authorisation requirements for the use of restrictive practices in respite or community access settings, where either or both are the only disability services accessed by the adult. The Bill will align the authorisation process for all regulated restrictive practices. The unique provisions for the locking of gates, doors and windows in response to an adult that does not have the skills to safely exit the premises without supervision will also be removed. This is because this restrictive practice will also be captured by the reformed authorisation framework as a regulated restrictive practice.

Reformed authorisation processes

The reformed authorisation framework will continue to consist of five main components: (a) Behaviour support assessments; (b) Behaviour support plans; (c) Authorisation; (d) Review; and (e) Monitoring. However, the application of each of these components will differ depending on whether a relevant service provider is providing NDIS supports or services or state disability services.

For NDIS supports or services, the Bill requires all assessments to be done, and plans developed, in accordance with the NDIS (RPBS) Rules. Further, in accordance with the NDIS QSF, the NDIS Commissioner remains responsible for monitoring the use of restrictive practices by registered NDIS providers. This means registered NDIS providers will continue to report the use of a regulated restrictive practice to the NDIS Commissioner.

For state disability services, the Bill prescribes the requirements across all five components. This approach reflects that the Queensland Government remains responsible for the full suite of safeguards in relation to state disability services it funds or provides. As far as practicable, the requirements in relation to behaviour support assessments and behaviour support plans for state disability services have been drafted to align with the requirements for NDIS supports or services under the NDIS (RPBS) Rules.

(a) Behaviour support assessments, including functional behavioural assessments

For NDIS supports or services, the requirements set out in the NDIS (RPBS) Rules in relation to behaviour support assessments, including a functional behavioural assessment, must be followed.

For state disability services, the Bill requires that in developing a comprehensive state behaviour support plan for a person with disability, the relevant service provider must undertake a behaviour support assessment, including a functional behavioural assessment, of the person with disability.

For both NDIS supports or services and state disability services, the Bill removes the requirement for the Chief Executive, Disability Services, to decide whether a multidisciplinary assessment will be conducted in circumstances where a relevant service provider wishes to contain or seclude a person with disability.

(b) Behaviour support plans

For NDIS supports or services, the requirements set out in the NDIS (RPBS) Rules in relation to the development of an NDIS behaviour support plan, which includes a comprehensive behaviour support plan or an interim behaviour support plan, must be followed. The senior practitioner can only authorise the use of a regulated restrictive practice in an NDIS behaviour support plan if satisfied that the behaviour support plan was developed in line with the NDIS (RPBS) Rules.

For disability services, the Bill requires the development of a state behaviour support plan. A state behaviour support plan, for a person with disability, means a comprehensive state behaviour support plan or an interim state behaviour support plan.

An interim state behaviour support plan contains proactive strategies designed to keep the person and others safe while a functional behavioural assessment of the person is carried out and a comprehensive state behaviour support plan for the person is developed.

State disability service providers are responsible for facilitating the development, or review, of a state behaviour support plan by a behaviour support practitioner. The Bill sets out how these plans are to be developed and the content of these plans.

The Bill removes the requirement for the Chief Executive, Disability Services, to develop all positive behaviour support plans that include containment or seclusion.

(c) Authorisation

The Bill streamlines the authorisation process and requires all applications for a regulated restrictive practice to be made to the senior practitioner. The application must be in the approved form and be accompanied by certain documents, including a copy of the NDIS behaviour support plan or state behaviour support plan for the person with disability to whom the application relates.

An authorisation for the use of a regulated restrictive practice is time limited. The Bill provides that a restrictive practice authorisation has effect until the earlier of the following:

- the end of the period stated in the authorisation;
- the cancellation of the authorisation; or
- a new restrictive practice authorisation in relation to the person takes effect.

The Bill provides for when a restrictive practice authorisation will be cancelled. Cancellation can occur automatically in certain circumstances or be cancelled by the senior practitioner. The Bill outlines the process the senior practitioner must follow if they believe a ground exists to cancel a restrictive practice authorisation, including a requirement to give the relevant service provider a show cause notice.

(d) Review

The Bill provides that a comprehensive state behaviour support plan must be reviewed if there is a change in circumstances that requires the plan to be amended or, in any event, at least once every 12 months while the plan is in force. These same requirements for review apply to a comprehensive behaviour support plan developed under the NDIS (RPBS) Rules.

The Bill provides for when a review of an NDIS behaviour support plan or comprehensive state behaviour support plan will require the relevant service provider to make a new application for authorisation to the senior practitioner.

The Bill also vests QCAT with merits review jurisdiction over all authorisation decisions made by the senior practitioner. The list of people who have standing to apply for review is broad.

(e) Monitoring

The Bill includes the ability for the senior practitioner to receive complaints about the use of a restrictive practice in relation to a person with disability, or the development of an NDIS behaviour support plan or state behaviour support plan for a person with disability. The senior practitioner may refer these matters to the NDIS Commissioner, the Chief Executive, Disability Services, or another entity prescribed by regulation.

Where a complaint relates to a NDIS provider, it may be referred to the NDIS Commission. This reflects the NDIS Commissioner's responsibility for overseeing the use of behaviour support and restrictive practices by registered NDIS providers, including by monitoring their compliance with the conditions of registration relating to behaviour support plans.

Where a complaint relates to DCCSDS, or a funded state disability service provider other than a service provider that is another department, the complaint may be referred to the Chief Executive, Disability Services. This reflects that the Queensland Government remains responsible for the full suite of safeguards in relation to state disability services it funds or provides.

Part 6A of the DS Act contains investigation, monitoring and enforcement powers that may be relied upon by the Chief Executive, Disability Services, in relation to the provision of state disability services by funded service providers.

The Bill also includes the ability to prescribe by regulation information about the use of regulated restrictive practices that must be provided to the senior practitioner. This approach enables flexibility to ensure there is no unnecessary duplication of reporting by relevant service providers to both the senior practitioner and the NDIS Commissioner.

Other circumstances regulated restrictive practices may be used

At times, it may be necessary for a relevant service provider with an existing authorisation to continue to use a regulated restrictive practice to support a person with disability while the senior practitioner is considering a new application for a regulated restrictive practice.

The Bill includes a provision that allows a relevant service provider, or an individual acting for a relevant service provider, to lawfully use a regulated restrictive practice to support a person with disability in the period between an existing authorisation ending and a new application for a regulated restrictive practice being decided or withdrawn. However, the relevant service provider may only use a regulated restrictive practice under these provisions until the earlier of the following:

- the application for the new restrictive practice authorisation is withdrawn;
- the relevant service provider is given notice that the senior practitioner has refused to approve the application for the new restrictive practice authorisation;
- a new restrictive practice authorisation given to the relevant service provider for the application takes effect; or
- the day that is 30 days after the existing authorisation ends (or a later date if the period is extended by the senior practitioner).

This provision does not constitute an authorised use of a regulated restrictive practices. This means registered NDIS providers who provide NDIS support or services will still be required to report unauthorised use to the NDIS Commissioner. As outlined above, the Bill also includes the ability to prescribe by regulation information about the use of regulated restrictive practices that must be provided to the senior practitioner.

Alternative ways of achieving policy objectives

Cost modelling and analysis of the current framework (as a base case) and three options for reform was undertaken between November 2021 and July 2022. The three reform options and base case were evaluated against an evaluation framework, based on the National Principles to increase system clarity and uphold the rights of people with disability.

The three reforms options included:

- **Pure Clinical model:** Implemented by the Bill.
- **Market model:** This option vests some authorisation authority in the market in relation to lower risk restrictive practices. The senior practitioner would have responsibility for all other authorisation decisions. Market sounding undertaken in 2023 identified that this option is not currently viable given current market capacity and capability in Queensland.
- **Tribunal model:** 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.

The Bill implements the Pure Clinical model as the preferred option. This option has been assessed as providing the highest level of safeguards for people with disability, achieves

alignment with the National Principles, and incorporates the key reform elements most strongly supported by stakeholders. This option does not preclude further reform, subject to future market capacity and capability and regulatory impacts.

Estimated cost for government implementation

Through the 2024-25 State Budget the Queensland Government approved the following funding for implementation activities associated with the establishment of the new restrictive practices' authorisation framework:

- $12.365 million over four years from 2024-25 and $3.210 million per annum ongoing as an immediate uplift to base resourcing in response to increased demand.
- $6.714 million over three years from 2024-25 to 2026-27 for an implementation and transition team across DCSSDS, QCAT and OPG to manage transition to the reformed framework.
- Up to $2.5 million over four years from 2024-25, with $560,460 ongoing, to be for ICT hardware and management costs.

Any costs for the Coroners Court of Queensland arising from the expansion of the reportable deaths in care framework are anticipated to be minimal and will be met from existing resources.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles (FLPs) under the *Legislative Standards Act 1992* (LS Act). Potential breaches of FLPs are addressed below.

Whether the legislation has sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992*, s 4(2)(a))

Rights and liberties of persons with whom restrictive practices may be used

The Bill inserts new clauses in the DS Act to create a new administrative authorisation framework for the use of restrictive practices and expands the scope to include all people with disability (adults and children) when receiving NDIS supports or services or disability services from relevant services providers. It also expands the scope to include all forms of regulated restrictive practices under the NDIS (RPBS) Rules, including the locking of gates, doors and windows in response to an adult with a skills deficit not having the skills to safely exit a premises without supervision.

This is a potential departure from the principle that a Bill should not adversely affect the rights and liberties of an individual. Authorising the use of regulated restrictive practices can be a significant intrusion of the rights and liberties of a person with disability. However, these provisions are considered justifiable as the Bill contains measures to limit the circumstances regulated restrictive practices may be authorised or used, to minimise limitations on a person's rights and liberties.

The Bill sets out the criteria the senior practitioner must be satisfied of before providing authorisation to use a regulated restrictive practice, including that:

- there is a need for the regulated restrictive practice to be used in relation to the person because the person's behaviour has previously resulted in harm to the person or others; and
- there is a reasonable likelihood that, if the authorisation is not given, the person's behaviour will cause harm to the person or others; and
- if the NDIS behaviour support plan for the person includes provision for the regulated restrictive practice, the plan was developed in accordance with the NDIS (RPBS) Rules for the plan and for a plan that includes chemical restraint, was developed in consultation with the person's treating doctor; and
- if the state behaviour support plan for the person includes provision for the regulated restrictive practice, the plan was developed in accordance with section 176 and for a plan that includes chemical restraint, was developed in consultation with the person's treating doctor; and
- there is a reasonable likelihood that if the NDIS behaviour support plan or state behaviour support plan for the person is implemented as proposed, the risk of the person's behaviour causing harm will be reduced or eliminated and the person's quality of life will be improved in the long term and the observation and monitoring provided for under the NDIS behaviour support plan or state behaviour support plan will be appropriate; and
- the regulated restrictive practice will be used only as a last resort to prevent harm to the person or others and after consideration of the likely impact of the use of the regulated restrictive practice in relation to the person; and
- to the extent possible, best practice alternative strategies will be used before the restrictive practice is used and the alternative strategies that have been considered or used are documented in the NDIS behaviour support plan or state behaviour support plan for the person; and
- the proposed use of the regulated restrictive practice is the least restrictive way of ensuring the safety of the person or others and is proportionate to the risk of harm to the person or others; and
- the regulated restrictive practice is not a prohibited restrictive practice.

Even after authorisation is given, the Bill provides that regulated restrictive practices may only be used by a relevant service provider if:

- the use of the restrictive practice is necessary to prevent the person's behaviour causing harm to the person or others;
- the restrictive practice is used as a last resort to prevent harm to the person or others;
- the restrictive practice is the least restrictive way of ensuring the safety of the person or others;
- the restrictive practice is used for the shortest possible time to ensure the safety of the person or others;
- the use of the restrictive practice complies with the NDIS behaviour support plan or state behaviour support plan for the person; and
- for environmental restraint involving the containment of a person with disability or seclusion— the person's needs are met, including that the person is given sufficient bedding, clothing, food, and drink and access to adequate heating, cooling and toilet facilities.

The Bill also includes the ability to prescribe by regulation information about the use of regulated restrictive practices that must be provided to the senior practitioner. This approach reflects that the Queensland Government remains responsible for the full suite of safeguards in relation to state disability services it funds, while creating the flexibility to ensure there is no unnecessary duplication of reporting between the senior practitioner and the NDIS Commissioner. Part 6A of the DS Act contains investigation, monitoring and enforcement powers that may be relied upon by the Chief Executive, Disability Services, in relation to state disability services.

Additional safeguards outside of the DS Act include the requirement under the NDIS (RPBS) Rules for registered NDIS providers to report the unauthorised use of a regulated restrictive practice to the NDIS Commissioner. This will enable appropriate enforcement actions to be undertaken where considered necessary.

Disclosure of confidential information about a person with disability

The Bill amends the DS Act to provide for circumstances when confidential information about a person with disability may be obtained or disclosed. This is a potential departure from the principle that a Bill should not adversely affect the rights and liberties of individuals.

The provisions are considered justifiable as the access or disclosure of the confidential information serves a specific purpose as outlined below, which is balanced with appropriate safeguards to prevent misuse of this information. Any interference with the right to privacy resulting from the Bill are considered proportionate because they are in accordance with the limited circumstances provided for by the DS Act.

The Bill inserts new clauses in the DS Act to enable the senior practitioner to access confidential information about a person with disability. This includes:

- information about a person's behaviour or an assessment of the person carried out for the purpose of developing a plan;
- information in relation to the relevant person with disability received by the senior practitioner from the NDIS Commission;
- a report given to the senior practitioner under section 47 of the *Public Guardian Act 2014;*
- for a relevant person with disability who is a child—information disclosed to the senior practitioner under the *Child Protection Act 1999* in relation to the child; and
- for certain service providers—information about the use of the restrictive practice prescribed under a regulation.

Access to this confidential information will assist the senior practitioner in performing their functions, including considering applications for, and giving restrictive practice authorisations under Part 6. Section 228 of the DS Act provides that if a person gains confidential information through involvement in the DS Act's administration (including the senior practitioner) the person must not disclose the information to anyone, other than in certain limited circumstances.

The Bill inserts a new clause that enables the senior practitioner to share information with the NDIS Commissioner if satisfied the disclosure would assist in the performance of the NDIS Commissioner's functions. This will enable the NDIS Commissioner to exercise their quality

and safeguarding functions under the NDIS Act in relation to the provision of NDIS supports or services by registered NDIS providers. Chapter 4, Part 2, of the NDIS Act sets out the measures that must be taken for the protection of personal information that the National Disability Insurance Agency may obtain in the course of performing its functions.

The Bill inserts a new clause that enables a relevant service provider to request confidential information from the senior practitioner for the purpose of a behaviour support assessment, including a functional behavioural assessment, or the development a behaviour support plan. The provision of confidential information to support assessments, or the development of a behaviour support plan, is essential to ensure a behaviour support plan contains proactive and evidence-informed strategies to improve the person's quality of life and support their progress towards positive change.

The Bill inserts a new clause that vests QCAT with a merits review function (under Chapter 2, Part 1, Division 3 of the QCAT Act) to review authorisation decisions made by the senior practitioner under Part 6. As part of this function, if a person makes an application for review to QCAT, the senior practitioner must disclose to the registrar the names and addresses of all persons, apart from the applicant, who are entitled to apply for a review of the decision. This will enable the registrar to give an information notice to each of these persons. QCAT may, by notice to a prescribed person, ask the person to give to QCAT information or material in the person's custody or control QCAT considers necessary to make an informed decision about a matter in the proceeding. QCAT may also obtain documents or things from prescribed persons or other persons under the QCAT Act. The provision of confidential information in these circumstances will enable QCAT to conduct a review of a Part 6 reviewable decision about a person with disability in a way that, to the greatest extent possible, protects and promotes the rights of the person.

New offence provisions

The Bill inserts a new clause in the DS Act that provides in relation to QCAT proceedings for children with disability, it is an offence to publish: a) information given in evidence or otherwise in the proceeding; or b) information that is likely to identify a person who appears as a witness before QCAT in the proceeding, is a party to the proceeding, or is mentioned, or otherwise involved, in the proceeding. The maximum penalty is 200 penalty units.

This clause may be seen as a potential departure from the principle that a Bill should not adversely affect rights and liberties of an individual. However, it is considered that the new offence is appropriate and reasonable, and the penalty proportionate to the wrong occasioned by the breach.

The Bill also allows QCAT to make various types of limitation orders in relation to the conduct of review proceedings. The contravention of a limitation order is an offence with a maximum penalty of 200 penalty units. These provisions may be seen as a potential departure from the principle that a Bill should not adversely affect rights and liberties of an individual. However, the new offences are considered appropriate and reasonable, and the penalty proportionate to the wrong occasioned by the breach, consistent with the same offences that currently apply under the GA Act.

The Bill also inserts a new provision that requires a relevant service provider to notify the senior practitioner of changes in relation to particular matters that occur after they have made an application for a restrictive practice authorisation, but before the senior practitioner has made a decision. The maximum penalty is 10 penalty units. This clause may be seen as a potential departure from the principle that a Bill should not adversely affect rights and liberties of an individual. However, it is considered that the provision is appropriate and reasonable, and the penalty proportionate to the wrong occasioned by the breach.

Immunity from civil and criminal liability

The Bill inserts a new clause and amends an existing provision in the DS Act to provide that a relevant service provider, or an individual acting for a relevant service provider, is not criminally or civilly liable for using a regulated restrictive practice in relation to a person with disability if the individual acts honestly and without negligence under sections 145 or 146. This is a potential departure from the principle that a Bill should not adversely affect the rights and liberties of individuals, specifically that it should not confer immunity from proceeding or prosecution without adequate justification.

However, it is considered that these immunity provisions are justified as there are sufficient safeguards to ensure that the immunities are only conveyed where the use of a regulated restrictive practices complies with the safeguards set out in sections 145 or 146, including that they are:

- necessary to prevent the person's behaviour causing harm to the person or others;
- used as a last resort to prevent harm to the person or others;
- the least restrictive way of ensuring the safety of the person or others;
- to be used for the shortest possible time to ensure the safety of the person or others;
- used in accordance with the NDIS behaviour support plan or state behaviour support plan for the person; and
- for environmental restraint involving the containment of the person or seclusion—comply with section 147 (relevant service provider to ensure a person's needs are met).

Whether the legislation has sufficient regard to the institution of Parliament (*Legislative Standards Act 1992*, s 4(2)(b))

Reference to legislation outside the responsibility of Queensland Parliament

The Bill amends the meaning of certain terms in the DS Act by reference to definitions in the NDIS Act and NDIS (RPBS) Rules and therefore references a range of external documents. This may be seen as a potential departure from the principle that a Bill have sufficient regard to the institution of Queensland Parliament. However, this is considered justified for the reasons outlined below.

Roles and responsibilities of jurisdictions to deliver the NDIS: In accordance with the agreed roles and responsibilities of the NDIS, and as articulated in the NDIS Act and subordinate legislation, the NDIS has a shared financial, regulatory and service delivery model. The NDIS Commission (a Commonwealth agency) has oversight and monitors the use of restrictive practices in Australia, while states and territories remain responsible for authorising or prohibiting the use of restrictive practices in their jurisdiction. The disability support market

delivers NDIS supports to eligible NDIS participants. The regulatory framework for the oversight and authorisation of the use of restrictive practices in Queensland reflects the shared functions between state and the Commonwealth, and the legislative framework for the NDIS stipulated by the Commonwealth Parliament and developed in consultation with states and territories.

National Principles: On 24 July 2020, Disability Ministers agreed to progress work toward greater national consistency based on the National Principles developed by the 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.

Queensland's current authorisation framework for the use of restrictive practices to support people with disability does not fully align 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 people with whom restrictive practices are used because of a lack of equality of protections. It also results in service system complexity for existing service providers, creating a risk of lack of compliance and may operate as a deterrent for new service providers to enter the market. Inconsistency of authorisation processes for the use of restrictive practices across jurisdictions has resulted in complexity.

Publicly available information: Some legislative instruments referenced in the Bill, including the NDIS (RPBS) Rules, are Commonwealth legislative instruments, and are subject to Parliamentary scrutiny and processes. Further, instruments are publicly available on Commonwealth and NDIS websites, and proactively distributed to subscribers when amended.

Regulation-making power

The Bill inserts the following provisions in the DS Act to provide for certain matters to be prescribed by regulation:

- section 140 provides that Part 6 does not apply in relation to a service provider to the extent the service provider is providing disability services that are not provided with funding received from DCSSDS, or another entity prescribed by regulation.
- section 142 provides for ***prohibited restrictive practices*** to be prescribed by regulation.
- section 149 provides that a copy of an application for authorisation must be given to an entity prescribed by regulation.
- section 151 provides that if, before the senior practitioner decides an authorisation application, the applicant's name or contact details, as stated in the application, change, or another matter prescribed by regulation changes in relation to the applicant, the applicant must give the senior practitioner notice about the change.
- section 178 provides for the content of state behaviour support plans, including that they include matters prescribed by regulation.
- section 182 provides Part 6, Division 5 (complaints about restrictive practices) applies, or does not apply, to another service provider prescribed by regulation.

- section 184 provides the senior practitioner may refer a complaints matter to a ***complaints entity*** that is prescribed by regulation.
- section 195 provides that the notification requirements about restrictive practice authorisations relating to visitable locations or visitable sites apply to a relevant service provider, other than a relevant service provider prescribed by regulation.
- section 199 provides that section 199 applies to a relevant service provider, other than a relevant service provider prescribed by regulation, that is using a regulated restrictive practice in relation to a person with disability. Further, the relevant service provider must give to the senior practitioner, in the way and at the times prescribed by regulation, information about the use of the restrictive practice prescribed by regulation.
- section 200AB that provides the senior practitioner's functions include performing any other function prescribed by regulation.

This may be considered a breach of the fundamental legislative principle that legislation has sufficient regard to the institution of Parliament. However, it is considered this approach is necessary to enable flexibility to prescribe further requirements, if required, to ensure the reformed authorisation framework can operate efficiently and effectively. The field of positive behaviour supports and restrictive practices is highly clinical, technical and evidence based, and best practice is constantly evolving nationally. The delegation of service delivery and technical detail to regulation provides for flexibility to ensure the DS Act remains contemporary and in line with accepted best practice.

In addition, regulation-making powers in the Bill must have regard to the objects of the DS Act and is limited to the scope of the DS Act's application. This will require any subordinate legislation to be developed within the boundaries of these provisions.

Transitional regulation-making power

The Bill inserts new section 406 of the DS Act that provides for a transitional regulation-making power under the DS Act to allow a regulation to make provision about a matter for which – (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of this Act as in force before its amendment by the amending Act to the operation of the amended Act, including, for example, the sharing of particular information; and (b) the DS Act does not provide or sufficiently provide. It also provides that transitional regulation may have retrospective operation to a day not earlier than the day the section commences. Further, this section and any transitional regulation expire on the day that is 2 years after the day this section commences.

The Bill similarly inserts new section 283 of the GA Act that provides for a transitional regulation-making power under the GA Act to allow a regulation to make provisions about a matter for which - (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of this Act as in force before its amendment by the *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2024* to the operation of this Act as in force from the commencement, including, for example, for the sharing of particular information; and (b) the GA Act does not provide or sufficiently provide.

This may be considered a breach of the fundamental legislative principle that legislation has sufficient regard to the institution of Parliament. The inclusion of a transitional regulation-

making power of this nature is considered necessary to address operational and practical issues that might arise in the implementation of the reformed authorisation framework in Queensland.

Noting the significant human rights implications for persons involved in the use of positive behaviour supports and restrictive practices, it is critical that appropriate arrangements are in place to support approvals and applications made under the existing authorisation framework to transition to the new framework in an appropriate manner. The transitional regulation-making power will provide flexibility to respond to transitional arrangements identified as required following passage of the Bill. To ensure the transitional regulation-making power has sufficient regard to the institution of Parliament, the Bill provides for sunset clauses requiring transitional regulations to expire two years after their commencement.

Delegation of the senior practitioner's functions

The Bill inserts a new clause in the DS Act that provides the senior practitioner may delegate a power of the senior practitioner under the Act to a member of the senior practitioner's staff, or a public service officer, who is appropriately qualified to exercise the power delegated.

This may be considered a breach of the fundamental legislative principle that legislation has sufficient regard to the institution of Parliament, in particular that a Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons. However, it is considered the Bill clearly provides the delegation of the senior practitioner's powers only in appropriate cases and to appropriately qualified persons. Before making an instrument of delegation, the senior practitioner will consider all circumstances including the nature of the power, its consequences and whether its use requires particular expertise or experience when deciding on the appropriate delegates.

Delegation of legislative power to prescribe an alternative program to the DSOA program

The Bill amends the Coroners Act to include a delegation of legislative power to prescribe an alternative program to the program administered by the Commonwealth and known as the Commonwealth Disability Support for Older Australians (DSOA) program.

This may be considered a breach of the fundamental legislative principle that legislation has sufficient regard to the institution of Parliament, in particular that a Bill only allows the delegation of legislative power only in appropriate cases and to appropriate persons. However, this is considered justified on the grounds that it is considered reasonably necessary to accommodate and futureproof the proposed expansion of the reportable death framework under the Coroners Act, in the event the Commonwealth administers the supports and services currently provided under the DSOA program, via an equivalent program with a changed name.

Consultation

Stakeholder consultation on ideas for reform was conducted over a three-month period from November 2021 to January 2022. Consultation was guided by a consultation paper (including an easy read version produced by the Council for Intellectual Disability) and online resources.

Queenslanders with Disability Network (QDN) was engaged to conduct focus groups and gather

the views of people with disability and their families and carers. Other consultation methods included:

- Online engagement through Queensland Communities (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 with preliminary findings of the PBSRP Review 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.
- Prohibiting 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 easy read formats for stakeholders to provide short answers 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 restrictive practices regulated 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 of 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.
- 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.

The Coroners Court was consulted in relation to the amendments to the Coroners Act.

Consistency with legislation of other jurisdictions

On 24 July 2020, Disability Ministers endorsed the National Principles and agreed to progress work toward greater consistency on this basis. At that time, other jurisdictions either had no regulatory authorisation framework in place or had regulatory frameworks that aligned (either largely or in full) with the National Principles. All other jurisdictions consequently agreed in full to the National Principles and have provided action plans to the NDIS Commission for progressing works towards national consistency.

Other states and territories generally have more streamlined authorisation frameworks. For example, in in the Northern Territory under the *NDIS (Authorisations) Act 2019* (NT), an NDIS provider may apply to Northern Territory's senior practitioner for an authorisation or interim authorisation for the use of restrictive practices. The senior practitioner is a public sector employee, with the qualifications, clinical experience and personal qualities necessary to exercise the senior practitioner's powers and perform the senior practitioner's functions, appointed by the Minister.

In Victoria, under the *Disability Act 2006* (Vic), an authorised program officer (appointed by a registered NDIS provider) may authorise the use of restrictive practices. Additional approval for the use of seclusion, mechanical and physical restraints must be obtained from Victoria's senior practitioner. The senior practitioner, a person who has the appropriate clinical qualifications and experience to perform the functions and exercise the powers conferred on the senior practitioner, is appointed by the Secretary.

In South Australia, under the *Disability Inclusion Act 2018* (SA), there is a senior authorising officer and authorised program officers. Authorised program officers can authorise level 1 restrictive practices, while the senior authorising officer can authorise level 1 or 2 restrictive practices.

It is intended that like the Northern Territory, Victoria and South Australia, Queensland implement a senior practitioner type role with specific powers and functions as detailed below.

The amendments in the Bill will contribute towards greater national consistency.

The expansion of the reportable deaths in care framework to include people who receive disability supports under the DSOA program is unique to the State of Queensland.

Reasons for non-inclusion of information

Not applicable.

Notes on provisions

Part 1 Preliminary

1 Short title

Clause 1 provides that the Bill, when enacted, can be cited as the Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2024.

2 Commencement

Clause 2 provides that this Act commences on a day fixed by proclamation.

Part 2 Amendment of Coroners Act 2003

3 Act amended

Clause 3 states that this Part amends the *Coroners Act 2003.*

4 Amendment of s 7 (Duty to report deaths)

Clause 4 amends the definition of 'relevant service provider' to include NDIS registered providers who were providing services or supports in relation to the death in care of a person mentioned in new subsection 9(1)(f), inserted by Clause 5, and amends subsection 7(2) to include reference to new subsection 9(1)(f). This ensures that disability service providers who provide disability services or supports under the program administered by the Commonwealth Government known as the Disability Support for Older Australians (DSOA) Program are required to report the death of a DSOA client to a police officer or coroner, regardless of whether anyone else may have reported the death. The Commonwealth Government administers the DSOA program under the authority granted by the *Financial Framework (Supplementary Powers) Regulations 1997*, Schedule 1AB Part 4 Item 470.

5 Amendment of s 9 (*Death in care* defined)

Clause 5 amends the definition of 'death in care' by inserting new subsection 9(1)(f), to include a person who was not living in aged care or a private dwelling and was receiving services or supports under the DSOA program (a DSOA client). This amendment ensures that the death of DSOA clients is required to be reported to the coroner or police, consistent with the scope of coverage of the reportable deaths framework that applied prior to the establishment of the NDIS.

Subclause (1) includes a delegation of legislative power to prescribe an alternative program to the program administered by the Commonwealth Government, in the event that the Commonwealth administers the supports and services currently provided under the DSOA program, via an equivalent program with a changed name.

Subclause (2) amends subsection 9(4), which defines the term 'private dwelling', to include reference to persons mentioned in new subsection 9(1)(f). This ensures that the requirement to report the death of a DSOA client does not extend to DSOA clients who lived in a dwelling that was used, or used principally, as a separate residence for the DSOA client and/or one or more of their relations.

Subclause (3) amends subsection 9(4)(a) to remove the reference to a 'Chapter 5B approval' under the *Guardianship and Administration Act 2000* and replaces this with reference to an 'authorised regulated restrictive practice'. This is consequential to the omission of Chapter 5B of the *Guardianship and Administration Act 2000* and the introduction of the reformed authorisation framework under the *Disability Services Act 2006*.

Subclause (4) replaces the subsection 9(5) definition of 'Chapter 5B approval' with a new definition of an 'authorised regulated restrictive practice', to mean a regulated restrictive practice that has been authorised to be used in relation to a person with disability under the *Disability Services Act 2006*. This is consequential to the omission of Chapter 5B of the *Guardianship and Administration Act 2000* and the introduction of the reformed authorisation framework under the *Disability Services Act 2006*.

Subclause (5) amends the subsection 9(5)(a) definition of 'restrictive practice', to mean a regulated restrictive practice within the meaning of the *Disability Services Act 2006*. This is consequential to the omission of Chapter 5B of the *Guardianship and Administration Act 2000* and the introduction of the reformed authorisation framework under the *Disability Services Act 2006.*

6 Amendment of s 47 (Coroner's comments and findings for particular deaths)

Clause 6 amends section 47 to insert new subsection 2(A) which will require the coroner to give a written copy of the findings and comments made regarding the following matters to the senior practitioner:

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

Subclause (2) amends subsection 47(3) to insert new definitions of a ***prohibited restrictive practice*** within the meaning of the *Disability Services Act 2006*. This subclause also amends subsection 47(3) to insert a new definition of ***senior practitioner (restrictive practices)***, to mean the senior practitioner appointed under the *Disability Services Act 2006.*

Subclause (3) amends the subsection 47(3) definition of ***relevant Act*** to include reference to new subsection 9(1)(f). This ensures that the coroner must give a written copy of the findings and comments in relation to the investigation of a death in care of a DSOA client (under section 9(1)(f)), to the chief executive and Minister responsible for the *Disability Services Act 2006*.

Subclause (4) renumbers subsections 47(3) to (5).

7 Amendment of sch 2 (Dictionary)

Clause 7 inserts a new definition for ***restrictive practice authorisation*** for the *Coroners Act 2003*, to adopt the definition set out in the *Disability Services Act 2006*, section 142.

Part 3 Amendment of *Disability Services Act 2006*

8 Act amended

Clause 8 provides that Part 3 amends the *Disability Services Act 2006.*

Further amendments to the *Disability Services Act 2006* are also provided for in Schedule 1, which contains minor, consequential amendments.

9 Amendment of s 6 (Objects of Act)

Clause 9 amends section 6(1)(d) to provide the objects of the *Disability Services Act 2006* include to safeguard the rights of 'people with disability, including by regulating the use of restrictive practices by relevant service providers in relation to people with disability' only where it is necessary to protect a person from harm and with the aim of reducing or eliminating the need for use of the restrictive practices.

This amendment reflects that the Bill will broaden the scope of the authorisation framework for the use of regulated restrictive practices under Part 6 of the *Disability Services Act 2006* from adults with cognitive or intellectual disability, to all persons with disability, including adults and children.

10 Amendment of s 7 (How objects are mainly achieved)

Clause 10 amends section 7 of the *Disability Services Act 2006,* which states how the objects of the Act are mainly achieved.

The clause amends section 7(a) by inserting clarifying words to provide that one of the main ways the objects of the Act are achieved is by stating the human rights principle and supporting rights applying to 'the administration of this Act in relation to people with disability. The purpose of this amendment is to reflect that the human rights principle and supporting rights in the Act apply only to the administration of this Act, and not more broadly to people with disability.

The clause also amends section 7(f) to remove reference to 'adults with intellectual or cognitive disability'. The amended section 7(f) provides the objects of the *Disability Services Act 2006* are also achieved by stating the circumstances in which relevant service providers are authorised to use restrictive practices in relation to 'people with disability'. The purpose of this amendment is to reflect the broadened scope of the authorisation framework from adults with cognitive or intellectual disability, to all persons with disability, for the use of regulated restrictive practices under Part 6 of the *Disability Services Act 2006*.

11 Replacement of pt 2, div 1 (Human rights principle)

Clause 11 omits and replaces the general principles of the *Disability Services Act 2006* under Part 2, Division 1.

New section 17 provides that an entity, including a relevant service provider, that performs a function, or exercises a power, under the *Disability Services Act 2006* in relation to a person with disability must have regard to the human rights principles in performing functions or exercising powers. Previously section 17 did not require a relevant entity or service provider to have regard to the human rights principles. This approach aligns with the *Human Rights Act 2019.*

New section 18 provides an overarching principle that people with disability have the same human rights as other members of society and should be empowered to exercise their rights. Subsection (2) provides for supporting rights to the principle stated in subsection (1).

The purpose of replacing section 18 is to ensure the human rights principles for the purpose of the *Disability Services Act 2006* more closely reflect and align with the articles of the *United Nations Convention on the Rights of Persons with Disabilities* (UNCRPD) and its eight guiding principles:

- Respect for a person with disability's inherent dignity, individual autonomy including freedom to make their own choices, and to be independent;
- Non-discrimination;
- Full and effective participation and inclusion in society;
- Respect for difference and acceptance of a person with disability as part of human diversity and humanity;
- Equality of opportunity;
- Accessibility;
- Equality between men and women;
- Respect for the evolving capacities of children with disability and their right to preserve their identities.

12 Amendment of s 32A (Application of part)

Clause 12 amends section 32A of the *Disability Services Act 2006* by omitting section 32A(1)(c) and removing its regulation-making head of power. This amendment reflects that there is no longer a need to prescribe other service providers by regulation, which was previously required to facilitate the effective implementation and application of the NDIS in Queensland.

13 Amendment of pt 6, hdg (Positive behaviour support and restrictive practices)

Clause 13 omits the heading of Part 6 and replaces it with 'Restrictive practices'.

The purpose of this amendment is to reflect that the terminology and definitions within Part 6 of the *Disability Services Act 2006* now align with the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* (Cwlth) (NDIS (RPBS) Rules).

14 Replacement of pt 6, divs 1-6

Clause 14 amends Part 6 of the *Disability Services Act 2006* by omitting the existing Part 6, Divisions 1-6 and replacing it with a new Part 6, Divisions 1-6.

The purpose of this amendment is to replace 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 the Queensland Government.

139 Purpose of part

New section 139 states the purpose of this Part is to protect the rights of people with disability by:

- stating principles to be taken into account by relevant service providers in providing disability services or NDIS supports or services to people with disability whose behaviour causes harm to themselves or others;
- promoting the reduction and elimination of the use of regulated restrictive practices by relevant service providers;
- providing an authorisation framework for the use of regulated restrictive practices by relevant service providers in relation to people with disability that—
    - is compatible with the human rights principles under the section 18 of the *Disability Services Act 2006*;
    - ensures the use is the least restrictive way of ensuring the safety of people with disability and others;
    - maximises the opportunity for positive outcomes;
    - provides transparency in relation to the use of regulated restrictive practices;
- ensuring regulated restrictive practices are used in relation to people with disability only if the requirements of this Part are complied with;
- providing for the review of particular decisions relating to the authorisation of the use of regulated restrictive practices.

140 Application of part

New section 140 defines the scope of the reformed authorisation framework and the application of this Part.

This Part applies to the following service providers that provide disability services or NDIS supports or services to a person with disability:

- a registered NDIS provider;
- a funded service provider;
- the department—this refers to the administrative unit responsible for disability services, under the relevant Administrative Arrangements Order made under the *Constitution of Queensland 2001*, currently the Department of Child Safety, Seniors and Disability Services (DCSSDS);
- another service provider prescribed by regulation.

It does not apply in relation to a service provider:

- prescribed by regulation; or
- to the extent the service provider is providing disability services or NDIS supports or services prescribed by regulation; or
- to the extent the service provider is providing disability services that are not provided either wholly or partly with funding received from the department, or another entity prescribed by regulation.

A service provider is a relevant service provider to the extent this Part applies in relation to the provider as described under subsections (1) and (2).

This Part applies in relation to a relevant service provider that provides disability services or NDIS supports or services to a person with disability even if particular disability services or NDIS supports or services are provided to the person using funding received from a mix of funds or resources.

The effect of this section is that reformed authorisation framework applies to people with disability, including children with disability, while they are receiving:

- disability services from a funded service provider or DCSSDS; or
- NDIS supports or services from a registered NDIS provider.

This Part does not regulate the use of restrictive practices outside the provision of disability services or NDIS supports or services, even if restrictive practices are being used in relation to a person with disability. This section also includes a note to clarify how the restrictive practices framework under Part 6 applies to a forensic disability client under the *Forensic Disability Act 2011*.

141 Principles for providing disability services or NDIS supports or services to particular people with disability

New section 141 outlines certain principles for the provision of disability services or NDIS supports or services by a relevant service provider. It applies to a relevant service provider that is providing disability services or NDIS supports or services to a person with disability whose behaviour causes harm to the person or others.

The section provides that the relevant service provider must provide disability services or NDIS support or services to the person in a way that:

- promotes the persons developmental and physical, mental, social and vocational ability, and opportunities for participation and inclusion in the community; and
- responds to the person's needs and goals; and
- ensures the person and their family and friends are given an opportunity to participate in the development of strategies for the care and support of the person; and
- considers the person's cultural rights; and
- involves behaviour support planning informed by evidence-based best practice and the implementation of strategies, to produce behavioural change, focused on skills development and environmental design; and
- ensures transparency and accountability in the use of regulated restrictive practices; and

- recognises that regulated restrictive practices should only be used when necessary to prevent harm to the person or others, and if the use is the least restrictive way of ensuring the safety of the person or others; and
- recognises that regulated restrictive practices should not be used punitively or in response to behaviour that does not cause harm to the person or others; and
- aims to reduce the intensity, frequency and duration of the person's behaviour that causes harm to the person or others; and
- aims to reduce or eliminate the need to use regulated restrictive practices; and
- if there is an NDIS behaviour support plan or a state behaviour support plan for the person with disability, ensures regulated restrictive practices are only used consistent with the plan; and
- if the person is a child, that the best interests of the child are paramount, and that full consideration should be given to the need to strengthen, preserve and promote positive relationships between the child and the child's parents, family members and other people who are significant in the child's life.

142 Definitions for part

New section 142 sets out the key terms for the operation of the reformed authorisation framework. As far as practicable, terms have been defined to ensure consistency across Queensland and Commonwealth legislation, including the NDIS (RPBS) Rules.

Aligning important definitions with the terminology used in the NDIS (RPBS) Rules is intended to minimise the administrative overheads for relevant service providers. Definitions that are aligned with the NDIS (RPBS) Rules in new section 142 include ***chemical restraint***, ***environmental restraint***, ***mechanical restraint***, ***NDIS behaviour support plan, physical restraint*** and ***seclusion***.

Other key definitions include ***behaviour support assessment***, ***containment*** (as a form of ***environmental restraint*** not defined in the NDIS (RPBS) Rules, ***harm***, ***least restrictive***, ***parent***, ***relevant person***, and ***state behaviour support plan***.

A ***relevant person*** for an adult with disability includes:

- a guardian or attorney; or
- a person who is a part of the adult's support network and who is in a close and continuing relationship with them; or
- a person, other than a paid carer, who is the primary carer of the adult and in a close and continuing relations with them; or
- if the adult with disability is an Aboriginal person or a Torres Strait Islander person, any person who is regarded under Aboriginal tradition or Island custom as a child, parent or sibling of the adult, and who is in a close and continuing relationship with the adult.

A ***relevant person*** for a child with disability includes:

- a parent of the child; or
- a person granted custody or guardianship of the child under the *Child Protection Act 1999*, including the chief executive for example; or
- if a person who is a parent or granted custody of the child is not the primary carer, the primary carer; or

- a person with whom the child has a significant relationship (for example, an approved foster carer or kinship carer).

143 State behaviour support plans

New section 143 defines ***state behaviour support plan***, including that a state behaviour support plan can mean either a ***comprehensive state behaviour support plan***; or an ***interim state behaviour support plan***.

State behaviour supports plans relate to the provision of disability services by a relevant service provider where there is a need to use a regulated restrictive practice to support a person with disability.

Generally, a ***state behaviour support plan***, for a person with disability, is a plan that describes the strategies to be used to:

- meet the person's needs; and
- support the person's development of skills; and
- maximise opportunities through which the person can improve their quality of life; and
- reduce the intensity, frequency and duration of the person's behaviour that causes harm to the person or others.

A ***comprehensive state behaviour support plan*** is a plan that:

- is based on a behaviour support assessment, (including a functional behaviour assessment) of a person with disability; and
- contains proactive and evidence-informed strategies to improve the person with disability's quality of life and support their progress towards positive change; and
- includes provisions for the use of a regulated restrictive practice in relation to the person with disability over the long term.

An ***interim state behaviour support plan*** is a plan that:

- contains general preventative and responsive strategies designed to keep a person with disability and others safe while a behaviour support assessment, including a functional behavioural assessment, of the person is carried out and a comprehensive state behaviour support plan is developed for the person; and
- includes provisions for the use of a regulated restrictive practice in relation to the person with disability over the short term.

Division 2 Use of regulated restrictive practices

This Division deals with the requirements for the lawful use of a regulated restrictive practice.

As per new section 190, a relevant service provider, or an individual acting for a relevant service provider, will not be civilly or criminally liable for the use of a regulated restrictive practice if the individual acts honestly and without negligence under section 145 or 146.

Subdivision 1 General

144 Purpose of division

New section 144 provides that this Division states the circumstances in which a relevant service provider, or an individual acting for a relevant service provider, is permitted to use a regulated restrictive practice in relation to a person with disability.

Generally, the use of a regulated restrictive practice in relation to a person with disability must be authorised under a restrictive practice authorisation. However, a regulated restrictive practice may be used after a restrictive practice authorisation ends if the use is in accordance with new section 146.

145 Use of regulated restrictive practices permitted after restrictive practice authorisation given

New section 145 outlines the circumstances when a relevant service provider, or an individual acting for a relevant service provider, may lawfully use a regulated restrictive practice after authorisation is given.

Subsection (1) states a relevant service provider, or an individual acting for a relevant service provider, may use a regulated restrictive practice in relation to a person with disability to whom the service provider is providing disability services or NDIS supports or services if:

- the service provider holds a restrictive practice authorisation that authorises the use of the restrictive practice in relation to the person; and
- the use is necessary to prevent the person's behaviour causing harm to the person or others; and
- the restrictive practice is used as a last resort to prevent harm to the person or others; and
- the restrictive practice is the least restrictive way of ensuring the safety of the person or others; and
- the restrictive practice is used for the shortest possible time to ensure the safety of the person or others; and
- the use of the restrictive practice complies with the NDIS behaviour support plan or state behaviour support plan for the person; and
- for environmental restraint involving the containment of the person or seclusion—the use is in accordance with section 147.

A note states that section 199 provides for the requirement for a relevant service provider to give the senior practitioner information about the use of a regulated restrictive practice.

Subsection (2) states that the use of the regulated restrictive practice does not comply with an NDIS behaviour support plan or state behaviour support plan if the relevant service provider has implemented the preventative or proactive strategies stated in the plan.

Subsection (3) declares that a regulated restrictive practice may be used in relation to a person with disability under this section despite the absence or refusal of the person's consent.

146 Other circumstances regulated restrictive practice may be used

New section 146 outlines the other circumstances where a relevant service provider, or an individual acting for a relevant service provider, may lawfully use a regulated restrictive practice after an existing restrictive practices authorisation has ended. Section 146 will apply if:

- a restrictive practice authorisation given to a relevant service provider authorises the use of a regulated restrictive practice in relation to a person with disability (an ***existing authorisation***); and
- the service provider applies for a new restrictive practice authorisation under section 148, at least 30 days before the day the existing authorisation ends; and
- when the existing authorisation ends, the application for the new restrictive practice authorisation has not been decided or withdrawn; and
- the service provider is providing disability services or NDIS supports and services to the person.

Subsection (2) states that the relevant service provider, or individual acting for the relevant service provider, may use the regulated restrictive practice in relation to the person after the existing authorisation ends if:

- the use is necessary to prevent the person's behaviour from causing harm to the person or others; and
- the restrictive practice is used as a last resort; and
- it is the least restrictive way of ensuring the safety of the person or others; and
- it is used for the shortest possible time; and
- it is not a prohibited restrictive practice; and
- the use complies with the NDIS behaviour support plan or state behaviour support plan for the person; and
- if the restrictive practice involves the containment of a person as an environmental restraint, the use complies with section 147.

A note states that section 199 provides for the requirement for a relevant service provider to give the senior practitioner information about the use of a regulated restrictive practice.

Subsection (3) states the relevant service provider or individual may only use the regulated restrictive practices until the earlier of:

- the application for the new restrictive practice authorisation in withdrawn;
- the receipt of a notice by the service provider under section 162 that the senior practitioner has refused to approve the new restrictive practice application;
- a new restrictive practice authorisation given to the service provider takes effect;
- the day is 30 days after the day the existing authorisation ends or a later day that is stated in the notice given to the service provider.

Subsection (4) states the senior practitioner, by notice given to the relevant service provider, can extend the period the service provider may use the regulated restrictive practice by up to 30 days.

Subsection (5) states the use of a regulated restrictive practice does not comply with an NDIS behaviour support plan or state behaviour support plan if the relevant service provider hasn't implemented the preventative or proactive strategies as stated in the plan.

Subsection (6) states that to remove any doubt, it is declared that a regulated restrictive practice may be used in relation to a person with disability under this section despite the absence or refusal of the person's consent.

The intent of this section is to ensure relevant services providers are able to continue the use of authorised restrictive practices after the authorisation is due to end, and until a new authorisation decision is made by the senior practitioner, if the use is consistent with the previous authorisation.

Subdivision 2 Particular requirements for environmental restraint involving containment or seclusion

147 Relevant service provider to ensure person's needs are met

New section 147 outlines particular requirements for containment or seclusion to ensure a person with disability's needs are met.

This section applies to a relevant service provider that:

- is using environmental restraint in relation to a person with disability to the extent it involves the containment of the person; or
- is secluding a person with disability.

The relevant service provider must ensure:

- the person is given each of the following:
    - sufficient bedding and clothing;
    - sufficient food and drink;
    - access to adequate heating and cooling;
    - access to toilet facilities;
    - the person's medication as prescribed by a doctor; and
- the person is regularly observed and monitored while the regulated restrictive practice is being used.

Containment is a type of ***environmental restraint***. See the definition of ***environmental restraint*** in section 142.

The senior practitioner may impose additional conditions for the use of containment or seclusion in the restrictive practice authorisation, such as the maximum length of time that containment and seclusion can be use at any one time, when deciding the application under section 157.

Division 3 Restrictive practice authorisations

This Division deals with applications by a relevant service provider who is providing disability services or NDIS supports or services to a person with disability to the senior practitioner for

authorisation to use a regulated restrictive practice. The relevant service provider is sometimes referred to as the 'applicant' throughout this Division.

Under the reformed authorisation framework, all authorisation decisions will be made by the senior practitioner, or a delegate within the Office of the Senior Practitioner.

Subdivision 1 Making applications

148 Application for restrictive practice authorisation

New section 148 outlines who may apply to the senior practitioner for restrictive practice authorisation.

A relevant service provider who is providing disability services or NDIS supports or services to a person with disability may apply to the senior practitioner for authorisation to use a regulated restrictive practice in relation to the person. However, an application for authorisation may not relate to the use of a prohibited restrictive practice.

A note states to see section 146 in relation to the use of a regulated restrictive practice without a restrictive practice authorisation in particular circumstances.

149 Requirements for application

New section 149 outlines the requirements for applications to the senior practitioner for a restrictive practice authorisation.

The application must be—

- in the approved form; and
- accompanied by—
    - a copy of the NDIS behaviour support plan or state behaviour support plan for the person with disability;
    - any behaviour support assessment, including a functional behavioural assessment, carried out for the development or review of the NDIS behaviour support plan or state behaviour support plan; and
    - if the applicant is aware that the person with disability is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—a copy of the order or authority.

The applicant must give a copy of the application to the person with disability and a person prescribed by regulation. If the person with disability is an adult, they receive a copy of the application. If the person with disability is a child, each parent of the child and, to the extent practicable, the child.

150 Request for further information or documents

New section 150 provides the senior practitioner with the ability to request further information or documents or arrange to visit a place at which the regulated restrictive practices are proposed to be used. This is to ensure the senior practitioner has the relevant information required to make an informed authorisation decision.

Before deciding the application, the senior practitioner may, by notice given to the applicant, ask the applicant to give the senior practitioner, stated information, or a stated document, the senior practitioner reasonably believes is relevant to the application.

The notice must state the period within which the information or document must be given; and that the senior practitioner may withdraw the application under new section 153 if the applicant does not comply with the request within the stated period.

Also, before deciding the application, the senior practitioner may arrange with the applicant to visit a place at which the regulated restrictive practice is proposed to be used or, with the consent of the person with disability, arrange to meet with the person. This reflects that in deciding whether to grant an application the senior practitioner must consider the suitability of the environment in which the regulated restrictive practice is to be used (see section 159). It is intended that the senior practitioner will arrange a visit in consultation with the relevant service provider.

151 Notice of particular changes

New section 151 outlines when a relevant service provider who has applied for authorisation to use a regulated restrictive practice (the applicant) must give notice of change in information to the senior practitioner. This is intended to ensure timely advice from the applicant so the senior practitioner can contact the applicant throughout the application process.

This section applies if, before the senior practitioner decides an application:

- the applicant's name or contact details as stated in the application change; or
- another matter, prescribed by regulation for this section, changes in relation to the applicant.

The applicant must, within 7 days after the change happens, give the senior practitioner a notice about the change, in the approved form and in an approved way.

The maximum penalty for non-compliance is 10 penalty units.

Subdivision 2 Withdrawal of applications

152 Request for withdrawal

New section 152 provides that a relevant service provider who applies for a restrictive practice authorisation (the applicant) may ask the senior practitioner to withdraw the application at any time before it is decided. The request may be made orally or in writing.

The senior practitioner may either withdraw the application or decide to continue deciding the application despite the request. However, if the senior practitioner decides to continue deciding the application, the applicant must be given notice of the decision.

153 Withdrawal because of failure to comply with particular request

New section 153 states that the senior practitioner may withdraw an application for a restrictive practice authorisation before it is decided if:

- the senior practitioner gives the applicant notice under section 150(1) asking the applicant to provide stated information or a stated document; and
- the notice includes a warning mentioned in section 150(2)(b); and
- the applicant does not comply with the notice.

154 Notice of withdrawal

New section 154 provides that if the senior practitioner withdraws an application under section 152 or 153 before it is decided, the senior practitioner must give the applicant a notice (a ***withdrawal notice***) that states the application is withdrawn; and the reason for the withdrawal.

155 Giving copy of withdrawal notice

New section 155 provides that the senior practitioner must give a copy of the withdrawal notice to:

- the person with disability to whom the application relates;
- each relevant person for the person with disability who—
    - was consulted by the applicant in the development of the NDIS behaviour support plan or state behaviour support plan for the person with disability; or
    - was consulted by the senior practitioner under section 160 in relation to the application;
- if the senior practitioner is aware the person with disability is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—the authorised psychiatrist responsible for treating the person under that Act;
- if the senior practitioner is aware the person with disability is a forensic disability client—a senior practitioner (forensic disability) responsible for the care and support of the person under the *Forensic Disability Act 2011*.

The senior practitioner must, unless it is not practicable in the circumstances, give a copy of the notice to each person who is a parent of the child.

Subsection (4) states the senior practitioner may give a copy of the notice to the NDIS commissioner or the chief executive. This will depend on whether the application related to a disability service or NDIS support or service, noting the distinct roles and responsibilities of both entities. The provision of this information falls within the roles and responsibilities of both entities to investigate and monitor compliance with conditions of registration or funding.

Subdivision 3 Deciding applications

156 Application of subdivision

New section 156 provides that that this Subdivision applies if a relevant service provider makes an application for authorisation to use a regulated restrictive practice to support a person with disability and the application has not been withdrawn under Subdivision 2.

157 Deciding application

New section 157 states that the senior practitioner must consider the application and decide to:

- give the restrictive practice authorisation with or without conditions; or
- refuse to approve the application.

158 When restrictive practice authorisation may be given

New section 158 provides that the senior practitioner may decide to give the restrictive practice authorisation only if satisfied of certain criteria.

This applies where the senior practitioner is considering an application for the use of a regulated restrictive practice by a relevant service provider, irrespective of whether they are providing disability services or NDIS supports or services. It also applies to an application that contains an interim NDIS behaviour support plan/interim state behaviour support plan or comprehensive NDIS behaviour support plan/comprehensive state behaviour support plan.

The section provides the senior practitioner may only give the restrictive practices authorisation if satisfied:

- there is a need for the regulated restrictive practice to be used in relation to the person because the person's behaviour has previously resulted in harm to the person or others; and
- there is a reasonable likelihood that, if the authorisation is not given, the person's behaviour will cause harm to the person or others; and
- if the NDIS behaviour support plan for the person includes provision for the regulated restrictive practice—the plan was developed—in accordance with the NDIS (RPBS) Rules; and for a plan that includes the provision for chemical restraint in consultation with the person's treating doctor; and
- if the state behaviour support plan for the person includes provision for the regulated restrictive practice—the plan was developed—in accordance with section 176; and for a plan that includes provision for chemical restraint, in consultation with the person's treating doctor; and
- there is a reasonable likelihood that if the NDIS behaviour support plan or state behaviour support plan for the person is implemented as proposed:
    - the risk of the person's behaviour causing harm will be reduced or eliminated; and
    - the person's quality of life will be improved in the long term; and
    - the observation and monitoring provided for under the NDIS behaviour support plan or state behaviour support plan will be appropriate; and
- the regulated restrictive practice will be used only:
    - as a last resort to prevent harm to the person or others; and
    - after consideration of the likely impact of the use of the regulated restrictive practice in relation to the person; and
- to the extent possible, best practice alternative strategies will be used before the regulated restrictive practice is used; and
- the alternative strategies that have been considered or used are documented in the NDIS behaviour support plan or state behaviour support plan for the person; and
- the proposed use of the regulated restrictive practice is the least restrictive way of ensuring the safety of the person and others; and is proportionate to the risk of harm to the person or others; and
- the regulated restrictive practice is not a prohibited restrictive practice.

159 Matters senior practitioner to consider

New section 159 states that in deciding whether to grant an application, the senior practitioner must consider:

- the person with disability's capacity for understanding, or making decisions about, the use of restrictive practices in relation to the person;
- if the senior practitioner is aware the relevant person with disability is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016* - the terms of the order or authority;
- any information available to the senior practitioner about strategies, including regulated restrictive practices, previously used to manage the behaviour of the relevant person with disability that causes harm to the person or others, and the effectiveness of those strategies;
- the type of NDIS supports or services or state disability services provided to the relevant person with disability; and
- the suitability of the environment in which the regulated restrictive practice is to be used.

Also, in deciding whether to grant the application, the senior practitioner may, but need not, consider the following:

- if a behaviour support assessment, including a functional behavioural assessment, of the person with disability has been carried out:
    - the findings, theories and recommendations of the persons who assessed the person;
    - how any difference of opinion between the persons who assessed the person was taken into account in developing the NDIS behaviour support plan or state behaviour support plan for the person;
- the views of each entity or department consulted during the carrying out of a functional behavioural assessment of the relevant person with disability or the development of the NDIS behaviour support plan or state behaviour support plan for the person about the use of a regulated restrictive practice in relation to the person;
- the way in which the relevant service provider will support and supervise staff involved in implementing the NDIS behaviour support plan or state behaviour support plan for the relevant person with disability;
- any information in relation to the relevant person with disability or the relevant service provider received by the senior practitioner from the NDIS Commission
- any report given to the senior practitioner under section 47 of the *Public Guardian Act 2014*;
- for a relevant person with disability who is a child—any information disclosed to the senior practitioner under the *Child Protection Act 1999* in relation to the child including, for example, information about the child's behaviour or an assessment of the child carried out in connection with the *Child Protection Act 1999*.

160 Requirement to consult

New section 160 states that in deciding the application, 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.

Unless it is not practicable in the circumstances, the senior practitioner must also consult with, and consider the views of, the following persons about the proposed use of the regulated restrictive practice:

- each relevant person for the person with disability the senior practitioner is aware of;
- if the senior practitioner is aware the person with disability is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—the authorised psychiatrist responsible for treating the person under that Act;
- if the senior practitioner is aware the person with disability is a forensic disability client—a senior practitioner (forensic disability) responsible for the care and support of the person under the *Forensic Disability Act 2011*;
- any other person the senior practitioner considers to be integral to making a decision on the application.

When consulting with a person with disability, or a relevant person for the person with disability, the senior practitioner must ensure the consultation is carried out in a way that is accessible to the person.

If the person with disability is a child, the senior practitioner must, unless it is not practicable in the circumstances, consult with each person who is a parent of the child.

161 Paramount principle for decision relating to child with disability

New section 161 states the paramount principle for a decision relating to a child with disability. This section applies if:

- the senior practitioner is making a decision about an application to support a person with disability who is a child; and
- there is a conflict between the child's safety, wellbeing and best interests, whether immediate or long-term in nature, and the interests of an adult caring for the child.

This section provides the main principle for the making of the decision by the senior practitioner is that the safety, wellbeing and best interests of the child is paramount.

162 Notice of decision

New section 162 states that the senior practitioner must, as soon as practicable after deciding whether to grant the application for authorisation, give the relevant service provider notice of the decision, including:

- the name of the person with disability;
- the name of the relevant service provider;
- if the application is granted:
    - the regulated restrictive practices the relevant service provider is authorised to use; and
    - the day the authorisation takes effect; and
    - the period for which it has effect; and
    - any conditions to which the authorisation is subject;

- if the application is refused—that a person could become criminally or civilly liable for continuing to use, a regulated restrictive practice to support a person with disability.

The notice of decision must include or be accompanied by a notice complying with the *Queensland Civil and Administrative Tribunal Act 2009*, section 157(2) for the decision.

The stated period must not exceed six months if the NDIS behaviour support plan for the person with disability is an interim behaviour support plan under the NDIS (RPBS) Rules or the state behaviour support plan for the person is an interim state behaviour support plan. Otherwise, the stated period is 12 months.

163 Giving copy of notice of decision

New section 163 provides that the senior practitioner must, as soon as practicable after deciding whether to grant the application for authorisation, give a copy of the notice of the decision under section 162 to each of the following persons:

- the person with disability;
- each relevant person for the person with disability who:
    - was consulted by the relevant service provider in the development of the NDIS behaviour support plan or state behaviour support plan; or
    - was consulted by the senior practitioner about the application under section 160;
- if the senior practitioner is aware the person with disability is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—the authorised psychiatrist responsible for treating the person under that Act;
- if the senior practitioner is aware the person with disability is a forensic disability client—a senior practitioner (forensic disability) responsible for the care and support of the adult under the *Forensic Disability Act 2011*.

If the person with disability is a child, the senior practitioner must, unless it is not practicable in the circumstances, give a copy of the notice of the decision to each person who is a parent of the child.

The senior practitioner may give a copy of the notice of the decision to:

- if the application relates to the use of a regulated restrictive practice in the provision of NDIS supports or services and the senior practitioner is satisfied the disclosure would assist in the performance of the NDIS commissioner's functions under the *National Disability Insurance Scheme Act 2013* (Cwlth)—the NDIS commissioner; or
- if the application relates to the use of a regulated restrictive practice in the provision of disability services and the senior practitioner is satisfied the disclosure would assist in the performance of the chief executive's functions under this Act—the chief executive.

164 When restrictive practice authorisation takes effect

New section 164 states if the decision is to give the restrictive practice authorisation, the authorisation takes effect on the day stated in the notice of the decision given under section 162.

165 When restrictive practice authorisation stops having effect

New section 165 states that a restrictive practice authorisation given to a relevant service provider in relation to a person with disability stops having effect on the earlier of the following:

- the end of the period stated in the notice of the decision given under section 162;
- the cancellation of the authorisation under Subdivision 5;
- a new restrictive practice authorisation given to the relevant service provider in relation to the person takes effect.

Subdivision 4 Provision for new restrictive practice authorisations

166 Application for new restrictive practice authorisation required if behaviour support plans are changed or replaced

New section 166 sets out the requirement for a relevant service provider to apply for a new restrictive practice authorisation if a review of a NDIS behaviour support plan or comprehensive state behaviour support plan results in inconsistencies with an existing authorisation or a new behaviour support plan.

This section applies if—

- a restrictive practice authorisation (the ***existing authorisation***) is in effect for a person with disability; and
- the relevant service provider to whom the authorisation was given carries out a review of the NDIS behaviour support plan or the comprehensive state behaviour support plan for the person (each an ***existing plan***); and
- as a result of the review, the existing plan is changed and becomes inconsistent with the existing authorisation, or the existing plan is replaced with a new NDIS behaviour support plan or comprehensive state behaviour support plan that is inconsistent with the existing authorisation.

For example, a comprehensive state behaviour support plan is changed to increase the maximum period for the seclusion of a person with disability from 15 minutes to 30 minutes, but the existing authorisation limits the seclusion to a maximum period of 15 minutes. This would be considered inconsistent with the existing authorisation to use seclusion.

The relevant service provider must apply under section 148 for a new restrictive practice authorisation.

The application must be made, as soon as practicable, but no later than 30 days after the day the existing plan is changed.

A note provides to see Subdivision 5 for the consequences of a failure to comply with the section. Section 168 provides for grounds for cancellation of restrictive practice authorisation by senior practitioner, including where the relevant service provider has contravened a provision of this Act.

Subdivision 5 Cancellation of restrictive practice authorisation

167 Automatic cancellation of restrictive practice authorisation

New section 167 provides that a restrictive practice authorisation given to a relevant service provider in relation to a person with disability is automatically cancelled if:

- the person to whom the authorisation relates dies; or
- the person to whom the authorisation relates stops receiving NDIS supports or services or state disability services from the relevant service provider to whom the authorisation relates; or
- if the relevant service provider to whom the authorisation relates is a registered NDIS service provider—the service provider has their registration under the *National Disability Insurance Scheme Act 2013* suspended or cancelled by the NDIS Commissioner.

168 Grounds for cancellation of restrictive practice authorisation by senior practitioner

New section 168 provides for grounds for cancellation of restrictive practice authorisation given to a relevant service provider by senior practitioner. It states that each of the following is a ground for cancelling a restrictive practice authorisation:

- the authorisation was obtained by materially incorrect or misleading information or documents or by a mistake;
- the relevant service provider to whom the authorisation was granted has contravened a condition of the authorisation;
- the relevant service provider to whom the authorisation was granted has contravened a provision of this Act.

Example of contravening a provision of this Act under section 168(c)

A review of a comprehensive behaviour support plan leads to a change that is inconsistent with the existing authorisation. Under section 166, the relevant service provider must apply under section 148 to the senior practitioner for a new restrictive practice authorisation.
The application must be made, as soon as practicable, but no later than 30 days after the change to the existing plan. Failure to comply with this timeframe could be grounds for the senior practitioner to cancel the existing restrictive practice authorisation.

169 Show cause notice

New section 169 provides for cancellation of restrictive practice authorisation by the senior practitioner. It states that if the senior practitioner believes a ground exists to cancel a restrictive practice authorisation (the ***proposed action***), the senior practitioner must give the service provider to whom the authorisation was granted notice under this section (a ***show cause notice***).

The show cause notice must state each of the following:

- the proposed action;
- the ground for the proposed action;
- an outline of the facts and circumstances forming the basis for the ground;

- that the relevant service provider may, within a stated period (the ***show cause period***), make written representations to the senior practitioner to show why the proposed action should not be taken.

The show cause period must end at least 7 days after the senior practitioner gives the show cause notice to the relevant service provider.

170 Representations about show cause notice

New section 170 provides for representations about the show cause notice provided to the relevant service provider by the senior practitioner. It states that the relevant service provider may make written representations about the show cause notice to the senior practitioner in the show cause period and that the senior practitioner must consider all representations made within the show cause period.

171 Ending show cause process without further action

New section 171 provides for ending the show cause process without further action. It states that if, after considering the accepted representations, the senior practitioner no longer believes a ground exists to take the proposed action, the senior practitioner:

- must take no further action about the show cause notice; and
- must give the relevant service provider notice that no further action is to be taken about the show cause notice.

172 Cancellation of restrictive practice authorisation

New section 172 provides for cancellation of restrictive practice authorisation. This section applies if, after considering any written representations made to the senior practitioner in the show cause period, the senior practitioner:

- still considers a ground exists to cancel the restrictive practice authorisation; and
- believes a cancellation of the authorisation is warranted.

The senior practitioner may cancel the restrictive practice authorisation.

If the senior practitioner cancels a restrictive practice authorisation, the senior practitioner must give the relevant service provider a notice of the decision (a ***cancellation notice***) that states:

- the day the cancellation of the restrictive practice authorisation takes effect; and
- that the cancellation affects the application of sections 189 and 190 of the *Disability Services Act 2009* in relation to a relevant service provider and in relation to an individual acting for the relevant service provider, respectively.

The cancellation notice must include or be accompanied by a notice complying with the *Queensland Civil and Administrative Tribunal Act 2009*, section 157(2) for the decision.

173 Giving copy of cancellation notice

If the senior practitioner cancels a restrictive practice authorisation under section 172, the senior practitioner must give a copy of the cancellation notice to:

- the person with disability to whom the restrictive practice authorisation relates; and
- each relevant person for the person with disability who was consulted by the relevant service provider in the development of the NDIS behaviour support plan or state behaviour support plan or was consulted by the senior practitioner under section 160 in relation to the application for authorisation; and
- if relevant, the authorised psychiatrist responsible for treating the person under the *Mental Health Act 2016*; and/or a senior practitioner (forensic disability) responsible for the care and support of the adult under the *Forensic Disability Act 2011*.
- if the person with disability is a child, each parent of the child, to the extent practicable.

If relevant, the senior practitioner may also give a copy of the cancellation notice to the NDIS commissioner and the chief executive.

Division 4 State behaviour support plans

Subdivision 1 Preliminary

174 Application and operation of division

New section 174 states this Division outlines the requirements for the development and review of ***state behaviour support plans*** for persons with disability.

Generally, relevant service providers are required to develop and review state behaviour support plans under this Division if the relevant service provider is providing disability services to a person with disability.

This Division does not apply in relation to the development or review of:

- an NDIS behaviour support plan; or
- any other type of support plan for a person with disability that does not provide for the use of a regulated restrictive practice in relation to the person.

For the requirements relating to the development a review of NDIS behaviour support plans, see the NDIS (RPBS) Rules.

This Division has been drafted to ensure, as far as practicable, the requirements for the development and review of a state behaviour support plan align with the requirements for the development and review of a NDIS behaviour support plan. This reflects that people with disability should be afforded the same quality and safeguards in relation to the provisions of disability services or NDIS supports or services.

Subdivision 2 General requirements

175 Who can develop and review State behaviour support plans

New section 175 outlines that a state behaviour support plan must be developed, or reviewed, by a ***behaviour support practitioner***. Subsection (2) provides that a person is appropriately qualified to be a behaviour support practitioner if the person has the qualifications or experience appropriate to:

- conduct a behaviour support assessment, including a functional behavioural assessment, of a person with disability; and
- develop a state behaviour support plan for a person with disability.

Examples of who might be appropriately qualified to be behaviour support practitioners are behaviour analysts, medical practitioners, psychologists, psychiatrists, speech and language pathologists, occupational therapists, registered nurses, social workers.

A relevant service provider that is providing disability services to a person with disability may develop or review a state behaviour support plan for the person if the service provider is an individual who is a behaviour support practitioner.

Behaviour support assessment and ***functional behavioural assessment*** are both defined terms under section 142.

176 Requirements before developing State behaviour support plans

New section 176 states before developing a state behaviour support plan for a person with disability, a relevant service provider must take all reasonable steps to:

- reduce and eliminate the need for the use of regulated restrictive practices in relation to the person; and
- take into account any behaviour support assessments or other assessments carried out in relation to the person; and
- make changes within the environment of the person that may reduce or eliminate the need for the use of regulated restrictive practices; and
- consult with the person with disability. To the extent practicable and known to the relevant service provider, they must also consult with:
    - each relevant person for the person, as defined in section 142;
    - any other relevant service provider providing disability services or NDIS supports or services to the person;
    - if the relevant service provider proposes to use chemical restraint—the person's treating doctor;
    - if the relevant service provider is aware the person is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—the authorised psychiatrist responsible for treating the person under that Act;
    - if the relevant service provider is aware the person is a forensic disability client—a senior practitioner (forensic disability) responsible for the care and support of the person under the *Forensic Disability Act 2011*;
    - any other person relevant service provider considers to be integral to the development of the state behaviour support plan.

When consulting with the person with disability and the any relevant person for the person with disability, the relevant service provider must give the person details of the service provider's intention to include a regulated restrictive practice in the state behaviour support plan, in an appropriately accessible format.

Where the person with disability is a child the relevant service provider must, unless it is not practicable in the circumstances, consult with each person who is a parent of the child.

If the state behaviour support plan is a comprehensive state behaviour support plan, the relevant service provider must also ensure that a behaviour support assessment, including a functional behavioural assessment, of the person with disability is carried out. This reflects that a comprehensive behaviour support plan should be informed by a proper assessment of the person and the behaviours of concern giving rise to a restrictive practice authorisation, and include evidence based strategies to reduce or eliminate the need to use the restrictive practice.

177 Form of State behaviour support plans

New section 177 provides that a state behaviour support plan must be in the approved form, include any other information and be accompanied by any documents required by the senior practitioner under a guideline made under section 200AO.

178 Content of State behaviour support plans

New section 178 outlines the contents of a state behaviour support plan.

Subsection (1) provides that the state behaviour support plan must include:

- a description of:
  - the intensity, frequency and duration of any previous behaviour of the person that has caused harm to the person or others; and
  - the consequences of the behaviour; and
  - the early warning signs and triggers for the behaviour, if known;
- the proactive strategies that must be attempted before using a regulated restrictive practice, including the community access arrangements in place for the person;
- for each regulated restrictive practice proposed to be used in relation to the person:
  - the circumstances in which the regulated restrictive practice is to be used; and
  - information that demonstrates why use of the regulated restrictive practice is the least restrictive way of ensuring the safety of the person or others; and
  - the procedures for using the regulated restrictive practice, including procedures for observation and monitoring, that must be followed while the practice is being used; and
  - any other measures that must be taken while the regulated restrictive practice is being used that are necessary to ensure:
    - the person's proper care and treatment; and
    - the person is safeguarded from abuse, neglect and exploitation; and
    - the regulated restrictive practice is used for the shortest time that is reasonable in the circumstances; and
  - a description of the anticipated positive and negative effects on the person of using the regulated restrictive practice; and
  - the intervals at which use of the regulated restrictive practice will be reviewed by the relevant service provider using the regulated restrictive practice.
- the strategies to be used to support the development of skills by the person to reduce or remove the need for the use of a regulated restrictive practice in relation to the person;
- the behavioural goals for the person to be achieved through the implementation of the plan;
- if seclusion is proposed to be used in relation to the person—the maximum period for which seclusion may be used at any one time and the maximum frequency of the seclusion;

- if chemical restraint is proposed to be used in relation to the person:
    - the name of the medication or chemical substance to be used and any available information about the medication or chemical substance, including, for example, information about possible side effects; and
    - the dose, route and frequency of administration, including, for medication or a chemical substance to be administered as and when needed, the circumstances in which the medication or chemical substance may be administered, as prescribed by the person's treating doctor; and
    - if the medication or chemical substance to be used has previously been reviewed by the person's treating doctor—the date of the most recent review; and
    - the name of the person's treating doctor.
- if mechanical restraint or physical restraint is proposed to be used in relation to the person—the maximum period for which the restraint may be used at any one time;
- any other mater prescribed by regulation.

Subsection (2) provides that an interim state behaviour support plan for a person with a disability must include a description of the matters mentioned in subsection (1)(a)(i) and (ii), (b), (c), (f), (g) and (h). This reflects that an interim state behaviour support plan is intended to inform the use of a restrictive practice in the short term, while a comprehensive state behaviour support plan is developed.

The inclusion of the above information in a state behaviour support plan ensures that a relevant service provider, or an individual acting for a relevant service provider, is best equipped to only use regulated restrictive practice in a way that ensures the person's proper care and treatment and safeguards them from abuse, neglect and exploitation.

179 Development of State behaviour support plan after regulated restrictive practice first used

New section 179 details the requirements for the development of a state behaviour support plan after first use.

Subsection (1) provides that this section applies if:

- a relevant service provider uses a regulated restrictive practice in relation to a person (the ***first use***); and
- there is no state behaviour support plan for the person, or the use is not in accordance with a state behaviour support plan for the person with disability; and
- the use of the regulated restrictive practice in relation to the person with disability will, or is likely to, continue.

Subsection (2) provides that a relevant service provider must ensure that:

- within one month after the first use, all reasonable steps are taken to facilitate the development of an interim state behaviour support plan for the person by a behaviour support practitioner that includes provision for the use of a regulated restrictive practice in relation to the person; and
- within six months after the first use, all reasonable steps are taken to facilitate the development of a comprehensive state behaviour support plan for the person by a

behaviour support practitioner that includes provision for the use of a regulated restrictive practice.

Nothing in this section prevents an interim state behaviour support plan and a comprehensive state behaviour support plan from being developed for a person with disability simultaneously.

The intention behind this section is to ensure that if the use of a regulated restrictive practice in relation to the person with disability will, or is likely to, continue, a state behaviour support plan is developed as soon as possible. The development of a state behaviour support plan ensures that any proposed regulated restrictive practice is only considered as part of a wider positive behaviour support program for the person with disability, focused on their individual needs. The intention is that this will lead to a reduction in the need to use a regulated restrictive practice.

180 Requirement to apply for restrictive practice authorisation if State behaviour support plan developed

New section 180 details the requirements to apply for restrictive practice authorisation if a state behaviour support plan is developed.

Subsection (1) provides that new section 180 applies if a relevant service provider develops a state behaviour support plan for a person with disability that includes provision for the use of a regulated restrictive practice in relation to the person; and there is no restrictive practice authorisation in effect authorising the service provider to use the regulated restrictive practice in relation to the person.

Subsection (2) provides the relevant service provider must, as soon as reasonably practicable, apply under section 148 for authorisation to use the regulated restrictive practice in relation to the person.

For use of a restrictive practice while an application for a new restrictive practice authorisation is being considered, see section 146.

Subdivision 3 Reviews of comprehensive state behaviour support plans

181 Review of comprehensive state behaviour support plans

New section 181 outlines when a comprehensive state behaviour support plan must be reviewed.

Subsection (1) states that a comprehensive state behaviour support plan must be reviewed:

- if there is a change in the circumstances that requires the plan to be changed as soon as practicable after the change in circumstances happens; or
- otherwise—at least once every 12 months while the plan is in effect.

An example of a change in circumstances would include a change of relevant service provider for the person with disability.

Subsection (2) states section 176 applies to the review of a comprehensive state behaviour support plan.

Subsection (3) states if a review of a comprehensive state behaviour plan for a person with disability is carried out under this section, the plan may:

- continue in effect with changes; or
- be replaced with a new comprehensive state behaviour support plan for the person.

Division 5 Complaints about restrictive practices

182 Application of division

New section 182 outlines states that this Division applies to the following relevant service providers:

- registered NDIS service provider;
- the department;
- a funded service provider (other than a service provider that is another department); and
- another service provider prescribed by regulation.

However, this Division does not apply in relation to a relevant service provider:

- prescribed by regulation; or
- to the extent the service provider is providing disability services or NDIS supports or services prescribed by regulation.

183 Complaints about restrictive practices and behaviour support plans

New section 183 states that any person may make a complaint to the senior practitioner about:

- the use of a restrictive practice in relation to a person with disability by a relevant service provider in relation to which this Division applies; or
- the development or review of an NDIS behaviour support plan or state behaviour support plan for a person with disability by a relevant service provider in relation to which this Division applies.

The senior practitioner must maintain a system that deals effectively with complaints received.

184 Referring matters to complaints entity

New section 184 states the senior practitioner may:

- liaise with a complaints entity about a matter mentioned in section 183(1); and
- refer matters relating to people with disability to a complaints entity; and
- enter into an arrangement with a complaints entity aimed at avoiding inappropriate duplication of activities.

In this section ***complaints entity*** means:

- the chief executive, or
- the NDIS commissioner, or
- another entity prescribed by regulation.

Division 6 Reviews by tribunal

Division 6 confers jurisdiction on the Queensland Civil and Administrative Tribunal (QCAT) to review authorisation decisions of the senior practitioner. Review jurisdiction is conferred in relation to 'Part 6 reviewable decisions', as defined in new section 186. QCAT will conduct the review under Chapter 2, Part 1, Division 3 of the *Queensland Civil and Administrative Tribunal Act 2009* and the provisions of the *Queensland Civil and Administrative Tribunal Act 2009* apply to the review proceeding, except the extent they are inconsistent with the provision of this Division.

Subdivision 1 Preliminary

185 Purpose of division

New section 185 states that the purpose of this Division is to enable the tribunal to conduct a review of a Part 6 reviewable decision relating to a person with disability in a way that, to the greatest extent possible:

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

186 Definitions for division

New section 186 defines key terms for this Division including: *health care; health information; interested person; Part 6 reviewable decision; president; psychologist; registrar; review application; separate representative*; and *significant health detriment.*

187 Decisions that may not be reviewed

New section 187 clarifies, to remove any doubt, that the following decisions of the senior practitioner are not reviewable under this Division:

- a decision under section 150(1) to ask the applicant for a restrictive practice authorisation to give the senior practitioner further information or documents in relation to the application;
- a decision under section 155(4) to give a copy of a notice about the withdrawal of an application for a restrictive practice authorisation to a particular entity;
- a decision under section 152(3)(b) to continue deciding an application for a restrictive practice authorisation;
- a decision under section 153 to withdraw an application for a restrictive practice authorisation;
- a decision under section 159(2) to consider a particular matter in relation to an application for a restrictive practice authorisation;
- a decision under section 163(4) to give a copy of a notice of decision on an application for a restrictive practice authorisation to a particular entity;
- a decision under section 173(5) to give a copy of a cancellation notice under that section to a particular entity;
- a decision under section 184(1)(b) to refer a matter to a complaints entity under that section.

Subdivision 2 Applications for review

188 Applying for review

New section 188 provides for who may apply for review.

Subsection (1) states that each of the following entities may apply, as provided under the *Queensland Civil and Administrative Tribunal Act 2009*, to the tribunal for a review of a Part 6 reviewable decision:

- the relevant service provider to whom the decision relates;
- the person with disability to whom the decision relates;
- a relevant person for the person with disability (defined in new section 142);
- a nominated advocate of the person with disability;
- if the person with disability to whom the decision relates is a forensic disability client—a senior practitioner (forensic disability) responsible for the care and support of the person under the *Forensic Disability Act 2011*;
- if the person with disability is a child who is a relevant child under the *Public Guardian Act 2014*—the public guardian;
- any other interested person for the person with disability.

A nominated advocate of a person with disability is a person (however described and whether or not the person is a legal practitioner) expressly nominated by the person with disability to act as an applicant on their behalf in relation to the Part 6 reviewable decision, and to assist the person with disability in relation to the decision.

Note that the *Queensland Civil and Administrative Tribunal Act 2009*, section 22(3) enables QCAT to stay the operation of a Part 6 reviewable decision, either on application by a person or on its own initiative.

Under the *Queensland Civil and Administrative Tribunal Act 2009*, section 24, QCAT may: confirm or amend the senior practitioner's decision; set aside the decision and substitute its own decision; or set aside the decision and return the matter to the senior practitioner for reconsideration, with directions.

188A Making review application on behalf of child with disability

New section 188A states an entity may file a review application for review of a Part 6 reviewable decision relating to a child with disability on behalf of the child only with the president's permission.

Subsection (2) states the president may give permission only if the president considers:

- the entity is not, on the entity's own behalf, entitled to make the review application under section 188(1) (noting that the list of persons who have standing to make a review application in their own right is broad); and
- it is in the child's best interests that the review application be made; and
- it would be inappropriate for, or unreasonable to require, the child to make the application themself.

Subsection (3) states an applicant may withdraw a review application filed on behalf of a child with disability only with the permission of the president or the tribunal.

Subsection (4) states the president or tribunal may give permission under subsection (3) only if the president or tribunal considers that, having regard to the views or wishes of the child with disability, it is in the child's best interests that the review application be withdrawn.

Subsection (5) states that the public guardian is not required to obtain the president's permission under this section in relation to a review application made by the Public Guardian on behalf of a child who is a relevant child under the *Public Guardian Act 2014*.

This section provides a consistent approach to the initiation of proceedings on behalf of children under section 99P of the *Child Protection Act 1999*, to protect the best interests of the child under the reformed authorisation framework.

Subdivision 3 General provisions for tribunal proceedings

188B Application of subdivision

New section 188B provides that this subdivision applies if an entity makes a review application for review of a Part 6 reviewable decision under this Division.

188C Notice of review application

New section 188C states the registrar must give notice of the review application to the senior practitioner.

Subsection (2) states within 7 days after the day the senior practitioner receives the notice, the senior practitioner must give the registrar notice of the names and addresses of each entity, apart from the applicant:

- who is entitled under section 188(1) to apply for a review of the Part 6 reviewable decision concerned; and
- of whom the senior practitioner is aware.

Subsection (3) states that as soon as practicable after receiving the senior practitioner's notice, the registrar must give a notice (an ***information notice***) to each person named in the senior practitioner's notice.

Subsection (4) states that the information notice must state:

- details of the review application; and
- if the information notice is given to the relevant service provider to which the Part 6 reviewable decision relates—that the service provider is a party to the proceedings; and
- if the information notice is given to another person: that the person may elect to become a party to the review by filing a notice of election with the registrar; and the period within which the notice of election must be filed.

188D Parties to proceedings

New section 188D states that the parties to proceedings are:

- the applicant; and
- the relevant service provider to which the Part 6 reviewable decision relates; and
- the senior practitioner; and
- if the tribunal has ordered under section 188P that an adult with disability be represented by a representative—the adult's representative; and
- if the tribunal has ordered under section 188ZF that a child with disability be represented by a separate representative—the child's separate representative; and
- a person who elects to become a party under section 188E; and
- a person joined as a party under section 188F.

The *Queensland Civil and Administrative Tribunal Act 2009*, section 40, also provides for parties to a proceeding in its review jurisdiction. Parties to a proceeding listed in this section have all the rights and obligations on parties under the *Queensland Civil and Administrative Tribunal Act 2009*, including, for example, the obligation to act quickly in any dealing relevant to the proceeding and the right to access the record of proceeding in certain circumstances (subject to any limitation order that may apply).

188E Electing to become a party

New section 188E provides that certain persons may elect to become a party.

Subsection (1) states an entity that is entitled under section 188(1) to apply for a review of the Part 6 reviewable decision may elect to become a party to the proceeding by filing a notice of election with the registrar.

Subsection (2) states if the entity has been given an information notice under section 188C in relation to the review application, the notice of election must be filed with the registrar within 60 days after the day the registrar gives the entity the information notice.

Subsection (3) states if the entity has not been given an information notice under section 188C in relation to the review application, the notice of election must be filed with the registrar within 60 days after the day the review application was made. This ensures that persons entitled to make an application under section 188 are able to participate in the proceeding even though they may not have been involved in the development of the NDIS behaviour support plan or state behaviour support plan, or the Senior Practitioner decision making process. For example, such persons may only become aware of the proposed use of restrictive practices after an authorisation decision is made, through their involvement in supporting the person with disability. The provision ensures that all persons who have a genuine interest in supporting the person with disability have the ability to participate in the proceeding. If a person does not make the election by the deadline, they may nevertheless apply to be joined as a party under section 188F.

Subsection (4) states that the tribunal may not shorten the period for filing the notice of election mentioned in subsection (2).

Subsection (5) states that the tribunal may not shorten the period for filing the notice of election if to do so would result in the interests of the person with disability to whom the Part 6 reviewable decision relates being adversely affected.

188F Joinder of person as a party

New section 188F provides for the joinder of a person as party to the proceedings.

Subsection (1) states the tribunal may join a person as a party to the proceeding if satisfied the person is genuinely concerned in the subject matter of the review. However, in accordance with Subsection (2), if the proceeding concerns a child, the tribunal may not join a person as a party to the proceeding unless it is satisfied that to do so would be in the child's best interests.

Subsection (3) states the tribunal may join a person as a party to the proceeding on its own initiative or on application by the person.

Subsection (4) states the tribunal may join a person as a party to the proceeding at any time before the review application is finally decided by the tribunal.

188G Request or order for information

New section 188G states the tribunal may make a request or an order under this section to ensure, as far as it considers practicable, the tribunal has all the information and material it considers necessary to make an informed decision about a matter in the proceeding.

Subsection (2) states the tribunal may, by notice to a prescribed person, ask the person to give to the tribunal information or material in the person's custody or control that the tribunal considers necessary to make an informed decision about a matter in the proceeding.

Subsection (3) states the tribunal may order a prescribed person to give to the tribunal information or material in the person's custody or control that the tribunal considers necessary to make an informed decision about a matter in the proceeding.

A note makes reference to the *Queensland Civil and Administrative Tribunal Act 2009,* Chapter 5, Part 1 for consequences of a failure to comply with an order.

Subsection (4) states that for the *Queensland Civil and Administrative Tribunal Act 2009,* section 213(1), it is a reasonable excuse for the prescribed person to fail to comply with the order because giving the information or material might tend to incriminate the person.

Subsection (5) states subject to subsection (4), this section overrides—(a) any restriction, in an Act or the common law, about the disclosure or confidentiality of information; and (b) any claim of confidentiality or privilege, including a claim based on legal professional privilege.

Subsection (6) states this section does not limit the tribunal's powers under the *Queensland Civil and Administrative Tribunal Act 2009*.

Subsection (7) defines the meaning of ***prescribed person*** for the purpose of this section. A prescribed person for the purposes of this section, means:

- a relevant person for a person with disability; or
- if the person with disability to whom the proceeding relates is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016* – the authorised psychiatrist responsible for treating the person under that Act.

This section allows the tribunal to obtain information it needs to make a decision from a prescribed person, either by letter from the registry or by order, similar to the way the tribunal can request information under section 130 of the *Guardianship and Administration Act 2000* for the existing authorisation framework.

QCAT can also obtain information from prescribed persons, or other persons, under the *Queensland Civil and Administrative Tribunal Act 2009*. For example, under section 62 of the *Queensland Civil and Administrative Tribunal Act 2009*, QCAT may make a direction requiring a party to produce a document or thing. Also, under section 63 of the *Queensland Civil and Administrative Tribunal Act 2009*, QCAT may make an order requiring a third party to provide a document or thing. Under section 97 of the *Queensland Civil and Administrative Tribunal Act 2009*, QCAT may require a witness to attend or produce a document or thing.

188H Relationship with the *Queensland Civil and Administrative Tribunal Act 2009*

New section 188H makes it clear which provisions in the *Queensland Civil and Administrative Tribunal Act 2009* do not apply to proceedings under Part 6, Division 6 (Reviews by tribunal) of the *Disability Services Act 2006*, consistent with the approach under section 101 of the *Guardianship and Administration Act 2000* in relation to proceedings under the current authorisation framework. Both the *Queensland Civil and Administrative Tribunal Act 2009* and this Act enable QCAT to make non-publication orders.

Subsection (1)(a) disapplies section 66 (Non-publication orders) of the *Queensland Civil and Administrative Tribunal Act 2009*, so that the only non-publication/non-identification orders that can be made about proceedings under Part 6, Division 6 of the *Disability Services Act 2006* are the orders made under new sections 188T (Non-publication order), 188V (Non-identification order), 188ZN (Non-publication order).

Subsection (1)(b) disapplies section 90 (Public hearing) of the *Queensland Civil and Administrative Tribunal Act 2009*, to make it clear that the only circumstances in which QCAT can close hearings are when it makes an adult evidence order or a closure order under the Part 6, Division 6 of the *Disability Services Act 2006*.

Subsections (1)(c) and (1)(d) disapply the general provisions relating to costs in sections 100 and 102 of the *Queensland Civil and Administrative Tribunal Act 2009*. The general test as to whether and in what circumstances costs should be awarded in relation to a proceeding under Part 6, Division 6 of the *Disability Services Act 2006* is to be determined under new section 188I of the *Disability Services Act 2006*. However, costs can be awarded against a representative of a party under section 103 of the *Queensland Civil and Administrative Tribunal Act 2009* for proceedings under Part 6, Division 6 of the *Disability Services Act 2006*, and the test to be applied is as set out in section 102(3)(a) of the *Queensland Civil and Administrative Tribunal Act 2009*. Section 101 of the *Queensland Civil and Administrative Tribunal Act 2009* also applies in relation to costs against a child – see new section 188I.

Subsection (1)(e) disapplies section 142(3)(a)(ii) (Party may appeal) of the *Queensland Civil and Administrative Tribunal Act 2009* to ensure that a party does not have to apply for leave to appeal decisions that are not final decisions of QCAT (e.g., a limitation order).

Subsection (1)(f) disapplies section 222 (Court's powers relating to person contravening non-publication order) of the *Queensland Civil and Administrative Tribunal Act 2009* to make it clear that prohibitions or restrictions about publication or disclosures are made under the *Disability Services Act 2006*, rather than the *Queensland Civil and Administrative Tribunal Act 2009*, for proceedings under Part 6, Division 6 of the *Disability Services Act 2006*.

Subsection (2) states the *Queensland Civil and Administrative Tribunal Act 2009*, section 99 does not apply in relation to a proceeding under Part 6, Division 6 if the tribunal is considering whether to make an order under section 188R(1) or 188S(1). This provision effectively means that section 99 (Dealing with special witnesses) of the *Queensland Civil and Administrative Tribunal Act 2009* will apply to proceedings under Part 6, Division 6 of the *Disability Services Act 2006* except when QCAT is considering whether to make an order under section 188R (Adult evidence order) or section 188S (Closure order), ensuring that QCAT will apply the threshold tests in sections 188R and 188S of the *Disability Services Act 2006* when considering whether to hear evidence in the absence of certain persons or to close a hearing.

Generally speaking, this provision provides primacy of the more nuanced provisions in Part 6, Division 6 of the *Disability Services Act 2006*, over the provisions of general application in the *Queensland Civil and Administrative Tribunal Act 2009*, to provide appropriate safeguards for persons with disability under the reformed authorisation framework.

188I Costs

New section 188I provides that each party to a proceeding is to bear the party's own costs of the proceeding, consistent with the current approach under section 127 of the *Guardianship and Administration Act 2000*.

Subsection (2) provides that the tribunal retains the ability to order the applicant for the review proceeding, other than a child, to pay a party's costs and the costs of the tribunal in exceptional circumstances, including, for example, if the tribunal considers the application is frivolous or vexatious.

Subsection (3) provides that the following provisions of the *Queensland Civil and Administrative Tribunal Act 2009*, apply in relation to proceedings under this Division:

- section 101; and
- sections 103 to 109.

The combined effect of this section, and section 101 of the *Queensland Civil and Administrative Tribunal Act 2009*, is that while costs cannot be awarded against a child (who is either an applicant or party to the proceeding) costs could still be awarded against a representative of a child, under section 103 of the *Queensland Civil and Administrative Tribunal Act 2009*.

This provision also notes section 188H, which outlines which provisions in the *Queensland Civil and Administrative Tribunal Act 2009* that do not to apply to proceedings under Part 6, Division 6 (Reviews by tribunal) of the *Disability Services Act 2006*.

Subdivision 4 Proceedings relating to adults with disability

188J Application of subdivision

New section 188J states this subdivision applies in relation to a review application for review of a Part 6 reviewable decision relating to a person with disability who is an adult when the review application is made.

A Part 6 reviewable decision in relation to an adult with disability includes a decision of the senior practitioner to: give a restrictive practice authorisation (under section 157); to give a restrictive practice authorisation with conditions (under section 157); to refuse to approve an application for a restrictive practice authorisation (under section 157); or to cancel a restrictive practice authorisation (under section 172).

188K Definitions for subdivision

New section 188K defines key terms for this Subdivision including *adult evidence order; closure order; confidentiality order; limitation order; non-identification order; and non-publication order*. Similar to the approach under section 100 of the *Guardianship and Administration Act 2000*, the various types of confidentiality-related orders are collectively called “limitations orders”.

188L Notice of hearing

New section 188L states at least 7 days before the day the hearing of the proceeding starts, the tribunal must, to the extent practicable, give notice of the hearing to each party to the proceeding.

188M Constitution of tribunal

New section 188M states this section applies for the choosing of persons who are to constitute the tribunal for the proceeding.

Subsection (2) states in addition to the *Queensland Civil and Administrative Tribunal Act 2009*, section 167(1), the president must have regard to the need for the tribunal to have knowledge, expertise or experience in the following fields: (a) adults with disability; (b) guardianship and administration proceedings; (c) strategies in relation to preventing and eliminating the use of restrictive practices in relation to adults with disability.

Subsection (3) states if the adult with disability is an Aboriginal or a Torres Strait Islander person, the tribunal hearing the proceeding must include, if practicable, a member who is an Aboriginal person or a Torres Strait Islander person.

Subsection (4) states in this section— ***member*** has the meaning given by the *Queensland Civil and Administrative Tribunal Act 2009*, section 171.

188N Adult with disability can not be compelled to give evidence

New section 188N states that the adult with disability can not be compelled by the tribunal to give evidence in the proceedings. This includes that the adult can not be compelled to attend a hearing of the proceeding to give evidence or to produce a document or other thing to the tribunal, under section 97(1) of the *Queensland Civil and Administrative Tribunal Act 2009*. If an adult with disability does give evidence before the tribunal, the tribunal must first satisfy itself that the adult is willing to give the evidence.

188O Right to express views to tribunal

Subsection (1) ensures that regardless of whether the adult with disability is party to the proceeding or appears as a witness before the tribunal, the adult has the right to express their views about the matter.

Consistent with the approach under section 81(2)(a) of the *Guardianship and Administration Act 2000* in relation to proceedings under the current authorisation framework, subsection (2) provides that in exercising its functions and powers under the *Queensland Civil and Administrative Tribunal Act 2009*, the tribunal must, to the greatest extent practicable, seek and take into account the views, wishes and preferences expressed or demonstrated by the adult with disability. This provides appropriate safeguards for adults with impaired capacity in the reformed authorisation framework.

188P Appointing representative

New section 188P states the tribunal may appoint a representative to represent the views, wishes and interests of the adult with disability in a proceeding if:

- the adult is not represented in the proceeding; or
- the adult is represented in the proceeding by an agent the tribunal considers to be inappropriate to represent the adult's interests.

A proceeding may be adjourned to allow the appointment to be made.

A representative appointed under this section must:

- have regard to any expressed or demonstrated views, wishes and preferences of the adult; and
- to the greatest extent practicable, present the adult's views, wishes and preferences to the tribunal; and
- promote and safeguard the adult's rights, interests and opportunities.

The tribunal must notify each party about the appointment of a representative under this section as soon as practicable after the appointment.

A representative appointment made under this section is similar to a representative appointed under section 125 of the *Guardianship and Administration Act 2000* in relation to proceedings under the current authorisation framework to provide appropriate safeguards for adults with impaired capacity in the reformed authorisation framework.

188Q Hearing open

New section 188Q states a hearing of the proceeding by the tribunal must be held in public. However, the tribunal can make an adult evidence order under section 188R or a closure order under section 188S.

188R Adult evidence order

New section 188R states if the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person or to obtain relevant information the tribunal would not otherwise receive, the tribunal may, by order (known as an ***adult evidence order***), obtain relevant information for the adult with disability at a hearing in the absence of anyone else.

This can include:

- members of the public; or
- a particular person, including a party to the proceeding.

This provision notes section 188N—the adult with disability cannot be compelled to give evidence.

If the relevant information is health information for the person, serious harm to the person includes significant health detriment to the person.

For subsection (1), the information is only relevant if it is directly relevant to a matter in the proceeding. An adult evidence order can be made on application of a party, or on the tribunal's own initiative.

It is an offence for a person to contravene an adult evidence order, unless they have a reasonable excuse.

The maximum penalty for this contravention is 200 penalty units.

Adult evidence orders made under this section are similar to adult evidence orders that can be made under section 106 of the *Guardianship and Administration Act 2000* in relation to proceedings under the current authorisation framework to provide appropriate safeguards for adults with impaired capacity in the reformed authorisation framework.

188S Closure order

New section 188S provides that the tribunal may order the closure of a hearing or part of the hearing to all or some members of the public and exclude a particular person, including a party to the proceeding, from a hearing or part of a hearing, if it is considered necessary by way of issuing a ***closure order.***

The tribunal needs to be satisfied it is necessary to avoid serious harm or injustice to a person before making the closure order.

If the hearing or part of the hearing concerns health information for the person, serious harm to the person includes significant health detriment to the person.

A closure order can be made on application of a party to the proceeding, or on the tribunal's own initiative. It is also an offence for a person to contravene the closure order, unless they have a reasonable excuse.

The maximum penalty for this contravention is 200 penalty units.

A closure order made under this section is similar to a closure order that can be made under section 107 of the *Guardianship and Administration Act 2000* in relation to proceedings under the current authorisation framework to provide appropriate safeguards for adults with impaired capacity in the reformed authorisation framework.

188T Non-publication order

New section 188T states the tribunal may, but only to the extent necessary, prohibit the publication of information about a proceeding if the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person. This is called a ***non-publication order***.

It is important to note that the tribunal may not make a non-publication order relating to information that is subject to a non-identification order under section 188V.

If information about the proceeding is health information for a person, serious harm to the person includes significant health detriment to the person.

The tribunal can make the non-publication order on its own initiative or on the application of a party to the proceeding.

If information about the proceeding discloses health information for the person the tribunal can also make the non-publication order on the application of the person or an interested person for the person and the interested person can make the application for the person, even after their death.

The person's death does not affect the non-publication order made by an interested person for the person.

Also, if information about the proceeding discloses any information prepared or provided by an entity, the tribunal can make the non-publication order on the application of that entity

It is an offence for a person to contravene the non-publication order, unless they have a reasonable excuse. The maximum penalty for this contravention is 200 penalty units.

A non-publication order under this section is similar to the non-publication order that can be made under 108 of the *Guardianship and Administration Act 2000* in relation to proceedings under the current authorisation framework to provide appropriate safeguards for adults with impaired capacity in the reformed authorisation framework.

188U Confidentiality order

New section 188U states the tribunal can make a ***confidentiality order*** if they are satisfied it is necessary to avoid serious harm or injustice to a person. If this threshold is met, the tribunal can make a confidentiality order, the extent necessary, to withhold information or a document, or part of a document, from a party to the proceeding or another person.

If a document, or part of a document, contains health information for the person or to the extent other information is health information for a person, serious harm to the person includes significant health detriment to the person.

The confidentiality order can be made by application of a party to the proceeding or by the tribunal's own initiative. The tribunal can also make a confidentiality order regarding a document or other information on the application of the entity who prepared or provided the document or other information.

It is an offence for a person to contravene the confidentiality order, unless they have a reasonable excuse. The maximum penalty for this contravention is 200 penalty units.

A confidentiality order made under this section is similar to a confidentiality order that can be made under section 109 of the *Guardianship and Administration Act 2000* in relation to proceedings under the current authorisation framework to provide appropriate safeguards for adults with impaired capacity in the reformed authorisation framework.

188V Non-identification order

New section 188V states generally, and subject to an order made by the tribunal under this Division or the *Queensland Civil and Administrative Tribunal Act 2009*, information about the proceeding may be published. However, as per subsection (2), the tribunal may, having regard to the matters mentioned in subsection (4), by order (a ***non-identification order***) prohibit publication of information identifying, or likely to lead to the identification of, the adult with disability.

Subsection (3) states the tribunal may make the non-identification order at any time:

- on its own initiative; or
- on the application of the adult with disability, a party to the proceeding or an interested person for the adult with disability.

Subsection (4) states for subsection (2), the matters are:

- the views, wishes and preferences expressed or demonstrated by the adult with disability; and
- the views of other parties to the proceeding; and
- the rights and interests of the adult with disability; and
- any public interest in the publication of the identity of the adult with disability; and
- the capacity of the adult with disability to consent to the publication; and
- any other matter the tribunal considers relevant.

The rights and interests of the affected adult referenced at subsection (4) above include the right to freedom of expression and the right to privacy.

An example a matter that the tribunal might consider relevant is the principle of open justice.

Subsection (5) states a person must not contravene the non-identification order, unless the person has a reasonable excuse. The maximum penalty for contravening subsection (5) is 200 penalty units.

188W Non-publication order or confidentiality order made before hearing

New section 188T states a non-publication order or confidentiality order may be made under this subdivision before a hearing of the proceeding starts. However, a non-publication order or confidentiality order made before a hearing is vacated at the start of the hearing.

Sections 188X (Standing for limitation order) to 188Z (Reasons for limitation order) do not apply in relation to a non-publication order or confidentiality order made before a hearing of the proceeding starts.

This section takes a consistent approach to the making of limitation orders under section 110 of the *Guardianship and Administration Act 2000* in relation to proceedings under the existing authorisation framework to provide appropriate safeguards for adults with impaired capacity in the reformed authorisation framework.

188X Standing for limitation order

New section 188X states each party to the proceeding, and any entity that would be adversely affected by the making of a limitation order, has standing to be heard in relation to the making of the order. For example, a journalist could be adversely affected by a limitation order that prevents the publication of particular information.

This section provides a consistent approach to limitation orders under section 111 of the *Guardianship and Administration Act 2000* in relation to proceedings under the existing authorisation framework to provide appropriate safeguards for adults with impaired capacity in the reformed authorisation framework.

188Y Making and notifying decision for limitation order

New section 188Y states the tribunal must give its decision on the making of a limitation order as soon as practicable after hearing any submissions on the making of the order.

Subsection (2) states as soon as practicable after making its decision, the tribunal must give a copy of its decision to each of the following—

- the adult with disability;
- each party to the proceeding;
- each entity heard in relation to the limitation order;
- the public advocate.

Subsection (3) states the tribunal must also give a copy of its decision to anyone else who requests a copy.

Subsection (4) states for subsection (3), it is sufficient for the tribunal to give a copy of the decision in a form that does not contravene a non-identification order.

Subsection (5) states, also, within 45 days after the day the decision is made, the tribunal must give the public advocate all information before the tribunal in making its decision, including, for a confidentiality order made under this subdivision, the document or other information being considered as the subject of the confidentiality order.

This section provides a consistent approach to the making of limitation orders under section 112 of the *Guardianship and Administration Act 2000* in relation to proceedings under the existing authorisation framework to provide appropriate safeguards for adults with impaired capacity in the reformed authorisation framework.

188Z Reasons for limitation order

New section 188Z states this section applies if the tribunal decides to make a limitation order.

Subsection (2) states if the limitation order is an order other than an adult evidence order, the tribunal must give written reasons for its decision.

Subsection (3) states if the limitation order is an adult evidence order, the tribunal may give written reasons for its decision.

Subsection (4) states if the tribunal gives written reasons for its decision, it must give a copy of the reasons to each of the following persons within 45 days after the day the decision is made:

- the adult with disability;
- each party in the proceeding;
- each entity heard in relation to the limitation order;
- the public advocate.

Subsection (5) states the tribunal must also give a copy of the reasons to anyone else who requests a copy.

Subsection (6) states for subsection (5), it is sufficient for the tribunal to give a copy of the written reasons in a form that does not contravene a non-identification order.

Subsection (7) states the *Queensland Civil and Administrative Tribunal Act 2009*, sections 121 and 122 do not apply to a limitation order.

This section provides a consistent approach to the making of limitation orders under section 113 of the *Guardianship and Administration Act 2000* in relation to proceedings under the existing authorisation framework to provide appropriate safeguards for adults with impaired capacity in the reformed authorisation framework.

188ZA Procedural directions

New section 188ZA states the tribunal may direct the adult with disability—

- to undergo examination by a doctor or psychologist in the ordinary course of the doctor's medical practice or the psychologist's practice; or
- to be brought before the tribunal.

The note highlights that despite this section, section 188N (Adult with disability can not be compelled to give evidence) still applies.

Subsection (2) states the tribunal may change or revoke the direction.

Subsection (3) states if the tribunal gives a direction to undergo examination, the tribunal may direct that a party to the proceeding pay for the examination.

A note provides for the consequences of a failure to comply with the obligation under subsection (3), see the *Queensland Civil and Administrative Tribunal Act 2009*, Chapter 5, Part 1. This section provides a consistent approach to section 114 of the *Guardianship and Administration Act 2000*. in relation to proceedings under the existing authorisation framework to provide appropriate safeguards for adults with impaired capacity in the reformed authorisation framework.

Subdivision 5 Proceedings relating to children with disability

188ZB Application of subdivision

New section 188ZB states this subdivision applies in relation to a review application for review of a Part 6 reviewable decision relating to a person with disability who is a child when the review application is made.

It should be noted that Subdivision 4 applies to review applications for review of a Part 6 reviewable decision relating to an adult with disability (who is an adult at the time the proceeding is started).

- This means that, if a proceeding is started under this Subdivision, and during the proceeding, the child turns 18—the proceeding may continue as if the individual were still a child; and
- this Subdivision continues to apply to the proceeding.

A Part 6 reviewable decision in relation to a child with disability includes a decision of the senior practitioner to: give a restrictive practice authorisation (under section 157); to give a restrictive practice authorisation with conditions (under section 157); to refuse to approve an application for a restrictive practice authorisation (under section 157); or to cancel a restrictive practice authorisation (under section 172).

188ZC Definitions for subdivision

New section 188ZC defines key terms for this subdivision, including: *confidentiality order*; *identity authorisation order*; *limitation order*; and *non-publication order*. Similar to the approach under section 100 of the *Guardianship and Administration Act 2000*, and section 188HK, the various types of confidentiality-related orders are collectively called “limitations orders”. It should be noted that “limitations order” is defined differently under Subdivisions 4 and 5.

188ZD Notice of hearing

New section 188ZD states at least 7 days before the day the hearing of the proceeding starts, the tribunal must, to the extent practicable, give notice of the hearing to:

- each party to the proceeding;
- if the child with disability is a relevant child under the *Public Guardian Act 2014*—the public guardian.

188ZE Constitution of tribunal

New section 188ZE states this section applies for the choosing of persons who are to constitute the tribunal for the proceeding.

In addition to the *Queensland Civil and Administrative Tribunal Act 2009*, section 167, the president must have regard to the need for the tribunal to have knowledge, expertise or experience in the following fields:

- children with disability;
- child protection;
- child welfare;
- strategies in relation to preventing and eliminating the use of restrictive practices in relation to children with disability.

If the child with disability is an Aboriginal or a Torres Strait Islander person, the tribunal must include, if practicable, a member who is an Aboriginal person or a Torres Strait Islander person.

In this section—***member*** has the meaning given by the *Queensland Civil and Administrative Tribunal Act 2009*.

188ZF Order about separate representative

New section 188ZF states if the tribunal considers it would be in the best interests of the child with disability for the child to be separately represented before the tribunal by a lawyer, the tribunal may order that the child be represented by a lawyer (a ***separate representative***).

Subsection (2) states subsection (1) applies whether or not the child:

- is a party to the proceeding; or
- is represented by a lawyer or someone else under the *Queensland Civil and Administrative Tribunal Act 2009*, section 43.

Subsection (3) states the separate representative must—

- act in the child's best interests having regard to any expressed views or wishes of the child; and
- as far as possible, present the child's views and wishes to the tribunal.

Subsection (4) states the tribunal must give a notice of the appointment of a separate representative under subsection (1) to each party to the proceeding as soon as practicable after the appointment.

Subsection (5) states to remove any doubt, it is declared that, if the child is a party to the proceeding, the child may be represented in the proceeding by the separate representative as

well as a lawyer or someone else under the *Queensland Civil and Administrative Tribunal Act 2009*, section 43.

This section broadly provides a consistent approach to the appointment of separate representatives under section 99Q of the *Child Protection Act 1999* to protect the best interests of the child under the reformed authorisation framework

188ZG Separate representative can not give particular evidence

New section 188ZG states the separate representative for a child with disability:

- can not be called to give evidence in any proceeding before the tribunal about a communication between the representative and the child; and
- must not give evidence in any proceeding before the tribunal about a communication between the representative and the child.

This section provides a consistent approach section 99R of the *Child Protection Act 1999* to protect the best interests of the child under the reformed authorisation framework.

188ZH Child can not be compelled to give evidence

New section 188ZH states the child with disability can not be compelled to give evidence in the proceeding.

Subsection (2) states without limiting subsection (1), the tribunal may not require the child with disability to do either of the following under the *Queensland Civil and Administrative Tribunal Act 2009*, section 97(1):

- attend a hearing of the proceeding to give evidence;
- produce a stated document or other thing to the tribunal.

Subsection (3) states before the child with disability gives evidence in the proceeding, the tribunal must satisfy itself that the child is willing to give the evidence.

This section provides a consistent approach to section 99T of the *Child Protection Act 1999* to protect the best interests of the child under the reformed authorisation framework.

188ZI Right to express views to tribunal

New section 188ZI states whether or not the child with disability is a party to the proceeding or appears as a witness before the tribunal, the child has the right to express their views to the tribunal about matters relevant to the proceeding.

This section provides a consistent approach to section 99U of the *Child Protection Act 1999* to protect the best interests of the child under the reformed authorisation framework.

188ZJ Child with disability giving evidence or expressing view to tribunal

New section 188ZJ states this section applies if the child with disability is giving evidence or expressing the child's views to the tribunal at a hearing of the proceeding.

Subsection (2) states only the following persons may be present while the child gives evidence or expresses the child's views:

- the constituting members;
- a lawyer or someone else who is representing the child under the *Queensland Civil and Administrative Tribunal Act 2009*, section 43;
- the separate representative for the child;
- a nominated advocate for the child;
- a parent of the child;
- if a person has been granted custody or guardianship of the child under the *Child Protection Act 1999*—the person who has custody, or is the guardian, of the child under that Act;
- the child's support person if the child has a support person and agrees to that person's presence;
- if the child is a relevant child under the *Public Guardian Act 2014*—the public guardian;
- if a person made the review application on behalf of the child under section 188A—the person.

Subsection (3) states despite subsection (2), the child may elect to give evidence or express the child's views in the presence of the parties to the proceeding and their representatives if the child—

- is 12 years or more; and
- is represented by a separate representative or a lawyer under the *Queensland Civil and Administrative Tribunal Act 2009*, section 43.

subsection (4) provides that for the purposes of subsection (2)(d), a nominated advocate of a child with disability is a person (however described and whether or not the person is a legal practitioner) expressly nominated by the child to be present at, and assist the child with, the proceeding for the Part 6 reviewable decision.

If the chief executive of the department in which the *Child Protection Act 1999* is administered has been granted custody or guardianship of the child under that Act, a person who is an officer or employee of the department in which the *Child Protection Act 1999* is administered may be present on that chief executive's behalf.

This section provides a broadly consistent approach to section 99V of the *Child Protection Act 1999* to protect the best interests of the child under the reformed authorisation framework.

188ZK Proceeding to be held in private

New section 188ZK state a hearing of the proceeding by the tribunal must be held in private.

However, as per subsection (2), the following persons are entitled to be present at the proceeding—

- the child with disability;
- each party to the proceeding;
- if, under an Act, a party is entitled to be represented by someone else at the proceeding—the party's representative;
- if the child with disability is a relevant child under the *Public Guardian Act 2014*—the public guardian;
- a witness while giving evidence;

- a support person for a witness, while the witness is giving evidence;
- a person allowed to be present by the tribunal.

This section is subject to section 188ZJ (Child with disability giving evidence or expressing views to tribunal) and the *Queensland Civil and Administrative Tribunal Act 2009*, section 220.

This section provides a broadly consistent approach to 99J of the *Child Protection Act 1999* to protect the best interests of the child under the reformed authorisation framework.

188ZL When proceeding may be held in public

New section 188ZL states despite section 188ZK, the tribunal may allow a hearing of the proceeding to be held in public if information identifying, or likely to lead to the identification of, the child with disability will not be given in the proceeding.

This section provides a consistent approach to section 99K of the *Child Protection Act 1999* to protect the best interests of the child under the reformed authorisation framework.

188ZM Publication of information

New section 188ZM states a person must not publish—

- information given in evidence or otherwise in the proceeding; or
- information that is likely to identify a person who— (i) appears as a witness before the tribunal in the proceeding; or (ii) is a party to the proceeding; or (iii) is mentioned, or otherwise involved, in the proceeding.

The maximum penalty for contravening this provision is —200 penalty units.

Subsection (2) states the tribunal may make an order (an *identity authorisation order*) authorising the publication of information that is otherwise prohibited under subsection (1). It should be noted that an identity authorisation order under this section is broadly similar to an order that can be made under section 114A(5) of the *Guardianship Act 2000*, or a decision of the tribunal to consent to the publication of particular information under section 99ZG(3) of the *Child Protection Act 1999* (although they do not have the same name).

Subsection (3) states the tribunal may make the identity authorisation order only if the tribunal is satisfied the publication of the information—

- is in the public interest; and
- does not conflict with the best interests of the child with disability.

Subsection (4) states a person does not commit an offence against subsection (1) to the extent the publication of the information is authorised under an identity authorisation order.

Subsection (5) states the *Queensland Civil and Administrative Tribunal Act 2009*, section 125 does not apply for the purposes of this section. This ensures that that when QCAT publishes its final decision in the proceeding under section 125 of the *Queensland Civil and Administrative Tribunal Act 2009*, QCAT must comply with this section.

Subsection (6) states in this section:

- ***information*** includes—(a) a matter contained in a document filed with, or received by, the tribunal; and (b) the tribunal's decision or the reasons for a decision.
- ***publish***, for information, means to publish the information to the public by way of the internet, newspaper, radio, television or other form of communication

188ZN Non-publication order

New section 188ZN states the tribunal may, but only to the extent necessary, prohibit the publication of information about a proceeding if the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person. This is called a ***non-publication order***.

The tribunal may not make a non-publication order relating to information that is subject to a non-identification order under section 188ZM(1).

If information about the proceeding is health information for a person, serious harm to the person includes significant health detriment to the person. If information about the proceeding discloses any information prepared or provided by an entity, the tribunal can make the non-publication order on the application of that entity.

The tribunal can make the non-publication order on its own initiative or on the application of a party to the proceeding. If health information is disclosed for the person the tribunal can also make the non-publication order on the application of the person or an interested person for the person and the interested person can make the application for the person, even after their death.

If the non-publication order prohibits the publication of information that discloses health information for a person, the person's death does not affect the non-publication order.

It is an offence for a person to contravene the non-publication order, unless they have a reasonable excuse. The maximum penalty for this contravention is 200 penalty units.

A non-publication order under this section is broadly consistent with a non-publication order that may be made under section 108 of the *Guardianship and Administration Act 2000* in relation to proceedings about adults with impaired capacity under the current authorisation framework.

188ZO Confidentiality order

New section 188ZO states the tribunal can make a ***confidentiality order*** if they are satisfied it is necessary to avoid serious harm or injustice to a person. If this threshold is met, the tribunal can make a confidentiality order, to the extent necessary, to withhold information or a document, or part of a document, from a party to the proceeding or another person.

If the document, or part of the document, contains health information for the person or to the extent other information is health information of a person, serious harm to the person includes significant health detriment to the person.

The confidentiality order can be made by application of a party to the proceeding or by the tribunal's own initiative. The tribunal can also make a confidentiality order regarding a

document or other information on the application of the entity who prepared or provided the document or other information.

It is an offence for a person to contravene the confidentiality order, unless they have a reasonable excuse. The maximum penalty for this contravention is 200 penalty units.

A confidentiality order under this section is broadly consistent with a confidentiality order that can be made under section 109 of the *Guardianship and Administration Act 2000* in relation to proceedings about adults with impaired capacity under the current authorisation framework.

188ZP Non-publication order or confidentiality order made before hearing

New section 188ZP states a non-publication order or confidentiality order may be made under this subdivision before a hearing of the proceeding starts. However, a non-publication order or confidentiality order made before a hearing is vacated at the start of the hearing.

Sections 188ZQ to 188ZS do not apply in relation to a non-publication order or confidentiality order made before a hearing of the proceeding starts.

This section provides a consistent approach to limitation orders under section 110 of the *Guardianship and Administration Act 2000* in relation to proceedings about adults with impaired capacity under the current authorisation framework.

188ZQ Standing for limitation order

New section 188ZQ states that each party, and any entity that would be adversely affected by the making of a limitation order, has standing to be heard in relation to the making of the order. For example, a journalist who would be excluded from a hearing by a closure order would be an entity that would be adversely affected by the order.

This section provides a consistent approach to limitations orders under section 111 of the *Guardianship and Administration Act 2000* in relation to adults with impaired capacity under the existing authorisation framework.

188ZR Making and notifying decision for limitation order

New section 188ZR states the tribunal must give its decision on the making of a limitation order as soon as practicable after hearing any submissions on the making of the order.

Subsection (2) states as soon as practicable after making its decision, the tribunal must give a copy of its decision to each of the following—

- the child with disability; and
- each party to the proceeding; and
- each entity heard in relation to the order; and
- if the child with disability is represented by a lawyer under the *Queensland Civil and Administrative Tribunal Act 2009*, section 43—the lawyer; and
- if the child with disability is a relevant child under the *Public Guardian Act 2014*—the public guardian.

Subsection (3) states the tribunal must also give a copy of its decision to anyone else who requests a copy.

Subsection (4) states for subsection (3), it is sufficient for the tribunal to give a copy of the decision in a form that does not contravene section 188ZM(1).

This section provides a consistent approach to the making of limitation orders under section 112 of the *Guardianship and Administration Act 2000* in relation to proceedings about adults with impaired capacity under the current authorisation framework.

188ZS Reasons for limitation order

New section 188ZS states this section applies if the tribunal decides to make a limitation order.

Subsection (2) states the tribunal must give written reasons for its decision to make the limitation order.

Subsection (3) states the tribunal give a copy of the reasons to each of the following persons within 45 days after the day the decision is made:

- each party to the proceeding;
- each entity heard in relation to the order;
- if the child with disability is represented by a lawyer under the *Queensland Civil and Administrative Tribunal Act 2009*, section 43 – the lawyer;
- if the child with disability is a relevant child under the *Public Guardian Act 2014* – the public guardian.

Subsection (4) states the tribunal must also give a copy of the reasons to anyone else who requests a copy.

Subsection (5) states for subsection (4), it is sufficient for the tribunal to give a copy of the written reasons in a form that does not contravene section 188ZM(1).

Subsection (6) states the *Queensland Civil and Administrative Tribunal Act 2009*, sections 121 and 122 do not apply to a limitation order.

This section provides a consistent approach to the making of limitation orders under section 113 of the *Guardianship and Administration Act 2000* in relation to adults with impaired capacity under the current authorisation framework.

188ZT Procedural directions

New section 188ZT states the tribunal may direct the child with disability—

- to undergo examination by a doctor or psychologist in the ordinary course of the doctor's medical practice or the psychologist's practice; or
- to be brought before the tribunal.

The note highlights that despite this section, section 188ZH (Child can not be compelled to give evidence) applies.

A second note provides for the consequences of a failure to comply with the obligation under subsection (3), see the *Queensland Civil and Administrative Tribunal Act 2009*, Chapter 5, Part 1.

Subsection (2) states the tribunal may change or revoke the direction.

Subsection (3) states if the tribunal gives a direction to undergo examination, the tribunal may direct that a party to the proceeding pay for the examination.

This section adopts the approach under section 114 of the *Guardianship and Administration Act 2000* in relation to proceedings about adults with impaired capacity under the current authorisation framework.

15 Amendment of pt 6, div 7, hdg (Immunity for use of restrictive practices)

Clause 15 amends Part 6, Division 7, Heading of the *Disability Services Act 2006* to replace 'restrictive practice' with 'regulated restrictive'. This reflects the scope of the reformed authorisation framework applying to the use of regulated restrictive practices.

16 Amendment of s 189 (Immunity from liability – relevant service provider)

Clause 16 amends section 189 of the *Disability Services Act 2006* to provide that a relevant service provider who uses a regulated restrictive practice to support a person with disability is not criminally or civilly liable for using the regulated restrictive practice if the relevant service provider acts honestly and without negligence, under sections 145 or 146.

17 Replacement of s 190 (Immunity from liability—individual acting for relevant service provider)

Clause 17 replaces section 190 of the *Disability Services Act 2006* to provide that an individual who, acting for a relevant service provider, who uses a regulated restrictive practice to support a person with disability is not criminally or civilly liable for using the regulated restrictive practice if the individual acts honestly and without negligence under Sections 145 or 146.

18 Omission of s 191 (Requirement to give statement about use of restrictive practices)

Clause 18 omits section 191 of the *Disability Services Act 2006.* This reflects that in relation to the development of a NDIS behaviour support plan, the NDIS (RPBS) Rules already include the requirement to give the person with disability, and certain others, details of the service provider's intention to include a regulated restrictive practice in the NDIS behaviour support plan, in an appropriately accessible format.

In relation to the development of a state behaviour support plans, see section 176(2) which provides when consulting a person with disability and other person, the relevant service provider must give the person details of the service provider's intention to include a regulated restrictive practice in the state behaviour support plan, in an appropriately accessible format.

19 Omission of s 192 (Requirement to give information to guardian or informal decision maker)

Clause 19 omits section 192 of the *Disability Services Act 2006*. This reflects that under the reformed authorisation framework guardians and informal decision makers will no longer be giving approval or consent to the use of restrictive practices.

20 Amendment of s 193 (Requirement to keep and implement procedure)

Clause 20 amends section 193 of the *Disability Services Act 2006* to ensure that relevant service providers, other than those prescribed by regulation, are still required to keep and implement procedures on the use of regulated restrictive practices to reflect the broader the aim of the framework.

21 Amendment of s 194 (Requirement to keep records and other documents)

Clause 21 amends section 194 of the *Disability Services Act 2006* to reflect the broader quality and safeguarding functions of the framework by ensuring that relevant service providers, other than a relevant service provider prescribed by regulation, must keep a copy of the NDIS behaviour support plan or state behaviour support plan for the person with disability at the premises where the state disability services or NDIS supports or services are provided. It is also intended to retain, by regulation, the ability to prescribe additional records or documents that must be kept.

22 Replacement of s 195 (Notification requirements about approvals given for use of restrictive practices)

Clause 22 replaces section 195 of the *Disability Services Act 2006* to reflect changes to the authorisation framework.

The new section 195 provides applies if:

- a relevant service provider, other than a relevant service provider prescribed by regulation, is given a restrictive practice authorisation to use a restrictive practice at a place; and
- there is no other restrictive practice authorisation in effect relating to the place; and
- for a restrictive practice authorisation in relation to a child, the place is a visitable location under the *Public Guardian Act 2014*, section 51; and
- for a restrictive practice authorisation in relation to an adult—as a result of the restrictive practice authorisation being given, the place becomes a visitable site under the *Public Guardian Act 2014*, section 39 definition visitable site, paragraph (c).

The relevant service provider must, within 21 days after the day the restrictive practice authorisation is given, give notice of the restricted practice authorisation in the approved form to the public guardian. The notice must state:

- the name and address of the visitable location or visitable site; and
- that a restrictive practice approval has been given in relation to the visitable location or visitable site.

A relevant service provider that has given a notice under subsection (2) must, within the period mentioned in subsection (5), give notice to the public guardian if a restrictive practice authorisation relating to the visitable site stops having effect. For subsections (2) and (4), the notice must be given within 21 days after the event mentioned in the subsection happens.

The Public Guardian's community visitor function (adult) is tied to whether restrictive practices are used at the site because the use of restrictive practices are 'a relevant class of supports' for the purposes of the definition of visitable site in section 39(c) of the *Public Guardian Act 2014*. The approval by the senior practitioner therefore has the potential to introduce a new visitable site to be visited. This section ensures that the public guardian is made aware of any new sites it must visit under its community visitor function for adults or children under the *Public Guardian Act 2014* or any sites that are no longer required to be visited.

The Public Guardian's community visitor function (child) is not directly tied to whether restrictive practices are used at the site - the definitions for visitable location, visitable site and visitable home, for the child visiting function, are not tied to the use of restrictive practices. This section also ensures that the Public Guardian is aware of any visitable locations where regulated restrictive practices are being used in relation to a child to assist a community visitor (child) perform their functions under the *Public Guardian Act 2014*.

23 Amendment of s 197 (Relevant service provider may request confidential information form health professional, chief executive (health) and health service chief executive)

Clause 23 amends section 197 of the *Disability Services Act 2006* to ensure that ensure relevant service providers have access to information required for the purpose of functional behavioural assessments and the development of NDIS behaviour support plans and state behaviour support plans.

The new section 197(1) applies if a relevant service provider considers a health professional, the chief executive (health), or a health service chief executive, may hold confidential information about a person with disability that is relevant to any of the following being done by the provider:

- a functional behavioural assessment of the person, including the making of a decision about whether to assess the person;
- the development or review of an NDIS behaviour support plan or a state behaviour support plan for the person.

The relevant service provider may ask the health professional, chief executive (health) or health service chief executive for the confidential information.

24 Insertion of new s 197A

197A Relevant service provider may request confidential information from senior practitioner

Clause 24 inserts a new section 197A into the *Disability Services Act 2006* that applies if a relevant service provider considers the senior practitioner may hold confidential information about a person with disability that is relevant to any of the following being done by the relevant service provider:

- a behaviour support assessment, including a functional behaviour assessment, of the person; and/or

- the development or amendment of a NDIS behaviour support plan or state behaviour support plan for the person with disability.

The relevant service provider may ask the senior practitioner for the confidential information. The senior practitioner may disclose the confidential information to the relevant service provider if they are satisfied the information is relevant to a matter being done by the service provider.

25 Amendment of s 198 (Relevant service providers must maintain confidentiality)

Clause 25 amends section 198 of the *Disability Services Act 2006* to protect the confidential information of persons with disability where a relevant service provider gains confidential information from: a health professional, the chief executive (health), or a health chief executive; the senior practitioner; or otherwise gains confidential information in the course of a functional behaviour assessment or developing a NDIS behaviour support plan or state behaviour support plan. Penalties for unlawful disclosure reflect the existing section 198 under the Act.

26 Replacement of pt 6, div 7, sdiv 4 (Reporting and provision of particular information)

Subdivision 4 Information gathering and sharing

Clause 26 amends the *Disability Services Act 2006* by replacing Part 6, Division 7, Subdivision 4 to provide information gathering and sharing powers that will support the senior practitioner to fulfil its functions.

199 Requirement to give information about use of regulated restrictive practice to senior practitioner

New section 199 applies to a relevant service provider, other than a relevant service provider prescribed by regulation, that is using a regulated restrictive practice in relation to a person with disability.

The relevant service provider must give to the senior practitioner, in the way and at the times

prescribed by regulation, information about the use of the regulated restrictive practice prescribed by regulation.

200 Senior practitioner may give information about use of regulated restrictive practice

New section 200 states the senior practitioner may give information given to the senior practitioner by a relevant service provider under section 199 to any or all of the following:

- the public guardian:
  - on the request of the public guardian, if satisfied the disclosure would assist in the performance of the public guardian's functions under the *Public Guardian Act 2014*;
  - on its own initiative, if satisfied that both of the following apply:
    - the information relates to a child with disability who is staying at a visitable location or who is a relevant child under the *Public Guardian Act 2014*; and

    - the disclosure would assist in the performance of stated functions under the *Public Guardian Act 2014*;
- the NDIS Commissioner if satisfied the disclosure would assist in the performance of the commissioner's functions under the *National Disability Insurance Scheme Act 2013*; or
- the relevant service provider.

27 Insertion of new pt 6AA

Part 6AA Senior practitioner

Division 1 Establishment, functions and powers

200AA Establishment

This section provides there must be a Senior Practitioner.

200AB Functions of senior practitioner

This section provides that the senior practitioner's main function is to promote the reduction and elimination of the use of restrictive practices by relevant service providers by considering applications for, and giving, restrictive practice authorisations under Part 6.

The senior practitioner's main function is performed primarily by the senior practitioner doing the following—

- publishing data relating to restrictive practice authorisations given under Part 6;
- monitoring and receiving complaints about the compliance of relevant service providers with the framework for the use of regulated restricted practices under Part 6;
- developing and providing information, education and advice about the use of regulated restrictive practices;
- developing guidelines about matters relating to Part 6, including guidelines to support relevant service providers in relation to applications for restrictive practice authorisations;
- performing any other function prescribed by regulation.

The senior practitioner also has any other function given to the senior practitioner under this Act or another Act.

200AC Powers

This section provides that the senior practitioner has the powers given under this Act or another Act.

Subsection (2) provides the senior practitioner may do all things necessary or convenient to be done in performing the senior practitioner's functions. Without limiting subsection (2), the senior practitioner may ask the NDIS commissioner for information the senior practitioner considers necessary or convenient to perform the senior practitioner's functions.

200AD Not under Ministerial control

This section provides that in performing the senior practitioner's functions and exercising the senior practitioner's powers, the senior practitioner is not under the control or direction of the Minister.

200AE Not a statutory body for particular Acts

This section provides that to remove any doubt, it is declared that the senior practitioner is not a statutory body for the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*.

200AF Delegation

This section provides the senior practitioner may delegate a power of the senior practitioner under this Act or another Act to—(a) a member of the senior practitioner's staff who is appropriately qualified to exercise the power delegated; or (b) a public service officer who is appropriately qualified to exercise the power delegated.

Division 2 Appointment and related matters

200AG Appointment of senior practitioner

This section provides the senior practitioner is to be appointed by the Governor in Council on the recommendation of the Minister. The Minister may recommend a person for appointment only if the person is appropriately qualified to perform the functions of the senior practitioner.

200AH Senior practitioner appointed under this Act

The senior practitioner is appointed under this Act and not under the *Public Sector Act 2022*.

200AI Conditions of appointment

This section states the senior practitioner is to be paid the remuneration and allowances decided by the Governor in Council.

The senior practitioner holds office on the terms and conditions, not provided for by this Act, that are decided by the Governor in Council.

200AJ Preservation of rights

This section applies if a public service officer is appointed as the senior practitioner.

The person keeps all rights accrued or accruing to the person as a public service officer as if service as the senior practitioner were a continuation of service as a public service officer.

At the end of the person's term of office as senior practitioner or on resignation from the office, the person's service as the senior practitioner is taken to be service of a like nature in the public service for deciding the person's rights as a public service officer.

200AK Vacancy in office

This section outlines when the office of the senior practitioner becomes vacant.

The office of the senior practitioner becomes vacant—

- if the senior practitioner—(i) resigns office by signed notice to the Minister giving at least 1 month's notice; or (ii) is convicted of an indictable offence; or (iii) is an insolvent under administration; or (iv) is removed from office by the Governor in Council under subsection (2); or
- if the senior practitioner is suspended by the Minister under subsection (4)—during the period of suspension.

The Governor in Council may, at any time, remove the senior practitioner from office on the recommendation of the Minister.

The Minister may recommend the senior practitioner's removal from office if satisfied the senior practitioner—

- has been guilty of misconduct; or
- is incapable of performing their duties; or
- has neglected their duties or performed them incompetently.

The Minister may, by signed notice given to the senior practitioner, suspend the senior practitioner for up to 60 days if—

- there is an allegation of misconduct against the senior practitioner; or
- the Minister is satisfied a matter has arisen in relation to the senior practitioner that may be grounds for removal under this section.

Division 3 Office and staff of the senior practitioner

200AL Office

This section states that the Office of the Senior Practitioner is established, and that the office consists of the senior practitioner and the senior practitioner's staff.

200AM Control of the office

This section states that the senior practitioner is to control the office. However, this does not prevent the attachment of the office to DCSSDS for the purpose of ensuring that the office is supplied with the administrative support services that it requires to carry out its functions effectively and efficiently. The purpose of this section is to ensure clarity on the way the Office of the Senior Practitioner is to be staff and administratively supported.

200AN Staff of the office

New section 200AN states that the staff of the office of the senior practitioner are employed under the *Public Sector Act 2022.*

Division 4 Guidelines

200AO Senior practitioner may make guidelines

New section 200AO provides for the senior practitioner to make and issues guidelines that pertain to the compliance with Part 6. The guidelines must be accessible to the public on a Queensland Government website.

28 Omission of pt 8, div 2 (Locking of gates, doors and windows)

Clause 28 omits Part 8, Division 2 of the *Disability Services Act 2006*. This reflects that the locking of gates, doors and windows in response to an adult not having the skills to safely exit premises without supervision will be regulated as per all other regulated restrictive practices under new Part 6 of the *Disability Services Act 2006*. This will achieve alignment with the NDIS (RPBS) Rules and provide the highest level of safeguards for people with disability.

29 Amendment of s 228 (Confidentiality of other information)

Clause 29 amends section 228 of the *Disability Services Act 2006* to ensure it captures a person who is involved in the administration of amended Part 6, including the senior practitioner.

The amendments to section 228(3) expand the list of people who can be considered to have gained information through involvement in the Act's administration because of being, or an opportunity given by being:

- the senior practitioner; or
- a staff member of the Office of the Senior Practitioner; or
- a person contracted by the chief executive to provide state disability services or NDIS supports or services for DCSSDS; or
- a person contracted by the chief executive or the department for the purpose of conducting a behaviour support assessment, including a functional behavioural assessment, or developing an NDIS behaviour support plan or a State behaviour support plan for a person with disability; or
- a person contracted by the senior practitioner to carry out research in relation to the objects of the Act; or
- a behaviour support practitioner engaged by the relevant service provider for the purpose of developing a state behaviour support plan under Part 6, Division 4;

Section 228 has also been amended to provides that the senior practitioner may:

- disclose information to the NDIS Commissioner if satisfied the disclosure would assist in the performance of the commissioner's functions under the *National Disability Insurance Scheme Act 2013* (Cwlth); or
- disclose information to the chief executive if satisfied the disclosure would assist in the performance of the chief executive's functions under this Act.

30 Insertion of new s 241B (Review of changes relating to regulated restrictive practices)

Clause 30 inserts new section 241B, which requires the Minister to conduct a statutory review of the amendments made by the *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2024*. The purpose of the review is to ensure the reformed

framework that is implemented through the amendments is operating efficiently and effectively.

The review must be completed as soon as practicable after the end of 3 years after the commencement of section 241B.

31 Insertion of new pt 9, div 15

Clause 31 inserts new Part 9, Division 15 (new sections 394 – 403) into the *Disability Services Act 2006* to support a smooth transition to the reformed authorisation framework.

Division 15 Transitional provisions for Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2024

Subdivision 1 Preliminary

394 Definitions for division

New section 394 section contains definitions for the purpose of Part 9, Division 15 (Transitional provisions for *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2024*).

395 Particular terms have meaning given under unamended Act

New section 395 provides that, in this Division, a term defined under the unamended Act but not under the amended Act has the meaning it had under the unamended Act. Subsection (1) does not apply in relation to a term defined in new section 394.

In this section:

- ***amended Act*** means this Act as in force after the commencement.
- ***unamended Act*** means this Act as in force from time to time before the commencement.

Subdivision 2 Particular assessments and positive behaviour support plans

396 Existing assessments of adults with an intellectual or cognitive disability

New section 396 applies if, before the commencement, an assessment of an adult with an intellectual or cognitive disability was carried out under former section 148.

The assessment is taken to be a behaviour support assessment, including a functional behavioural assessment, for the adult under the amended Act.

397 Existing positive behaviour support plans

New section 397 applies if, immediately before commencement, a positive behaviour support plan was in effect for an adult with intellectual or cognitive disability. The section provides, that, under the amended Act, the positive behaviour support plan is taken to be:

- for a plan relating to an adult receiving NDIS supports or services from a relevant service provider—an NDIS behaviour support plan; or
- for a plan relating to an adult receiving disability services from a relevant service provider—a State behaviour support plan.

It is intended that the provisions in the amended Act relating to the review of state behaviour support plans will apply to existing positive behaviour support plans that will become state behaviour support plan under s 397(2)(b).

Subdivision 3 Other transitional provisions

398 Confidentiality of particular information—relevant service providers

New section 398 applies in relation to a relevant service provider that gains confidential information under former s 197, or mentioned in former section 198(1)(b).

New section 198(2) and (3) will apply in relation to the disclosure of the information after the commencement, by the relevant service provider, or an individual acting for the relevant service provider, as if the confidential information were mentioned in new section 198(1).

Section 198 provides for a penalty for the unauthorised disclosure of confidential information. It provides for disclosure in limited circumstances, including for a proceeding in a court or tribunal, if authorised in writing by the person with disability to whom the information relates; or to protect a person with disability from abuse, neglect or exploitation.

399 Information about use of restrictive practices before commencement

New section 399 extends the application of former section 199(2) so that if, before the commencement:

- a relevant service provider that former section 199 applied to used a restrictive practice in relation to an adult with an intellectual and cognitive disability; and
- the relevant service provider had not given the chief executive information about the use of the restrictive practice under former s 199(2).

Former section 199(2) continues to apply in relation to the relevant service provider as if the amending Act had not been enacted.

400 Chief executive may give information about use of restrictive practice

New section 400 applies to information given to the chief executive by a relevant service provider under former section 199 before or after commencement.

The chief executive may give the information to an entity mentioned in former section 200(2) or the senior practitioner as if the amending Act had not been enacted. Former section 200 allows the chief executive to give information received under section 199 to QCAT, the public guardian, the public advocate, and the relevant service provider.

If the chief executive gives the information to the senior practitioner, new section 200 applies in relation to the information as if it was given to the senior practitioner by the relevant service provider under new section 199.

401 Confidentiality of particular information—other persons

New section 401 provides that new section 228, Confidentiality of other information, applies in relation to the disclosure, after the commencement, of confidential information by a person mentioned in former section 228(3)(d), whether the information was gained by the person before or after the commencement. This relates to a person contracted by the department for the purpose of conducting a multidisciplinary assessment, or developing a positive behaviour support plan, under former Part 6, Division 3.

402 Immunity from liability—use of restrictive practices before commencement

New section 402 provides that former Part 6, Division 7, Subdivision 1 continues to apply in relation to the use of a restrictive practice by a relevant service provider, or an individual acting for a relevant service provider, before the commencement.

This provision is intended to ensure that the civil and criminal immunities that applied under the previous framework for restrictive practices under the Act in relation to restrictive practices used before commencement of this Bill will continue. It does not apply to restrictive practices used after commencement.

403 Immunity from liability—locking gates, doors and windows before commencement

New section 403 provides that former sections 218 and 219 continue to apply in relation to the locking of gates, doors or windows by a relevant service provider, or an individual acting for a relevant service provider, before commencement.

This provision is intended to ensure that the civil and criminal immunities that applied under the unamended Act in relation to the locking of gates, doors and windows which occurred before commencement of the amended Act will continue. It does not apply to restrictive practices used after commencement.

The Bill removes the unique provisions for the locking of gates, doors and windows in response to an adult that does not have the skills to safely exit the premises without supervision that exist under the unamended Act. These restrictive practices will be captured by the reformed authorisation framework as a regulated restrictive practice.

404 Immunity from liability—transitional regulation

New section 404 applies if a relevant service provider, or an individual acting for a relevant service provider, is authorised to use a restrictive practice or lock gates, doors or windows at a premises at which disability services or NDIS supports or services are provided to a person which under a transitional regulation made under section 406.

The transitional regulation may provide for former Part 6, Division 7, subdivision 1 or former

section 218 or 219 (each a ***former immunity provision)*** to apply in relation to the doing of the thing by the relevant service provider or individual under the transitional regulation.

Subsection (3) states if the transitional regulation provides for a former immunity provision to apply regarding the doing of a thing, the former immunity provision applies in relation to the doing of the thing after the transitional regulation expires.

The intent of this section is to ensure an immunity for a thing done in accordance with a transitional regulation during the transitional period does not expire when the transitional regulation expires. If the immunity were to expire, this would expose the provider or individual to criminal or civil liability for an action that was lawful at the time it was done. It is not intended that the immunity provided under this provision would extend to actions taken after the transitional regulation expires – by this time, it is anticipated that all regulated restrictive practices should come within the authorisation process and immunities provided for under the amended Act.

405 Proceedings for particular offences

New section 405 applies in relation to an offence against former section 198 or former section 228 committed by a person before the commencement. These provisions relate to the disclosure of confidential information.

Subsection (2) provides that, without limiting the *Acts Interpretation Act 1954*, section 20, a proceeding for the offence may be continued or started, and the person may be convicted of and punished for the offence, as if the amending Act had not been enacted.

Subsection (2) applies despite the Criminal Code, section 11.

406 Transitional regulation-making power

New section 406 states a regulation (a ***transitional regulation***) may make provision about a matter for which—

- it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of this Act as in force before its amendment by the amending Act to the operation of the amended Act, including, for example, the sharing of particular information; and
- this Act does not provide or sufficiently provide.

A transitional regulation may have retrospective operation to a day that is not earlier than the day this section commences.

A transitional regulation must declare it is a transitional regulation.

This section and any transitional regulation expire on the day that is 2 years after the day this section commences.

32 Amendment of sch 8 (Dictionary)

Clause 32 amends Schedule 8 of the *Disability Services Act 2005* to provide for new and amended definitions used in amended Part 6. Many of these amended definitions are to align with definitions of the reformed authorisation framework and other relevant legislation, including the *National Disability Insurance Scheme Act 2013(Cth).*

Part 4 Amendment of Guardianship and Administration Act 2000

33 Act amended

Clause 33 states that this Part amends the *Guardianship and Administration Act 2000*.

34 Omission of s13A (Advance appointment – guardian for restrictive practice matter)

Clause 34 omits section 13A, which provides for the advance appointment of a guardian for a restrictive practice matter, as a consequential amendment to the omission of Chapter 5B.

35 Omission of ch 5B (Restrictive practices)

Clause 35 omits Chapter 5B to facilitate the operation of the new authorisation framework to be contained in the *Disability Services Act 2006*. Chapter 5B provides the former legislative framework for certain restrictive practices to be authorised by formally appointed guardians for restrictive practice matters, by consent. Chapter 5B also provides the former legislative framework for QCAT and the Office of the Public Guardian to authorise containment and seclusion.

36 Amendment of s 83 (Annual report by president)

Clause 36 amends s 83(b) of the *Guardianship and Administration Act 2000* by omitting and inserting new section 83(b), which will require the QCAT President to include in the tribunal's annual report under the *Queensland Civil and Administrative Tribunal Act 2009* for the previous financial year, the number of applications for external review and orders made under the *Disability Services Act 2006*, Part 6 Division 6 during the year. This will replace the former reporting obligation regarding the number of applications, approvals and orders made under chapter 5B of the *Guardianship and Administration Act 2000* during the year.

37 Insertion of new ch 12, pt 13

Part 13 Transitional provisions for Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2024

Clause 37 inserts new Chapter 12, Part 13 into the *Guardianship and Administration Act 2000* to support a smooth transition to the reformed authorisation framework.

Division 1 Preliminary

275 Definitions for part

New section 275 contains definitions for the purpose of Part 13 (Transitional provisions for *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2024*).

276 Particular terms having meaning given under unamended Act

New section 276 provides that, in this part, a term defined under the unamended Act but not under the amended Act has the meaning it had under the unamended Act.

In this section:
amended Act means this Act as in force from the commencement.
unamended Act means this Act as in force from immediately before the commencement.

Division 2 Existing proceedings

277 Existing proceedings for appointment of guardians for a restrictive practice matter

New section 277 applies if—

- before the commencement, a proceeding under former Chapter 5B, Part 5 for the appointment of a guardian for a restrictive practice matter under former Chapter 5B, Part 3 had been started; and
- immediately before the commencement, the proceeding had not been decided, withdrawn or otherwise disposed of by the tribunal.

The tribunal must discontinue the proceeding.

If a proceeding is discontinued under this section:

- the tribunal may make such orders or directions it considers appropriate;
- the tribunal must give the senior practitioner the name and contact details of the relevant service provider providing disability services to the adult concerned, and each other active party to the proceeding; and
- the tribunal must, as soon as practicable, give a written notice to each active party that states the proceeding is being discontinued, and that an application for an authorisation for the use of a restrictive practice may be made to the senior practitioner under the *Disability Services Act 2006* by the relevant service provider.

Subsection (4) provides that if the senior practitioner receives an application from the relevant service provider, the senior practitioner may ask the registrar for a copy of the record for the proceeding. The tribunal must comply with such a request.

Where a proceeding has been discontinued under this section, and an application has been subsequently made to the senior practitioner for the authorisation of the use of restrictive practices under section 161 of the *Disability Services Act 2006*, that application can either be withdrawn or decided under the *Disability Services Act 2006*. Subsections (5) and (6) ensure that active parties to the discontinued QCAT proceeding are notified by the senior practitioner of the progress of any such application made with to the senior practitioner.

278 Existing proceedings for containment or seclusion approvals

New section 278 applies if—

- before the commencement, a proceeding under former Chapter 5B, Part 5 for a containment or seclusion approval under former Chapter 5B, Part 2 had been started (which includes proceedings about containment or seclusion under section 80V of the *Guardianship and Administration Act 2000* well as proceedings about other restrictive practices under section 80X); and
- immediately before the commencement, the proceeding had not been decided, withdrawn or otherwise disposed of by the tribunal.

The tribunal must transfer the proceeding to the senior practitioner.

If the tribunal transfers the proceeding under this section:

- The proceeding is discontinued;
- The tribunal may make such orders or directions it considers appropriate to facilitate the transfer;
- The registrar must give a copy of the record for the proceeding to the senior practitioner;
- The tribunal must give the senior practitioner the name and contact details of the relevant service provider providing disability services to the adult concerned, and each other active party to the proceeding; and
- The tribunal must, as soon as practicable, give a written notice to the relevant service provider and each active party that states the proceeding is being dealt with by the senior practitioner as if it were an application for a restrictive practice authorisation under the *Disability Services Act 2006*; and
- The senior practitioner must deal with the proceeding as if it were an application for a restrictive practice authorisation under the *Disability Services Act 2006.*

The relevant service provider providing disability services to the adult concerned is taken to be the applicant for the application for the restrictive practice authorisation.

In considering the application, the senior practitioner may, by written notice given to an active party to the proceeding, ask the party to give the senior practitioner stated information that the senior practitioner reasonably believes is relevant to the application. This power is in in addition to the senior practitioner's power to request further information or documents under section 150 of the *Disability Services Act 2006*.

If the senior practitioner gives the applicant a notice of withdrawal of the application under section 154 of the *Disability Services Act 2006* or a notice of a decision on the application under section 162 of the *Disability Services Act 2006*, the senior practitioner must give a copy of the notice to any other active party to the proceeding.

279 Existing proceedings for reviews of containment or seclusion approvals

New section 279 applies if—

- before the commencement, a proceeding under former Chapter 5B, Part 5 for a review of a containment or seclusion approval under former section 80ZA had been started; and
- immediately before the commencement, the proceeding had not been decided, withdrawn or otherwise disposed of by the tribunal.

The tribunal must transfer the proceeding to the senior practitioner.

If the tribunal transfers the proceeding under this section:

- The proceeding is discontinued;
- The tribunal may make such orders or directions it considers appropriate to facilitate the transfer;
- The registrar must give a copy of the record for the proceeding to the senior practitioner;

- The tribunal must give the senior practitioner the name and contact details of the relevant service provider providing disability services to the adult concerned, and each other active party to the proceeding; and
- The tribunal must, as soon as practicable, give a written notice to the relevant service provider and each other active party to the proceeding that states the proceeding is being dealt with by the senior practitioner as if it were an application for a restrictive practice authorisation under the *Disability Services Act 2006.;* and
- The senior practitioner must deal with the proceeding as if it were an application for a restrictive practice authorisation under the *Disability Services Act 2006.*

The relevant service provider providing disability services to the adult concerned is taken to be the applicant for the application for the restrictive practice authorisation.

In considering the application, the senior practitioner may, by written notice given to an active party to the proceeding, ask the party to give the senior practitioner stated information that the senior practitioner reasonably believes is relevant to the application. This power is in in addition to the senior practitioner's power to request further information or documents under section 150 of the *Disability Services Act 2006*.

If the senior practitioner gives the applicant a notice of withdrawal of the application under section 145 of the *Disability Services Act 2006* or a notice of a decision on the application under section 162 of the *Disability Services Act 2006*, the senior practitioner must give a copy of the notice to any other active party to the proceeding that was before the tribunal.

Division 3 Other matters

280 Transfer of records

Subsection (1) of new section 280 provides that the registrar must give the senior practitioner:

(a) relevant information and documents relating to all appointments of guardians for restrictive practices matters under this Act in effect immediately before the commencement; and
(b) relevant information and documents relating to all containment and seclusion approvals under this Act in effect immediately before the commencement.

Subsection (1) provides that, if asked by the senior practitioner, the registrar must give the senior practitioner a copy of the record of proceeding for any matter mentioned in subsection (1).

Relevant information and documents include (but are not limited to), the name and contact details of each party to the proceeding and of the relevant service provide. They also include a copy of any limitations orders made in relation to the proceeding and a copy of the final decision made by the tribunal.

281 Release of information

New section 281 applies if the tribunal, registrar, or public guardian (each a relevant entity) is required to give particular information in its custody or control to the senior practitioner under this Part or under a transitional regulation under section 283.

Subsection (2) provides that the relevant entity may give the information despite:

(a) any limitation order made by the tribunal in relation to a proceeding; or
(b) any other provision of this Act, the *Public Guardian Act 2014* or the *Queensland Civil and Administrative Tribunal Act 2009*.

282 Annual report by president

New section 282 applies in relation to the annual report made by the president under section 83 for a financial year.

Subsection (2) provides the annual report must include the proceedings transferred by the tribunal to the senior practitioner under Division 2 in the financial year.

283 Transitional regulation-making power

New section 283 states a regulation (a ***transitional regulation***) may make provision about a matter for which—

- it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of this Act as in force before its amendment by the *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2024* to the operation of this Act as in force from the commencement, including, for example, for the sharing of particular information; and
- this Act does not provide or sufficiently provide.

The combined effect of sections 281 and 283 are that any information sharing arrangements in the transitional regulation, to facilitate the transition of this Act, will overcome any limitation that might otherwise apply to the sharing of that information under the *Guardianship and Administration Act 2000*, *Public Guardian Act 2014* or *Disability Services Act 2006*.

A transitional regulation may have retrospective operation to a day that is not earlier than the day this section commences.

A transitional regulation must declare it is a transitional regulation.

This section and any transitional regulation expire on the day that is 2 years after the day this section commences.

38 Amendment of sch 4 (Dictionary)

Clause 38 amends Schedule 4 of the *Guardianship and Administration Act 2000*, to remove all references to terms used in Chapter 5B.

Part 5 Amendment of *Public Guardian Act 2014*

39 Act amended

Clause 39 states that this Part amends the *Public Guardian Act 2014.*

40 Amendment of s 12 (Functions—adult with impaired capacity for a matter)

Clause 40 amends section 12 of the *Public Guardian Act 2014*, by omitting subsection 12(1)(g) as a consequential amendment to the omission of Chapter 5B of the *Guardianship and Administration Act 2000* and the introduction of the reformed authorisation framework under the *Disability Services Act 2006*. This means the Public Guardian will no longer have a function tin approving the use of a restrictive practice in relation to adults under Chapter 5B of the *Guardianship and Administration Act 2000.* Subclause (2) renumbers parts of subsection 12(1) because of this omission.

41 Amendment of s 13 (Functions—relevant child, etc.)

Clause 41 amends section 13 of the *Public Guardian Act 2014*, by inserting new section 13(1)(o). This creates a new function for the public guardian to help a relevant child to initiate or, on the child's behalf, initiate an application to QCAT for a review of an authorisation decision of the senior practitioner under Part 6, Division 6 of the *Disability Services Act 2006*.

42 Amendment of s 39 (Definitions for pt 6)

Clause 42 amends section 39 of the *Public Guardian Act 2014*, by omitting the section 39 definition of 'Chapter 5B approval'. Subclause (2) inserts a new definition of 'restrictive practice', meaning:

- a regulated restrictive practice within the meaning of the *Disability Services Act 2006*, section 142; or
- a regulated restrictive practice within the meaning of the national disability insurance scheme rules made for the *National Disability Insurance Scheme Act 2013* (Cwlth), section 73H about conditions applying to registered NDIS providers in relation to the use of regulated restrictive practices.

Subclause (3) amends the section 39 definition of *private dwelling house* to remove the reference to a restrictive practice under a Chapter 5B approval, replacing this with a reference to a regulated restrictive practice being used at the premises in relation to an adult under a restrictive practice authorisation.

These amendments are consequential to the omission of chapter 5B of the *Guardianship and Administration Act 2000* by clause 35 and the introduction of the reformed authorisation framework under the *Disability Services Act 2006*.

43 Amendment of s 47 (Reports by community visitors (adult))

Clause 43 amends section 47(4)(e) of the *Public Guardian Act 2014*, to provide that the Public Guardian may give a copy of a report provided by a community visitor (adult) after visiting a

visitable site to QCAT, a guardian or administrator for an adult, or the senior practitioner, if a regulated restrictive practice is being used at the site.

44 Amendment of s 70 (Reports by community visitors (child))

Clause 44 amends section 70 of the *Public Guardian Act 2014* to provide that the Public Guardian may provide a copy of a report provided by a community visitor (child) after visiting a child under care staying at a visitable home or visitable site to the senior practitioner, if a regulated restrictive practice is being used in relation to the child at the visitable home or visitable site.

45 Amendment of s 85 (Application of pt 4 – separate representatives)

Clause 45 amends section 85(a) of the *Public Guardian Act 2014* to provide that Chapter 4, Part 4 of the Act does not apply to information about a child and the child's circumstances in the possession or control of the chief executive officer of Legal Aid Queensland if the information came into the possession or control of the chief executive officer because a person is separately representing, or separately represented, the child under the *Disability Services Act 2006*, section 188ZF.

46 Amendment of s 86 (Prescribed entities)

Clause 46 amends section 86 of the *Public Guardian Act 2014* to add the senior practitioner as a prescribed entity for the purposes of Chapter 4, Part 4 of the Act, to authorise and facilitate an appropriate exchange of information, including confidential information about a child and a child's circumstances, between the senior practitioner and the Public Guardian to help the Public Guardian perform child advocate functions in relation to relevant children.

47 Amendment of Schedule 1 (Dictionary)

Clause 47 amends the dictionary in Schedule 1 of the *Public Guardian Act (2014)*, by removing definitions for 'Chapter 5B approval' and 'restrictive practice' definitions and inserting new definitions of *regulated restrictive practice*, *restrictive practice authorisation* and *senior practitioner* with reference to the new definitions in the *Disability Services Act 2006*.

Part 6 Amendment of *Queensland Civil and Administrative Tribunal Act 2009*

48 Act amended

Clause 48 states that this Part amends the *Queensland Civil and Administrative Tribunal Act 2009*.

49 Amendment of s 46 (Withdrawal of application or referral)

Clause 49 amends section 46(2)(b) of the *Queensland Civil and Administrative Tribunal Act 2009*, to provide that an application for review of an authorising decision by the Senior

Practitioner under Part 6, Division 6 of the *Disability Services Act 2006* can only be withdrawn with the leave of the tribunal.

50 Amendment of sch 3 (Dictionary)

Clause 50 amends the definition of non-publication order in Schedule 3 of the *Queensland Civil and Administrative Tribunal Act 2009* to remove references to provisions being omitted by the Bill and to include new confidentiality, non-publication and non-identification orders that may be made by QCAT under sections 188T, 188ZU, 188V, 188ZN and 188ZO of the *Disability Services Act 2006*.

Part 7 Other amendments

51 Legislation amended

Clause 51 states that Schedule 1 amends the legislation it mentions.

Schedule 1 Other amendments

Disability Services Act 2006

1 Section 5(1), '218, 219,' –

Clause 1 removes reference to existing sections '218, 219' from section 5 of the *Disability Services Act 2006.*

2 Section 37, definition relevant person, paragraph (a)(iv), within the meaning of the *Guardianship and Administration Act 2000* –

Clause 2 removes 'within the meaning of the *Guardianship and Administration Act 2000'* from the definition of *relevant person.* This reflects the new definition of *relevant person* within section 142 of the *Disability Services Act 2006*.

3 Section 52(4), definition *NDIS participant* –

Clause 3 removes the definition of *NDIS participant* from section 52(4) of the *Disability Services Act 2006.*

Forensic Disability Act 2011

1 Section 14(6), definition *relevant plans*, paragraph (b), 'positive behaviour support plan'—

Clause 1 amends the definition of *relevant plan* within section 14(6) of the *Forensic Disability Act 2011* to replace the term 'positive behaviour support plan' with the new term *State behaviour support plan* within the meaning of the *Disability Services Act 2006.*

2 Section 14(6), definition *relevant plans* –

Clause 2 amends the definition of *relevant plan* within section 14(6) of the *Forensic Disability Act 2011* to add a new paragraph to make clear this includes an NDIS behaviour support plan within the meaning of the *Disability Services Act 2006*.

3 Section 14(6), definition relevant plans, paragraphs (ba) and (c)—

Clause 3 amends section 14(6) of the *Forensic Disability Act 2011* to renumber paragraphs (ba) and (c) as (c) and (d).

4 Section 47, note, 'restrictive practices' –

Clause 4 amends section 47 of the *Forensic Disability Act 2011* to omit 'restrictive practices' and replace with *regulated restrictive practices* to reflected updated terminology in the *Disability Services Act 2006.*

Guardianship and Administration Act 2000

1 Section 12(4) and note –

Clause 1 removes section 12(4) and note of the *Guardianship and Administration Act 2000.*

2 Section 13(9) –

Clause 2 removes section 13(9) of the *Guardianship and Administration Act 2000.*

3 Section 26(1)(g) –

Clause 3 removes section 26(1(g) of the *Guardianship and Administration Act 2000*.

4 Section 28(2) –

Clause 4 removes section 28(2) of the *Guardianship and Administration Act 2000*.

5 Section 29(1)(b), from '(other' to '5B)'—

Clause 5 amends section 29(1)(b) of the *Guardianship and Administration Act 2000*.

6 Section 29(1)(c) and (2) –

Clause 6 removes section 29(1)(c) and (2) of the *Guardianship and Administration Act 2000.*

7 Section 33(3) –

Clause 7 removes section 33(3) of the *Guardianship and Administration Act 2000*.

8 Section 81(1)(i) –

Clause 8 removes section 81(1)(i) of the *Guardianship and Administration Act 2000*.

9 Section 81(1)(j) and (k) –

Clause 9 renumbers section 81(1)(j) and (k) of the *Guardianship and Administration Act 2000* to section (81)(i) and section 81(1)(j).

10 Section 118(1)(k) –

Clause 10 removes section 118(1)(k) of the *Guardianship and Administration Act 2000.*

11 Section 118(1)(I) –

Clause 11 renumbers section 118(l)(1) of the *Guardianship and Administration Act 2000* as Section 118(l)(k).

12 Section 118(6)(a) and (8), '(k)' –

Clause 12 amends section 118(6)(a) and (8) to replace (k) with (j).

13 Schedule 2, section 2(j) and (k) –

Clause 13 removes Schedule 2, section 2(j) and (k) of the *Guardianship and Administration Act 2000*.

Schedule 2, subsection 2(j) and (k) provides that the definition of a 'personal matter' includes:

- a restrictive practice matter under Chapter 5B; and
- seeking help and making representations about the use of restrictive practices for an adult who is the subject of a containment or seclusion approval under Chapter 5B.

14 Schedule 2, section 2(l) and (m) –

Clause 14 renumbers Schedule 2, section 2(l) and (m) of the *Guardianship and Administration Act 2000* as section 2(j) and (k).