

Disability Services Amendment Regulation 2025

Explanatory notes for SL 2025 No. 47

made under the

Disability Services Act 2006

General Outline

Short title

Disability Services Amendment Regulation 2025

Authorising law

Sections 140 and 239 of the *Disability Services Act 2006*

Policy objectives and the reasons for them

The policy objective of the *Disability Services Amendment Regulation 2025* (the Amendment Regulation) is to amend the *Disability Services Regulation 2017* (the Regulation) to remove reference to the *Aged Care Act 1997* (Cth) (the current Aged Care Act) and *Aged Care Quality and Safety Commission Act 2018* (Cth) (ACQSC Act), and replace with reference to the *Aged Care Act 2024* (Cth) (the new Aged Care Act) in time for its commencement on 1 July 2025.

Reasons for the policy objectives

Under the National Disability Insurance Scheme (NDIS) Quality and Safeguarding Framework (QSF), states and territories are responsible for the legislative and policy frameworks that authorise the use of regulated restrictive practices in the NDIS. Queensland's current authorisation framework for the use of restrictive practices with adults with an intellectual or cognitive disability who receive disability services or NDIS supports or services is predominately prescribed under part 6 of the DS Act.

The NDIS Quality and Safeguards Commission (NDIS Commission) is responsible for overseeing the use of behaviour support and restrictive practices, including setting conditions of registration for the use of restrictive practices by registered NDIS providers. These include that regulated restrictive practices may only be used by registered NDIS providers in accordance with a behaviour support plan developed by a specialist behaviour support practitioner. Registered NDIS providers are also required to obtain state or territory

authorisation (where available) to use regulated restrictive practices. All use of regulated restrictive practices must be reported to the NDIS Commission.

It is acknowledged some younger people (aged under 65), who are NDIS participants, live permanently, or for extended periods of time in residential aged care (RAC) facilities.

On commencement of the NDIS QSF in Queensland on 1 July 2019, RAC providers were exempt from the Commonwealth's conditions of registration for the use of regulated restrictive practices with NDIS participants in RAC facilities. This reflected that the aged care system is subject to an alternative QSF. Queensland put in place a corresponding exemption, under section 12 of the Amendment Regulation, exempting RAC providers from the requirement to comply with part 6 of the DS Act.

On 1 December 2020, the Commonwealth exemption lapsed, and from 1 March 2021 RAC providers became subject to the same conditions of registration as other registered NDIS providers if they cared for NDIS participants.

In 2020, DFSDSCS commenced the Positive Behaviour Support and Restrictive Practices Review (PBSRP Review). The purpose of the PBSRP Review was to consider the policy, legislative and financial implications associated with the implementation of nationally consistent authorisation processes for the use of regulated restrictive practices in disability service settings. Noting the uncertain impacts on RAC providers, the Queensland exemption for RAC providers was retained.

The PBSRP Review is now complete. Subject to any legislative changes to Queensland's existing authorisation framework for the use of regulated restrictive practices in disability service settings, and further consideration of how any reformed authorisation framework for disability service settings should apply to RAC providers, Queensland will continue to require an exemption for RAC providers. Requiring RAC providers to comply with the existing authorisation framework will create unnecessary confusion and regulatory burden.

The Queensland exemption for RAC providers relies upon provisions in the current Aged Care Act and ACQSC Act. The new Aged Care Act was passed by Federal Parliament on 25 November 2024 and will commence on 1 July 2025. The new Aged Care Act will replace the current Aged Care Act and the ACQSC Act.

Under the new Aged Care Act, the use of restrictive practices with people with disability in residential care homes continues to be subject to an alternative QSF. This will include the requirement for funded aged care services to be delivered by a registered provider and, as a condition of registration, the requirement to comply with any requirements prescribed by rules relating to the use of restrictive practices with a person to whom the provider is delivering services in a residential care home.

Achievement of policy objectives

The Amendment Regulation will amend the DS Regulation to remove reference to the current Aged Care Act and ACQSC Act, and associated terminology, and provide that section 140(2) of the DS Act does not apply to a registered provider under the new Aged Care Act if:

- the registered provider is providing disability services or NDIS supports or services to an adult; and
- the adult has an approval, under the new Aged Care Act, section 65(2), to access funded aged care services for the service group residential care.

Consistency with policy objective of authorising law

The Amendment Regulation is consistent with the policy objectives of the DSA.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There is no alternative way of achieving the policy objectives.

Benefits and costs of implementation

The Amendment Regulation will not change the purpose of section 12 of the DS Regulation, but rather will remove any ambiguity and promote regulatory certainty for providers and participants once the new Aged Care Act commences.

Further, the use of regulated restrictive practices by registered providers with people with disability in residential care homes will continue to be subject to an alternative quality and safeguarding framework under the new Aged Care Act.

There are no implementation costs associated with the Amendment Regulation.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

The Office of Best Practice Regulation was consulted on the development of the Amendment Regulation. As the proposal relates to a consequential amendment, Office of Best Practice Regulation advised no regulatory impact analysis is required under the Queensland Government Better Regulation Policy.

The Amendment Regulation has not been subject to community consultation, noting the proposed amendment is not anticipated to impact current practice.

Notes on provisions

Short Title

Clause 1 states that the short title is the *Disability Services Amendment Regulation 2025*.

Commencement

Clause 2 states that the regulation commences on 1 July 2025.

Regulation amended

Clause 3 states that this regulation amends the *Disability Services Regulation 2017*.

Amendment of s 12 (Service providers to which pt 6 of the Act does not apply—Act, s 140)

Clause 4 amends section 12 by inserting ‘a registered provider under the *Aged Care Act 2024* (Cwlth) is prescribed’.

Clause 4 amends section 12(b) by inserting ‘the adult has an approval, under the *Aged Care Act 2024* (Cwlth), section 65(2), to access funded aged care services for the service group residential care’.

Clause 4 amends section 12 by inserting ‘In this section—***funded aged care services*** see the *Aged Care Act 2024* (Cwlth), section 7’ and ‘***service group*** see the *Aged Care Act 2024* (Cwlth), section 7.’

The purpose of these amendments is to remove reference to the *Aged Care Act 1997* (Cth) and *Aged Care Quality and Safety Commission Act 2018* (Cth) and replace with reference to the *Aged Care Act 2024* (Cth) (the new Aged Care Act) in time for its commencement on 1 July 2025.

The proposed amendments will not change the purpose of section 12 of the DS Regulation and will provide clarity and certainty for providers and participants once the new Aged Care Act commences on 1 July 2025.