

# Disability Services Amendment Regulation 2025

## Human Rights Certificate

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, Amanda Camm, Minister for Families, Seniors, Disability Services and Minister for Child Safety and the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Disability Services Amendment Regulation 2025* (the DS Amendment Regulation) made under the *Disability Services Act 2006* (DS Act).

In my opinion, the DS Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

### Overview of the Subordinate Legislation

The DS Amendment Regulation exempts registered providers under the *Aged Care Act 2024* (Cth) from the requirement to comply with part 6 of the DS Act in the provision of disability services or National Disability Insurance Scheme (NDIS) supports or services to an adult within an approved residential care home.

Under the 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 Commissioner.

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, residential aged care (RAC) providers were exempt from the Commonwealth's conditions of registration for the use of restrictive practices with NDIS participants in RAC facilities. This reflected that the aged care system is subject to an alternative quality and safeguarding framework. Queensland put in

place a corresponding exemption, under section 12 of the *Disability Services Regulation 2017* (the DS 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 *Aged Care Act 1997* (Cth) (the current Aged Care Act) and *Aged Care Quality and Safety Commission Act 2018* (Cth) (ACQSC Act). It also refers to definition and terminology as defined under those Acts.

The *Aged Care Act 2024* (Cth) (the new Aged Care Act) was passed by Federal Parliament on 25 November 2024 and will start from 1 July 2025. The new Aged Care Act will replace the current Aged Care Act and the ACQSC Act. The new Aged Care Act also uses new terminology, for example, 'a registered provider' instead of 'an approved provider' and 'residential care home' instead of 'residential facility'.

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 quality and safeguarding framework. 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.

In addition, the new Aged Care Act only provides immunity from civil or criminal liability that may arise in relation to the use of a restrictive practice in particular circumstances and where certain conditions are met. This will provide additional protection to individuals receiving funded aged care services and ensure that the scope of this immunity is strictly limited to use that aligns with the consent that has been provided.

## Human Rights Issues

**Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)**

The enactment of the DS Amendment Regulation has been considered in line with the HR Act, and it has been determined that no human rights are engaged by the DS Amendment Regulation.

A minor amendment is required to section 12 of the DS Regulation to remove reference to the current Aged Care Act and ACQSC Act and replace with reference to 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, but rather will remove any ambiguity and promote regulatory certainty for providers and participants once the new Aged Care Act commences. Therefore, there are no limits on human rights.

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.

## **Conclusion**

I consider that the DS Amendment Regulation is compatible with the HR Act because it does not limit human rights.

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