

16 July 2024

Our ref: LP

Committee Secretary
Community Support and Services Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: [REDACTED]

Dear Committee Secretary

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

Thank you for the opportunity to provide feedback on the Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024 (**the Bill**). The Queensland Law Society (**QLS**) appreciates being consulted on this important piece of legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled with input from members with expertise in this area.

Key points:

- QLS supports the senior practitioner model under the Bill as long as there is strong alignment with human rights principles and sufficient safeguards to support transparency in decision-making.
- Appropriate resourcing and funding for the implementation of the reformed authorisation framework and positive behaviour management to support the reforms will be critical to ensuring they achieve their legislative intent.
- Complaints and appeal mechanisms under the Bill must be clear and supported by legal assistance sector funding to ensure they are accessible.
- Sector wide education is required to assist all stakeholders and service providers to understand what restrictive practices are and to ensure the legislative framework is applied appropriately in practice.
- Cultural safety is critical. QLS supports further consultation with First Nations and Culturally and Linguistically Diverse stakeholders to ensure appropriate protocols and supported decision making frameworks are promoted by the reform.

In formulating our response, we have had the benefit of reviewing submissions of Queensland Advocacy for Inclusion (QAI) and of other submissions to this Inquiry.

At the outset, we generally welcome enhanced regulation of restrictive practices. In particular, QLS strongly supports coordination of state and national regulation of restrictive practices with a view to minimising their use across all health, aged care and disability settings.

We emphasise that appropriate resourcing and funding for the implementation of the reformed authorisation framework and positive behaviour management to support the reforms will remain critical to ensuring they achieve their legislative intent.

Expanded scope needs to be considered

QLS notes the restrictive practices framework under the Bill will only cover National Injury Insurance Scheme (NDIS) participants or state-funded disability services.

QLS has previously expressed concern with inconsistent authorisation and application of restrictive practices across different settings including for example for people with disability who are not NDIS participants.

We support the Public Advocate's submission in respect of advocating for extension of the authorisation framework to other areas such as aged care, health and the NDIS.¹ The submission of QAI to the inquiry has also queried whether the new framework will apply to supported accommodation settings.²

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**the Disability Royal Commission**) made a number of recommendations on these issues.

Comprehensive consideration of the Disability Royal Commission reports and recommendations must form part of all reform measures in this area.

In the time available, our response to the Bill is limited to those aspects below.

Part 3 Amendment of Disability Services Act 2006

Senior practitioner framework

The Bill amends the *Disability Services Act 2006* (**DS Act**) to establish a reformed authorisation framework for the use of regulated restrictive practices including establishing the office and functions of the senior practitioner, replacing the current guardianship-based model with a clinician-based model.

QLS generally supports the proposed model of authorisation, where a senior practitioner undertakes functions such as providing authorisation for restrictive practices. However there must be strong alignment with human rights principles and sufficient safeguards to support transparency in decision-making.

¹ The Public Advocate, Submission No 3 to Community Support and Services Committee, *Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024* (4 July 2024).

² Queensland Advocacy for Inclusion, Submission No 7 to Community Support and Services Committee, *Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024* (5 July 2024).

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It is crucial that the role of the senior practitioner is closely aligned with the Human Rights Act 2019 to ensure that decisions made respect and uphold the human rights of persons with disability.

QLS recommends:

- The human rights principles in Clause 11 apply to the senior practitioner in the performance of their functions under the Bill.
- Additional safeguards to ensure transparency of decision-making by the senior practitioner. This includes improved data collection (as required under section 200AB of the Bill) and monitoring of trends in the use of restrictive practices and decisions made by the senior practitioner; and
- Requiring annual reporting to Parliament on the use of restrictive practices in the legislation.

Subdivision 3 Deciding applications

158 When restrictive practice authorisation may be given

Under new section 158 of the Bill, the senior practitioner may decide to give the restrictive practice authorisation only if satisfied that:

- (a) 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
- (b) 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 ...

Comments:

QLS notes that QAI has recommended that 'harm' be changed to 'serious' harm to ensure that restrictive practices can only be used as a last resort, in response to a *serious* risk of harm to a person with disability or others.³

The addition of 'serious' would ensure a level of gravity to the anticipated harm. Our members with expertise in this area have similarly expressed reservation with the current harm threshold and suggested it may result in unintended consequences.

159 Matters senior practitioner to consider and section 160 Requirement to consult

Section 159(1)(a) stipulates that in deciding the application to use a regulated restrictive practice, the senior practitioner must consider the person's capacity to understand or make decisions about the use of restrictive practices in relation to themselves.

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

³ Queensland Advocacy for Inclusion, Submission No 7 to Community Support and Services Committee, *Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024* (5 July 2024) 4.

preferences of, the person with disability about the proposed use of the regulated restrictive practice.

Comments:

Consistent with submissions of QAI⁴, QLS considers the restrictive practice framework should reflect the presumption of decision-making capacity and a supported decision-making approach.

In this regard, the Bill should be supported by training and education to support the implementation of the reformed framework, including with respect to the Capacity Assessment Guidelines⁵ and supported decision-making approaches.

183 Complaints about restrictive practices and behaviour support plans

New section 183 allows any person to make a complaint to the senior practitioner about the use of a restrictive practice or the development or review of a behaviour support plan by a relevant service provider and requires that a 'system' that deals effectively with complaints received, be maintained.

Comments:

QLS agrees with submissions of QAI and ADA Australia that section 183 is unclear. Further clarity should be provided in the drafting to ensure these mechanisms are clear and can be accessed promptly.

Noting the significant role of the senior practitioner in authorising restrictive practices but also receiving complaints, consideration might be given to a body akin to the Mental Health Review Tribunal to provide periodic and upon application, review of authorisation and behaviour support plans, comprised of members with legal and clinical expertise to support this process.

200AF Delegation by senior practitioner

Section 200AF allows the senior practitioner to delegate a power of the senior practitioner under the Act or another Act to a member of the senior practitioner's staff or a public service officer who is 'appropriately qualified' to exercise the power delegated.

Comments:

Whilst the Explanatory Notes to the Bill state that before making the 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'⁶ these safeguards are not

⁴ Queensland Advocacy for Inclusion, Submission No 7 to Community Support and Services Committee, *Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024* (5 July 2024) 14.

⁵ Queensland Government, *Queensland Capacity Assessment Guidelines 2020* (2021).

⁶ Explanatory Notes, *Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024* (Qld) 15.

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included in the Bill. QLS considers the drafting in the Bill should reflect that delegation will only occur in appropriate cases.

200AG Appointment of senior practitioner

Section 200AG enables appointment of a senior practitioner who is 'appropriately qualified' to perform the functions of the senior practitioner.

Comments:

We support the submission of ADA Australia with respect to the need for clarification and particularisation of the senior practitioner's experience and qualifications to undertake the role. For example we note that ADA has identified the importance of a comprehensive understanding of the *Mental Health Act*, the disability and guardianship legal frameworks, human rights and cultural factors.⁷

Complaints and appeals – funding for legal representation

Individuals subject to the use of restrictive practices must be afforded adequate support to understand and navigate the application, complaints and appeal processes under the Bill.

In this regard, QLS strongly supports submissions of QAI that any complaints and appeal process must be supported by adequate legal representation.

This is particularly important where an affected person is required to respond to an application or appeal by a service provider.

Sector-wide education on restrictive practices

QLS agrees with other submitters that while improving the authorisation process is essential, further work is needed to ensure that service providers understand and apply the legislative framework in practice.

To foster a comprehensive understanding of restrictive practices across the sector, a wide-reaching education initiative is essential. This initiative should ensure all service providers and stakeholders are aware of and understand what restrictive practices are and their impact.

Education and training should promote:

- alternative to restrictive practices, emphasising the importance of reducing and eliminating their use; and
- alignment with human rights principles and supported decision-making.

⁷ Aged and Disability Advocacy Australia, Submission No 11 to Community Support and Services Committee, *Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024* (8 July 2024) 4–5.

Cultural Safety for Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse clients

Lastly, QLS notes the concerns raised by QAI with respect to whether the proposed model is appropriate for First Nations people with disability.

Cultural safety is paramount in the context of restrictive practices, particularly for Aboriginal and Torres Strait Islanders and Culturally and Linguistically Diverse (**CALD**) clients. This could be achieved by embedding appropriate protocols and involving a supported decision-making framework.

It is not clear from the Explanatory Notes whether First Nations or Culturally and Linguistically Diverse stakeholders were engaged in relation to the Bill.

QLS strongly emphasises the importance of ensuring these perspective are central to any changes to the current model. We would support further consultation in this regard.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or [REDACTED]

