



Queensland

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





Queensland

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

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# 2024

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## A Bill

for

**An Act to amend the *Coroners Act 2003*, the *Disability Services Act 2006*, the *Guardianship and Administration Act 2000*, the *Public Guardian Act 2014*, the *Queensland Civil and Administrative Tribunal Act 2009* and the legislation mentioned in schedule 1 for particular purposes**

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[s 1]

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**The Parliament of Queensland enacts—** 1

**Part 1 Preliminary** 2

**Clause 1 Short title** 3

This Act may be cited as the *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2024*. 4  
5

**Clause 2 Commencement** 6

This Act commences on a day to be fixed by proclamation. 7

**Part 2 Amendment of Coroners Act 2003** 8  
9

**Clause 3 Act amended** 10

This part amends the *Coroners Act 2003*. 11

**Clause 4 Amendment of s 7 (Duty to report deaths)** 12

(1) Section 7(2), ‘section 9(1)(a) or (e)’— 13

*omit, insert—* 14

section 9(1)(a), (e) or (f) 15

(2) Section 7(8), definition *relevant service provider*— 16

*insert—* 17

(c) in relation to the death in care of a person 18  
mentioned in section 9(1)(f)—the registered 19  
NDIS provider that was providing the 20  
services or supports mentioned in the 21  
section. 22

---

|                 |  |  |
|-----------------|--|--|
| <b>Clause 5</b> | <b>Amendment of s 9 (<i>Death in care</i> defined)</b>   | 1                                      |
| (1)             | Section 9(1)—  | 2                                      |
|                 | <i>insert</i> —  | 3                                      |
|                 | (f) the person was a participant who—  | 4                                      |
|                 | (i) was not living in a private dwelling or<br>an aged care facility; and  | 5<br>6                                 |
|                 | (ii) was receiving services or supports<br>under—  | 7<br>8                                 |
|                 | (A) the program administered by the<br>Commonwealth known as the<br>Commonwealth Disability<br>Support for Older Australians; or   | 9<br>10<br>11<br>12                    |
|                 | (B) another program administered by<br>the Commonwealth prescribed by<br>regulation; and   | 13<br>14<br>15                         |
|                 | (iii) did not have a participant’s plan.   | 16                                     |
| (2)             | Section 9(4), ‘and (e)’—   | 17                                     |
|                 | <i>omit, insert</i> —  | 18                                     |
|                 | , (e) and (f)  | 19                                     |
| (3)             | Section 9(4)(a)—   | 20                                     |
|                 | <i>omit, insert</i> —  | 21                                     |
|                 | (a) if a regulated restrictive practice was used at<br>the dwelling in relation to the deceased<br>person under a restrictive practice<br>authorisation in effect immediately before<br>the person died—the deceased person and 1<br>or more of the deceased person’s relations;<br>or | 22<br>23<br>24<br>25<br>26<br>27<br>28 |
| (4)             | Section 9(5), definition <i>chapter 5B approval</i> —  | 29                                     |
|                 | <i>omit.</i>   | 30                                     |
| (5)             | Section 9(5), definition <i>restrictive practice</i> , paragraph (a)—  | 31                                     |
|                 | <i>omit, insert</i> —  | 32                                     |

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[s 6]

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|                 |   |                      |
|-----------------|---|----------------------|
|                 | (a) a regulated restrictive practice under the <i>Disability Services Act 2006</i> ; or   | 1<br>2               |
| <b>Clause 6</b> | <b>Amendment of s 47 (Coroner’s comments and findings for particular deaths)</b>  | 3<br>4               |
|                 | (1) Section 47—   | 5                    |
|                 | <i>insert—</i>  | 6                    |
|                 | (2A) Subsection (4) applies if the findings and comments relate to the investigation of a death in care of a person in relation to whom—  | 7<br>8<br>9          |
|                 | (a) a regulated restrictive practice under the <i>Disability Services Act 2006</i> was used under a restrictive practice authorisation in effect immediately before the person died; or | 10<br>11<br>12<br>13 |
|                 | (b) a prohibited restrictive practice was used.   | 14                   |
|                 | (2B) The coroner must also give a written copy of the findings and comments to the senior practitioner.   | 15<br>16             |
|                 | (2) Section 47(3)—  | 17                   |
|                 | <i>insert—</i>  | 18                   |
|                 | <b><i>prohibited restrictive practice</i></b> see the <i>Disability Services Act 2006</i> , section 142.  | 19<br>20             |
|                 | <b><i>senior practitioner</i></b> means the senior practitioner appointed under the <i>Disability Services Act 2006</i> , section 200AG.  | 21<br>22<br>23       |
|                 | (3) Section 47(3), definition <i>relevant Act</i> , paragraph (a)(ii), after ‘section 9(1)(a)(ii)’—   | 24<br>25             |
|                 | <i>insert—</i>  | 26                   |
|                 | or (f)  | 27                   |
|                 | (4) Section 47(2A) to (3)—  | 28                   |
|                 | <i>renumber</i> as section 47(3) to (5).  | 29                   |



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|                  |  |    |
|------------------|--|----|
| <b>Clause 7</b>  | <b>Amendment of sch 2 (Dictionary)</b>                     | 1  |
|                  | Schedule 2—  | 2  |
|                  | <i>insert</i> —  | 3  |
|                  | <i>restrictive practice authorisation</i> see the          | 4  |
|                  | <i>Disability Services Act 2006</i> , section 142.         | 5  |
| <b>Part 3</b>    | <b>Amendment of Disability Services Act 2006</b>           | 6  |
|                  |  | 7  |
| <b>Clause 8</b>  | <b>Act amended</b>   | 8  |
|                  | This part amends the <i>Disability Services Act 2006</i> . | 9  |
|                  | <i>Note</i> —  | 10 |
|                  | See also the amendments in schedule 1.                     | 11 |
| <b>Clause 9</b>  | <b>Amendment of s 6 (Objects of Act)</b>                   | 12 |
|                  | Section 6(1)(d), from ‘adults with’ to ‘those adults’—     | 13 |
|                  | <i>omit, insert</i> —                                      | 14 |
|                  | people with disability, including by regulating the        | 15 |
|                  | use of restrictive practices by relevant service           | 16 |
|                  | providers in relation to people with disability            | 17 |
| <b>Clause 10</b> | <b>Amendment of s 7 (How objects are mainly achieved)</b>  | 18 |
|                  | (1) Section 7(a), after ‘to’—                              | 19 |
|                  | <i>insert</i> —  | 20 |
|                  | the administration of this Act in relation to              | 21 |
|                  | (2) Section 7(f), from ‘adults’ to ‘disability’—           | 22 |
|                  | <i>omit, insert</i> —                                      | 23 |
|                  | people with disability                                     | 24 |

[s 11]

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|                  |   |                           |    |    |    |
|------------------|---|---------------------------|----|----|----|
| <b>Clause 11</b> | <b>Replacement of pt 2, div 1 (Human rights principle)</b>  | 1                         |    |    |    |
|                  | Part 2, division 1—   | 2                         |    |    |    |
|                  | <i>omit, insert—</i>  | 3                         |    |    |    |
|                  | <b>Division 1</b>   | <b>General principles</b> | 4  |    |    |
|                  | <b>17 Principles for performing functions and exercising powers</b>   | 5                         | 6  |    |    |
|                  | (1) This section applies to an entity, including a relevant service provider, that performs a function, or exercises a power, under this Act in relation to a person with disability. | 7                         | 8  | 9  | 10 |
|                  | (2) The entity must perform the function or exercise the power in a way that—   | 11                        | 12 |    |    |
|                  | (a) promotes and safeguards the person’s rights, interests and opportunities; and   | 13                        | 14 |    |    |
|                  | (b) is least restrictive of those rights, interests and opportunities.  | 15                        | 16 |    |    |
|                  | (3) The entity must also have regard to the human rights principle in performing the function or exercising the power.  | 17                        | 18 | 19 |    |
|                  | <b>18 Principle that people with disability have the same human rights as others</b>  | 20                        | 21 |    |    |
|                  | (1) People with disability have the same human rights as other members of society and should be empowered to exercise their rights.   | 22                        | 23 | 24 |    |
|                  | (2) The following are supporting rights for the principle stated in subsection (1)—   | 25                        | 26 |    |    |
|                  | (a) people with disability are equal before the law and have the same right as other members of society to enjoy their human rights without discrimination;                           | 27                        | 28 | 29 | 30 |

- 
- (b) people with disability have the right to non-discrimination on the grounds of their disability and have the same right as other members of society to protection against discrimination on other grounds, including, for example, racial and cultural identity, sex, gender identity and sexual orientation;
- (c) people with disability have the right to autonomy and independence, including the freedom to make decisions about their own lives;
- (d) people with disability should be actively involved in decision-making processes about policies, programs and practices that affect them;
- (e) people with disability have the right to full and effective participation and inclusion in society;
- (f) people with disability have the right to respect for difference and acceptance as part of human diversity and humanity;
- (g) people with disability are entitled to the recognition and support of their specific cultural and linguistic identity, including, for example, specific sign languages or specific behavioural norms, values or traditions shared by members of a particular group of people;
- (h) people with disability who are Aboriginal peoples or Torres Strait Islander peoples possess additional collective and cultural rights that are indispensable for their wellbeing and development;
- (i) people with disability have the right to access, on an equal basis with other members of society, the physical

[s 12]

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|                  |  |  |
|------------------|--|--|
|                  | environment, information and communication, facilities and services;   | 1<br>2                                       |
| (j)              | people with disability have the right to privacy, including the right to have their personal information protected on the same basis as other members of society;  | 3<br>4<br>5<br>6                             |
| (k)              | people with disability have the same rights to liberty and security as other members of society, including—  | 7<br>8<br>9                                  |
| (i)              | the right not to be deprived of their liberty, other than in accordance with the law; and  | 10<br>11<br>12                               |
| (ii)             | the right not to be deprived of their liberty only because of their disability;  | 13<br>14                                     |
| (l)              | children with disability have the same human rights, and the right to their full enjoyment, as other children;   | 15<br>16<br>17                               |
| (m)              | children with disability have the right to express their views freely on all matters affecting them, with their views being given due weight in accordance with their age and maturity on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right. | 18<br>19<br>20<br>21<br>22<br>23<br>24<br>25 |
| (3)              | Subsection (2) does not limit subsection (1).  | 26   |
| <b>Clause 12</b> | <b>Amendment of s 32A (Application of part)</b>  | 27   |
|                  | Section 32A(1)(c)—   | 28   |
|                  | <i>omit.</i>   | 29   |
| <b>Clause 13</b> | <b>Amendment of pt 6, hdg (Positive behaviour support and restrictive practices)</b>   | 30<br>31                                     |
|                  | Part 6, heading—   | 32   |

*omit, insert—*

1

## **Part 6                      Restrictive practices**

2

### **Clause 14      Replacement of pt 6, divs 1–6**

3

Part 6, divisions 1 to 6—

4

*omit, insert—*

5

### **Division 1                  Preliminary**

6

#### **139 Purpose of part**

7

The purpose of this part is to protect the rights of  
people with disability by—

8

9

- (a) 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; and
- (b) promoting the reduction and elimination of  
the use of regulated restrictive practices by  
relevant service providers; and
- (c) providing an authorisation framework for  
the use of regulated restrictive practices by  
relevant service providers in relation to  
people with disability that—
  - (i) is compatible with the human rights  
principle; and
  - (ii) ensures the use is the least restrictive  
way of ensuring the safety of people  
with disability and others; and
  - (iii) maximises the opportunity for positive  
outcomes; and

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[s 14]

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- (iv) provides transparency in relation to the use of regulated restrictive practices; and 1  
2  
3
- (d) ensuring regulated restrictive practices are used in relation to people with disability only if the requirements of this part are complied with; and 4  
5  
6  
7
- (e) providing for the review of particular decisions relating to the authorisation of the use of regulated restrictive practices. 8  
9  
10

#### **140 Application of part** 11

- (1) This part applies in relation to the following service providers that provide disability services or NDIS supports or services to a person with disability— 12  
13  
14  
15
  - (a) a registered NDIS provider; 16
  - (b) a funded service provider; 17
  - (c) the department; 18
  - (d) another service provider prescribed by regulation. 19  
20
- (2) However, this part does not apply in relation to a service provider— 21  
22
  - (a) prescribed by regulation; or 23
  - (b) to the extent the service provider is providing disability services or NDIS supports or services prescribed by regulation; or 24  
25  
26  
27
  - (c) 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. 28  
29  
30  
31  
32
- (3) A service provider is a *relevant service provider* 33

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to the extent this part applies in relation to the provider under subsections (1) and (2). 1  
2

- (4) To remove any doubt, it is declared that 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. 3  
4  
5  
6  
7  
8  
9

*Note—* 10

For when this part applies to a forensic disability client, see also the *Forensic Disability Act 2011*, section 47. 11  
12

**141 Principles for providing disability services or NDIS supports or services to particular people with disability** 13  
14  
15

- (1) This section applies in relation 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. 16  
17  
18  
19  
20
- (2) The relevant service provider must provide disability services or NDIS supports or services to the person in a way that— 21  
22  
23
- (a) promotes the person’s— 24
- (i) development and physical, mental, social and vocational ability; and 25  
26
- (ii) opportunities for participation and inclusion in the community; and 27  
28
- (b) responds to the person’s needs and goals; and 29  
30
- (c) 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 31  
32  
33  
34

[s 14]

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- (d) considers the person’s cultural rights; and 1
- (e) involves— 2
  - (i) behaviour support planning informed 3  
by evidence-based best practice; and 4
  - (ii) the implementation of strategies, to 5  
produce behavioural change, focused 6  
on skills development and 7  
environmental design; and 8
- (f) ensures transparency and accountability in 9  
the use of regulated restrictive practices; and 10
- (g) recognises that regulated restrictive 11  
practices should only be used— 12
  - (i) when necessary to prevent harm to the 13  
person or others; and 14
  - (ii) if the use is the least restrictive way of 15  
ensuring the safety of the person or 16  
others; and 17
- (h) recognises that regulated restrictive 18  
practices should not be used punitively or in 19  
response to behaviour that does not cause 20  
harm to the person or others; and 21
- (i) aims to reduce the intensity, frequency and 22  
duration of the person’s behaviour that 23  
causes harm to the person or others; and 24
- (j) aims to reduce or eliminate the need to use 25  
regulated restrictive practices; and 26
- (k) if there is an NDIS behaviour support plan 27  
or a State behaviour support plan for the 28  
person with disability—ensures regulated 29  
restrictive practices are only used consistent 30  
with the plan; and 31
- (l) if the person is a child, recognises that— 32
  - (i) the best interests of the child are 33  
paramount; and 34



- 
- (ii) 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

In this part—

*attorney* means—

- (a) an attorney under a power of attorney; or
- (b) an attorney under an advance health directive under the *Powers of Attorney Act 1998* or a similar document under the law of another jurisdiction.

*behaviour support assessment*, in relation to a person with disability, means an assessment for the purpose of making recommendations about appropriate strategies for—

- (a) meeting the person's needs and improving the person's capabilities and quality of life; and
- (b) reducing the intensity, frequency and duration of the person's behaviour that causes harm to the person or others; and
- (c) managing the person's behaviour that causes harm to the person or others to minimise the risk of harm.

*chemical restraint* means chemical restraint as described in the NDIS (Restrictive Practices) Rules, section 6(b).

*comprehensive State behaviour support plan*, for a person with disability, see section 143(3).

*containment*, of a person with disability—

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- (a) means physically preventing the free exit of the person from premises where the person receives disability services or NDIS supports or services in response to the person's behaviour that causes harm to the person or others; but
- (b) does not include seclusion of the person.
- environmental restraint***—
- (a) means environmental restraint as described in the NDIS (Restrictive Practices) Rules, section 6(e); and
- (b) includes containment of a person with disability.
- harm***, to a person, means—
- (a) physical harm to the person; or
- (b) a serious risk of physical harm to the person; or
- (c) damage to property involving a serious risk of physical harm to the person.
- interim State behaviour support plan***, for a person with disability, see section 143(4).
- least restrictive***, in relation to the use of a restrictive practice in relation to a person with disability, means use of the restrictive practice—
- (a) ensures the safety of the person or others; and
- (b) having regard to paragraph (a), imposes the minimum limits on the freedom of the person as is practicable in the circumstances.
- mechanical restraint*** means mechanical restraint as described in the NDIS (Restrictive Practices) Rules, section 6(c).

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|   |                      |
|---|----------------------|
| <b><i>NDIS behaviour support plan</i></b> , for a person with disability, means—  | 1<br>2               |
| (a) a comprehensive behaviour support plan developed for the person under the NDIS (Restrictive Practices) Rules; or  | 3<br>4<br>5          |
| (b) an interim behaviour support plan developed for the person under the NDIS (Restrictive Practices) Rules.  | 6<br>7<br>8          |
| <b><i>NDIS (Restrictive Practices) Rules</i></b> means the <i>National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018</i> (Cwlth), as in force from time to time. | 9<br>10<br>11<br>12  |
| <b><i>parent</i></b> , of a child with disability, includes—  | 13                   |
| (a) a person who exercises parental responsibility for the child, other than a person standing in the place of a parent of a child on a temporary basis; and  | 14<br>15<br>16<br>17 |
| (b) for an Aboriginal child—a person who, under Aboriginal tradition, is regarded as a parent of the child; and   | 18<br>19<br>20       |
| (c) for a Torres Strait Islander child—a person who, under Island custom, is regarded as a parent of the child.   | 21<br>22<br>23       |
| <b><i>physical restraint</i></b> means physical restraint as described in the NDIS (Restrictive Practices) Rules, section 6(d).   | 24<br>25<br>26       |
| <b><i>power of attorney</i></b> means—  | 27                   |
| (a) a general power of attorney made under the <i>Powers of Attorney Act 1998</i> ; or  | 28<br>29             |
| (b) an enduring power of attorney under the <i>Powers of Attorney Act 1998</i> ; or   | 30<br>31             |
| (c) a power of attorney made other than under the <i>Powers of Attorney Act 1998</i> , whether  | 32<br>33             |

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|   |                            |
|---|----------------------------|
| before or after the commencement of that Act; or  | 1<br>2                     |
| (d) a similar document under a law of another jurisdiction.   | 3<br>4                     |
| <b><i>premises</i></b> includes the land around a building or other structure, but does not include a vehicle.  | 5<br>6                     |
| <b><i>prohibited restrictive practice</i></b> means a restrictive practice prescribed by regulation to be a prohibited restrictive practice.  | 7<br>8<br>9                |
| <b><i>regulated restrictive practice</i></b> means any of the following—  | 10<br>11                   |
| (a) chemical restraint;   | 12                         |
| (b) environmental restraint;  | 13                         |
| (c) mechanical restraint;   | 14                         |
| (d) physical restraint;   | 15                         |
| (e) seclusion.  | 16                         |
| <b><i>relevant person</i></b> means—  | 17                         |
| (a) for an adult with disability—   | 18                         |
| (i) a guardian or attorney for the adult; or  | 19                         |
| (ii) a person who is part of the adult's support network and who is in a close and continuing relationship with the adult; or   | 20<br>21<br>22<br>23       |
| (iii) a person, other than a paid carer for the adult, who is the primary carer of the adult and who is in a close and continuing relationship with the adult; or                               | 24<br>25<br>26<br>27<br>28 |
| (iv) if the adult 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, | 29<br>30<br>31<br>32<br>33 |

- 
- and who is in a close and continuing relationship with the adult; or 1  
2
- (b) for a child with disability— 3
- (i) a parent of the child; or 4
- (ii) a person, including, for example, the chief executive, granted custody or guardianship of the child under the *Child Protection Act 1999*; or 5  
6  
7  
8
- (iii) if a person mentioned in subparagraph (i) or (ii) is not the child’s primary carer—the child’s primary carer; or 9  
10  
11
- (iv) a person with whom the child has a significant relationship. 12  
13
- Example—* 14
- An approved foster carer or kinship carer may be someone with whom the child has a significant relationship. 15  
16  
17
- restrictive practice*** means any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability. 18  
19  
20  
21
- restrictive practice authorisation*** means an authorisation to use a regulated restrictive practice given under division 3. 22  
23  
24
- seclusion*** means seclusion as described in the NDIS (Restrictive Practices) Rules, section 6(a). 25  
26
- State behaviour support plan***, for a person with disability, see section 143(1). 27  
28

### **143 State behaviour support plans** 29

- (1) A ***State behaviour support plan***, for a person with disability, is— 30  
31
- (a) a comprehensive State behaviour support plan for the person; or 32  
33

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- (b) an interim State behaviour support plan for the person. 1  
2
- (2) Generally, a State behaviour support plan for a person with disability is a plan that describes the strategies to be used to— 3  
4  
5
  - (a) meet the person’s needs; and 6
  - (b) support the person’s development of skills; and 7  
8
  - (c) maximise opportunities through which the person can improve their quality of life; and 9  
10
  - (d) reduce the intensity, frequency and duration of the person’s behaviour that causes harm to the person or others. 11  
12  
13
- (3) A **comprehensive State behaviour support plan**, for a person with disability, is a plan developed under this part that— 14  
15  
16
  - (a) is based on a behaviour support assessment, including a functional behavioural assessment, of the person; and 17  
18  
19
  - (b) contains proactive and evidence-informed strategies to improve the person’s quality of life and support their progress towards positive change; and 20  
21  
22  
23
  - (c) includes provisions for the use of a regulated restrictive practice in relation to the person over the long term. 24  
25  
26
- (4) An **interim State behaviour support plan**, for a person with disability, is a plan developed under this part that— 27  
28  
29
  - (a) contains general preventative and responsive strategies designed to keep the person and others safe while— 30  
31  
32
    - (i) a behaviour support assessment, including a functional behavioural 33  
34

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|   |                            |
|---|----------------------------|
| assessment, of the person is carried out; and   | 1<br>2                     |
| (ii) a comprehensive State behaviour support plan for the person is developed; and  | 3<br>4<br>5                |
| (b) includes provisions for the use of a regulated restrictive practice in relation to the person over the short term.  | 6<br>7<br>8                |
| <b>Division 2 Use of regulated restrictive practices</b>  | 9<br>10                    |
| <b>Subdivision 1 General</b>  | 11                         |
| <b>144 Purpose of division</b>  | 12                         |
| (1) This division provides for 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. | 13<br>14<br>15<br>16<br>17 |
| (2) Generally, the use of a regulated restrictive practice in relation to a person with disability should be authorised under a restrictive practice authorisation.   | 18<br>19<br>20<br>21       |
| (3) However, a regulated restrictive practice may be used after a restrictive practice authorisation ends if the use is in accordance with section 146.   | 22<br>23<br>24             |
| <i>Note—</i>  | 25                         |
| See also sections 189 and 190 in relation to immunity for the use of a regulated restrictive practice under section 145 or 146.   | 26<br>27<br>28             |

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- 145 Use of regulated restrictive practice permitted after restrictive practice authorisation given** 1  
2
- (1) A relevant service provider, or an individual 3  
acting for a relevant service provider, may use a 4  
regulated restrictive practice in relation to a 5  
person with disability to whom the service 6  
provider is providing disability services or NDIS 7  
supports or services if— 8
- (a) the service provider holds a restrictive 9  
practice authorisation that authorises the use 10  
of the restrictive practice in relation to the 11  
person; and 12
- (b) the use of the restrictive practice is 13  
necessary to prevent the person’s behaviour 14  
causing harm to the person or others; and 15
- (c) the restrictive practice is used as a last resort 16  
to prevent harm to the person or others; and 17
- (d) the restrictive practice is the least restrictive 18  
way of ensuring the safety of the person or 19  
others; and 20
- (e) the restrictive practice is used for the 21  
shortest possible time to ensure the safety of 22  
the person or others; and 23
- (f) the use of the restrictive practice complies 24  
with the NDIS behaviour support plan or 25  
State behaviour support plan for the person; 26  
and 27
- (g) for environmental restraint involving the 28  
containment of the person or seclusion—the 29  
use is in accordance with section 147. 30
- Note—* 31
- See section 199 for the requirement for a relevant 32  
service provider to give the senior practitioner 33  
information about the use of a regulated restrictive 34  
practice. 35
- (2) For subsection (1)(f), the use of a regulated 36



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restrictive practice does not comply with an NDIS  
behaviour support plan or State behaviour support  
plan if the relevant service provider has not  
implemented the preventative or proactive  
strategies stated in the plan.

- (3) 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.

**146 Other circumstances regulated restrictive  
practice may be used**

- (1) This section applies if—
- (a) 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
  - (b) at least 30 days before the day the existing  
authorisation ends, the service provider  
applies under section 148 for a new  
restrictive practice authorisation to use the  
restrictive practice in relation to the person;  
and
  - (c) when the existing authorisation ends, the  
application for the new restrictive practice  
authorisation has not been decided or  
withdrawn; and
  - (d) the service provider is providing disability  
services or NDIS supports or services to the  
person.
- (2) The relevant service provider, or an individual  
acting for the relevant service provider, may use  
the regulated restrictive practice in relation to the  
person after the existing authorisation ends if—

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- (a) the use of the restrictive practice is necessary to prevent the person’s behaviour causing harm to the person or others; and
  - (b) the restrictive practice is used as a last resort to prevent harm to the person or others; and
  - (c) the restrictive practice is the least restrictive way of ensuring the safety of the person or others; and
  - (d) the restrictive practice is used for the shortest possible time to ensure the safety of the person or others; and
  - (e) the restrictive practice is not a prohibited restrictive practice; and
  - (f) the use of the restrictive practice complies with the NDIS behaviour support plan or State behaviour support plan for the person; and
  - (g) for environmental restraint involving the containment of the person or seclusion—the use complies with section 147.
- Note—*
- See section 199 for the requirement for a relevant service provider to give the senior practitioner information about the use of a regulated restrictive practice.
- (3) However, the relevant service provider or individual may only use the regulated restrictive practice until the earlier of the following—
    - (a) the application for the new restrictive practice authorisation is withdrawn;
    - (b) the service provider receives notice under section 162 that the senior practitioner has refused to approve the application for the new restrictive practice authorisation;

- 
- (c) a new restrictive practice authorisation given to the service provider for the application takes effect;
- (d) the day that is 30 days after the day the existing authorisation ends or a later day stated in a notice given to the service provider under subsection (4).
- (4) The senior practitioner may, by notice given to the relevant service provider, extend the period during which the service provider may use the regulated restrictive practice by up to 30 days.
- (5) For subsection (2)(f), 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 has not implemented the preventative or proactive strategies stated in the plan.
- (6) 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.
- Subdivision 2 Particular requirements for environmental restraint involving containment or seclusion**
- 147 Relevant service provider to ensure person's needs are met**
- (1) This section applies to a relevant service provider that—
- (a) is using environmental restraint in relation to a person with disability to the extent it involves the containment of the person; or

[s 14]

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|                      |   |                                  |
|----------------------|---|----------------------------------|
| (b)                  | is secluding a person with disability.  | 1                                |
| (2)                  | The relevant service provider must ensure—  | 2                                |
| (a)                  | the person is given each of the following—  | 3                                |
| (i)                  | sufficient bedding and clothing;  | 4                                |
| (ii)                 | sufficient food and drink;  | 5                                |
| (iii)                | access to adequate heating and cooling;   | 6                                |
| (iv)                 | access to toilet facilities;  | 7                                |
| (v)                  | the person’s medication as prescribed<br>by a doctor; and   | 8<br>9                           |
| (b)                  | the person is regularly observed and<br>monitored while the regulated restrictive<br>practice is being used.  | 10<br>11<br>12                   |
| <b>Division 3</b>    | <b>Restrictive practice<br/>authorisations</b>  | 13<br>14                         |
| <b>Subdivision 1</b> | <b>Making applications</b>  | 15                               |
| <b>148</b>           | <b>Application for restrictive practice<br/>authorisation</b>   | 16<br>17                         |
| (1)                  | A relevant service provider who is providing<br>disability services or NDIS supports or services to<br>a person with disability may apply to the senior<br>practitioner for a restrictive practice authorisation<br>to use a regulated restrictive practice in relation to<br>the person. | 18<br>19<br>20<br>21<br>22<br>23 |
|                      | <i>Note—</i>  | 24                               |
|                      | See also section 146 in relation to the use of a regulated<br>restrictive practice without a restrictive practice<br>authorisation in particular circumstances.   | 25<br>26<br>27                   |
| (2)                  | However, the application may not relate to the use<br>of a prohibited restrictive practice.   | 28<br>29                         |

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|   |                                  |
|---|----------------------------------|
| <b>149 Requirements for application</b>   | 1                                |
| (1) The application must be—  | 2                                |
| (a) in the approved form; and   | 3                                |
| (b) accompanied by—   | 4                                |
| (i) a copy of the NDIS behaviour support plan or State behaviour support plan for the person with disability; and   | 5<br>6<br>7                      |
| <i>Note—</i>  | 8                                |
| See division 4 for provisions relating to State behaviour support plans.  | 9<br>10                          |
| (ii) 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                   | 11<br>12<br>13<br>14<br>15<br>16 |
| (iii) if the applicant is aware that the person with disability is subject to a forensic order, treatment support order or treatment authority under the <i>Mental Health Act 2016</i> —a copy of the order or authority. | 17<br>18<br>19<br>20<br>21<br>22 |
| (2) The applicant must give a copy of the application to the following—   | 23<br>24                         |
| (a) if the person with disability is an adult—the adult;  | 25<br>26                         |
| (b) if the person with disability is a child—   | 27                               |
| (i) each parent of the child; and   | 28                               |
| (ii) to the extent it is practicable—the child;   | 29<br>30                         |
| (c) an entity prescribed by regulation.   | 31                               |

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- 150 Request for further information or documents** 1
- (1) 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. 2  
3  
4  
5  
6  
7
- (2) The notice must state— 8
- (a) the period within which the information or document must be given; and 9  
10
- (b) that the senior practitioner may withdraw the application under section 153 if the applicant does not comply with the request within the stated period. 11  
12  
13  
14
- (3) Also, before deciding the application, the senior practitioner may— 15  
16
- (a) arrange with the applicant to visit a place at which the regulated restrictive practice is proposed to be used; or 17  
18  
19
- (b) with the consent of the person with disability, arrange to meet with the person. 20  
21
- 151 Notice of particular changes** 22
- (1) This section applies if, before the senior practitioner decides the application— 23  
24
- (a) the applicant’s name or contact details, as stated in the application, change; or 25  
26
- (b) another matter prescribed by regulation changes in relation to the applicant. 27  
28
- (2) The applicant must, within 7 days after the day the change happens, give the senior practitioner a notice about the change, in the approved form and in the approved way. 29  
30  
31  
32
- Maximum penalty—10 penalty units. 33

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## **Subdivision 2 Withdrawal of applications** 1

### **152 Request for withdrawal** 2

- (1) A relevant service provider who applies for a restrictive practice authorisation may ask the senior practitioner to withdraw the application at any time before it is decided. 3  
4  
5  
6
- (2) The request may be made orally or in writing. 7
- (3) The senior practitioner may— 8
  - (a) withdraw the application; or 9
  - (b) decide to continue deciding the application despite the request. 10  
11
- (4) If the senior practitioner decides to continue deciding the application under subsection (3)(b), the senior practitioner must give the applicant notice of the decision. 12  
13  
14  
15

### **153 Withdrawal because of failure to comply with particular request** 16 17

- The senior practitioner may withdraw an application for a restrictive practice authorisation before it is decided if— 18  
19  
20
- (a) the senior practitioner gives the applicant a notice under section 150(1) asking the applicant to provide stated information or a stated document; and 21  
22  
23  
24
  - (b) the notice includes a warning mentioned in section 150(2)(b); and 25  
26
  - (c) the applicant does not comply with the notice. 27  
28

[s 14]

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- 154 Notice of withdrawal** 1
- If the senior practitioner withdraws an application 2  
for a restrictive practice authorisation under 3  
section 152 or 153, the senior practitioner must 4  
give the applicant a notice (a *withdrawal notice*) 5  
that states— 6
- (a) the application is withdrawn; and 7
  - (b) the reason for the withdrawal. 8
- 155 Giving copy of withdrawal notice** 9
- (1) The senior practitioner must give a copy of the 10  
withdrawal notice to— 11
- (a) the person with disability to whom the 12  
application relates; and 13
  - (b) each relevant person for the person with 14  
disability who— 15
    - (i) was consulted by the applicant in the 16  
development of the NDIS behaviour 17  
support plan or State behaviour support 18  
plan for the person with disability; or 19
    - (ii) was consulted by the senior 20  
practitioner under section 160 in 21  
relation to the application; and 22
  - (c) if the senior practitioner is aware the person 23  
with disability is subject to a forensic order, 24  
treatment support order or treatment 25  
authority under the *Mental Health Act* 26  
*2016*—the authorised psychiatrist 27  
responsible for treating the person under 28  
that Act; and 29
  - (d) if the senior practitioner is aware the person 30  
with disability is a forensic disability 31  
client—a senior practitioner (forensic 32  
disability) responsible for the care and 33



- 
- support of the person under the *Forensic Disability Act 2011*. 1  
2
- (2) Subsection (3) applies if the person with disability 3  
is a child. 4
- (3) Despite subsection (1)(b), the senior practitioner 5  
must, unless it is not practicable in the 6  
circumstances, give a copy of the notice to each 7  
person who is a parent of the child. 8
- (4) The senior practitioner may give a copy of the 9  
notice to— 10
- (a) if the application relates to the use of a 11  
regulated restrictive practice in the provision 12  
of NDIS supports or services and the senior 13  
practitioner is satisfied the disclosure would 14  
assist in the performance of the NDIS 15  
commissioner’s functions under the 16  
*National Disability Insurance Scheme Act 17*  
*2013 (Cwlth)*—the NDIS commissioner; or 18
- (b) if the application relates to the use of a 19  
regulated restrictive practice in the provision 20  
of disability services and the senior 21  
practitioner is satisfied the disclosure would 22  
assist in the performance of the chief 23  
executive’s functions under this Act—the 24  
chief executive. 25

### **Subdivision 3 Deciding applications** 26

#### **156 Application of subdivision** 27

This subdivision applies if— 28

- (a) a relevant service provider applies for a 29  
restrictive practice authorisation to use a 30  
regulated restrictive practice in relation to a 31  
person with disability; and 32

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- (b) the application has not been withdrawn under subdivision 2. 1  
2

**157 Deciding application** 3

The senior practitioner must consider the application and decide to— 4  
5

- (a) give the restrictive practice authorisation with or without conditions; or 6  
7
- (b) refuse to approve the application. 8

**158 When restrictive practice authorisation may be given** 9  
10

The senior practitioner may decide to give the restrictive practice authorisation only if satisfied— 11  
12  
13

- (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 14  
15  
16  
17  
18
- (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 19  
20  
21  
22
- (c) if the NDIS behaviour support plan for the person includes provision for the regulated restrictive practice—the plan was developed— 23  
24  
25  
26
- (i) in accordance with the NDIS (Restrictive Practices) Rules; and 27  
28
- (ii) for a plan that includes provision for chemical restraint—in consultation with the person's treating doctor; and 29  
30  
31

- 
- (d) if the State behaviour support plan for the person includes provision for the regulated restrictive practice—the plan was developed—
- (i) in accordance with section 176; and
  - (ii) for a plan that includes provision for chemical restraint—in consultation with the person’s treating doctor; and
- (e) there is a reasonable likelihood that if the NDIS behaviour support plan or State behaviour support plan for the person is implemented as proposed—
- (i) the risk of the person’s behaviour causing harm will be reduced or eliminated; and
  - (ii) the person’s quality of life will be improved in the long term; and
  - (iii) the observation and monitoring provided for under the NDIS behaviour support plan or State behaviour support plan will be appropriate; and
- (f) the regulated restrictive practice will be used only—
- (i) as a last resort to prevent harm to the person or others; and
  - (ii) after consideration of the likely impact of the use of the regulated restrictive practice in relation to the person; and
- (g) to the extent possible, best practice alternative strategies will be used before the regulated restrictive practice is used; and
- (h) 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

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- (i) the proposed use of the regulated restrictive practice—
  - (i) is the least restrictive way of ensuring the safety of the person or others; and
  - (ii) is proportionate to the risk of harm to the person or others; and
- (j) the regulated restrictive practice is not a prohibited restrictive practice.

**159 Matters senior practitioner to consider**

- (1) In deciding the application, the senior practitioner must consider—
  - (a) the person’s capacity for understanding, or making decisions about, the use of restrictive practices in relation to the person; and
  - (b) if the senior practitioner is aware the person 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; and
  - (c) any information available to the senior practitioner about strategies, including regulated restrictive practices, previously used to manage the behaviour of the person that causes harm to the person or others, and the effectiveness of those strategies; and
  - (d) the type of disability services or NDIS supports or services provided to the person; and
  - (e) the suitability of the environment in which the regulated restrictive practice is to be used.
- (2) Also, the senior practitioner may, but need not,

- 
- consider the following— 1
- (a) if a behaviour support assessment, including 2  
a functional behavioural assessment, of the 3  
person has been carried out— 4
- (i) the findings, theories and 5  
recommendations of the assessment; 6  
and 7
- (ii) how any difference of opinion between 8  
the assessments was taken into account 9  
in developing the NDIS behaviour 10  
support plan or State behaviour support 11  
plan for the person; 12
- (b) the views of each entity consulted during the 13  
carrying out of a functional behavioural 14  
assessment of the person, or the 15  
development of the NDIS behaviour support 16  
plan or State behaviour support plan for the 17  
person, about the use of a regulated 18  
restrictive practice in relation to the person; 19
- (c) the way in which the relevant service 20  
provider will support and supervise staff 21  
involved in implementing the NDIS 22  
behaviour support plan or State behaviour 23  
support plan for the person; 24
- (d) any information in relation to the person or 25  
the relevant service provider received by the 26  
senior practitioner from the NDIS 27  
commission; 28
- (e) any report given to the senior practitioner 29  
under the *Public Guardian Act 2014*, section 30  
47; 31
- (f) if the person is a child—any information 32  
disclosed to the senior practitioner under the 33  
*Child Protection Act 1999* in relation to the 34  
child including, for example, information 35  
about the child’s behaviour or an assessment 36

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of the child carried out in connection with 1  
that Act. 2

**160 Requirement to consult** 3

- (1) In deciding the application, the senior practitioner 4  
must— 5
- (a) take reasonable steps to consult with, and 6  
consider any expressed or demonstrated 7  
views, wishes and preferences of, the person 8  
with disability about the proposed use of the 9  
regulated restrictive practice; and 10
- (b) unless it is not practicable in the 11  
circumstances, consult with, and consider 12  
the views of, the following persons about 13  
the proposed use of the regulated restrictive 14  
practice— 15
- (i) each relevant person for the person 16  
with disability the senior practitioner is 17  
aware of; 18
- (ii) if the senior practitioner is aware the 19  
person with disability is subject to a 20  
forensic order, treatment support order 21  
or treatment authority under the *Mental* 22  
*Health Act 2016*—the authorised 23  
psychiatrist responsible for treating the 24  
person under that Act; 25
- (iii) if the senior practitioner is aware the 26  
person with disability is a forensic 27  
disability client—a senior practitioner 28  
(forensic disability) responsible for the 29  
care and support of the person under 30  
the *Forensic Disability Act 2011*; 31
- (iv) any other person the senior practitioner 32  
considers to be integral to making a 33  
decision on the application. 34

- 
- (2) When consulting with a person mentioned in subsection (1)(a) or (b)(i), the senior practitioner must ensure the consultation is carried out in a way that is accessible to the person. 1  
2  
3  
4
- (3) Subsection (4) applies if the person with disability is a child. 5  
6
- (4) Despite subsection (1)(b)(i), the senior practitioner must, unless it is not practicable in the circumstances, consult with each person who is a parent of the child. 7  
8  
9  
10
- 161 Paramount principle for decision relating to child with disability** 11  
12
- (1) This section applies if— 13
- (a) the application is in relation to a child; and 14
- (b) 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. 15  
16  
17  
18
- (2) The main principle for the making of the decision is that the safety, wellbeing and best interests of the child is paramount. 19  
20  
21
- 162 Notice of decision** 22
- (1) The senior practitioner must, as soon as practicable after deciding the application, give the relevant service provider notice of the decision. 23  
24  
25
- (2) The notice must state— 26
- (a) the name of the person with disability; and 27
- (b) the name of the relevant service provider; and 28  
29
- (c) if the decision is to give the restrictive practice authorisation— 30  
31

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- (i) the regulated restrictive practice the relevant service provider is authorised to use; and
  - (ii) the day the authorisation takes effect; and
  - (iii) the period the authorisation has effect; and
  - (iv) any conditions to which the authorisation is subject; and
- (d) if the decision is to refuse the application—that a person could be criminally or civilly liable for continuing to use a regulated restrictive practice in relation to the person with disability.
- (3) The notice of the decision must include or be accompanied by a notice complying with the QCAT Act, section 157(2) for the decision.
- (4) For subsection (2)(c)(iii), the stated period must not exceed—
  - (a) if the NDIS behaviour support plan for the person with disability is an interim behaviour support plan under the NDIS (Restrictive Practices) Rules or the State behaviour support plan for the person is an interim State behaviour support plan—6 months; or
  - (b) otherwise—12 months.

### **163 Giving copy of notice of decision**

- (1) The senior practitioner must, as soon as practicable after deciding the application, give a copy of the notice of the decision under section 162 to the following persons—
  - (a) the person with disability;



- 
- (b) each relevant person for the person with disability who—
- (i) was consulted by the relevant service provider in the development of the NDIS behaviour support plan or State behaviour support plan for the person with disability; or
  - (ii) was consulted by the senior practitioner under section 160 in relation to the application;
- (c) 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;
- (d) 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*.
- (2) Subsection (3) applies if the person with disability is a child.
- (3) Despite subsection (1)(b), 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.
- (4) The senior practitioner may give a copy of the notice of the decision to—
- (a) 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

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|  |                                   |
|--|-----------------------------------|
| assist in the performance of the NDIS commissioner's functions under the <i>National Disability Insurance Scheme Act 2013</i> (Cwlth)—the NDIS commissioner; or  | 1<br>2<br>3<br>4                  |
| (b) 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. | 5<br>6<br>7<br>8<br>9<br>10<br>11 |
| <b>164 When restrictive practice authorisation takes effect</b>  | 12<br>13                          |
| 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.   | 14<br>15<br>16<br>17              |
| <b>165 When restrictive practice authorisation stops having effect</b>   | 18<br>19                          |
| 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—   | 20<br>21<br>22<br>23              |
| (a) the end of the period stated in the notice of the decision given under section 162;  | 24<br>25                          |
| (b) the cancellation of the authorisation under subdivision 5;   | 26<br>27                          |
| (c) a new restrictive practice authorisation given to the relevant service provider in relation to the person takes effect.  | 28<br>29<br>30                    |

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**Subdivision 4 Provision for new restrictive practice authorisations**

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

- (1) This section applies if—
- (a) a restrictive practice authorisation (the *existing authorisation*) is in effect for a person with disability; and
  - (b) 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
  - (c) as a result of the review—
    - (i) the existing plan is changed in a way that makes it inconsistent with the existing authorisation; or
    - (ii) 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.

*Example of an inconsistent change—*

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 seclusion to a maximum period of 15 minutes.

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

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

*Note—*

For the consequences of a failure to comply with this section, see subdivision 5.

## **Subdivision 5 Cancellation of restrictive practice authorisations**

### **167 Automatic cancellation of restrictive practice authorisation**

A restrictive practice authorisation given to a relevant service provider in relation to a person with disability is automatically cancelled if—

- (a) the person dies; or
- (b) the person stops receiving disability services or NDIS supports or services from the relevant service provider; or
- (c) for a relevant service provider that is a registered NDIS provider—the service provider’s registration under the *National Disability Insurance Scheme Act 2013* (Cwlth) is suspended or cancelled by the NDIS commissioner under that Act.

### **168 Grounds for cancellation of restrictive practice authorisation by senior practitioner**

Each of the following is a ground for cancelling a restrictive practice authorisation given to a relevant service provider—

- (a) the authorisation was obtained by materially incorrect or misleading information or documents or by a mistake;

- 
- (b) the relevant service provider has  
contravened a condition of the authorisation; 1 2
  - (c) the relevant service provider has  
contravened a provision of this Act. 3 4

### **169 Show cause notice** 5

- (1) If the senior practitioner considers a ground exists  
to cancel a restrictive practice authorisation given  
to a relevant service provider (the *proposed  
action*), the senior practitioner may give the  
service provider a notice (a *show cause notice*). 6 7 8 9 10
- (2) The show cause notice must state each of the  
following— 11 12
  - (a) the proposed action; 13
  - (b) the ground for the proposed action; 14
  - (c) an outline of the facts and circumstances  
forming the basis for the ground; 15 16
  - (d) 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; 17 18 19 20 21
  - (e) when the show cause period ends. 22
- (3) The show cause period must end at least 7 days  
after the day the senior practitioner gives the show  
cause notice to the relevant service provider. 23 24 25

### **170 Representations about show cause notice** 26

- (1) The relevant service provider may make written  
representations about the show cause notice to the  
senior practitioner in the show cause period. 27 28 29
- (2) The senior practitioner must consider any written  
representations made to the senior practitioner 30 31

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within the show cause period. 1

**171 Ending show cause process without further action** 2  
3

If, after considering any written representations 4  
made to the senior practitioner in the show cause 5  
period, the senior practitioner no longer considers 6  
a ground exists to take the proposed action, the 7  
senior practitioner must— 8

- (a) take no further action about the show cause 9  
notice; and 10
- (b) give the relevant service provider notice that 11  
no further action is to be taken about the 12  
show cause notice. 13

**172 Cancellation of restrictive practice authorisation** 14  
15

(1) This section applies if, after considering any 16  
written representations made to the senior 17  
practitioner in the show cause period, the senior 18  
practitioner— 19

- (a) still considers a ground exists to cancel the 20  
restrictive practice authorisation; and 21
- (b) considers that cancellation of the 22  
authorisation is warranted. 23

(2) The senior practitioner may cancel the restrictive 24  
practice authorisation. 25

(3) If the senior practitioner decides to cancel the 26  
restrictive practice authorisation, the senior 27  
practitioner must give the relevant service 28  
provider a notice of the decision (a ***cancellation*** 29  
***notice***) that states— 30

- (a) the day the cancellation takes effect; and 31
- (b) that the cancellation affects— 32

- 
- (i) the application of section 189 in relation to the relevant service provider; and
  - (ii) the application of section 190 in relation to an individual acting for the relevant service provider.
- (4) The cancellation notice must include or be accompanied by a notice complying with the QCAT Act, section 157(2) for the decision.

### **173 Giving copy of cancellation notice**

- (1) If the senior practitioner cancels the restrictive practice authorisation under section 172, the senior practitioner must give a copy of the cancellation notice to—
- (a) the person with disability to whom the restrictive practice authorisation relates; and
  - (b) each relevant person for the person with disability who—
    - (i) was consulted by the relevant service provider in the development of the NDIS behaviour support plan or State behaviour support plan for the person with disability; or
    - (ii) was consulted by the senior practitioner under section 160 in relation to the application for the authorisation; and
  - (c) 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; and

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|                      |   |                            |
|----------------------|---|----------------------------|
| (d)                  | 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 <i>Forensic Disability Act 2011</i> . | 1<br>2<br>3<br>4<br>5<br>6 |
| (2)                  | Subsection (3) applies if the person with disability is a child.  | 7<br>8                     |
| (3)                  | Despite subsection (1)(b), the senior practitioner must, unless it is not practicable in the circumstances, give a copy of the cancellation notice to each person who is a parent of the child.   | 9<br>10<br>11<br>12        |
| (4)                  | The senior practitioner may give a copy of the cancellation notice to—  | 13<br>14                   |
| (a)                  | if the restrictive practice authorisation relates to the use of a regulated restrictive practice for the provision of NDIS supports or services—the NDIS commissioner; and  | 15<br>16<br>17<br>18       |
| (b)                  | if the restrictive practice authorisation relates to the use of a regulated restrictive practice for the provision of disability services—the chief executive.  | 19<br>20<br>21<br>22       |
| <b>Division 4</b>    | <b>State behaviour support plans</b>  | 23<br>24                   |
| <b>Subdivision 1</b> | <b>Preliminary</b>  | 25                         |
| <b>174</b>           | <b>Application and operation of division</b>  | 26                         |
| (1)                  | This division sets out requirements for the development and review of State behaviour support plans for persons with disability.  | 27<br>28<br>29             |
| (2)                  | Generally, a relevant service provider that is  | 30                         |



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providing disability services to a person with disability is responsible for developing or reviewing a State behaviour support plan for the person.

(3) This division does not apply in relation to the development or review of—

(a) an NDIS behaviour support plan; or

*Note—*

See the NDIS (Restrictive Practices) Rules in relation to requirements for the development and review of NDIS behaviour support plans.

(b) 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.

## **Subdivision 2 General requirements**

### **175 Who can develop and review State behaviour support plans**

(1) A State behaviour support plan for a person with disability must be developed or reviewed for a relevant service provider by a behaviour support practitioner.

(2) A *behaviour support practitioner* is a person who has the qualifications or experience appropriate to—

(a) conduct a behaviour support assessment, including a functional behavioural assessment, of a person with disability; and

(b) develop a State behaviour support plan for a person with disability.

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|   |    |
|---|----|
| <i>Examples of persons who may have appropriate qualifications or experience—</i> | 1  |
|   | 2  |
| behaviour analysts, medical practitioners, psychologists,                         | 3  |
| psychiatrists, speech and language pathologists,                                  | 4  |
| occupational therapists, registered nurses, social                                | 5  |
| workers   | 6  |
| (3) A relevant service provider that is providing                                 | 7  |
| disability services to a person with disability may                               | 8  |
| develop or review a State behaviour support plan                                  | 9  |
| for the person if the service provider is an                                      | 10 |
| individual who is a behaviour support   | 11 |
| practitioner.   | 12 |

## **176 Requirements before developing State behaviour support plans**

13  
14

|  |    |
|--|----|
| (1) Before developing a State behaviour support plan | 15 |
| for a person with disability, a relevant service     | 16 |
| provider must take all reasonable steps to—          | 17 |
| (a) reduce and eliminate the need for the use of     | 18 |
| regulated restrictive practices in relation to       | 19 |
| the person; and                                      | 20 |
| (b) take into account any behaviour support          | 21 |
| assessments or other assessments carried out         | 22 |
| in relation to the person; and                       | 23 |
| (c) make changes within the environment of the       | 24 |
| person that may reduce or eliminate the              | 25 |
| need for the use of regulated restrictive            | 26 |
| practices; and                                       | 27 |
| (d) consult with—                                    | 28 |
| (i) the person; and                                  | 29 |
| (ii) to the extent practicable, each relevant        | 30 |
| person for the person the service                    | 31 |
| provider is aware of; and                            | 32 |
| (iii) any other relevant service provider            | 33 |
| providing disability services or NDIS                | 34 |
| supports or services to the person; and              | 35 |

- 
- (iv) if the relevant service provider proposes to use chemical restraint—the person’s treating doctor; and
- (v) 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; and
- (vi) 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*; and
- (vii) any other person the relevant service provider considers to be integral to the development of the State behaviour support plan.
- (2) When consulting a person under subsection (1)(d)(i) or (ii), 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.
- (3) Subsection (4) applies if the person with disability is a child.
- (4) Despite subsection (1)(d)(ii), the relevant service provider must, unless it is not practicable in the circumstances, consult with each person who is a parent of the child.
- (5) 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

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with disability is carried out. 1

**177 Form of State behaviour support plans 2**

A State behaviour support plan must— 3

(a) be in the approved form; and 4

(b) include any information, and be 5  
accompanied by any documents, required by 6  
the senior practitioner under a guideline 7  
made under section 200AO. 8

**178 Content of State behaviour support plans 9**

(1) A comprehensive State behaviour support plan 10  
for a person with disability must include the 11  
following matters— 12

(a) a description of— 13

(i) the intensity, frequency and duration of 14  
any previous behaviour of the person 15  
that has caused harm to the person or 16  
others; and 17

(ii) the consequences of the behaviour; and 18

(iii) the early warning signs and triggers for 19  
the behaviour, if known; 20

(b) the proactive strategies that must be 21  
attempted before using a regulated 22  
restrictive practice, including the 23  
community access arrangements in place for 24  
the person; 25

(c) for each regulated restrictive practice 26  
proposed to be used in relation to the 27  
person— 28

(i) the circumstances in which the 29  
regulated restrictive practice is to be 30  
used; and 31

- 
- (ii) 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
  - (iii) 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
  - (iv) any other measures that must be taken while the regulated restrictive practice is being used that are necessary to ensure—
    - (A) the person’s proper care and treatment; and
    - (B) the person is safeguarded from abuse, neglect and exploitation; and
    - (C) the regulated restrictive practice is used for the shortest time that is reasonable in the circumstances; and
  - (v) a description of the anticipated positive and negative effects on the person of using the regulated restrictive practice; and
  - (vi) the intervals at which use of the regulated restrictive practice will be reviewed by the relevant service provider using the regulated restrictive practice;
  - (d) 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;

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- (e) the behavioural goals for the person to be achieved through the implementation of the plan; 1  
2  
3
- (f) if seclusion is proposed to be used in relation to the person—the maximum period for which seclusion may be used at any 1 time and the maximum frequency of the seclusion; 4  
5  
6  
7  
8
- (g) if chemical restraint is proposed to be used in relation to the person— 9  
10
  - (i) 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 11  
12  
13  
14  
15  
16
  - (ii) 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 17  
18  
19  
20  
21  
22  
23  
24
  - (iii) 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 25  
26  
27  
28  
29
  - (iv) the name of the person’s treating doctor; 30  
31
- (h) 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 1 time; 32  
33  
34  
35
- (i) any other matter prescribed by regulation. 36

- 
- (2) An interim State behaviour support plan for a person with disability must include the matters mentioned in subsection (1)(a)(i) and (ii), (b), (c), (f), (g) and (h).

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

- (1) This section applies if—
- (a) a relevant service provider that is providing disability services to a person with disability uses a regulated restrictive practice in relation to the person (the *first use*); and
  - (b) 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; and
  - (c) the use of the regulated restrictive practice in relation to the person will, or is likely to, continue.
- (2) The relevant service provider must ensure that—
- (a) within 1 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 ongoing use of the regulated restrictive practice in relation to the person; and
  - (b) within 6 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 ongoing use of the regulated restrictive practice.

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- (3) Nothing in subsection (2) prevents an interim State behaviour support plan and a comprehensive State behaviour support plan from being developed for a person with disability simultaneously.

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

- (1) This section applies if—
- (a) 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
  - (b) there is no restrictive practice authorisation in effect authorising the service provider to use the regulated restrictive practice in relation to the person.
- (2) The relevant service provider must, as soon as reasonably practicable, apply under section 148 for a restrictive practice authorisation in relation to the person.

**Subdivision 3 Reviews of comprehensive State behaviour support plans**

**181 Review of comprehensive State behaviour support plans**

- (1) A comprehensive State behaviour support plan for a person with disability must be reviewed—
- (a) if there is a change in circumstances that requires the plan to be changed—as soon as



- 
- practicable after the change in  
circumstances happens; or
- Example of a change in circumstances—*  
a change of relevant service provider for the  
person with disability
- (b) otherwise—at least once every 12 months  
while the plan is in effect.
- (2) Section 176 applies to the review of the  
comprehensive State behaviour support plan.
- (3) If a review of a comprehensive State behaviour  
plan for a person with disability is carried out  
under this section, the plan may—
- (a) continue in effect with changes; or
- (b) be replaced with a new comprehensive State  
behaviour support plan for the person.

## **Division 5            Complaints about restrictive practices**

### **182 Application of division**

- (1) This division applies in relation to the following  
relevant service providers—
- (a) a registered NDIS provider;
- (b) the department;
- (c) a funded service provider, other than a  
service provider that is another department;
- (d) another service provider prescribed by  
regulation.
- (2) However, this division does not apply in relation  
to a relevant service provider—
- (a) prescribed by regulation; or

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- (b) to the extent the service provider is providing disability services or NDIS supports or services prescribed by regulation. 1  
2  
3  
4

**183 Complaints about restrictive practices and behaviour support plans** 5  
6

- (1) Any person may make a complaint to the senior practitioner about— 7  
8
  - (a) 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 9  
10  
11  
12
  - (b) 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. 13  
14  
15  
16  
17
- (2) The senior practitioner must maintain a system that deals effectively with complaints received. 18  
19

**184 Referring matters to complaints entity** 20

- (1) The senior practitioner may— 21
  - (a) liaise with a complaints entity about a matter mentioned in section 183(1); and 22  
23
  - (b) refer matters relating to people with disability to a complaints entity; and 24  
25
  - (c) enter into an arrangement with a complaints entity aimed at avoiding inappropriate duplication of activities. 26  
27  
28
- (2) In this section— 29
  - complaints entity* means— 30
    - (a) the chief executive; or 31

- 
- (b) the NDIS commissioner; or 1
  - (c) another entity prescribed by regulation. 2

## **Division 6      Reviews by tribunal** 3

### **Subdivision 1   Preliminary** 4

#### **185 Purpose of division** 5

The purpose of this division is to enable the 6  
tribunal to conduct a review of a part 6 reviewable 7  
decision relating to a person with disability in a 8  
way that, to the greatest extent possible— 9

- (a) protects and promotes the rights of the 10  
person; and 11
- (b) takes into account the views, wishes and 12  
preferences of the person. 13

#### **186 Definitions for division** 14

In this division— 15

**health care** means health care within the meaning 16  
of the *Guardianship and Administration Act* 17  
*2000*, schedule 2, section 5. 18

**health information**, for a person, means— 19

- (a) information about the person’s physical or 20  
mental condition; or 21
- (b) information about the person’s health care, 22  
including the person’s expressed wishes 23  
about the person’s health care; or 24
- (c) information about the person collected to 25  
provide, or in providing, health care to the 26  
person; or 27

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- (d) information about the person collected in relation to the donation, or intended donation, of the person's body parts, organs or bodily substances; or 1  
2  
3  
4
- (e) genetic information about the person in a form that is, or could be, predictive about the health of the person or of a sibling, relative or descendant of the person. 5  
6  
7  
8
- interested person***, for another person, see the *Guardianship and Administration Act 2000*, schedule 4. 9  
10  
11
- part 6 reviewable decision*** means— 12
- (a) a decision of the senior practitioner under section 157 to give a restrictive practice authorisation; or 13  
14  
15
- (b) a decision of the senior practitioner under section 157 to impose conditions on a restrictive practice authorisation; or 16  
17  
18
- (c) a decision of the senior practitioner under section 157 to refuse to approve an application for a restrictive practice authorisation; or 19  
20  
21  
22
- (d) a decision of the senior practitioner under section 172 to cancel a restrictive practice authorisation. 23  
24  
25
- president*** means the president of the tribunal under the QCAT Act. 26  
27
- psychologist*** means a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession, other than as a student. 28  
29  
30  
31
- registrar*** means the principal registrar under the QCAT Act. 32  
33
- review application*** see section 188(1). 34

- 
- separate representative* see section 188ZF(1). 1
- significant health detriment*, to a person, means 2  
significant identifiable detriment to any of the 3  
following— 4
- (a) the person’s physical or mental health or 5  
wellbeing; 6
  - (b) the person’s health care; 7
  - (c) the person’s relationship with a health 8  
provider under the *Guardianship and 9  
Administration Act 2000*, including the 10  
person’s willingness to fully disclose 11  
relevant information to the health provider. 12

### **187 Decisions that may not be reviewed** 13

- To remove any doubt, it is declared that the 14  
following decisions of the senior practitioner are 15  
not reviewable under this division— 16
- (a) a decision under section 150(1) to ask the 17  
applicant for a restrictive practice 18  
authorisation to give the senior practitioner 19  
further information or documents in relation 20  
to the application; 21
  - (b) a decision under section 155(4) to give a 22  
copy of a notice about the withdrawal of an 23  
application for a restrictive practice 24  
authorisation to a particular entity; 25
  - (c) a decision under section 152(3)(b) to 26  
continue deciding an application for a 27  
restrictive practice authorisation; 28
  - (d) a decision under section 153 to withdraw an 29  
application for a restrictive practice 30  
authorisation; 31

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- (e) a decision under section 159(2) to consider a particular matter in relation to an application for a restrictive practice authorisation; 1  
2  
3
- (f) 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; 4  
5  
6  
7
- (g) a decision under section 173(4) to give a copy of a cancellation notice under that section to a particular entity; 8  
9  
10
- (h) a decision under section 184(1)(b) to refer a matter to a complaints entity under that section. 11  
12  
13

## **Subdivision 2 Applications for review** 14

### **188 Applying for review** 15

- (1) Each of the following entities may apply, as provided under the QCAT Act, to the tribunal for a review of a part 6 reviewable decision (*a review application*)— 16  
17  
18  
19
  - (a) the relevant service provider to which the decision relates; 20  
21
  - (b) the person with disability to whom the decision relates; 22  
23
  - (c) a relevant person for the person with disability; 24  
25
  - (d) a nominated advocate of the person with disability; 26  
27
  - (e) if 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*; 28  
29  
30  
31  
32

- 
- (f) if the person with disability is a child who is a relevant child under the *Public Guardian Act 2014*—the public guardian;
- (g) any other interested person for the person with disability.

*Note—*

For the effect of a proceeding for review on the operation of a part 6 reviewable decision, see the QCAT Act, section 22.

- (2) For subsection (1)(d), 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.

### **188A Making review application on behalf of child with disability**

- (1) An entity may make 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.
- (2) The president may give permission only if the president considers—
- (a) the entity is not, on the entity's own behalf, entitled to make the review application under section 188(1); and
- (b) it is in the child's best interests that the review application be made; and
- (c) it would be inappropriate for, or unreasonable to require, the child to make the application themselves.
- (3) An applicant may withdraw a review application

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made on behalf of a child with disability only with the permission of the president or the tribunal. 1  
2

(4) 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. 3  
4  
5  
6  
7  
8

(5) The public guardian is not required to obtain the permission of the president or tribunal 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*. 9  
10  
11  
12  
13  
14

### **Subdivision 3 General provisions for tribunal proceedings** 15 16

#### **188B Application of subdivision** 17

This subdivision applies if an entity makes a review application for review of a part 6 reviewable decision under this division. 18  
19  
20

#### **188C Notice of review application** 21

(1) The registrar must give notice of the review application to the senior practitioner. 22  
23

(2) 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— 24  
25  
26  
27  
28

(a) who is entitled under section 188(1) to apply for a review of the part 6 reviewable decision; and 29  
30  
31



- 
- (b) of whom the senior practitioner is aware. 1
- (3) As soon as practicable after receiving the senior 2  
practitioner's notice, the registrar must give a 3  
notice (an *information notice*) to each person 4  
named in the senior practitioner's notice. 5
- (4) The information notice must state— 6
- (a) details of the review application; and 7
- (b) if the information notice is given to the 8  
relevant service provider to which the part 6 9  
reviewable decision relates—that the service 10  
provider is a party to the proceedings; and 11
- (c) if the information notice is given to another 12  
person— 13
- (i) that the person may elect to become a 14  
party to the review by filing a notice of 15  
election with the registrar; and 16
- (ii) the period within which the notice of 17  
election must be filed. 18
- 188D Parties to proceeding 19**
- The parties to the proceeding are— 20
- (a) the applicant; and 21
- (b) the relevant service provider to which the 22  
part 6 reviewable decision relates; and 23
- (c) the senior practitioner; and 24
- (d) if the part 6 reviewable decision relates to an 25  
adult with disability and the tribunal has 26  
appointed a representative for the adult 27  
under section 188P—the adult's 28  
representative; and 29
- (e) if the part 6 reviewable decision relates to a 30  
child with disability and the tribunal has 31  
ordered under section 188ZF that the child 32

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be represented by a separate 1  
representative—the child’s separate 2  
representative; and 3

(f) a person who elects to become a party under 4  
section 188E; and 5

(g) a person joined as a party under section 6  
188F. 7

**188E Electing to become a party** 8

(1) An entity that is entitled under section 188(1) to 9  
apply for a review of the part 6 reviewable 10  
decision may elect to become a party to the 11  
proceeding by filing a notice of election with the 12  
registrar. 13

(2) If the entity has been given an information notice 14  
under section 188C in relation to the review 15  
application, the notice of election must be filed 16  
with the registrar within 60 days after the day the 17  
information notice is given. 18

(3) If the entity has not been given an information 19  
notice under section 188C in relation to the 20  
review application, the notice of election must be 21  
filed with the registrar within 60 days after the day 22  
the review application was made. 23

(4) The tribunal may shorten the period for filing the 24  
notice of election mentioned in subsection (2). 25

(5) However, the tribunal may not act under 26  
subsection (4) if to do so would result in the 27  
interests of the person with disability to whom the 28  
part 6 reviewable decision relates being adversely 29  
affected. 30

**188F Joinder of person as a party** 31

(1) The tribunal may join a person as a party to the 32  
proceeding if satisfied the person is genuinely 33

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concerned in the subject matter of the review. 1

- (2) However, if the proceeding concerns a child, the 2  
tribunal may not join a person as a party to the 3  
proceeding unless satisfied that to do so would be 4  
in the child's best interests. 5
- (3) The tribunal may join a person as a party to the 6  
proceeding on its own initiative or on application 7  
by the person. 8
- (4) The tribunal may join a person as a party to the 9  
proceeding at any time before the review 10  
application is finally decided by the tribunal. 11

**188G Request or order for information 12**

- (1) The tribunal may make a request or an order under 13  
this section to ensure, as far as it considers it 14  
practicable, the tribunal has all the information 15  
and material it considers necessary to make an 16  
informed decision about a matter in the 17  
proceeding. 18
- (2) The tribunal may, by notice to a prescribed 19  
person, ask the person to give to the tribunal 20  
information or material in the person's custody or 21  
control that the tribunal considers necessary to 22  
make an informed decision about a matter in the 23  
proceeding. 24
- (3) The tribunal may order a prescribed person to 25  
give to the tribunal information or material in the 26  
person's custody or control that the tribunal 27  
considers necessary to make an informed decision 28  
about a matter in the proceeding. 29

*Note—* 30

For the consequences of a failure to comply with an 31  
order under this subsection, see the QCAT Act, chapter 32  
5, part 1. 33

- (4) For the QCAT Act, section 213(1), it is a 34  
reasonable excuse for the prescribed person to fail 35

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to comply with the order because giving the 1  
information or material might tend to incriminate 2  
the person. 3

(5) Subject to subsection (4), this section overrides— 4

(a) any restriction, in an Act or the common 5  
law, about the disclosure or confidentiality 6  
of information; and 7

(b) any claim of confidentiality or privilege, 8  
including a claim based on legal 9  
professional privilege. 10

(6) This section does not limit the tribunal’s powers 11  
under the QCAT Act. 12

(7) In this section— 13

*prescribed person* means— 14

(a) a relevant person for the person with 15  
disability to whom the review application 16  
relates; or 17

(b) if the person with disability to whom the 18  
review application relates is subject to a 19  
forensic order, treatment support order or 20  
treatment authority under the *Mental Health* 21  
*Act 2016*—the authorised psychiatrist 22  
responsible for treating the person under 23  
that Act. 24

### **188H Relationship with QCAT Act** 25

(1) The following provisions of the QCAT Act do not 26  
apply in relation to the proceeding— 27

(a) section 66; 28

(b) section 90; 29

(c) section 100; 30

(d) section 102 (except to the extent it applies 31  
for section 103 of that Act); 32

- 
- (e) section 142(3)(a)(ii); 1
  - (f) section 222. 2
  - (2) The QCAT Act, section 99 does not apply in 3  
relation to the proceeding if the tribunal is 4  
considering whether to make an order under 5  
section 188R(1) or 188S(1). 6

**188I Costs** 7

- (1) Each party to the proceeding is to bear the party's 8  
own costs for the proceeding. 9
  - (2) However, the tribunal may order the entity that 10  
made the review application, other than a child, to 11  
pay a party's costs and the costs of the tribunal in 12  
exceptional circumstances, including, for 13  
example, if the tribunal considers the application 14  
is frivolous or vexatious. 15
  - (3) Also, the following provisions of the QCAT Act 16  
apply in relation to the proceedings— 17
    - (a) section 101; 18
    - (b) sections 103 to 109. 19
- Note—* 20
- See also section 188H. 21

**Subdivision 4 Proceedings relating to** 22  
**adults with disability** 23

**188J Application of subdivision** 24

This subdivision applies in relation to a review 25  
application for review of a part 6 reviewable 26  
decision relating to a person with disability who is 27  
an adult when the review application is made. 28

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|  |                                  |
|--|----------------------------------|
| <b>188K Definitions for subdivision</b>  | 1                                |
| In this subdivision—   | 2                                |
| <i>adult evidence order</i> see section 188R(1).   | 3                                |
| <i>closure order</i> see section 188S(1).  | 4                                |
| <i>confidentiality order</i> see section 188U(1).  | 5                                |
| <i>limitation order</i> means any of the following orders—   | 6<br>7                           |
| (a) an adult evidence order;   | 8                                |
| (b) a closure order;   | 9                                |
| (c) a confidentiality order;   | 10                               |
| (d) a non-identification order;  | 11                               |
| (e) a non-publication order.   | 12                               |
| <i>non-identification order</i> see section 188V(2).   | 13                               |
| <i>non-publication order</i> see section 188T(1).  | 14                               |
| <br>   |                                  |
| <b>188L Notice of hearing</b>  | 15                               |
| 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.   | 16<br>17<br>18<br>19             |
| <br>   |                                  |
| <b>188M Constitution of tribunal</b>   | 20                               |
| (1) This section applies for the choosing of persons who are to constitute the tribunal for the proceeding.  | 21<br>22<br>23                   |
| (2) In addition to matters mentioned in the QCAT Act, section 167(1), the president must have regard to the need for the tribunal hearing the proceeding to include a member who has knowledge, expertise or experience in the following fields— | 24<br>25<br>26<br>27<br>28<br>29 |

- 
- (a) adults with disability; 1
- (b) guardianship and administration 2  
proceedings; 3
- (c) strategies in relation to preventing and 4  
eliminating the use of restrictive practices in 5  
relation to adults with disability. 6
- (3) If the adult with disability is an Aboriginal person 7  
or a Torres Strait Islander person, the tribunal 8  
hearing the proceeding must include, if 9  
practicable, a member who is an Aboriginal 10  
person or a Torres Strait Islander person. 11
- (4) In this section— 12  
*member* means a member of the tribunal under 13  
the QCAT Act, section 171. 14
- 188N Adult with disability can not be compelled to 15  
give evidence 16**
- (1) The adult with disability can not be compelled to 17  
give evidence in the proceeding. 18
- (2) Without limiting subsection (1), neither the 19  
tribunal nor the registrar can give the adult with 20  
disability a notice under the QCAT Act, section 21  
97(1) requiring the adult to— 22
- (a) attend a hearing of the proceeding to give 23  
evidence; or 24
- (b) produce a document or other thing to the 25  
tribunal. 26
- (3) Before the adult with disability gives evidence in 27  
the proceeding, the tribunal must satisfy itself that 28  
the adult is willing to give the evidence. 29
- 188O Right to express views to tribunal 30**
- (1) Whether or not the adult with disability is a party 31

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to the proceeding or appears as a witness before 1  
the tribunal, the adult has the right to express the 2  
adult's views to the tribunal about matters 3  
relevant to the proceeding. 4

- (2) In performing its functions or exercising its 5  
powers under this Act or the QCAT Act in 6  
relation to the adult with disability, the tribunal 7  
must, to the greatest extent practicable, seek and 8  
take account of the views, wishes and preferences 9  
expressed or demonstrated by the adult. 10

### **188P Appointing representative** 11

- (1) The tribunal may appoint a representative to 12  
represent the views, wishes and interests of the 13  
adult with disability in the proceeding if— 14
- (a) the adult is not represented in the 15  
proceeding; or 16
- (b) the adult is represented in the proceeding by 17  
an agent the tribunal considers to be 18  
inappropriate to represent the adult's 19  
interests. 20
- (2) The proceeding may be adjourned to allow the 21  
appointment to be made. 22
- (3) A representative appointed under subsection (1) 23  
must— 24
- (a) have regard to any expressed or 25  
demonstrated views, wishes and preferences 26  
of the adult; and 27
- (b) to the greatest extent practicable, present the 28  
adult's views, wishes and preferences to the 29  
tribunal; and 30
- (c) promote and safeguard the adult's rights, 31  
interests and opportunities. 32
- (4) The tribunal must give a notice of the 33



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appointment of a representative under subsection 1  
(1) to each party to the proceeding as soon as 2  
practicable after the appointment. 3

**188Q Hearing open** 4

- (1) A hearing of the proceeding by the tribunal must 5  
be held in public. 6
- (2) However, the tribunal may make an adult 7  
evidence order under section 188R or a closure 8  
order under section 188S. 9

**188R Adult evidence order** 10

- (1) If the tribunal is satisfied it is necessary to avoid 11  
serious harm or injustice to a person or to obtain 12  
relevant information the tribunal would not 13  
otherwise receive, the tribunal may, by order (an 14  
*adult evidence order*), obtain relevant 15  
information from the adult with disability at a 16  
hearing in the absence of anyone else, including, 17  
for example— 18
- (a) members of the public; or 19
- (b) a particular person, including a party to the 20  
proceeding. 21

*Note—* 22

See also section 188N. 23

- (2) To the extent the relevant information is health 24  
information for a person, serious harm to the 25  
person includes significant health detriment to the 26  
person. 27
- (3) For subsection (1), information is relevant only if 28  
it is directly relevant to a matter in the proceeding. 29
- (4) The tribunal may make the adult evidence order 30  
on its own initiative or on the application of a 31  
party to the proceeding. 32

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- (5) A person must not contravene an adult evidence order, unless the person has a reasonable excuse. 1  
2  
Maximum penalty for subsection (5)—200 3  
penalty units. 4

**188S Closure order** 5

- (1) If the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person, the tribunal may, but only to the extent necessary, by order (a *closure order*), do either or both of the following— 6  
7  
8  
9  
10  
(a) close a hearing of the proceeding or part of a hearing to all or some members of the public; 11  
12  
13  
(b) exclude a particular person, including a party to the proceeding, from a hearing of the proceeding or part of a hearing. 14  
15  
16  
(2) To the extent the hearing or the part of the hearing concerns health information for a person, serious harm to the person includes significant health detriment to the person. 17  
18  
19  
20  
(3) The tribunal may make the closure order on its own initiative or on the application of a party to the proceeding. 21  
22  
23  
(4) A person must not contravene a closure order, unless the person has a reasonable excuse. 24  
25  
Maximum penalty for subsection (4)—200 26  
penalty units. 27

**188T Non-publication order** 28

- (1) If the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person, the tribunal may, but only to the extent necessary, by order (a *non-publication order*), prohibit publication of 29  
30  
31  
32

- 
- information about the proceeding. 1
- (2) However, the tribunal may not make a 2  
non-publication order in relation to information if 3  
the information is the subject of a 4  
non-identification order made under section 5  
188V. 6
- (3) To the extent information about the proceeding is 7  
health information for a person, serious harm to 8  
the person includes significant health detriment to 9  
the person. 10
- (4) The tribunal may make the non-publication order 11  
on its own initiative or on the application of a 12  
party to the proceeding. 13
- (5) Also, if information about the proceeding 14  
discloses information prepared or provided by an 15  
entity, the tribunal may make the non-publication 16  
order on the application of the entity. 17
- (6) Further, if information about the proceeding 18  
discloses health information for the person— 19
- (a) the tribunal may make the non-publication 20  
order on the application of— 21
- (i) the person; or 22
- (ii) an interested person for the person; and 23
- (b) an application for the non-publication order 24  
may be made by an interested person for the 25  
person even after the person’s death. 26
- (7) If a non-publication order prohibits the 27  
publication of information that discloses health 28  
information for a person, the person’s death does 29  
not affect the non-publication order. 30
- (8) A person must not contravene a non-publication 31  
order, unless the person has a reasonable excuse. 32
- Maximum penalty for subsection (8)—200 33  
penalty units. 34

[s 14]

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- 188U Confidentiality order** 1
- (1) If the tribunal is satisfied it is necessary to avoid 2  
serious harm or injustice to a person, the tribunal 3  
may, but only to the extent necessary, by order (a 4  
*confidentiality order*)— 5
- (a) withhold from a party to the proceeding or 6  
another person a document, or part of a 7  
document, before the tribunal; or 8
- (b) withhold from a party to the proceeding or 9  
another person other information before the 10  
tribunal. 11
- (2) To the extent a document or part of a document 12  
contains health information for a person, or to the 13  
extent other information is health information for 14  
a person, serious harm to the person includes 15  
significant health detriment to the person. 16
- (3) The tribunal may make the confidentiality order 17  
on its own initiative or on the application of a 18  
party to the proceeding. 19
- (4) Also, the tribunal may make the confidentiality 20  
order in relation to a document or other 21  
information on the application of the entity who 22  
prepared or provided the document or other 23  
information. 24
- (5) A person must not contravene a confidentiality 25  
order, unless the person has a reasonable excuse. 26
- Maximum penalty for subsection (5)—200 27  
penalty units. 28
- 188V Non-identification order** 29
- (1) Generally, information about the proceeding may 30  
be published, subject to an order made by the 31  
tribunal under this division or the QCAT Act. 32
- (2) However, the tribunal may, having regard to the 33  
matters mentioned in subsection (4), by order (a 34

- 
- non-identification order*) prohibit publication of information identifying, or likely to lead to the identification of, the adult with disability. 1  
2  
3
- (3) The tribunal may make the non-identification order at any time— 4  
5
- (a) on its own initiative; or 6
- (b) on the application of— 7
- (i) the adult with disability; or 8
- (ii) a party to the proceeding; or 9
- (iii) an interested person for the adult with disability. 10  
11
- (4) For subsection (2), the matters are— 12
- (a) the views, wishes and preferences expressed or demonstrated by the adult with disability; and 13  
14  
15
- (b) the views of other parties to the proceeding; and 16  
17
- (c) the rights and interests of the adult with disability; and 18  
19
- (d) any public interest in the publication of the identity of the adult with disability; and 20  
21
- (e) the capacity of the adult with disability to consent to the publication; and 22  
23
- (f) any other matter the tribunal considers relevant. 24  
25
- (5) A person must not contravene a non-identification order, unless the person has a reasonable excuse. 26  
27
- Maximum penalty for subsection (5)—200 penalty units. 28  
29

[s 14]

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|   |                      |
|---|----------------------|
| <b>188W Non-publication order or confidentiality order made before hearing</b>  | 1<br>2               |
| (1) A non-publication order or confidentiality order may be made under this subdivision before a hearing of the proceeding starts.  | 3<br>4<br>5          |
| (2) However, a non-publication order or confidentiality order made before a hearing starts is vacated at the start of the hearing.  | 6<br>7<br>8          |
| (3) Sections 188X to 188Z do not apply in relation to a non-publication order or confidentiality order made before a hearing of the proceeding starts.                              | 9<br>10<br>11        |
| <br>  |                      |
| <b>188X Standing for limitation order</b>   | 12                   |
| 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. | 13<br>14<br>15<br>16 |
| <i>Example—</i>   | 17                   |
| 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.  | 18<br>19<br>20       |
| <br>  |                      |
| <b>188Y Making and notifying decision for limitation order</b>  | 21<br>22             |
| (1) 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.                        | 23<br>24<br>25<br>26 |
| (2) As soon as practicable after making its decision, the tribunal must give a copy of its decision to the following entities—  | 27<br>28<br>29       |
| (a) the adult with disability;  | 30                   |
| (b) each party to the proceeding;   | 31                   |

- 
- (c) each entity heard in relation to the limitation order; 1  
2
  - (d) the public advocate. 3
  - (3) The tribunal must also give a copy of its decision to anyone else who requests a copy. 4  
5
  - (4) 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. 6  
7  
8
  - (5) 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 decision relating to a confidentiality order, the document or other information to which the decision relates. 9  
10  
11  
12  
13  
14

**188Z Reasons for limitation order** 15

- (1) This section applies if the tribunal decides to make a limitation order. 16  
17
- (2) If the limitation order is an order other than an adult evidence order, the tribunal must give written reasons for the decision. 18  
19  
20
- (3) If the limitation order is an adult evidence order, the tribunal may give written reasons for the decision. 21  
22  
23
- (4) If the tribunal gives written reasons for the decision, the tribunal must, within 45 days after the day the decision is made, give a copy of the reasons to— 24  
25  
26  
27
  - (a) the adult with disability; and 28
  - (b) each party in the proceeding; and 29
  - (c) each entity heard in relation to the limitation order; and 30  
31
  - (d) the public advocate. 32

[s 14]

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- (5) The tribunal must also give a copy of the reasons to anyone else who requests a copy. 1  
2
- (6) For subsection (5), it is sufficient for the tribunal to give a copy of the reasons in a form that does not contravene a non-identification order. 3  
4  
5
- (7) The QCAT Act, sections 121 and 122 do not apply to a limitation order. 6  
7

### **188ZA Procedural directions** 8

- (1) The tribunal may direct the adult with disability— 9
- (a) to undergo examination by a doctor or psychologist in the ordinary course of the doctor’s medical practice or the psychologist’s practice; or 10  
11  
12  
13
- (b) to be brought before the tribunal. 14
- Notes—* 15
- 1 However, see section 188N. 16
- 2 For the consequences of a failure to comply with a direction under this section, see the QCAT Act, chapter 5, part 1. 17  
18  
19
- (2) The tribunal may change or revoke the direction. 20
- (3) If the tribunal gives a direction under subsection (1)(a), the tribunal may direct that a party to the proceeding pay for the examination. 21  
22  
23

### **Subdivision 5 Proceedings relating to children with disability** 24 25

### **188ZB Application of subdivision** 26

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. 27  
28  
29  
30



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|   |                            |
|---|----------------------------|
| <b>188ZC Definitions for subdivision</b>  | 1                          |
| In this subdivision—  | 2                          |
| <i>confidentiality order</i> see section 188ZO(1).  | 3                          |
| <i>identity authorisation order</i> see section 188ZM(2).   | 4<br>5                     |
| <i>limitation order</i> means the following orders—   | 6                          |
| (a) a confidentiality order;  | 7                          |
| (b) an identity authorisation order;  | 8                          |
| (c) a non-publication order.  | 9                          |
| <i>non-publication order</i> see section 188ZN(1).  | 10                         |
| <br>  |                            |
| <b>188ZD Notice of hearing</b>  | 11                         |
| 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—   | 12<br>13<br>14             |
| (a) each party to the proceeding; and   | 15                         |
| (b) if the child with disability is a relevant child under the <i>Public Guardian Act 2014</i> —the public guardian.  | 16<br>17<br>18             |
| <br>  |                            |
| <b>188ZE Constitution of tribunal</b>   | 19                         |
| (1) This section applies for the choosing of persons who are to constitute the tribunal for the proceeding.   | 20<br>21<br>22             |
| (2) In addition to the matters mentioned in the QCAT Act, section 167, the president must have regard to the need for the tribunal hearing the proceeding to include a member who has knowledge, expertise or experience in the following fields— | 23<br>24<br>25<br>26<br>27 |
| (a) children with disability;   | 28                         |
| (b) child protection;   | 29                         |

[s 14]

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- (c) child welfare; 1
- (d) strategies in relation to preventing and 2  
eliminating the use of restrictive practices in 3  
relation to children with disability. 4
- (3) If the child with disability is an Aboriginal person 5  
or a Torres Strait Islander person, the tribunal 6  
must include, if practicable, a member who is an 7  
Aboriginal person or a Torres Strait Islander 8  
person. 9
- (4) In this section— 10  
*member* means a member of the tribunal under 11  
the QCAT Act, section 171. 12

**188ZF Order about separate representative** 13

- (1) If the tribunal considers it would be in the best 14  
interests of the child with disability for the child 15  
to be separately represented before the tribunal by 16  
a lawyer, the tribunal may order that the child be 17  
represented by a lawyer (a *separate* 18  
*representative*). 19
- (2) Subsection (1) applies whether or not the child— 20
  - (a) is a party to the proceeding; or 21
  - (b) is represented by a lawyer or someone else 22  
under the QCAT Act, section 43. 23
- (3) The separate representative must— 24
  - (a) act in the child’s best interests having regard 25  
to any expressed views or wishes of the 26  
child; and 27
  - (b) as far as possible, present the child’s views 28  
and wishes to the tribunal. 29
- (4) The tribunal must give a notice of the 30  
appointment of a separate representative under 31  
subsection (1) to each party to the proceeding as 32  
soon as practicable after the appointment. 33

- 
- (5) 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 QCAT Act, section 43.

**188ZG Separate representative can not give particular evidence**

The separate representative for a child with disability—

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

**188ZH Child can not be compelled to give evidence**

- (1) The child with disability can not be compelled to give evidence in the proceeding.
- (2) Without limiting subsection (1), neither the tribunal nor the registrar can give the child with disability a notice under the QCAT Act, section 97(1) requiring the child to—
- (a) attend a hearing of the proceeding to give evidence; or
- (b) produce a stated document or other thing to the tribunal.
- (3) Before the child with disability gives evidence in the proceeding, the tribunal must satisfy itself that the child is willing to give the evidence.

[s 14]

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|   |                            |
|---|----------------------------|
| <b>188ZI Right to express views to tribunal</b>   | 1                          |
| 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. | 2<br>3<br>4<br>5<br>6      |
| <b>188ZJ Child with disability giving evidence or expressing views to tribunal</b>  | 7<br>8                     |
| (1) 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.  | 9<br>10<br>11              |
| (2) Only the following persons may be present while the child gives evidence or expresses the child's views—  | 12<br>13<br>14             |
| (a) the members constituting the tribunal;  | 15                         |
| (b) a lawyer or someone else who is representing the child under the QCAT Act, section 43;  | 16<br>17<br>18             |
| (c) the separate representative for the child;  | 19                         |
| (d) a nominated advocate for the child;   | 20                         |
| (e) a parent of the child;  | 21                         |
| (f) if a person has been granted custody or guardianship of the child under the <i>Child Protection Act 1999</i> —the person who has custody, or is the guardian, of the child under that Act;                              | 22<br>23<br>24<br>25<br>26 |
| (g) the child's support person if the child has a support person and agrees to that person's presence;  | 27<br>28<br>29             |
| (h) if the child is a relevant child under the <i>Public Guardian Act 2014</i> —the public guardian;  | 30<br>31<br>32             |

- 
- (i) if a person made the review application on behalf of the child under section 188A—the person. 1  
2  
3
- (3) 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— 4  
5  
6  
7
- (a) is 12 years or more; and 8
- (b) is represented by a separate representative or a lawyer under the QCAT Act, section 43. 9  
10
- (4) For 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. 11  
12  
13  
14  
15  
16
- (5) Subsection (6) applies 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. 17  
18  
19  
20
- (6) For subsection (2)(f), 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. 21  
22  
23  
24
- 188ZK Proceeding to be held in private** 25
- (1) A hearing of the proceeding by the tribunal must be held in private. 26  
27
- (2) However, the following persons are entitled to be present at the proceeding— 28  
29
- (a) the child with disability; 30
- (b) each party to the proceeding; 31

[s 14]

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- (c) if, under an Act, a party is entitled to be represented by someone else at the proceeding—the party’s representative; 1  
2  
3
  - (d) if the child with disability is a relevant child under the *Public Guardian Act 2014*—the public guardian; 4  
5  
6
  - (e) a witness while giving evidence; 7
  - (f) a support person for a witness while the witness is giving evidence; 8  
9
  - (g) a person allowed to be present by the tribunal. 10  
11
- (3) Subsection (2) is subject to section 188ZJ and the QCAT Act, section 220. 12  
13

**188ZL When proceeding may be held in public** 14

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. 15  
16  
17  
18  
19

**188ZM Publication of information** 20

- (1) A person must not publish— 21
- (a) information given in evidence or otherwise in the proceeding; or 22  
23
  - (b) information that is likely to identify a person who— 24  
25
    - (i) appears as a witness before the tribunal in the proceeding; or 26  
27
    - (ii) is a party to the proceeding; or 28
    - (iii) is mentioned, or otherwise involved, in the proceeding. 29  
30

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|   |                      |
|---|----------------------|
| Maximum penalty—200 penalty units.  | 1                    |
| <i>Notes—</i>   | 2                    |
| • The publication of information about the proceeding may also be prohibited by a non-publication order under section 188ZN.  | 3<br>4<br>5          |
| • See also the <i>Child Protection Act 1999</i> , section 189.  | 6                    |
| (2) The tribunal may make an order (an <b><i>identity authorisation order</i></b> ) authorising the publication of information that is otherwise prohibited under subsection (1). | 7<br>8<br>9<br>10    |
| (3) The tribunal may make the identity authorisation order only if satisfied the publication of the information—  | 11<br>12<br>13       |
| (a) is in the public interest; and  | 14                   |
| (b) does not conflict with the best interests of the child with disability.   | 15<br>16             |
| (4) 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.              | 17<br>18<br>19<br>20 |
| (5) This section applies despite the QCAT Act, section 125(1).  | 21<br>22             |
| (6) In this section—  | 23                   |
| <b><i>information</i></b> includes—   | 24                   |
| (a) a matter contained in a document filed with, or received by, the tribunal; and  | 25<br>26             |
| (b) the tribunal’s decision or the reasons for a decision of the tribunal.  | 27<br>28             |
| <b><i>publish</i></b> , for information, means to publish the information to the public by way of the internet, newspaper, radio, television or other form of communication.      | 29<br>30<br>31<br>32 |

[s 14]

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### **188ZN Non-publication order**

- |   |                       |
|---|-----------------------|
|   | 1                     |
| (1) If the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person, the tribunal may, but only to the extent necessary, by order (a <b><i>non-publication order</i></b> ), prohibit publication of information about the proceeding. | 2<br>3<br>4<br>5<br>6 |
| (2) However, the tribunal may not make a non-publication order in relation to information to which section 188ZM(1) applies.  | 7<br>8<br>9           |
| (3) To the extent information about the proceeding is health information for a person, serious harm to the person includes significant health detriment to the person.  | 10<br>11<br>12<br>13  |
| (4) The tribunal may make the non-publication order on its own initiative or on the application of a party to the proceeding.   | 14<br>15<br>16        |
| (5) Also, if information about the proceeding discloses information prepared or provided by an entity, the tribunal may make the non-publication order on the application of the entity.  | 17<br>18<br>19<br>20  |
| (6) Further, if information about the proceeding discloses health information for a person—   | 21<br>22              |
| (a) the tribunal may make the non-publication order on the application of—  | 23<br>24              |
| (i) the person; or  | 25                    |
| (ii) an interested person for the person; and   | 26                    |
| (b) an application for the non-publication order may be made by an interested person for the person even after the person's death.  | 27<br>28<br>29        |
| (7) 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.   | 30<br>31<br>32<br>33  |
| (8) A person must not contravene a non-publication  | 34                    |



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order, unless the person has a reasonable excuse. 1

Maximum penalty for subsection (8)—200 2  
penalty units. 3

**188ZO Confidentiality order** 4

- (1) If the tribunal is satisfied it is necessary to avoid 5  
serious harm or injustice to a person, the tribunal 6  
may, but only to the extent necessary, by order (a 7  
*confidentiality order*)— 8
- (a) withhold from a party to the proceeding or 9  
another person a document, or part of a 10  
document, before the tribunal; or 11
- (b) withhold from a party to the proceeding or 12  
another person other information before the 13  
tribunal. 14
- (2) To the extent a document or part of a document 15  
contains health information for a person, or to the 16  
extent other information is health information for 17  
a person, serious harm to the person includes 18  
significant health detriment to the person. 19
- (3) The tribunal may make the confidentiality order 20  
on its own initiative or on the application of a 21  
party. 22
- (4) Also, the tribunal may make the confidentiality 23  
order in relation to a document or other 24  
information on the application of the entity who 25  
prepared or provided the document or other 26  
information. 27
- (5) A person must not contravene a confidentiality 28  
order, unless the person has a reasonable excuse. 29
- Maximum penalty for subsection (5)—200 30  
penalty units. 31

[s 14]

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|   |                      |
|---|----------------------|
| <b>188ZP Non-publication order or confidentiality order made before hearing</b>   | 1<br>2               |
| (1) A non-publication order or confidentiality order may be made under this subdivision before a hearing of the proceeding starts.                                | 3<br>4<br>5          |
| (2) However, a non-publication order or confidentiality order made before a hearing is vacated at the start of the hearing.                                       | 6<br>7<br>8          |
| (3) 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.          | 9<br>10<br>11        |
| <b>188ZQ Standing for limitation order</b>  | 12                   |
| 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. | 13<br>14<br>15<br>16 |
| <b>188ZR Making and notifying decision for limitation order</b>   | 17<br>18             |
| (1) 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.      | 19<br>20<br>21<br>22 |
| (2) As soon as practicable after making its decision, the tribunal must give a copy of its decision to—   | 23<br>24             |
| (a) the child with disability; and  | 25                   |
| (b) each party to the proceeding; and   | 26                   |
| (c) each entity heard in relation to the order; and   | 27<br>28             |
| (d) if the child with disability is represented by a lawyer under the QCAT Act, section 43—the lawyer; and  | 29<br>30<br>31       |

- 
- (e) if the child with disability is a relevant child under the *Public Guardian Act 2014*—the public guardian. 1  
2  
3
- (3) The tribunal must also give a copy of its decision to anyone else who requests a copy. 4  
5
- (4) 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). 6  
7  
8
- 188ZS Reasons for limitation order** 9
- (1) This section applies if the tribunal decides to make a limitation order. 10  
11
- (2) The tribunal must give written reasons for the decision. 12  
13
- (3) The tribunal must, within 45 days after the day the decision is made, give a copy of the reasons to— 14  
15
- (a) each party to the proceeding; and 16
- (b) each entity heard in relation to the order; and 17  
18
- (c) if the child with disability is represented by a lawyer under the QCAT Act, section 43—the lawyer; and 19  
20  
21
- (d) if the child with disability is a relevant child under the *Public Guardian Act 2014*—the public guardian. 22  
23  
24
- (4) The tribunal must also give a copy of its reasons to anyone else who requests a copy. 25  
26
- (5) For subsection (4), it is sufficient for the tribunal to give a copy of the reasons in a form that does not contravene section 188ZM(1). 27  
28  
29
- (6) The QCAT Act, sections 121 and 122 do not apply to limitation orders. 30  
31

[s 15]

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**188ZT Procedural directions**

- |  |    |
|--|----|
|  | 1  |
| (1) The tribunal may direct the child with disability— | 2  |
| (a) to undergo examination by a doctor or              | 3  |
| psychologist in the ordinary course of the             | 4  |
| doctor’s medical practice or the                       | 5  |
| psychologist’s practice; or                            | 6  |
| (b) to be brought before the tribunal.                 | 7  |
| <i>Notes—</i>  | 8  |
| 1 However, see section 188ZH.                          | 9  |
| 2 For the consequences of a failure to comply with a   | 10 |
| direction under this section, see the QCAT Act,        | 11 |
| chapter 5, part 1.                                     | 12 |
| (2) The tribunal may change or revoke the direction.   | 13 |
| (3) If the tribunal gives a direction under subsection | 14 |
| (1)(a), the tribunal may direct that a party to the    | 15 |
| proceeding pay for the examination.                    | 16 |

|                  |  |    |
|------------------|--|----|
| <b>Clause 15</b> | <b>Amendment of pt 6, div 7, sdiv 1, hdg (Immunity for use of restrictive practices)</b> | 17 |
|                  | Part 6, division 7, subdivision 1, heading, ‘restrictive’—                               | 18 |
|                  | <i>omit, insert—</i>   | 19 |
|                  | <b>regulated restrictive</b>   | 20 |
|                  |  | 21 |

|                  |   |    |
|------------------|---|----|
| <b>Clause 16</b> | <b>Amendment of s 189 (Immunity from liability—relevant service provider)</b> | 22 |
|                  | Section 189, from ‘restrictive’—  | 23 |
|                  | <i>omit, insert—</i>  | 24 |
|                  | regulated restrictive practice under section 145 or                           | 25 |
|                  | 146.  | 26 |
|                  |   | 27 |

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|                  |  |                      |
|------------------|--|----------------------|
| <b>Clause 17</b> | <b>Replacement of s 190 (Immunity from liability—individual acting for relevant service provider)</b>  | 1<br>2               |
|                  | Section 190—   | 3                    |
|                  | <i>omit, insert—</i>   | 4                    |
|                  | <b>190 Immunity from liability—individual acting for relevant service provider</b>   | 5<br>6               |
|                  | (1) This section applies to an individual who, acting for a relevant service provider, uses a regulated restrictive practice in relation to a person with disability.                | 7<br>8<br>9<br>10    |
|                  | (2) The individual is not criminally or civilly liable for using the regulated restrictive practice if the individual acts honestly and without negligence under section 145 or 146. | 11<br>12<br>13<br>14 |
| <b>Clause 18</b> | <b>Omission of s 191 (Requirement to give statement about use of restrictive practices)</b>  | 15<br>16             |
|                  | Section 191—   | 17                   |
|                  | <i>omit.</i>   | 18                   |
| <b>Clause 19</b> | <b>Omission of s 192 (Requirement to give information to guardian or informal decision-maker)</b>  | 19<br>20             |
|                  | Section 192—   | 21                   |
|                  | <i>omit.</i>   | 22                   |
| <b>Clause 20</b> | <b>Amendment of s 193 (Requirement to keep and implement procedure)</b>  | 23<br>24             |
|                  | (1) Section 193(1), from ‘restrictive’ to ‘disability’—  | 25                   |
|                  | <i>omit, insert—</i>   | 26                   |
|                  | regulated restrictive practice in relation to a person with disability   | 27<br>28             |
|                  | (2) Section 193(2), from ‘who uses’ to ‘adult’—  | 29                   |

[s 21]

---

*omit, insert—* 1  
who uses the regulated restrictive practice in 2  
relation to the person with disability 3  
(3) Section 193(2)(a) and (b) and (3), definition *keep and* 4  
*implement*, paragraph (c), ‘restrictive’— 5  
*omit, insert—* 6  
regulated restrictive 7

**Clause 21 Amendment of s 194 (Requirement to keep records and other documents)** 8  
9  
(1) Section 194(1), from ‘restrictive’ to ‘disability’— 10  
*omit, insert—* 11  
regulated restrictive practice in relation to a 12  
person with disability 13  
(2) Section 194(3)— 14  
*omit, insert—* 15  
(3) Also, the relevant service provider must keep, at 16  
premises where disability services or NDIS 17  
supports or services are provided to the person 18  
with disability, a copy of the NDIS behaviour 19  
support plan or State behaviour support plan for 20  
the person. 21  
*Note—* 22  
For the consequences of a failure to comply with the 23  
obligation under this subsection, see division 3, 24  
subdivision 5. 25  
(3) Section 194(4)— 26  
*omit.* 27

**Clause 22 Replacement of s 195 (Notification requirements about approvals given for use of restrictive practices)** 28  
29  
Section 195— 30

---

*omit, insert—*

**195 Notification requirements about restrictive  
practice authorisations relating to visitable  
locations or visitable sites**

- (1) This section applies if—
- (a) a relevant service provider, other than a relevant service provider prescribed by regulation, is given a restrictive practice authorisation to use a regulated restrictive practice at a place; and
  - (b) there is no other restrictive practice authorisation in effect relating to the place; and
  - (c) 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
  - (d) for a restrictive practice authorisation in relation to an adult—as a result of the giving of the restrictive practice authorisation, the place becomes a visitable site under the *Public Guardian Act 2014*, section 39, definition *visitable site*, paragraph (c).
- (2) The relevant service provider must, within 21 days after the day the restricted practice authorisation is given, give notice of the authorisation in the approved form to the public guardian.
- (3) The notice must state—
- (a) the name and address of the visitable location or visitable site; and
  - (b) that a restrictive practice authorisation has been given in relation to the visitable location or visitable site.
- (4) A relevant service provider that gives a notice

[s 23]

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under subsection (2) in relation to a visitable 1  
location or visitable site must give notice to the 2  
public guardian if a restrictive practice 3  
authorisation relating to the visitable location or 4  
visitable site stops having effect. 5

(5) The notice must be given within 21 days after the 6  
day the restrictive practice authorisation stops 7  
having effect. 8

*Note—* 9

For the consequences of a failure to comply with the 10  
obligations under this section, see division 3, 11  
subdivision 5. 12

**Clause 23**      **Amendment of s 197 (Relevant service provider may 13  
request confidential information from health 14  
professional, chief executive (health) or health service 15  
chief executive) 16**

(1) Section 197(1)— 17  
*omit, insert—* 18

(1) This section applies if a relevant service provider 19  
considers a health professional, the chief 20  
executive (health) or a health service chief 21  
executive may hold confidential information 22  
about a person with disability that is relevant to 23  
any of the following being done by the provider— 24

(a) a behaviour support assessment, including a 25  
functional behavioural assessment, of the 26  
person, including the making of a decision 27  
about whether to assess the person; 28

(b) the development or review of an NDIS 29  
behaviour support plan or a State behaviour 30  
support plan for the person. 31

(2) Section 197(2), ‘or chief executive (health)’— 32  
*omit, insert—* 33

, chief executive (health) or health service chief 34



---

|                  |   |    |
|------------------|---|----|
|                  | executive   | 1  |
| (3)              | Section 197(3) and (4), ‘or the chief executive (health)’—  | 2  |
|                  | <i>omit, insert—</i>  | 3  |
|                  | , chief executive (health) or health service chief  | 4  |
|                  | executive   | 5  |
| <b>Clause 24</b> | <b>Insertion of new s 197A</b>  | 6  |
|                  | After section 197—  | 7  |
|                  | <i>insert—</i>  | 8  |
|                  | <b>197A Relevant service provider may request confidential information from senior practitioner</b>   | 9  |
|                  |   | 10 |
|                  |   | 11 |
|                  | (1) This section 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 provider—       | 12 |
|                  |   | 13 |
|                  |   | 14 |
|                  |   | 15 |
|                  |   | 16 |
|                  | (a) a behaviour support assessment, including a functional behavioural assessment, of the person;   | 17 |
|                  |   | 18 |
|                  |   | 19 |
|                  | (b) the development or review of an NDIS behaviour support plan or a State behaviour support plan for the person.   | 20 |
|                  |   | 21 |
|                  |   | 22 |
|                  | (2) The relevant service provider may ask the senior practitioner for the confidential information.   | 23 |
|                  |   | 24 |
|                  | (3) The senior practitioner may disclose the confidential information to the relevant service provider if satisfied the information is relevant to a matter mentioned in subsection (1)(a) or (b) being done by the service provider. | 25 |
|                  |   | 26 |
|                  |   | 27 |
|                  |   | 28 |
|                  |   | 29 |

[s 25]

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|                  |   |  |
|------------------|---|--|
| <b>Clause 25</b> | <b>Amendment of s 198 (Relevant service providers must maintain confidentiality)</b>  | 1<br>2   |
| (1)              | Section 198(1)(a), after ‘197’—<br><i>insert</i> —<br>or 197A   | 3<br>4<br>5                                    |
| (2)              | Section 198(1)(b)(i) and (ii)—<br><i>omit, insert</i> —<br>(i) carrying out a behaviour support assessment, including a functional behavioural assessment, of a person with disability; or<br>(ii) developing or reviewing an NDIS behaviour support plan or a State behaviour support plan for a person with disability. | 6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14 |
| (3)              | Section 198(3)(e), from ‘adult’ to ‘disability’—<br><i>omit, insert</i> —<br>person with disability   | 15<br>16<br>17                                 |
| <b>Clause 26</b> | <b>Replacement of pt 6, div 7, sdiv 4 (Reporting and provision of particular information)</b>   | 18<br>19                                       |
|                  | Part 6, division 7, subdivision 4—<br><i>omit, insert</i> —   | 20<br>21                                       |
|                  | <b>Subdivision 4 Information gathering and sharing</b>  | 22<br>23                                       |
|                  | <b>199 Requirement to give information about use of regulated restrictive practice to senior practitioner</b>   | 24<br>25<br>26                                 |
| (1)              | This section 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.   | 27<br>28<br>29<br>30                           |

- 
- (2) 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.

*Note—*

For the consequences of a failure to comply with the obligation under subsection (2), see division 3, subdivision 5.

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

- (1) This section applies in relation to information given to the senior practitioner by a relevant service provider under section 199.
- (2) The senior practitioner may give the information to—
- (a) the public guardian, in the circumstances mentioned in subsection (3); or
  - (b) 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
  - (c) the relevant service provider.
- (3) For subsection (2)(a), the senior practitioner may give the information to the public guardian—
- (a) 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*; or
  - (b) on the senior practitioner’s own initiative, if satisfied both of the following apply—

[s 27]

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|                  |  |                                  |
|------------------|--|----------------------------------|
|                  | (i) the information relates to a child with disability who is staying at a visitable location under the <i>Public Guardian Act 2014</i> or who is a relevant child under that Act;   | 1<br>2<br>3<br>4<br>5            |
|                  | (ii) the disclosure would assist in the performance of the functions of a community visitor (child) or child advocacy officer under the <i>Public Guardian Act 2014</i> , chapter 4.   | 6<br>7<br>8<br>9<br>10           |
| <b>Clause 27</b> | <b>Insertion of new pt 6AA</b>   | 11                               |
|                  | After part 6—  | 12                               |
|                  | <i>insert—</i>   | 13                               |
|                  | <b>Part 6AA Senior practitioner</b>  | 14                               |
|                  | <b>Division 1 Establishment, functions and powers</b>  | 15<br>16                         |
|                  | <b>200AA Establishment</b>   | 17                               |
|                  | There must be a Senior Practitioner.   | 18                               |
|                  | <b>200AB Functions of senior practitioner</b>  | 19                               |
|                  | (1) The senior practitioner’s main function is to promote the reduction and elimination of the use of regulated restrictive practices by relevant service providers by considering applications for, and giving, restrictive practice authorisations under part 6. | 20<br>21<br>22<br>23<br>24<br>25 |
|                  | (2) The senior practitioner’s main function is performed primarily by the senior practitioner doing the following—   | 26<br>27<br>28                   |

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|  |                            |
|--|----------------------------|
| (a) publishing data relating to restrictive practice authorisations given under part 6;  | 1<br>2                     |
| (b) monitoring and receiving complaints about the compliance of relevant service providers with the framework for the use of regulated restricted practices under part 6;  | 3<br>4<br>5<br>6           |
| (c) developing and providing information, education and advice about the use of regulated restrictive practices;   | 7<br>8<br>9                |
| (d) developing guidelines about matters relating to part 6, including guidelines to support relevant service providers in relation to making applications for restrictive practice authorisations;                   | 10<br>11<br>12<br>13<br>14 |
| (e) performing any other function prescribed by regulation.  | 15<br>16                   |
| (3) The senior practitioner also has any other function given to the senior practitioner under this Act or another Act.  | 17<br>18<br>19             |
| <b>200AC Powers</b>  | 20                         |
| (1) The senior practitioner has the powers given under this Act or another Act.  | 21<br>22                   |
| (2) Also, the senior practitioner may do all things necessary or convenient to be done in performing the senior practitioner's functions.  | 23<br>24<br>25             |
| (3) 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. | 26<br>27<br>28<br>29<br>30 |
| <b>200AD Not under Ministerial control</b>   | 31                         |
| In performing the senior practitioner's functions  | 32                         |

[s 27]

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and exercising the senior practitioner’s powers, 1  
the senior practitioner is not under the control or 2  
direction of the Minister. 3

**200AE Not a statutory body for particular Acts** 4

To remove any doubt, it is declared that the senior 5  
practitioner is not a statutory body for the 6  
*Statutory Bodies Financial Arrangements Act* 7  
*1982* or the *Financial Accountability Act 2009*. 8

**200AF Delegation** 9

The senior practitioner may delegate a power of 10  
the senior practitioner under this Act or another 11  
Act to— 12

- (a) a member of the senior practitioner’s staff 13  
who is appropriately qualified to exercise 14  
the power delegated; or 15
- (b) a public service officer who is appropriately 16  
qualified to exercise the power delegated. 17

**Division 2 Appointment and related 18  
matters 19**

**200AG Appointment of senior practitioner** 20

- (1) The senior practitioner is to be appointed by the 21  
Governor in Council on the recommendation of 22  
the Minister. 23
- (2) The Minister may recommend a person for 24  
appointment only if the person is appropriately 25  
qualified to perform the functions of the senior 26  
practitioner. 27

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|   |                                  |
|---|----------------------------------|
| <b>200AH Senior practitioner appointed under this Act</b>   | 1<br>2                           |
| The senior practitioner is appointed under this Act and not under the <i>Public Sector Act 2022</i> .   | 3<br>4                           |
| <b>200AI Conditions of appointment</b>  | 5                                |
| (1) The senior practitioner is to be paid the remuneration and allowances decided by the Governor in Council.   | 6<br>7<br>8                      |
| (2) The senior practitioner holds office on the terms and conditions, not provided for by this Act, that are decided by the Governor in Council.  | 9<br>10<br>11                    |
| <b>200AJ Preservation of rights</b>   | 12                               |
| (1) This section applies if a public service officer is appointed as the senior practitioner.   | 13<br>14                         |
| (2) 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.  | 15<br>16<br>17<br>18             |
| (3) 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. | 19<br>20<br>21<br>22<br>23<br>24 |
| <b>200AK Vacancy in office</b>  | 25                               |
| (1) The office of the senior practitioner becomes vacant—   | 26<br>27                         |
| (a) if the senior practitioner—   | 28                               |
| (i) resigns office by signed notice to the Minister giving at least 1 month’s notice; or  | 29<br>30<br>31                   |

[s 27]

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- (ii) is convicted of an indictable offence; or 1
  - (iii) is an insolvent under administration; or 2
  - (iv) is removed from office by the Governor  
in Council under subsection (2); or 4
- (b) if the senior practitioner is suspended by the  
Minister under subsection (4)—during the  
period of suspension. 5 6 7
- (2) The Governor in Council may, at any time,  
remove the senior practitioner from office on the  
recommendation of the Minister. 8 9 10
- (3) The Minister may recommend the senior  
practitioner’s removal from office if satisfied the  
senior practitioner— 11 12 13
  - (a) has been guilty of misconduct; or 14
  - (b) is incapable of performing their duties; or 15
  - (c) has neglected their duties or performed them  
incompetently. 16 17
- (4) The Minister may, by signed notice given to the  
senior practitioner, suspend the senior practitioner  
for up to 60 days if— 18 19 20
  - (a) there is an allegation of misconduct against  
the senior practitioner; or 21 22
  - (b) the Minister is satisfied a matter has arisen  
in relation to the senior practitioner that may  
be grounds for removal under this section. 23 24 25
  
- Division 3                      Office and staff of the** 26  
**senior practitioner** 27
  
- 200AL Office** 28
- (1) The Office of the Senior Practitioner is  
established. 29 30



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|  |                       |
|--|-----------------------|
| (2) The office consists of the senior practitioner and the senior practitioner’s staff.  | 1<br>2                |
| <b>200AM Control of office</b>   | 3                     |
| (1) The senior practitioner is to control the office.  | 4                     |
| (2) Subsection (1) does not prevent the attachment of the office to the department 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. | 5<br>6<br>7<br>8<br>9 |
| <b>200AN Staff of office</b>   | 10                    |
| The staff of the office are employed under the <i>Public Sector Act 2022</i> .   | 11<br>12              |
| <b>Division 4 Guidelines</b>   | 13                    |
| <b>200AO Senior practitioner may make guidelines</b>   | 14                    |
| (1) The senior practitioner may make guidelines about matters relating to compliance with part 6.  | 15<br>16              |
| (2) Without limiting subsection (1), a guideline may be about the use of a regulated restrictive practice in relation to a person with disability.   | 17<br>18<br>19        |
| (3) After the senior practitioner makes a guideline, the senior practitioner must publish the guideline on a Queensland Government website.  | 20<br>21<br>22        |
| (4) In this section—<br><i>Queensland Government website</i> means a website with a URL that contains ‘qld.gov.au’, other than the website of a local government.  | 23<br>24<br>25<br>26  |

[s 28]

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|                  |  |  |
|------------------|--|--|
| <b>Clause 28</b> | <b>Omission of pt 8, div 2 (Locking of gates, doors and windows)</b>   | 1<br>2                                 |
|                  | Part 8, division 2—  | 3                                      |
|                  | <i>omit.</i>   | 4                                      |
| <b>Clause 29</b> | <b>Amendment of s 228 (Confidentiality of other information)</b>   | 5<br>6                                 |
|                  | (1) Section 228(3)(c) to (e)—  | 7                                      |
|                  | <i>omit, insert—</i>   | 8                                      |
|                  | (c) the senior practitioner; or  | 9                                      |
|                  | (d) a staff member of the office of the senior practitioner; or  | 10<br>11                               |
|                  | (e) a person contracted by the chief executive to provide disability services or NDIS supports or services for the department; or  | 12<br>13<br>14                         |
|                  | (ea) 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 | 15<br>16<br>17<br>18<br>19<br>20<br>21 |
|                  | (eb) a person contracted by the chief executive or the senior practitioner to carry out research in relation to the objects of this Act; or  | 22<br>23<br>24                         |
|                  | (ec) a behaviour support practitioner engaged by a relevant service provider for the purpose of developing or reviewing a State behaviour support plan under part 6, division 4; or  | 25<br>26<br>27<br>28<br>29             |
|                  | (2) Section 228(3)(ea) to (f)—   | 30                                     |
|                  | <i>renumber</i> as section 228(3)(f) to (i).   | 31                                     |
|                  | (3) Section 228—   | 32                                     |

- 
- insert—* 1
- (7) The senior practitioner may— 2
- (a) disclose information to the NDIS 3  
commissioner if satisfied the disclosure 4  
would assist in the performance of the 5  
commissioner’s functions under the 6  
*National Disability Insurance Scheme Act 7*  
*2013 (Cwlth)*; or 8
- (b) disclose information to the chief executive if 9  
satisfied the disclosure would assist in the 10  
performance of the chief executive’s 11  
functions under this Act. 12

**Clause 30 Insertion of new s 241B** 13

After section 241AA— 14

*insert—* 15

**241B Review of changes relating to regulated 16**  
**restrictive practices** 17

- (1) The Minister must review the efficacy and 18  
efficiency of this Act in the light of amendments 19  
of the Act made by the *Disability Services 20*  
*(Restrictive Practices) and Other Legislation 21*  
*Amendment Act 2024*. 22
- (2) The review must be completed as soon as 23  
practicable after the day that is 3 years after the 24  
day this section commences. 25

**Clause 31 Insertion of new pt 9, div 15** 26

Part 9— 27

*insert—* 28

**Division 15 Transitional provisions for 29**  
**Disability Services 30**  
**(Restrictive Practices) and 31**

[s 31]

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|  |                |
|--|----------------|
| <b>Other Legislation</b>   | 1              |
| <b>Amendment Act 2024</b>  | 2              |
| <br>   |                |
| <b>Subdivision 1 Preliminary</b>   | 3              |
| <br>   |                |
| <b>394 Definitions for division</b>  | 4              |
| In this division—  | 5              |
| <i>amended Act</i> means this Act as in force from the commencement.   | 6<br>7         |
| <i>amending Act</i> means the <i>Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2024</i> .                | 8<br>9<br>10   |
| <i>former</i> , for a provision of this Act, means the provision as in force from time to time before the commencement.                    | 11<br>12<br>13 |
| <i>new</i> , for a provision of this Act, means the provision as in force from the commencement.   | 14<br>15       |
| <i>relevant service provider</i> means a relevant service provider under former section 140.   | 16<br>17       |
| <br>   |                |
| <b>395 Particular terms have meaning given under unamended Act</b>   | 18<br>19       |
| (1) 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. | 20<br>21<br>22 |
| (2) Subsection (1) does not apply in relation to a term defined in section 394.  | 23<br>24       |
| (3) In this section—   | 25             |
| <i>unamended Act</i> means this Act as in force immediately before the commencement.   | 26<br>27       |

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|  |                        |
|--|------------------------|
| <b>Subdivision 2 Particular assessments and positive behaviour support plans</b>   | 1<br>2<br>3            |
| <b>396 Existing assessments of adults with an intellectual or cognitive disability</b>   | 4<br>5                 |
| (1) This section applies in relation to an assessment of an adult with an intellectual or cognitive disability, carried out under former section 148, that is in effect immediately before the commencement. | 6<br>7<br>8<br>9<br>10 |
| (2) The assessment is taken to be a behaviour support assessment, including a functional behavioural assessment, for the adult under the amended Act.  | 11<br>12<br>13         |
| <b>397 Existing positive behaviour support plans</b>   | 14                     |
| (1) This section applies if, immediately before the commencement, a positive behaviour support plan was in effect for an adult with an intellectual or cognitive disability.                                 | 15<br>16<br>17<br>18   |
| (2) For this Act, the positive behaviour support plan is taken to be—  | 19<br>20               |
| (a) for a plan relating to an adult receiving NDIS supports or services from a relevant service provider—an NDIS behaviour support plan; or  | 21<br>22<br>23<br>24   |
| (b) for a plan relating to an adult receiving disability services from a relevant service provider—a State behaviour support plan.   | 25<br>26<br>27         |
| <b>Subdivision 3 Other transitional provisions</b>   | 28<br>29               |

[s 31]

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|   |  |
|---|--|
| <b>398 Confidentiality of particular information—relevant service providers</b>   | 1<br>2                                 |
| (1) This section applies in relation to a relevant service provider that gains, whether before or after the commencement—   | 3<br>4<br>5                            |
| (a) confidential information under former section 197; or   | 6<br>7                                 |
| (b) confidential information mentioned in former section 198(1)(b).   | 8<br>9                                 |
| (2) New section 198(2) and (3) applies in relation to a 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 confidential information mentioned in new section 198(1). | 10<br>11<br>12<br>13<br>14<br>15<br>16 |
| <b>399 Information about use of restrictive practices before commencement</b>   | 17<br>18                               |
| (1) This section applies if, before the commencement—   | 19<br>20                               |
| (a) a relevant service provider in relation to which former section 199 applies used a restrictive practice in relation to an adult with an intellectual or cognitive disability; and   | 21<br>22<br>23<br>24<br>25             |
| (b) the relevant service provider had not given the chief executive information about the use of the restrictive practice under former section 199(2).  | 26<br>27<br>28<br>29                   |
| (2) Former section 199(2) continues to apply in relation to the relevant service provider as if the amending Act had not been enacted.  | 30<br>31<br>32                         |

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|  |                                  |
|--|----------------------------------|
| <b>400 Chief executive may give particular information about use of restrictive practices</b>  | 1<br>2                           |
| (1) This section applies in relation to information given to the chief executive by a relevant service provider under former section 199 before or after the commencement.   | 3<br>4<br>5<br>6                 |
| (2) The chief executive may give the information to an entity mentioned in former section 200(2) or the senior practitioner.   | 7<br>8<br>9                      |
| (3) 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.        | 10<br>11<br>12<br>13<br>14       |
| <b>401 Confidentiality of particular information—other persons</b>   | 15<br>16                         |
| New section 228 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. | 17<br>18<br>19<br>20<br>21<br>22 |
| <b>402 Immunity from liability—use of restrictive practices before commencement</b>  | 23<br>24                         |
| 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.                   | 25<br>26<br>27<br>28<br>29       |
| <b>403 Immunity from liability—locking gates, doors and windows before commencement</b>  | 30<br>31                         |
| Former sections 218 and 219 continue to apply in   | 32                               |

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[s 31]

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relation to the locking of gates, doors or windows 1  
by a relevant service provider, or an individual 2  
acting for a relevant service provider, before the 3  
commencement. 4

**404 Immunity from liability—transitional regulation 5**

- (1) This section applies if a relevant service provider, 6  
or an individual acting for a relevant service 7  
provider, is authorised to do either of the 8  
following things under a transitional regulation 9  
made under section 406— 10
- (a) use a restrictive practice; 11
- (b) lock gates, doors or windows at premises at 12  
which disability services or NDIS supports 13  
or services are provided to a person. 14
- (2) The transitional regulation may provide for 15  
former part 6, division 7, subdivision 1 or former 16  
section 218 or 219 (each a *former immunity* 17  
*provision*) to apply in relation to the doing of the 18  
thing by the relevant service provider or 19  
individual under the transitional regulation. 20
- (3) If the transitional regulation provides for a former 21  
immunity provision to apply in relation to the 22  
doing of a thing under subsection (2), the former 23  
immunity provision applies in relation to the 24  
doing of the thing even after the transitional 25  
regulation expires. 26

**405 Proceedings for particular offences 27**

- (1) This section applies in relation to an offence 28  
against former section 198 or former section 228 29  
committed by a person before the 30  
commencement. 31
- (2) Without limiting the *Acts Interpretation Act 1954*, 32  
section 20, a proceeding for the offence may be 33



continued or started, and the person may be 1  
convicted of and punished for the offence, as if 2  
the amending Act had not been enacted. 3

- (3) Subsection (2) applies despite the Criminal Code, 4  
section 11. 5

#### **406 Transitional regulation-making power** 6

- (1) A regulation (a *transitional regulation*) may 7  
make provision about a matter for which— 8
- (a) it is necessary to make provision to allow or 9  
facilitate the doing of anything to achieve 10  
the transition from the operation of this Act 11  
as in force before its amendment by the 12  
amending Act to the operation of the 13  
amended Act, including, for example, the 14  
sharing of particular information; and 15
- (b) this Act does not provide or sufficiently 16  
provide. 17
- (2) A transitional regulation may have retrospective 18  
operation to a day that is not earlier than the day 19  
this section commences. 20
- (3) A transitional regulation must declare it is a 21  
transitional regulation. 22
- (4) This section and any transitional regulation expire 23  
on the day that is 2 years after the day this section 24  
commences. 25

#### **Clause 32 Amendment of sch 8 (Dictionary)** 26

- (1) Schedule 8, definitions *adult with an intellectual or cognitive* 27  
*disability*, *adult with a skills deficit*, *applicant*, *appropriately* 28  
*qualified*, *assessment*, *authorised psychiatrist*, *chemical* 29  
*restraint (fixed dose)*, *chief psychiatrist*, *community access* 30  
*services*, *contain*, *containment or seclusion approval*, *decision* 31  
*notice*, *division 2 service provider*, *GAA*, *guardian for a* 32  
*restrictive practice (general) matter*, *guardian for a restrictive* 33

[s 32]

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|   |                |
|---|----------------|
| <i>practice matter, guardian for a restrictive practice (respite)</i>   | 1              |
| <i>matter, informal decision-maker, mechanical restraint, model</i>   | 2              |
| <i>positive behaviour support plan, multidisciplinary</i>   | 3              |
| <i>assessment, parent, first and second mention, physical</i>   | 4              |
| <i>restraint, positive behaviour support plan, premises, relevant</i>   | 5              |
| <i>decision, relevant decision-maker (respite),</i>   | 6              |
| <i>respite/community access plan, respite services, restricting</i>   | 7              |
| <i>access, seclude and short term approval—</i>   | 8              |
| <i>omit.</i>  | 9              |
| (2) Schedule 8—   | 10             |
| <i>insert—</i>  | 11             |
| <b><i>adult evidence order</i></b> , for part 6, division 6,<br>subdivision 4, see section 188K.                            | 12<br>13       |
| <b><i>applicant</i></b> means—  | 14             |
| (a) for part 5—the applicant for a disability<br>worker screening application; or   | 15<br>16       |
| (b) for part 6, division 3—the applicant for an<br>application for a restrictive practice<br>authorisation.                 | 17<br>18<br>19 |
| <b><i>attorney</i></b> , for part 6, see section 142.   | 20             |
| <b><i>authorised psychiatrist</i></b> see the <i>Mental Health Act</i><br><i>2016</i> , schedule 3.                         | 21<br>22       |
| <b><i>behaviour support assessment</i></b> , in relation to a<br>person with disability, see section 142.                   | 23<br>24       |
| <b><i>behaviour support practitioner</i></b> see section<br>175(2).   | 25<br>26       |
| <b><i>cancellation notice</i></b> , for part 6, division 3,<br>subdivision 5, see section 172(3).                           | 27<br>28       |
| <b><i>closure order</i></b> , for part 6, division 6, subdivision<br>4, see section 188K.                                   | 29<br>30       |
| <b><i>comprehensive State behaviour support plan</i></b> , for<br>a person with disability, for part 6, see section<br>142. | 31<br>32<br>33 |

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|   |  |
|---|--|
| <b><i>confidentiality order</i></b> —   | 1  |
| (a) for part 6, division 6, subdivision 4, see section 188K; or   | 2<br>3                                       |
| (b) for part 6, division 6, subdivision 5, see section 188ZC.   | 4<br>5                                       |
| <b><i>containment</i></b> , of a person with disability, for part 6, see section 142.   | 6<br>7                                       |
| <b><i>environmental restraint</i></b> , for part 6, see section 142.  | 8<br>9                                       |
| <b><i>functional behavioural assessment</i></b> , in relation to a person with disability, means the process for determining and understanding the function or purpose behind the person’s behaviour, and may involve the collection of data, observations and information to develop an understanding of the relationship of events and circumstances that trigger and maintain the behaviour. | 10<br>11<br>12<br>13<br>14<br>15<br>16<br>17 |
| <b><i>health care</i></b> , for part 6, division 6, see section 186.  | 18   |
| <b><i>health information</i></b> , for a person, for part 6, division 6, see section 186.   | 19<br>20                                     |
| <b><i>identity authorisation order</i></b> , for part 6, division 6, subdivision 5, see section 188ZC.  | 21<br>22                                     |
| <b><i>interested person</i></b> , for part 6, division 6, see section 186.  | 23<br>24                                     |
| <b><i>interim State behaviour support plan</i></b> , for a person with disability, for part 6, see section 142.   | 25<br>26                                     |
| <b><i>limitation order</i></b> —  | 27   |
| (a) for part 6, division 6, subdivision 4, see section 188K; or   | 28<br>29                                     |
| (b) for part 6, division 6, subdivision 5, see section 188ZC.   | 30<br>31                                     |
| <b><i>mechanical restraint</i></b> , for part 6, see section 142.   | 32   |
| <b><i>NDIS behaviour support plan</i></b> , for a person with   | 33   |

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[s 32]

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|   |                |
|---|----------------|
| disability, for part 6, see section 142.  | 1              |
| <i>NDIS (Restrictive Practices) Rules</i> , for part 6,<br>see section 142.   | 2<br>3         |
| <i>non-identification order</i> , for part 6, division 6,<br>subdivision 4, see section 188K.                             | 4<br>5         |
| <i>non-publication order</i> —  | 6              |
| (a) for part 6, division 6, subdivision 4, see<br>section 188K; or  | 7<br>8         |
| (b) for part 6, division 6, subdivision 5, see<br>section 188ZC.  | 9<br>10        |
| <i>paid carer</i> , for an adult, see the <i>Guardianship and<br/>Administration Act 2000</i> , schedule 4.               | 11<br>12       |
| <i>parent</i> —   | 13             |
| (a) for part 4, see section 37; or  | 14             |
| (b) for part 6, see section 142; or   | 15             |
| (c) otherwise—of a person, includes—  | 16             |
| (i) in any case—the spouse of a parent of<br>the person; and  | 17<br>18       |
| (ii) for an Aboriginal person—a person<br>who, under Aboriginal tradition, is<br>regarded as a parent of the person; and  | 19<br>20<br>21 |
| (iii) for a Torres Strait Islander person—a<br>person who, under Island custom, is<br>regarded as a parent of the person. | 22<br>23<br>24 |
| <i>part 6 reviewable decision</i> , for part 6, division 6,<br>see section 186.   | 25<br>26       |
| <i>physical restraint</i> , for part 6, see section 142.  | 27             |
| <i>power of attorney</i> , for part 6, see section 142.   | 28             |
| <i>premises</i> —   | 29             |
| (a) for part 6, see section 142; or   | 30             |
| (b) otherwise, includes—  | 31             |

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|   |                      |
|---|----------------------|
| (i) a building or other structure; and  | 1                    |
| (ii) a part of a building or other structure;<br>and  | 2<br>3               |
| (iii) a vehicle; and  | 4                    |
| (iv) a caravan.   | 5                    |
| <b>president</b> , for part 6, division 6, see section 186.   | 6                    |
| <b>primary carer</b> , for a person, see the <i>Guardianship and Administration Act 2000</i> , schedule 4.  | 7<br>8               |
| <b>prohibited restrictive practice</b> , for part 6, see section 142.   | 9<br>10              |
| <b>proposed action</b> , for part 6, division 3, subdivision 5, see section 169(1).   | 11<br>12             |
| <b>psychologist</b> , for part 6, division 6, see section 186.  | 13<br>14             |
| <b>public advocate</b> means the public advocate under the <i>Guardianship and Administration Act 2000</i> .  | 15<br>16             |
| <b>registrar</b> , for part 6, division 6, see section 186.   | 17                   |
| <b>regulated restrictive practice</b> , for part 6, see section 142.  | 18<br>19             |
| <b>restrictive practice authorisation</b> see section 142.  | 20                   |
| <b>review application</b> , for part 6, division 6, see section 186.  | 21<br>22             |
| <b>seclusion</b> , for part 6, see section 142.   | 23                   |
| <b>senior practitioner</b> means the Senior Practitioner appointed under this Act.  | 24<br>25             |
| <b>senior practitioner (forensic disability)</b> means a person appointed to be a senior practitioner under the <i>Forensic Disability Act 2011</i> , section 101 or 102. | 26<br>27<br>28<br>29 |
| <b>separate representative</b> , for part 6, division 6, see section 186.   | 30<br>31             |

[s 33]

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- show cause notice*, for part 6, division 3, subdivision 5, see section 169(1). 1  
2
- show cause period*, for part 6, division 3, subdivision 5, see section 169(2)(d). 3  
4
- significant health detriment*, for a person, for part 6, division 6, see section 186. 5  
6
- State behaviour support plan*, for a person with disability, see section 142. 7  
8
- withdrawal notice*, for part 6, division 3, subdivision 2, see section 154. 9  
10
- (3) Schedule 8, definitions *chemical restraint*, *harm*, paragraph (a), *least restrictive* and *restrictive practice*, ‘section 144’— 11  
*omit*, *insert*— 12  
section 142 13  
14
- (4) Schedule 8, definition *complaints agency*— 15  
*insert*— 16  
(f) the senior practitioner. 17
- (5) Schedule 8, definition *relevant person*— 18  
*insert*— 19  
(c) for part 6, see section 142. 20

## **Part 4** **Amendment of Guardianship and Administration Act 2000** 21 22

- Clause 33** **Act amended** 23
- This part amends the *Guardianship and Administration Act 2000*. 24  
25
- Note*— 26
- See also the amendments in schedule 1. 27

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|                  |  |    |
|------------------|--|----|
| <b>Clause 34</b> | <b>Omission of s 13A (Advance appointment—guardian for restrictive practice matter)</b>  | 1  |
|                  | Section 13A—   | 2  |
|                  | <i>omit.</i>   | 3  |
|                  |  | 4  |
| <b>Clause 35</b> | <b>Omission of ch 5B (Restrictive practices)</b>   | 5  |
|                  | Chapter 5B—  | 6  |
|                  | <i>omit.</i>   | 7  |
|                  |  |    |
| <b>Clause 36</b> | <b>Amendment of s 83 (Annual report by president)</b>  | 8  |
|                  | (1) Section 83(b)—   | 9  |
|                  | <i>omit, insert—</i>   | 10 |
|                  | (b) the number of applications and orders made under the <i>Disability Services Act 2006</i> , part 6, division 6 during the year.   | 11 |
|                  |  | 12 |
|                  |  | 13 |
|                  | (2) Section 83—  | 14 |
|                  | <i>insert—</i>   | 15 |
|                  | (2) However, the president is not required to comply with subsection (1)(b) until the first financial year that starts after the commencement of the <i>Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2024</i> , section 14. | 16 |
|                  |  | 17 |
|                  |  | 18 |
|                  |  | 19 |
|                  |  | 20 |
|                  |  | 21 |
|                  |  |    |
| <b>Clause 37</b> | <b>Insertion of new ch 12, pt 13</b>   | 22 |
|                  | Chapter 12—  | 23 |
|                  | <i>insert—</i>   | 24 |

[s 37]

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|                   |  |                       |
|-------------------|--|-----------------------|
| <b>Part 13</b>    | <b>Transitional provisions<br/>for Disability Services<br/>(Restrictive Practices)<br/>and Other Legislation<br/>Amendment Act 2024</b>  | 1<br>2<br>3<br>4<br>5 |
| <b>Division 1</b> | <b>Preliminary</b>   | 6                     |
| <b>275</b>        | <b>Definitions for part</b>  | 7                     |
|                   | In this part—  | 8                     |
|                   | <i>former</i> , for a provision of this Act, means the<br>provision as in force from time to time before the<br>commencement.            | 9<br>10<br>11         |
|                   | <i>restrictive practice authorisation</i> see the<br><i>Disability Services Act 2006</i> , section 142.                                  | 12<br>13              |
|                   | <i>senior practitioner</i> means the senior practitioner<br>appointed under the <i>Disability Services Act 2006</i> ,<br>section 200AG.  | 14<br>15<br>16        |
| <b>276</b>        | <b>Particular terms have meaning given under<br/>unamended Act</b>   | 17<br>18              |
| (1)               | In this part, a term defined under the unamended<br>Act but not under the amended Act has the<br>meaning it had under the unamended Act. | 19<br>20<br>21        |
| (2)               | In this section—   | 22                    |
|                   | <i>amended Act</i> means this Act as in force from the<br>commencement.  | 23<br>24              |
|                   | <i>unamended Act</i> means this Act as in force<br>immediately before the commencement.  | 25<br>26              |
| <b>Division 2</b> | <b>Existing proceedings</b>  | 27                    |



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|   |                            |
|---|----------------------------|
| <b>277 Existing proceedings for appointment of guardians for a restrictive practice matter</b>  | 1                          |
|   | 2                          |
| (1) This section applies if—  | 3                          |
| (a) 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   | 4<br>5<br>6<br>7<br>8      |
| (b) immediately before the commencement, the proceeding had not been decided, withdrawn or otherwise disposed of by the tribunal.   | 9<br>10<br>11<br>12        |
| (2) The tribunal must discontinue the proceeding.   | 13                         |
| (3) If the tribunal discontinues the proceeding under subsection (2)—   | 14<br>15                   |
| (a) the tribunal may make the orders, or give the directions, it considers appropriate; and   | 16<br>17                   |
| (b) the tribunal must give the senior practitioner the name and contact details of—   | 18<br>19                   |
| (i) a relevant service provider providing disability services to the person the subject of the proceeding; and  | 20<br>21<br>22             |
| (ii) each other active party for the proceeding; and  | 23<br>24                   |
| (c) the tribunal must, as soon as practicable, give a written notice to each active party for the proceeding that states that—  | 25<br>26<br>27             |
| (i) the proceeding is being discontinued; and   | 28<br>29                   |
| (ii) if a relevant service provider proposes to use a regulated restrictive practice in relation to a person with disability, the service provider may make an application for a restrictive practice | 30<br>31<br>32<br>33<br>34 |

[s 37]

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|   |                       |
|---|-----------------------|
| authorisation under the <i>Disability Services Act 2006</i> .   | 1<br>2                |
| (4) If the senior practitioner receives an application mentioned in subsection (3)(c)(ii) from the relevant service provider providing disability services to the person the subject of the proceeding— | 3<br>4<br>5<br>6<br>7 |
| (a) the senior practitioner may ask the registrar for a copy of the record for the proceeding; and  | 8<br>9<br>10          |
| (b) the registrar must if requested under paragraph (a), give the senior practitioner a copy of the record for the proceeding.  | 11<br>12<br>13        |
| (5) Subsection (6) applies if the senior practitioner gives the applicant—  | 14<br>15              |
| (a) a notice of the withdrawal of the application under the <i>Disability Services Act 2006</i> , section 154; or   | 16<br>17<br>18        |
| (b) a notice of a decision on the application under the <i>Disability Services Act 2006</i> , section 162.  | 19<br>20<br>21        |
| (6) The senior practitioner must give a copy of the notice to any other active party for the proceeding.  | 22<br>23              |
| (7) In this section—  | 24                    |
| <i>regulated restrictive practice</i> see the <i>Disability Services Act 2006</i> , section 142.  | 25<br>26              |
| <b>278 Existing proceedings for containment or seclusion approvals</b>  | 27<br>28              |
| (1) This section applies if—  | 29                    |
| (a) before the commencement, a proceeding under former chapter 5B, part 5 for a containment or seclusion approval under   | 30<br>31<br>32        |

- 
- former chapter 5B, part 2 had been started; 1  
and 2
- (b) immediately before the commencement, the 3  
proceeding had not been decided, 4  
withdrawn or otherwise disposed of by the 5  
tribunal. 6
- (2) The tribunal must transfer the proceeding to the 7  
senior practitioner. 8
- (3) If the tribunal transfers the proceeding under 9  
subsection (2)— 10
- (a) the proceeding is discontinued; and 11
- (b) the tribunal may make the orders, or give the 12  
directions, it considers appropriate to 13  
facilitate the transfer; and 14
- (c) the registrar must give a copy of the record 15  
for the proceeding to the senior practitioner; 16  
and 17
- (d) the tribunal must give the senior practitioner 18  
the name and contact details of— 19
- (i) the relevant service provider to which 20  
the proceeding relates; and 21
- (ii) each active party for the proceeding; 22  
and 23
- (e) the tribunal must, as soon as practicable, 24  
give a written notice to the relevant service 25  
provider and each active party for the 26  
proceeding that states the proceeding is 27  
being dealt with by the senior practitioner as 28  
if it were an application by the relevant 29  
service provider for a restrictive practice 30  
authorisation under the *Disability Services* 31  
*Act 2006*; and 32
- (f) the senior practitioner must deal with the 33  
proceeding as if it were an application for a 34

[s 37]

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- restrictive practice authorisation under the *Disability Services Act 2006*. 1  
2
- (4) The relevant service provider is taken to be the applicant for the application for the restrictive practice authorisation. 3  
4  
5
- (5) In considering the application for the restrictive practice authorisation under the *Disability Services Act 2006*, the senior practitioner may, by written notice given to an active party for the proceeding, ask the active party to give the senior practitioner stated information that the senior practitioner reasonably believes is relevant to the application. 6  
7  
8  
9  
10  
11  
12  
13
- (6) The senior practitioner’s power to ask for information under subsection (5) is in addition to the senior practitioner’s power under the *Disability Services Act 2006*, section 150. 14  
15  
16  
17
- (7) Subsection (8) applies if the senior practitioner gives the applicant— 18  
19
- (a) a notice of the withdrawal of the application under the *Disability Services Act 2006*, section 154; or 20  
21  
22
- (b) a notice of a decision on the application under the *Disability Services Act 2006*, section 162. 23  
24  
25
- (8) The senior practitioner must give a copy of the notice to each active party for the proceeding. 26  
27
- 279 Existing proceedings for reviews of containment or seclusion approvals** 28  
29
- (1) This section applies if— 30
- (a) before the commencement, a proceeding under former chapter 5B, part 5 for a review of a containment or seclusion approval 31  
32  
33

- 
- under former section 80ZA had been 1  
started; and 2
- (b) immediately before the commencement, the 3  
proceeding had not been decided, 4  
withdrawn or otherwise disposed of by the 5  
tribunal. 6
- (2) The tribunal must transfer the proceeding to the 7  
senior practitioner. 8
- (3) If the tribunal transfers the proceeding under 9  
subsection (2)— 10
- (a) the proceeding is discontinued; and 11
- (b) the tribunal may make the orders, or give the 12  
directions, it considers appropriate to 13  
facilitate the transfer; and 14
- (c) the registrar must give a copy of the record 15  
for the proceeding to the senior practitioner; 16  
and 17
- (d) the tribunal must give the senior practitioner 18  
the name and contact details of— 19
- (i) the relevant service provider to which 20  
the proceeding relates; and 21
- (ii) each other active party for the 22  
proceeding; and 23
- (e) the tribunal must, as soon as practicable, 24  
give a written notice to the relevant service 25  
provider and each other active party for the 26  
proceeding that states the proceeding is 27  
being dealt with by the senior practitioner as 28  
if it were an application by the relevant 29  
service provider for a restrictive practice 30  
authorisation under the *Disability Services* 31  
*Act 2006*; and 32
- (f) the senior practitioner must deal with the 33  
proceeding as if it were an application for a 34

[s 37]

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- restrictive practice authorisation under the *Disability Services Act 2006*. 1  
2
- (4) The relevant service provider is taken to be the applicant for the application for the restrictive practice authorisation. 3  
4  
5
- (5) In considering the application for the restrictive practice authorisation under the *Disability Services Act 2006*, the senior practitioner may, by written notice given to an active party for the proceeding, ask the active party to give the senior practitioner stated information that the senior practitioner reasonably believes is relevant to the application. 6  
7  
8  
9  
10  
11  
12  
13
- (6) The senior practitioner’s power to ask for information under subsection (5) is in addition to the senior practitioner’s power under the *Disability Services Act 2006*, section 150. 14  
15  
16  
17
- (7) Subsection (8) applies if the senior practitioner gives the applicant— 18  
19
- (a) a notice of the withdrawal of the application under the *Disability Services Act 2006*, section 154; or 20  
21  
22
- (b) a notice of a decision on the application under the *Disability Services Act 2006*, section 162. 23  
24  
25
- (8) The senior practitioner must give a copy of the notice to any other active party for the proceeding. 26  
27

### **Division 3            Other matters** 28

#### **280 Transfer of records** 29

- (1) The registrar must give the senior practitioner— 30
- (a) relevant information and documents relating to all appointments of guardians for 31  
32

- 
- 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.
- (2) Also, 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).
- (3) For a matter mentioned in subsection (1), relevant information and documents include, but are not limited to, the following—
- (a) the name and contact details of each active party for a proceeding for the matter;
- (b) the name and contact details of a relevant service provider providing disability services to the person the subject of the matter;
- (c) a copy of any limitation order made by the tribunal in relation to a proceeding for the matter;
- (d) a copy of a final decision made by the tribunal in relation to the matter.

## **281 Release of information**

- (1) This section 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 a transitional regulation under section 283.
- (2) The relevant entity may give the information despite—

[s 37]

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- (a) any order made by the tribunal in relation to a proceeding, including, for example, a confidentiality order or non-publication order; or 1  
2  
3  
4
- (b) any other provision of this Act, the *Public Guardian Act 2014* or the QCAT Act. 5  
6

**282 Annual report by president** 7

- (1) This section applies in relation to the annual report made by the president under section 83 for a financial year. 8  
9  
10
- (2) The annual report must include the number of proceedings transferred by the tribunal to the senior practitioner under division 2 in the financial year. 11  
12  
13  
14

**283 Transitional regulation-making power** 15

- (1) A regulation (a *transitional regulation*) may make provision about a matter for which— 16  
17
  - (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 18  
19  
20  
21  
22  
23  
24  
25  
26  
27
  - (b) this Act does not provide or sufficiently provide. 28  
29
- (2) A transitional regulation may have retrospective operation to a day that is not earlier than the day this section commences. 30  
31  
32
- (3) A transitional regulation must declare it is a 33



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|                  |   |  |
|------------------|---|--|
|                  | transitional regulation.  | 1  |
|                  | (4) This section and any transitional regulation expire on the day that is 2 years after the day this section commences.  | 2<br>3<br>4  |
| <b>Clause 38</b> | <b>Amendment of sch 4 (Dictionary)</b>  | 5  |
|                  | (1) Schedule 4, definitions <i>adult with an intellectual or cognitive disability</i> , <i>assessment</i> , <i>authorised psychiatrist</i> , <i>chemical restraint</i> , <i>chemical restraint (fixed dose)</i> , <i>chief executive (disability services)</i> , <i>community access services</i> , <i>contain</i> , <i>containment or seclusion approval</i> , <i>director of forensic disability</i> , <i>disability services</i> , <i>forensic disability client</i> , <i>forensic disability service</i> , <i>harm</i> , <i>informal decision-maker</i> , <i>least restrictive</i> , <i>positive behaviour support plan</i> , <i>relevant service provider</i> , <i>respite/community access plan</i> , <i>respite services</i> , <i>restrictive practice</i> , <i>restrictive practice (general matter)</i> , <i>restrictive practice matter</i> , <i>restrictive practice (respite) matter</i> , <i>seclude</i> and <i>senior practitioner</i> —<br><i>omit</i> . | 6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18 |
|                  | (2) Schedule 4, definition <i>active party</i> , paragraphs (b) and (c)—<br><i>omit</i> , <i>insert</i> —<br>(b) otherwise, see section 119.  | 19<br>20<br>21   |
| <b>Part 5</b>    | <b>Amendment of Public Guardian Act 2014</b>  | 22<br>23   |
| <b>Clause 39</b> | <b>Act amended</b><br>This part amends the <i>Public Guardian Act 2014</i> .  | 24<br>25   |
| <b>Clause 40</b> | <b>Amendment of s 12 (Functions—adult with impaired capacity for a matter)</b><br>(1) Section 12(1)(g)—   | 26<br>27<br>28   |

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[s 41]

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*omit.* 1

(2) Section 12(1)(h) to (j)— 2

*renumber* as section 12(1)(g) to (i). 3

**Clause 41 Amendment of s 13 (Functions—relevant child, etc.)** 4

Section 13(1)— 5

*insert*— 6

- (o) helping the child to initiate or, on the child’s 7  
behalf, initiating an application to the 8  
tribunal for review of a decision of the 9  
senior practitioner under the *Disability* 10  
*Services Act 2006*, part 6, division 6. 11

**Clause 42 Amendment of s 39 (Definitions for pt 6)** 12

(1) Section 39, definition *chapter 5B approval*— 13

*omit.* 14

(2) Section 39— 15

*insert*— 16

***restrictive practice*** means— 17

(a) a regulated restrictive practice under the 18  
*Disability Services Act 2006*, section 142; or 19

(b) a regulated restrictive practice within the 20  
meaning of the national disability insurance 21  
scheme rules made for the *National* 22  
*Disability Insurance Scheme Act 2013* 23  
(Cwlth), section 73H about conditions 24  
applying to registered NDIS providers in 25  
relation to the use of regulated restrictive 26  
practices. 27

(3) Section 39, definition *private dwelling house*, paragraph (a), 28  
from ‘restrictive’ to ‘approval’— 29

*omit, insert*— 30

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|                  |  |                      |
|------------------|--|----------------------|
|                  | regulated restrictive practice is being used at the premises in relation to the adult under a restrictive practice authorisation   | 1<br>2<br>3          |
| <b>Clause 43</b> | <b>Amendment of s 47 (Reports by community visitors (adult))</b>   | 4<br>5               |
|                  | Section 47(4)(e)—  | 6                    |
|                  | <i>omit, insert—</i>   | 7                    |
|                  | (e) if a regulated restrictive practice is being used at the visitable site under a restrictive practice authorisation—  | 8<br>9<br>10         |
|                  | (i) the tribunal; or   | 11                   |
|                  | (ii) a guardian or administrator for a consumer in relation to whom the regulated restrictive practice is used; or   | 12<br>13<br>14       |
|                  | (iii) the senior practitioner;   | 15                   |
| <b>Clause 44</b> | <b>Amendment of s 70 (Reports by community visitors (child))</b>   | 16<br>17             |
|                  | (1) Section 70(3)—   | 18                   |
|                  | <i>insert—</i>   | 19                   |
|                  | (f) if a regulated restrictive practice is being used in relation to the child at the visitable home under a restrictive practice authorisation—the senior practitioner. | 20<br>21<br>22<br>23 |
|                  | (2) Section 70(4)—   | 24                   |
|                  | <i>insert—</i>   | 25                   |
|                  | (i) if a regulated restrictive practice is being used in relation to the child at the visitable site under a restrictive practice authorisation—the senior practitioner. | 26<br>27<br>28<br>29 |

[s 45]

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|                  |  |    |
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| <b>Clause 45</b> | <b>Amendment of s 85 (Application of pt 4—separate representatives)</b>  | 1  |
|                  | Section 85(a), after ‘110’—  | 2  |
|                  | <i>insert—</i>   | 3  |
|                  | or the <i>Disability Services Act 2006</i> , section 188ZF   | 4  |
|                  |  | 5  |
| <b>Clause 46</b> | <b>Amendment of s 86 (Prescribed entities)</b>   | 6  |
|                  | (1) Section 86—  | 7  |
|                  | <i>insert—</i>   | 8  |
|                  | (ra) the senior practitioner;  | 9  |
|                  | (2) Section 86(ra) and (s)—  | 10 |
|                  | <i>renumber</i> as section 86(s) and (t).  | 11 |
| <b>Clause 47</b> | <b>Amendment of sch 1 (Dictionary)</b>   | 12 |
|                  | (1) Schedule 1, definitions <i>chapter 5B approval</i> and <i>restrictive practice—</i>  | 13 |
|                  | <i>omit.</i>   | 14 |
|                  | (2) Schedule 1—  | 15 |
|                  | <i>insert—</i>   | 16 |
|                  | <i>regulated restrictive practice</i> see the <i>Disability Services Act 2006</i> , section 142.                                     | 17 |
|                  | <i>restrictive practice authorisation</i> means a restrictive practice authorisation under the <i>Disability Services Act 2006</i> . | 18 |
|                  | <i>senior practitioner</i> means the senior practitioner appointed under the <i>Disability Services Act 2006</i> , section 200AG.    | 19 |
|                  |  | 20 |
|                  |  | 21 |
|                  |  | 22 |
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| <b>Part 6</b>    | <b>Amendment of Queensland<br/>Civil and Administrative<br/>Tribunal Act 2009</b>  | 1<br>2<br>3  |
| <b>Clause 48</b> | <b>Act amended</b><br><br>This part amends the <i>Queensland Civil and Administrative<br/>Tribunal Act 2009</i> .  | 4<br>5<br>6  |
| <b>Clause 49</b> | <b>Amendment of s 46 (Withdrawal of application or referral)</b><br><br>Section 46(2)(b)—<br><i>omit, insert—</i><br><br>(b) the <i>Disability Services Act 2006</i> , part 6,<br>division 6;  | 7<br>8<br>9<br>10<br>11  |
| <b>Clause 50</b> | <b>Amendment of sch 3 (Dictionary)</b><br><br>(1) Schedule 3, definition <i>non-publication order</i> —<br><i>insert—</i><br><br>(da) a confidentiality order under the <i>Disability<br/>Services Act 2006</i> , section 188U or 188ZO;<br>or<br><br>(db) a non-identification order under the<br><i>Disability Services Act 2006</i> , section 188V;<br>or<br><br>(dc) a non-publication order under the <i>Disability<br/>Services Act 2006</i> , section 188T or 188ZN;<br>or<br><br>(2) Schedule 3, definition <i>non-publication order</i> , paragraphs (da)<br>to (f)—<br><i>renumber</i> as paragraphs (e) to (i). | 12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24<br>25<br>26 |

[s 51]

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**Part 7** **Other amendments** 1

|                  |  |   |
|------------------|--|---|
| <b>Clause 51</b> | <b>Legislation amended</b>                     | 2 |
|                  | Schedule 1 amends the legislation it mentions. | 3 |

|                                     |   |    |
|-------------------------------------|---|----|
| <b>Schedule 1</b>                   | <b>Other amendments</b>   | 1  |
|                                     | section 51  | 2  |
| <b>Disability Services Act 2006</b> |   | 3  |
| 1                                   | <b>Section 5(1), ‘218, 219,’—</b>   | 4  |
|                                     | <i>omit.</i>  | 5  |
| 2                                   | <b>Section 37, definition <i>relevant person</i>, paragraph (a)(iv), ‘within the meaning of the <i>Guardianship and Administration Act 2000</i>’—</b> | 6  |
|                                     | <i>omit.</i>  | 7  |
|                                     |   | 8  |
|                                     |   | 9  |
| <b>Forensic Disability Act 2011</b> |   | 10 |
| 1                                   | <b>Section 14(6), definition <i>relevant plans</i>, paragraph (b), ‘positive behaviour support plan’—</b>   | 11 |
|                                     | <i>omit, insert—</i>  | 12 |
|                                     | State behaviour support plan  | 13 |
|                                     |   | 14 |
| 2                                   | <b>Section 14(6), definition <i>relevant plans</i>—</b>   | 15 |
|                                     | <i>insert—</i>  | 16 |
|                                     | (ba) an NDIS behaviour support plan within the  | 17 |
|                                     | meaning of the Disability Services Act;   | 18 |

Schedule 1

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|   |  |        |
|---|--|--------|
| <b>3</b>  | <b>Section 14(6), definition <i>relevant plans</i>, paragraphs (ba) and (c)—</b> | 1<br>2 |
|   | <i>renumber</i> as paragraphs (c) and (d).                                       | 3      |
| <b>4</b>  | <b>Section 47, note, ‘restrictive practices’—</b>                                | 4      |
|   | <i>omit, insert—</i>   | 5      |
|   | regulated restrictive practices  | 6      |
| <b>Guardianship and Administration Act 2000</b> |  | 7      |
| <b>1</b>  | <b>Section 12(4) and note—</b>   | 8      |
|   | <i>omit.</i>   | 9      |
| <b>2</b>  | <b>Section 13(9)—</b>  | 10     |
|   | <i>omit.</i>   | 11     |
| <b>3</b>  | <b>Section 26(1)(g)—</b>   | 12     |
|   | <i>omit.</i>   | 13     |
| <b>4</b>  | <b>Section 28(2)—</b>  | 14     |
|   | <i>omit.</i>   | 15     |
| <b>5</b>  | <b>Section 29(1)(b), from ‘(other’ to ‘5B)’—</b>                                 | 16     |
|   | <i>omit.</i>   | 17     |
| <b>6</b>  | <b>Section 29(1)(c) and (2)—</b>   | 18     |
|   | <i>omit.</i>   | 19     |



|           |  |                |
|-----------|--|----------------|
| <b>7</b>  | <b>Section 33(3)—</b><br><i>omit.</i>  | 1<br>2         |
| <b>8</b>  | <b>Section 81(1)(i)—</b><br><i>omit.</i>   | 3<br>4         |
| <b>9</b>  | <b>Section 81(1)(j) and (k)—</b><br><i>renumber</i> as section 81(1)(i) and (j).     | 5<br>6         |
| <b>10</b> | <b>Section 118(1)(k)—</b><br><i>omit.</i>  | 7<br>8         |
| <b>11</b> | <b>Section 118(1)(l)—</b><br><i>renumber</i> as section 118(1)(k).                   | 9<br>10        |
| <b>12</b> | <b>Section 118(6)(a) and (8), ‘(k)’—</b><br><i>omit, insert—</i><br>(j)              | 11<br>12<br>13 |
| <b>13</b> | <b>Schedule 2, section 2(j) and (k)—</b><br><i>omit.</i>                             | 14<br>15       |
| <b>14</b> | <b>Schedule 2, section 2(l) and (m)—</b><br><i>renumber</i> as section 2(j) and (k). | 16<br>17       |