



# 'Safe, secure and affordable'?

The need for an inquiry into supported accommodation in Queensland

August 2023

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### **Acknowledgement of Lived Experience**

We acknowledge the experiential expertise of adults with impaired decision-making ability, whose rights we seek in our work to promote and protect.

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### **Office details**

Location: State Law Building, 50 Ann Street, Brisbane, QLD 4000  
Mail: GPO Box 149, Brisbane, QLD 4000  
Telephone: + (61 7) 3738 9513  
Website: [www.publicadvocate.qld.gov.au](http://www.publicadvocate.qld.gov.au)  
Email: [public.advocate@justice.qld.gov.au](mailto:public.advocate@justice.qld.gov.au)

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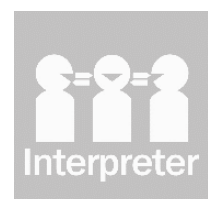


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The Honourable Yvette D'Ath MP  
Attorney-General and Minister for Justice  
Minister for the Prevention of Domestic and Family Violence  
Leader of the House  
1 William Street  
BRISBANE QLD 4000

21 August 2023

Dear Attorney-General,

Pursuant to Section 209A of the *Guardianship and Administration Act 2000 (Qld)*, I present to you my report '*Safe, secure and affordable?*' *The need for an inquiry into supported accommodation in Queensland.*

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'John Chesterman', with a long horizontal flourish extending to the right.

John Chesterman (Dr)  
**Public Advocate**



# Foreword

In Queensland, level 3 residential services, also known as supported accommodation, currently provide housing and support to some of the state's most marginalised citizens.

A considerable proportion of residents living in these services have cognitive disabilities or face other challenges in their lives that result in significant social care needs that are not being met by other residential support schemes, including social or public housing. State regulation of this sector has long been predicated on this fact.


At the same time, two inherent challenges have always accompanied state regulation of level 3 residential services. First, while it is not unusual for the state to regulate the services provided by private organisations, this is a sector in which the involvement of private providers has often been relied upon to support the basic needs of many Queenslanders. This creates a regulatory tension. Second, an ongoing debate exists about whether the regulation of level 3 residential services should primarily be carried out adopting a 'housing' frame of reference and regulatory approach, or whether this ought to be done from a 'social care' regulatory perspective.

On top of these challenges, the past decade has seen the advent of the National Disability Insurance Scheme (NDIS), which has given rise to a variety of new ways in which people with disability can be supported to live in the community, including through the provision of services that assist participants with 'Supported Independent Living'. This has led to complex situations of regulatory overlap or 'entanglement', as residential service providers, or closely aligned entities, operate in both state and federally regulated systems.

This report lays out the challenges facing the residential services sector in Queensland and its effective regulation, drawing on the views provided by many knowledgeable people in the sector, to whom I am most grateful. I am also grateful to the staff members in my office who worked assiduously on this report, in particular Jacinta Colley, who led the writing of the report, and Tracey Martell and former staff member Michelle King, for their considerable assistance.

Throughout the report 29 questions are posed, most of which can be grouped under these two central questions. Are the current residential services regulatory criteria appropriate, and appropriately monitored? Is there sufficient regulatory oversight of the interplay between multiple systems, particularly the state-regulated residential services system, and the federally-regulated NDIS?

These are significant questions that warrant further detailed sector and regulatory engagement in order that their answers might point to meaningful reform. That is why the sole recommendation in this report is for a Queensland parliamentary inquiry to be conducted into the provision and regulation of supported accommodation in Queensland. The questions that are posed throughout this report have been carefully researched and backgrounded; I trust that they might guide the proposed parliamentary inquiry.



John Chesterman (Dr)  
Public Advocate



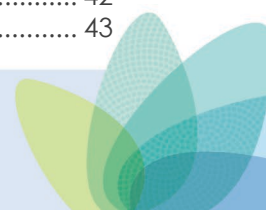
# Acronyms

CRPD	Convention on the Rights of Persons with Disabilities
DCSSDS	Department of Child Safety, Seniors and Disability Services
DOH	Department of Housing
MHLC	Mental Health Legal Centre
NDIS	National Disability Insurance Scheme
RTA	Residential Tenancies Authority
SAPA	Supported Accommodation Providers Association
SDA	Specialist Disability Accommodation
SIL	Supported Independent Living
SRS	Supported Residential Service
QAS	Queensland Ambulance Service



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# Executive summary

In Queensland, level 3 residential services, also known as supported accommodation, provide accommodation, personal care services, and often food services, to residents. Level 3 residential services are privately owned and are typically operated on a for-profit basis, but are regulated by the Department of Housing under the *Residential Services (Accreditation) Act 2002* (Qld).

While there is limited current information available on the people who reside in level 3 residential services, it is likely that a significant number of residents have a disability such as an intellectual impairment or acquired brain injury, mental health concerns, or issues relating to drug and alcohol use. It is likely that many experience impaired decision-making ability. Many residents have a variety of complex support needs and engage with services across a range of government systems. Many have limited support networks and connections to the community.

Residents of level 3 residential services are often people who have experienced challenges in finding and securing alternative, appropriate accommodation, have support needs that have not been met through other systems, or have difficulty accessing the support that they require to maintain their preferred housing arrangements. They often also experience difficulty in exercising choice and control over their supports and services.

Many residents are therefore at risk of abuse, neglect, and exploitation due to the challenges that lead them to engage with level 3 residential services.

In recent times, housing has been a topic of great concern at a state and national level.

There has been significant discussion about the current housing crisis, and the difficulty that people with disability, including those with impaired decision-making ability, experience in securing appropriate, accessible, and affordable accommodation.

There are several reviews and pieces of work underway that are examining, or are seeking to examine, these issues in further detail.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability has heard from witnesses about the experiences of people with disability in residential services, with a particular focus on services in New South Wales and Victoria.<sup>1</sup> It is expected to deliver its final report and recommendations about the quality and safety of services for people with disability in September 2023.

Housing and living support provided under the National Disability Insurance Scheme (NDIS) has been identified as a priority area for improvement during the Independent Review of the National Disability Insurance Scheme.<sup>2</sup> The Independent Review Panel will deliver its final report to the Disability Reform Ministers by October 2023.

A recent report published by the Mental Health Legal Centre in Victoria has also highlighted a range of concerns about resident safety in the context of intersecting residential services regulation in Victoria and the regulation of the NDIS.<sup>3</sup>

In the coming years, the Queensland Government will undertake a review of the key piece of legislation governing the accreditation and regulation of residential services, the *Residential Services (Accreditation) Act*.

It is therefore timely to examine the residential services sector in Queensland, consider the challenges that are faced by residents and service providers in these settings, and explore

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<sup>1</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Seventh Progress Report 1 July 2022- 31 December 2022* (2023).

<sup>2</sup> NDIS Review, *What we have heard: Moving from defining problems to build a better NDIS*, 2023.

<sup>3</sup> Mental Health Legal Centre, *Multiagency Choice and Control Project, 3-month interim report*, 2023.





opportunities to promote human rights and wellbeing and improve the delivery of services to residents.

This report explores issues relating to level 3 residential services in Queensland, drawing on consultations with stakeholders from 22 organisations, including government agencies, advocacy organisations, and service providers involved in the delivery of, or that engage routinely with, housing or homelessness services.

Stakeholders noted that the quality of level 3 residential services varies across providers. They described a range of issues that affect the human rights, wellbeing, and safety of residents in these settings, including:

- unsuitable physical environments, including issues with hygiene and cleanliness, accessibility, and appropriateness for people with disability;
- poorly maintained environments that create safety and privacy risks;
- a general lack of space and privacy for residents;
- strict house rules that limit residents' freedom and choice;
- poor food quality and/or an inadequate amount of food;
- limited access to food or snacks outside of designated meal times;
- difficulty accessing external service providers such as health care providers or advocates;
- difficulty accessing the broader community;
- challenges with relationships between residents, which can lead to conflict and concerns about personal safety; and
- inadequate support services to meet residents' needs, or poor quality of support services.

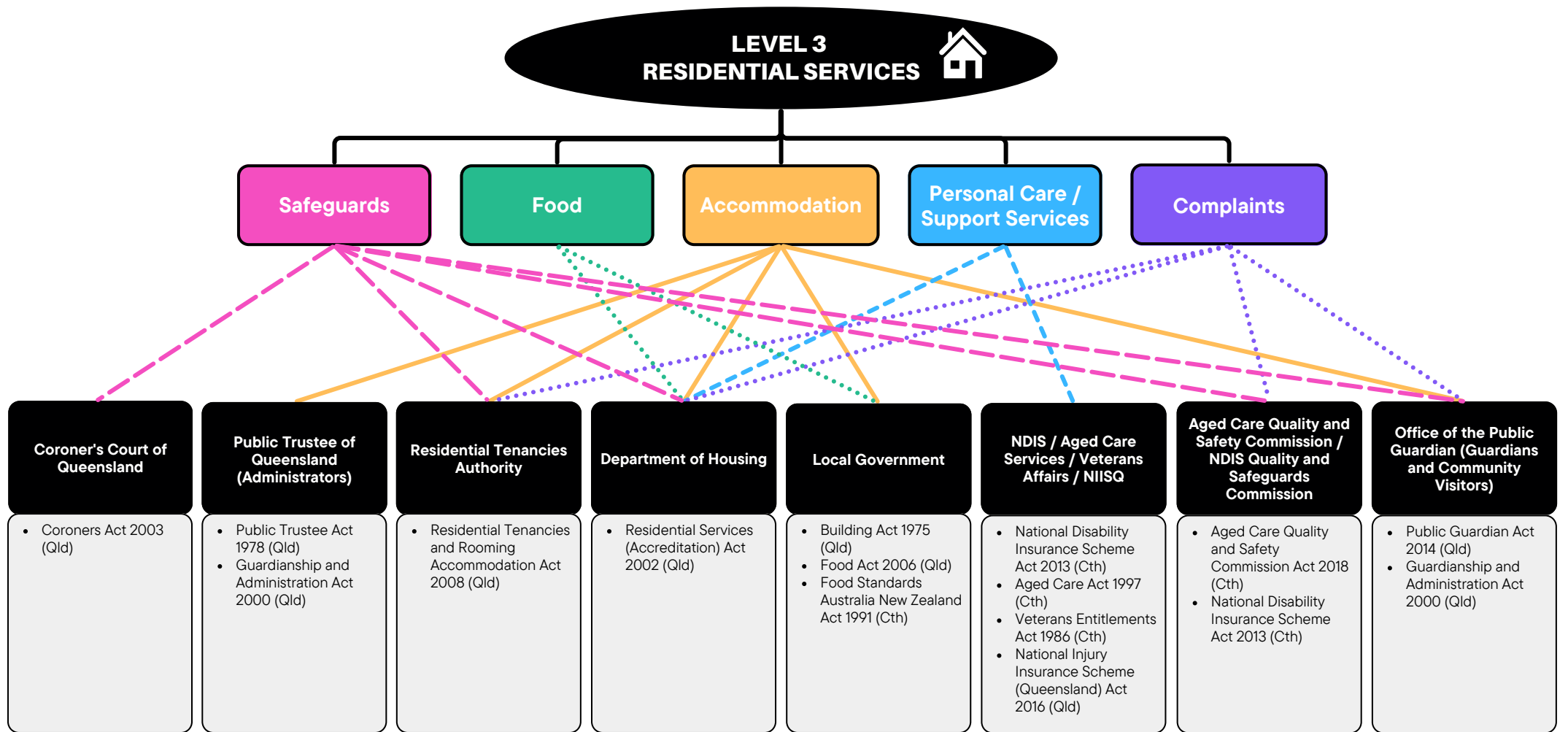
In addition to concerns about the standard of accommodation, food and personal care services provided to residents, stakeholders also described a number of systemic issues relating to the level 3 residential services sector, including:

- Complex regulatory and legislative frameworks involving all levels of government. While the legislative environment is complex, key elements critical to the wellbeing of residents are also not addressed, including a regulated fees and charges schedule.
- Fragmented and disjointed safeguarding mechanisms.
- Blurred lines of responsibility and potential conflicts of interest resulting from the dual role of providers as accommodation and service providers. This is heightened if residents are also NDIS participants, as many level 3 residential service providers (or closely related entities) are also NDIS service providers.
- The potential for level 3 residential services to be closed environments where residents have limited access to externally provided services or opportunities to participate in broader community life.
- The suitability of this model of accommodation and service provision to meet the needs of residents with complex support needs, many of whom have an intellectual disability, acquired brain injury, mental health concerns or issues with drug and alcohol use.

The insights shared by stakeholders highlight the complexity of the sector and the need for further investigation into how the human rights, safety and wellbeing of residents can be better supported. There is also a need for further discussion about the role of level 3 residential services in the broader housing and support sector, and how services should be regulated to maintain quality and ensure the best outcomes for residents.

The figure on the next page provides an overview of the legislative framework that applies to level 3 residential services in Queensland. It highlights, amongst other issues, the level of regulatory complexity and entanglement associated with the regulation of accommodation and services at local, state, and federal levels. It also describes the key systemic issues and recommendation contained in this report.





**KEY SYSTEMIC ISSUES:**

- Complex regulatory and legislative frameworks, at all levels of government. While the legislative environment is complex, key elements critical to the wellbeing of residents are also not addressed, including a regulated fees and charges schedule.
- Fragmented and disjointed safeguarding mechanisms.
- Blurred lines of responsibility and potential conflicts of interest resulting from the dual role of providers as accommodation and service providers.
- Standards of accommodation, food and services provided to residents.
- The potential for Level 3 services to be closed environments, where residents have limited access to externally provided services or opportunities to participate in broader community life.
- The suitability of this model of accommodation and service provision to meet the needs of residents with complex support needs, many of whom have an intellectual disability, acquired brain injury, mental health concerns, or issues with drug and alcohol use.

**RECOMMENDATION:** The Queensland Parliament should conduct an inquiry into the provision and regulation of supported accommodation in Queensland.

Overview of the legislative framework and key systemic issues for level 3 residential services in Queensland.

# Recommendation

**The Queensland Parliament should conduct an inquiry into the provision and regulation of supported accommodation in Queensland.**

While this report focuses on the provision, and regulation by the state, of level 3 residential services as defined under the *Residential Services (Accreditation) Act 2002* (Qld), many of the concerns that are discussed in this report also apply to other residential services regulated by the Act (namely level 1 and level 2 services). In addition, some Queenslanders with significant support needs are now residing in other kinds of shared-living arrangements, including those made possible by the provision of support services funded by the National Disability Insurance Scheme (NDIS).

It would make sense for the proposed parliamentary inquiry to have terms of reference that are broad enough to enable it to examine, and recommend improvements to:

- the provision of accommodation and support services to Queenslanders in this variety of settings; and
- the complex state and federal regulatory arrangements that apply.

In terms of the proposed inquiry's processes, thought might be given to the potential engagement of an independent non-government organisation to support residents to contribute their views on the services and support they receive, and associated regulatory requirements.

The relevant parliamentary committee might also seek answers to the following questions (which particularly relate to level 3 residential services):

## **The level 3 residential services model**

1. Is the current model by which level 3 residential services are provided – which typically sees private providers delivering accommodation and support services at the cost of a majority of a resident's Disability Support Pension – an appropriate one for Queensland into the future?
2. Should new models of service delivery that meet the needs of particular cohorts of residents (e.g. residents with significant mental health concerns or with significant drug and alcohol use) be trialled?

## **Costs and charges**

3. Are current charges for level 3 residential services reasonable?
  - a. Do they enable residents to have sufficient disposable income to ensure a reasonable quality of life?
  - b. Do they enable providers to deliver quality services on a financially viable basis?
  - c. Should a cap be placed on the amount that residents are able to be charged?
4. Should greater transparency be required of level 3 residential service providers concerning the fees charged for accommodation, food, and personal care services?

## **Service standards**

5. Do current service standards set appropriate benchmarks for the provision of level 3 residential services, particularly in relation to personal care?
6. Should the assessment of whether level 3 residential services meet particular standards require more thorough evidence, including greater on-site monitoring and more direct engagement with residents and relevant representative agencies?
7. Should the residential services regulator be required to publicly report on the compliance of service providers with accreditation standards?



## **Staff**

8. Are current minimum qualification and training requirements for staff of level 3 residential services appropriate?
9. How might greater assistance be provided to level 3 residential services to manage difficult scenarios, including those that occur outside business hours?

## **Conflicts of interest and transparency**

10. Further to question 4, should greater transparency be required concerning the fees that are charged to residents when their level 3 residential service provider, or a closely related entity, also provides them with NDIS-funded services?
11. When a level 3 residential service resident chooses their accommodation provider, or a closely related entity, as their NDIS service provider, what evidence should the service provider be required to provide to demonstrate that the resident has exercised an independent choice?
12. Is the monitoring of NDIS-funded services provided to residents of level 3 residential services adequate?

## **Oversight and safeguards**

13. How can existing safeguards be improved to provide better protections for residents living in level 3 residential services?

## **Promoting skills and independence**

14. Are there unintended consequences from the participation of residents of level 3 residential services in the NDIS that warrant regulatory reforms?

## **Complaints mechanisms**

15. Should a 'no wrong door' approach be established under which residents of level 3 residential services are assisted to lodge complaints about service provision across a range of service sectors, including the accommodation, NDIS, and aged care sectors?

## **Rooming agreements**

16. Do current regulatory requirements concerning rooming agreements adequately protect the rights of residents of level 3 residential services?

## **Informal safeguards and capacity building**

17. What additional steps should be taken to ensure that residents of level 3 residential services understand and are able to exercise their rights?
18. How can the voice of residents become more central to the regulation of level 3 residential services?

## **The suitability of personal care services**

19. Should a standardised intake assessment process be developed and implemented for potential residents of level 3 residential services to ensure that their accommodation and support needs will be able to be met in this setting?
20. How might the service and support needs of residents of level 3 residential services be reliably and regularly assessed?

## **Access to funding**

21. Should greater assistance be provided to residents of level 3 residential services who need to navigate and engage with multiple service systems (including in the fields of housing, NDIS, aged care, mental health, alcohol and other drugs, and the justice system)?



### **External service providers**

22. What changes are required to ensure that residents of level 3 residential services are able to access external services, including advocacy services?

### **Unregistered residential services**

23. How might unregistered services that meet the current level 3 residential services criteria, and that are therefore required to obtain registration and accreditation, be more reliably identified?

### **Emerging, unregulated models of accommodation**

24. What regulatory steps should be taken to better protect residents of level 3 residential services from predatory provider behaviour?

### **Decision-making**

25. How might residents, and potential residents, of level 3 residential services be better supported to make their own accommodation and service-related decisions?

### **Zero tolerance policies**

26. Has the adoption of 'zero tolerance' policies by some level 3 residential service providers had unintended consequences that require a regulatory response?

### **Restrictive practices**

27. How should the use of restrictive practices in level 3 residential services be minimised and more effectively regulated?

### **Emergency and disaster planning**

28. Are current disaster planning measures adequate across level 3 residential services?

### **Pathways out of level 3 residential services**

29. How might residents of level 3 residential services be assisted to develop skills that will enable them to move into other accommodation settings, where this is their preference?



# Introduction

## The Public Advocate

The position of Public Advocate is established under chapter 9 of the *Guardianship and Administration Act 2000* (Qld) to promote and protect the rights and interests of Queensland adults with impaired decision-making ability through systemic advocacy.

Section 209 of the *Guardianship and Administration Act* states that the functions of the Public Advocate are:

- (a) promoting and protecting the rights of adults with impaired capacity (the adults) for a matter;
- (b) promoting the protection of the adults from neglect, exploitation, or abuse;
- (c) encouraging the development of programs to help the adults to reach the greatest practicable degree of autonomy;
- (d) promoting the provision of services and facilities for the adults;
- (e) monitoring and reviewing the delivery of services and facilities to the adults.



### Impaired decision-making ability

'Having capacity' means a person can understand the nature and effect of decisions about a matter, can freely and voluntarily make decisions about it, and can communicate their decisions in some way.<sup>4</sup> If a person is unable to do one or more of these things, they may have impaired decision-making ability.

There are several conditions that may affect a person's decision-making ability. These include intellectual disability, acquired brain injury, mental illness, neurological disorders (such as dementia) or alcohol and drug misuse. While not all people with these conditions will experience impaired decision-making ability, many will at some point in their lives. For some, impaired decision-making ability may be episodic or temporary, requiring intensive supports at specific times, while others may require lifelong support with decision-making and communicating their choices and decisions.

People with impaired decision-making ability are a broad and diverse group. They can be from all age groups, cultures, and demographics.

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<sup>4</sup> *Guardianship and Administration Act 2000* (Qld) sch 4.



## Residential services

In Queensland, residential services provide accommodation, and often also other services, for four or more people who are not related and who share facilities such as a kitchen or bathroom.

The Queensland Department of Housing (DOH) oversees the registration and accreditation of residential service providers under the *Residential Services (Accreditation) Act 2002* (Qld).

There are three levels of service accreditation. The level of accreditation each service requires is dependent upon the services that are provided to residents.

All residential services must obtain level 1 accreditation, which relates to the provision of accommodation services. One service can include multiple sites. Individual residents in these settings have separate rental agreements (i.e., rooming agreements). Services that are accredited at Level 1 only are often referred to as boarding houses.

Level 2 accreditation relates to the provision of food and meal services and is a requirement for services that opt to provide meal services to residents.

Services that are accredited at level 3 (level 3 residential services), which are often referred to as supported accommodation, include the provision of accommodation and personal care services to residents. All services that provide personal care services must hold level 3 accreditation. As noted above, all services that are accredited as level 3 services must also be accredited at level 1. Most also provide meal services and are therefore also accredited at level 2, however this is not compulsory.

Level 3 residential services are the focus of this report.

This type of accommodation is distinct from the types of accommodation and supports provided under the National Disability Insurance Scheme (NDIS), such as specialist disability accommodation (SDA) or supported independent living (SIL), which are sometimes also referred to as supported accommodation. SDA and SIL service providers are regulated by the NDIS Quality and Safeguards Commission under the *National Disability Insurance Scheme Act 2013* (Cth) and the NDIS rules.

Level 3 residential services are also separate from social housing or specialist homelessness services, as they are subject to different regulation. Unlike these services, residential services do not receive government funding. Instead, residential services are owned and operated by private service providers, which often operate on a for-profit basis.

When the Residential Services (Accreditation) Bill was introduced to the Queensland Parliament in 2002, it was identified that:

The residents of the residential services sector are some of the most vulnerable people in the Queensland community. As such they are more susceptible to exploitation than most other groups in the community and often are unable to exercise the consumer choices that might otherwise allow them to avoid situations of long-term exploitation or abuse. With few exceptions, they have limited incomes and many experience a range of disadvantages (including intellectual and/or psychiatric disability, drug and alcohol problems, brain injury, problems associated with ageing, social, economic disadvantage, and social isolation).<sup>5</sup>

The Act was introduced to help protect the health, safety and rights of residents, and improve residential services in Queensland.<sup>6</sup>

Since that time, the NDIS has been rolled out nationally, changing the way that disability support services are delivered across the country and affecting the types and levels of support that can be accessed by people living in level 3 residential services. For many residents, the introduction of this

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<sup>5</sup> Explanatory Notes, Residential Services (Accreditation) Bill 2002 (Qld), p. 1.

<sup>6</sup> Explanatory Notes, Residential Services (Accreditation) Bill 2002 (Qld).





scheme has enabled access to supports that were not available previously, or funding for supports that they would have had to pay for themselves. However, it has also created a number of regulatory gaps and challenges for residents navigating the interface between the NDIS and residential service systems.

The Public Advocate's interest in level 3 residential services is long-standing, and has been heightened as a result of the consultation processes undertaken by the office during the preparation of recent reports on the acute mental health system<sup>7</sup> and on adult safeguarding in Queensland.<sup>8</sup> These discussions highlighted a number of issues that are affecting the human rights and wellbeing of residents living in level 3 residential services.

Several recent reports have further highlighted issues within the sector and in similar types of accommodation in other states and territories.

For example, an interim report produced by the Mental Health Legal Centre (MHLC) in Victoria described significant concerns regarding the quality of Supported Residential Services (SRSs), as well as challenges relating to the NDIS that may increase the risk of abuse and exploitation of residents with high-value NDIS packages.<sup>9</sup>

Resident experiences of SRSs in Victoria were also a focus of the second part of Public Hearing 26 held by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) in 2022.<sup>10</sup> During this hearing, the Disability Royal Commission heard from witnesses about issues relating to the quality of care, food, and living conditions in some SRSs.

The Disability Royal Commission also commissioned a research report, prepared by researchers from the University of Melbourne, which examined issues relating to the inclusion, integration and segregation of people with disability, including within accommodation and community living. The report explored relevant literature and expert views on issues within congregated accommodation, which includes residential services. The report recommended that:

Congregated accommodation settings (e.g., institutions, hostels, and boarding house-like facilities) need to be closed. They are unsafe and unable to deliver on the expectations of (and obligations imposed by) the [United Nations Convention on the Rights of Persons with Disabilities] and the objectives of the National Disability Insurance Scheme (NDIS) Act.<sup>11</sup>

Under the Queensland Housing and Homelessness Action Plan 2021–2025, the Queensland Government has committed to:

Deliver improvements for residential (manufactured home) parks and residential services to address:

- concerns about site rent increases and unsold manufactured homes in residential parks
- the impact of significant changes in the community affecting residential services, to ensure resident safety, fair trading and viability of the residential service industry.<sup>12</sup>

The Public Advocate has been advised that this will include a review of the *Residential Services (Accreditation) Act*.

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<sup>7</sup> Public Advocate (Qld), *Better Pathways: Improving Queensland's delivery of acute mental health services*, August 2022.

<sup>8</sup> Public Advocate (Qld), *Adult safeguarding in Queensland, Volume 1: Identifying the gaps*, July 2022; Public Advocate (Qld), *Adult Safeguarding in Queensland, Volume 2: Reform recommendations*, November 2022.

<sup>9</sup> Mental Health Legal Centre, *Multiagency Choice and Control Project, 3-month interim report*, 2023.

<sup>10</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Seventh Progress Report 1 July 2022- 31 December 2022* (2023).

<sup>11</sup> K. McVilly, S. Ainsworth, L. Graham, M. Harrison, V. Sojo, C. Spivakovsky, L. Gale, A. Genat, T. Zirsak, *Outcomes associated with 'inclusive', 'segregated' and 'integrated' settings for people with disability*, a research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, University of Melbourne, Australia (2022), p. 50.

<sup>12</sup> The State of Queensland, Department of Communities, Housing and Digital Economy, *Queensland Housing and Homelessness Action Plan 2021–2025*, 2021, p. 22.





The Independent Review of the National Disability Insurance Scheme is also considering how housing and living supports provided to eligible NDIS participants can be improved to support better outcomes and experiences. The Independent Review Panel is expected to make recommendations in its final report to be delivered to the Disability Reform Ministers by October 2023.

It is therefore timely to examine the level 3 residential services sector in Queensland, consider the challenges that may be faced by residents and service providers in these settings, and explore opportunities to strengthen the safeguards in place to promote the human rights and wellbeing of residents.

## Human rights and associated principles

This report focuses on the regulation of level 3 residential services. In doing so, it directly engages with many of the human rights of residents. They include, for residents with disabilities, the rights articulated in the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD), which Australia ratified in 2008. Relevant rights here, among others, are the rights of people with disability:

- to receive 'an adequate standard of living' which includes 'adequate food ... and housing' (Article 28);<sup>13</sup>
- to be centrally involved in decisions that affect them (Article 12);<sup>14</sup>
- to be free from 'exploitation, violence and abuse' (Article 16);<sup>15</sup> and
- 'to choose their place of residence and where and with whom they live' (Article 19).<sup>16</sup>

In addition, it is noted that some level 3 residential services arguably fit the description of being institutional, as opposed to enabling 'inclusion in the community', in contravention of Article 19 of the CRPD. A recent United Nations guideline on this topic identified that the following settings could not be fairly described as 'community-based': 'settings located "in the community" where service providers set a routine and deny autonomy; or "homes" where the same service provider packages housing and support together.'<sup>17</sup>

The number of residents within the particular facility and the ability of residents to meaningfully choose their accommodation setting and the services they receive are key here in ensuring that a person's residence in level 3 residential services does not amount to institutionalisation.

A focus on residents' right to housing is also reflected in the Housing Principles for Inclusive Communities developed by the DOH in collaboration with Queensland Government agencies, Griffith University, National Shelter and the Queenslanders with Disability Network following consultation with older people, people with disability and their families.<sup>18</sup>

Four principles were developed to 'help achieve more inclusive communities for Queenslanders'<sup>19</sup> in accordance with the objective of the Queensland Housing Strategy 2017-2027 that 'Every Queenslanders has access to a safe, secure and affordable home that meets their needs and enables participation in the social and economic life of our prosperous state' (from which the title of this report is drawn).<sup>20</sup>

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<sup>13</sup> *Convention on the Rights of Persons with Disabilities*, GARes 61/106, UNGAOR 61<sup>st</sup> sess, 76<sup>th</sup> plen mtg, UNDoc A/RES/61/106 (24 January 2007, adopted 13 December 2006) art 28.

<sup>14</sup> *Convention on the Rights of Persons with Disabilities*, GARes 61/106, UNGAOR 61<sup>st</sup> sess, 76<sup>th</sup> plen mtg, UNDoc A/RES/61/106 (24 January 2007, adopted 13 December 2006) art 12.

<sup>15</sup> *Convention on the Rights of Persons with Disabilities*, GARes 61/106, UNGAOR 61<sup>st</sup> sess, 76<sup>th</sup> plen mtg, UNDoc A/RES/61/106 (24 January 2007, adopted 13 December 2006) art 16.

<sup>16</sup> *Convention on the Rights of Persons with Disabilities*, GARes 61/106, UNGAOR 61<sup>st</sup> sess, 76<sup>th</sup> plen mtg, UNDoc A/RES/61/106 (24 January 2007, adopted 13 December 2006) art 19.

<sup>17</sup> Committee on the Rights of Persons with Disabilities, *Guidelines on deinstitutionalization, including in emergencies*, CRPD/C/5 (10 October 2022) para 16.

<sup>18</sup> Department of Housing, *Housing Principles for inclusive communities*, (29 November 2019), <<https://www.housing.qld.gov.au/about/initiatives/housing-principles-inclusive-communities>>.

<sup>19</sup> Department of Housing, *Housing Principles for inclusive communities*, (29 November 2019), <<https://www.housing.qld.gov.au/about/initiatives/housing-principles-inclusive-communities>>.

<sup>20</sup> Queensland Government (Department of Housing and Public Works), *Queensland Housing Strategy 2017-2027*, p. 5.



The principles include:

- Rights: 'People with disability and older people have the same rights to housing and assistance as the rest of the community and are encouraged and supported to exercise those rights.'<sup>21</sup>
- Control: 'Where a person requires support in their home, the provision and management of their housing should be separate from the provision and management of their paid supports. This will ensure greater housing security.'<sup>22</sup>
- Choice: 'People with disability and older people have choice about where they live, who they live with, and who comes into their home and when, rather than this being determined by the provider'.<sup>23</sup>
- Inclusion: 'Appropriate housing provides pathways to independence and enables social and economic participation through alternatives to group homes and high density of people with disability'.<sup>24</sup>

The Queensland Government has committed to 'Promote rights, choice, control, accessibility and inclusion in housing with support for people with disability' as part of the Queensland Housing and Homelessness Action Plan 2021–2025.<sup>25</sup>

## This report

The Public Advocate's legislative remit concerns 'adults with impaired capacity for a matter'.<sup>26</sup> While it is unknown exactly how many people residing in level 3 residential services in Queensland fall within this category, the sector is home to significant numbers of people with impaired decision-making ability, with high rates of NDIS participation among residents, and significant involvement with Queensland's mental health system.

This report explores level 3 residential services in Queensland, with a particular focus on the issues that are experienced by people with impaired decision-making ability who live in these residential services.

The report has been informed by individual discussions with stakeholders from 22 organisations. This includes representatives from government agencies, advocacy organisations, and service providers involved in the delivery of housing or homelessness services or that engage with level 3 residential services (see Appendix for a list of stakeholders who participated in these discussions). However, the views and opinions expressed in this report do not necessarily reflect the views of all stakeholders consulted.

In the course of researching this report, several staff members from the Office of the Public Advocate, including the Public Advocate, visited a small number of level 3 residential services and engaged with staff and residents. Meanwhile, many of the stakeholders consulted have worked closely with residents in these settings, and they provided insights into situations that they had observed and the experiences that residents have reported to their organisations. At the same time, this report recognises that the identification of meaningful reforms to this sector will require dedicated and widespread engagement with residents and former residents of level 3 residential services (as is discussed elsewhere in this report).

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<sup>21</sup> Department of Housing, *Housing Principles for inclusive communities*, (29 November 2019), <<https://www.housing.qld.gov.au/about/initiatives/housing-principles-inclusive-communities>>.

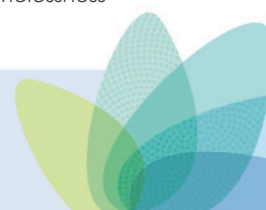
<sup>22</sup> Department of Housing, *Housing Principles for inclusive communities*, (29 November 2019), <<https://www.housing.qld.gov.au/about/initiatives/housing-principles-inclusive-communities>>.

<sup>23</sup> Department of Housing, *Housing Principles for inclusive communities*, (29 November 2019), <<https://www.housing.qld.gov.au/about/initiatives/housing-principles-inclusive-communities>>.

<sup>24</sup> Department of Housing, *Housing Principles for inclusive communities*, (29 November 2019), <<https://www.housing.qld.gov.au/about/initiatives/housing-principles-inclusive-communities>>.

<sup>25</sup> State of Queensland, Department of Communities, Housing and Digital Economy, *Queensland Housing and Homelessness Action Plan 2021–2025*, 2021, p.18.

<sup>26</sup> *Guardianship and Administration Act 2000* (Qld) s 209.



# Background

## Level 3 residential services in Queensland

As at 31 January 2023, there were 42 registered residential services with current accreditation for level 3 services, with up to 1,538 beds available across these services in Queensland.<sup>27</sup>

Level 3 residential services vary in size, with currently registered services reporting a maximum capacity of between 5 and 136 people.<sup>28</sup> Many services are located in the Brisbane area (18 services), however they are also located in Townsville, Far North and Central Queensland, on the Fraser and Sunshine Coasts, in Toowoomba, Ipswich, Logan and on the Gold Coast.

As noted, level 3 residential services are not funded by the government, but rather are funded by the rent and fees charged to residents. The amount that providers can charge residents is not regulated, so the cost to residents can vary across services. However, stakeholders reported that residents are often charged between 70 and 85 per cent of their pension (often the Disability Support Pension) and the full amount of any Rent Assistance payments that they receive. Some level 3 residential service providers may also charge additional fees for other services such as laundry or the administration of spending money.

Level 3 residential services are often used by people with complex support needs, many of whom have an intellectual disability, acquired brain injury, mental health concerns, or issues with drug and alcohol use. Many level 3 residential service residents have some degree of impaired decision-making ability, and often the decision-making ability of the person, and whether or not they have a decision-maker appointed for particular decisions, will not be known or recognised by the service provider.

However, there is limited recent information available on the cohort residing in these services, their support requirements, and the systems and services with which they engage.

The Department of Child Safety, Seniors and Disability Services (DCSSDS), in collaboration with the peak body for level 3 residential service providers in Queensland, the Supported Accommodation Providers Association (SAPA), have received funding from the federal Department of Social Services to undertake a project that aims to design and test a non-clinical assessment tool in level 3 residential services across Queensland. The implementation of this tool may support a better understanding of the cohort living in level 3 residential services, their needs, and how effectively these needs are being met. It is anticipated that this project will be completed by 30 June 2024.

## Residents' journeys within level 3 residential services

### Entry into level 3 residential services

There is limited information available about the people who enter level 3 residential services and pathways into this type of accommodation. However, stakeholders suggest that new residents are often people who are discharged from acute mental health units or hospitals, people who have been released from prison, or people who have no alternative housing options.

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<sup>27</sup> Department of Communities, Housing and Digital Economy, *Residential services registered with the Department of Communities, Housing and Digital Economy*, (28 March 2023) Queensland Government open data portal <<https://www.data.qld.gov.au/dataset/residential-services-registered-with-the-department-of-communities-housing-and-digital-economy>>.

<sup>28</sup> Department of Communities, Housing and Digital Economy, *Residential services registered with the Department of Communities, Housing and Digital Economy*, (28 March 2023) Queensland Government open data portal <<https://www.data.qld.gov.au/dataset/residential-services-registered-with-the-department-of-communities-housing-and-digital-economy>>.



Stakeholders noted that while there may be some people who consider level 3 residential services to be their home, it is often not a preferred housing option. Rather, this type of accommodation is often used as a last resort and may be the only alternative to rough sleeping.

People often move into level 3 residential services due to difficulty finding appropriate, affordable housing, due to support needs that have not been met through other systems, or due to difficulty accessing the support required to maintain their preferred housing or tenancy arrangements.

While there are a number of individual factors that influence a person's ability to access housing and support, there are also a broad range of issues that contribute to people entering level 3 residential services, including:

- a lack of appropriate, affordable housing suitable for people with disability or complex needs;
- a lack of available social housing;
- a lack of suitable emergency and crisis accommodation options;
- the limitations of housing and other supports funded under the NDIS and aged care systems;
- the limited supports available for those who do not meet the eligibility criteria to receive NDIS or aged care services;
- a lack of acute mental health beds and 'step-up step-down' services and supports;
- pressure on hospitals to move people out of acute beds and into the community;
- insufficient resources provided for long-term support to maintain a tenancy in homelessness service funding; and
- a siloed approach to housing, which involves many systems such as the disability, mental health, and criminal justice systems, at both State and Commonwealth level, which means that housing and supports required to maintain tenancies are often funded separately and through different systems.

People who enter level 3 residential services are often identified as those who have 'fallen through the gaps' in other systems.

### Resident experiences in level 3 residential services

Level 3 residential services provide residents with accommodation and personal care services, which may include, for example, assistance with medication, hygiene, and support in managing daily finances.

The support that residents receive and their experiences while in level 3 residential services can vary greatly, as practices and policies are different across services.

In addition to services provided by a level 3 residential service provider, many residents also receive, or are eligible to receive, funding for supports through other systems such as the NDIS or the aged care system.

Residents' experiences of level 3 residential services likely vary depending on the service, their compatibility with other residents at the service, and the extent to which individual needs and expectations are able to be met in these settings. While some residents may have positive experiences, stakeholders also described a number of issues and challenges that residents face. These issues are explored further later in this report.

### Exiting level 3 residential services

Most stakeholders indicated that level 3 residential services would ideally be a temporary form of accommodation, where residents could access housing and support while they secured alternative, appropriate accommodation.

However, there are many people who have lived in level 3 residential services for some time.

Some people consider level 3 residential services to be their home and may have a preference to remain living in these settings.



However, stakeholders indicated that there are likely a number of current residents who would prefer to live in alternative accommodation but who face a range of challenges that prevent them from doing so. They also noted that, for those who would like to live in alternative accommodation, there are limited pathways out of level 3 residential services, resulting in people becoming 'stuck' in these settings. This issue is discussed further below.

## Provider registration and accreditation

All residential services and providers of these services must be registered and apply for accreditation within three months of registering.

The registration and accreditation processes are overseen by the DOH. However, the registration process also requires approvals from other agencies.

Prior to applying for registration as a residential service, prospective service providers must obtain approval from local government for the service site (or sites) to receive classification as a class 1b building.

Prospective service providers also require a building compliance notice from local government that has been issued within the last 12 months and confirms that the building is compliant with the MP 5.7 Residential services building standard of the Queensland Development Code.<sup>29</sup>

Buildings must also meet fire safety standards, as described in the *Residential Services (Accreditation) Act*. Buildings where accommodation is provided to six or more unrelated people who share access to bathrooms are considered to be 'budget accommodation buildings' under the *Building Act 1975 (Qld)*.<sup>30</sup> Residential services that meet the criteria for budget accommodation must obtain a notice of compliance with the MP 2.1 Fire safety in budget accommodation buildings standard of the Queensland Development Code<sup>31</sup> and are required to have a fire safety management plan.

To become a registered service, potential service providers must also complete the relevant form and provide the DOH with a registration fee, a fee for and consent to conduct criminal history checks for each provider and associate, and relevant compliance notices.

Once registered, a service provider can begin providing services and has three months to apply for accreditation at the relevant level(s).

To obtain accreditation, services must meet the standards set out in the *Residential Services (Accreditation) Act* and the *Residential Services (Accreditation) Regulation 2018 (Qld)*, which are discussed further below.

The DOH sends an accreditation application kit to registered service providers, which includes a list of documentation required. This kit includes a self-assessment document that assists providers to identify whether they are meeting the accreditation standards. To apply for accreditation, service providers must complete and return the relevant documents, and pay an application fee.

Services may receive accreditation for up to three years, at which time the provider needs to apply to renew the accreditation.

## The legislative and safeguarding framework

There are several key pieces of legislation that create safeguards in level 3 residential services.

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<sup>29</sup> Queensland Development Code, MP 5.7 Residential services building standard, 2007.

<sup>30</sup> Building Act 1975 (Qld) s 216.

<sup>31</sup> Queensland Development Code, MP 2.1 Fire safety in budget accommodation buildings, 2008.



## Accreditation standards

An important safeguard for level 3 residential services is the registration and accreditation of services under the *Residential Services (Accreditation) Act*, which is administered by the DOH.

The objectives of this legislation are to:

- protect the health, safety and basic freedoms of residents;
- encourage service providers to continually improve the way they conduct residential services; and
- support fair trading in the residential services industry.<sup>32</sup>

As noted above, level 3 residential service providers must meet minimum standards based on the accreditation levels that they wish to obtain, which are described in the *Residential Services (Accreditation) Regulation*.

Requirements for accreditation at level 1, which is mandatory for all residential service providers, include matters relating to:

- privacy and confidentiality;
- agreement for residency;
- prevention of abuse and neglect;
- grievance mechanism;
- management of residents with complex or difficult behaviour;
- access to external service providers;
- entitlement of residents to independence and freedom of choice;
- living environment;
- security and emergencies;
- business management; and
- human resource management.<sup>33</sup>

Requirements for accreditation at level 2, which is only required for services that provide food services to residents, include matters relating to:

- food and nutrition;
- kitchens; and
- food handling and storage.<sup>34</sup>

Requirements for accreditation at level 3 include matters relating to:

- human resource management;
- access to externally provided support services;
- financial and clerical support;
- assistance with medication;
- health care;
- clothing;
- hygiene management;
- preservation of social networks;
- choice and decision making.<sup>35</sup>

The DOH employs regulatory analysts who conduct site audits to ensure that service providers are meeting the legislated benchmarks for service delivery. These audits are usually conducted when a service provider is applying for accreditation, or applying to renew their accreditation, which typically occurs once every three years.

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<sup>32</sup> Explanatory Notes, *Residential Services (Accreditation) Bill 2002*, p. 1.

<sup>33</sup> *Residential Services (Accreditation) Regulation 2018 (Qld)* s 6.

<sup>34</sup> *Residential Services (Accreditation) Regulation 2018 (Qld)* s 7.

<sup>35</sup> *Residential Services (Accreditation) Regulation 2018 (Qld)* s 8.





## Building standards

As noted above, as part of the registration and accreditation process, level 3 residential service providers are required to demonstrate that the site/s at which they will be providing the service complies with relevant building standards. This includes the MP 5.7 Residential services building standard of the Queensland Development Code, which outlines performance-based criteria to ensure 'suitable standards of health, safety and amenity for residents',<sup>36</sup>

Services may also need to comply with a range of other state legislation and local government requirements for buildings, for example those included in the *Residential Services (Accreditation) Act*, the *Residential Services (Accreditation) Regulation*, and the *Building Act*.

## Food standards

Level 3 residential services that provide food services to residents, and therefore require accreditation at level 2, must comply with relevant food standards to ensure safe and hygienic storage and preparation practices. This includes compliance with the service provider's accredited food safety program under the *Food Act 2006 (Qld)*, if there is one in place, or compliance with the Australia New Zealand Food Standards Code, standard 3.2.3, under the *Food Standards Australia New Zealand Act 1991 (Cth)*.

Service providers must also provide nutritious food in accordance with the *Toolkit for healthy eating in supported accommodation: A best practice guide*, published by Queensland Health.<sup>37</sup> This guide provides information on healthy eating, meal planning, food for people with special requirements, and helping residents to make healthy food choices.

## Personal care

As noted, personal care provided to residents as part of their level 3 residential service is regulated under the *Residential Services (Accreditation) Act*.

Level 3 residential services that assist residents with medication must provide this assistance in accordance with the *Guideline for Medication Assistance* published by the DOH.<sup>38</sup> This document is designed to support the development of policies and procedures to ensure safe practices that reduce the risk of harm from inappropriate use of medication. It includes topics such as:

- written consent;
- privacy and confidentiality;
- documentation;
- staff training;
- storage,
- medication storage, handling and labelling;
- safe disposal of medications;
- medication incidents; and
- quality use of medicines activities.<sup>39</sup>

## Tenancy rights and responsibilities

Residents within level 3 residential services enter into a rooming agreement rather than a general tenancy agreement, both of which are regulated by the Queensland Residential Tenancies Authority (RTA) under the *Residential Tenancies and Rooming Accommodation Act 2008 (Qld)*.

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<sup>36</sup> Queensland Development Code, MP 5.7 Residential services building standard, 2007, p. 3.

<sup>37</sup> State of Queensland (Metro South Health), *A toolkit for healthy eating in supported accommodation: A best practice guide*, Second edition, Queensland Health, 2018.

<sup>38</sup> Department of Communities, Housing and Digital Economy, *Guidelines for Medication Assistance, Residential Service Providers (Level 3 Services)*, 2021.

<sup>39</sup> Department of Communities, Housing and Digital Economy, *Guidelines for Medication Assistance, Residential Service Providers (Level 3 Services)*, 2021, pp. 2-3.



The *Residential Tenancies and Rooming Accommodation Act* outlines the rights and obligations of residents and providers of rooming accommodation, including level 3 residential services, in Queensland. This includes issues relating to ending agreements and dispute resolution.

## Serious incidents

Under the *Residential Services (Accreditation) Regulation*, level 3 residential service providers must record serious incidents, which include:

- (a) an incident at the registered premises for the service that causes the death, serious injury or illness of a resident; or
- (b) an incident at the registered premises for the service that exposes a resident to a risk of death, serious injury or illness; or
- (c) an incident at the registered premises for the service that involves—
  - (i) the verbal, emotional, sexual or physical abuse of a resident; or
  - (ii) the neglect of a resident; or
  - (iii) the financial abuse of a resident.<sup>40</sup>

The DOH requires that service providers maintain a log of these incidents. During site audits, regulatory analysts check that these records have been maintained and that the service provider responses to any serious incidents align with the service provider's policies.

The death of a resident in a level 3 residential service is considered to be a 'death in care' and is reportable under the *Coroners Act 2003 (Qld)*.<sup>41</sup>

## Community visitors

Under the Community Visitor program operated by the Office of the Public Guardian, community visitors can attend level 3 residential services to monitor and report on the adequacy and appropriateness of accommodation and services provided. Community visitors can make announced or unannounced visits to these services and make enquiries into:

- (a) the adequacy of services for the assessment, treatment and support of consumers at the visitable site; and
- (b) the appropriateness and standard of services for the accommodation, health and wellbeing of consumers at the site; and
- (c) the extent to which consumers at the site receive services in the way least restrictive of their rights; and
- (d) the adequacy of information given to consumers at the site about their rights; and
- (e) the accessibility and effectiveness of procedures for complaints about services for consumers at the site; and
- (f) at the request of the public guardian, another matter about the visitable site or consumers at the site.<sup>42</sup>

If a community visitor identifies potential issues, they are able to lodge complaints on behalf of residents and refer issues to relevant agencies as required.

In addition, residents of level 3 residential services (or any other person) are able to request a visit from a community visitor under section 43 of the *Public Guardian Act 2014 (Qld)*:

### 43 Requirement to visit visitable site if asked

- (1) A consumer at a visitable site, or a person for the consumer, may –
  - a. ask the Public Guardian to arrange for a community visitor (adult) to visit the site to perform the visitor's functions; or
  - b. ask a staff member at the visitable site to arrange for a community visitor (adult) to visit the site to perform a visitor's functions.<sup>43</sup>

<sup>40</sup> *Residential Services (Accreditation) Regulation 2018 (Qld)* sch 2 (definition of 'serious incident').

<sup>41</sup> *Coroners Act 2003 (Qld)* s 9(1)(a).

<sup>42</sup> *Public Guardian Act 2014 (Qld)* s 41(2).

<sup>43</sup> *Public Guardian Act 2014 (Qld)* s 43(1).





During 2022-2023, community visitors made a total of 97 visits across level 3 residential services.<sup>44</sup>

## Support services provided under other schemes

In addition to the personal care services provided as part of level 3 residential services, residents may also be eligible to receive support and services through other schemes such as the NDIS and aged care system.

In the case of services funded by the NDIS, relevant services are set out in a plan prepared for the participant and delivered by an NDIS service provider. The NDIS service provider may be an external service provider, or may be owned or operated by the level 3 residential service provider (or a closely related entity).

Under the NDIS, all service providers must comply with the NDIS Code of Conduct, as set out in the *National Disability Insurance Scheme (Code of Conduct) Rules 2018 (Cth)*. They must also have a mechanism in place to manage complaints about the quality and safety of services.<sup>45</sup>

Registered NDIS service providers must comply with the NDIS Practice Standards and are subject to further oversight by the NDIS Quality and Safeguards Commission (the NDIS Commission), which can conduct audits, and which must be notified about reportable incidents, namely:

- (a) the death of a person with disability; or
- (b) serious injury to a person with disability; or
- (c) abuse or neglect of a person with disability; or
- (d) unlawful sexual or physical contact with, or assault of, a person with disability; or
- (e) sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity; or
- (f) the use of a restrictive practice in relation to a person with disability, other than where the use is in accordance with an authorisation (however described) of a State or Territory in relation to the person.<sup>46</sup>

Service providers must be registered if they provide any of the following services:

- specialist disability accommodation,
- supports or services during which there is or is likely to be a need to use a regulated restrictive practice
- specialist behaviour supports that involve undertaking behaviour support assessment of the participant or developing a behaviour support plan for the participant.<sup>47</sup>

However, other service providers may choose to operate as unregistered service providers, meaning that they are not subject to the additional requirements noted above.

The NDIS Commission also responds to complaints and concerns about NDIS service providers and service provision.

For residents eligible to receive aged care services, the quality of these services is monitored by the Aged Care Quality and Safety Commission. The Aged Care Quality and Safety Commission accredits, assesses and monitors aged care services and can respond to complaints about services.

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<sup>44</sup> Office of the Public Guardian, written information received in response to a direct request from the Public Advocate, 8 August 2023.

<sup>45</sup> NDIS Quality and Safeguards Commission, *Unregistered provider obligations* (07 July 2022) <<https://www.ndiscommission.gov.au/providers/registered-ndis-providers/provider-obligations-and-requirements/unregistered-provider>>.

<sup>46</sup> National Disability Insurance Scheme Act 2013 (Cth) s 73Z(4).

<sup>47</sup> NDIS Quality and Safeguards Commission, *Unregistered provider obligations* (07 July 2022) <<https://www.ndiscommission.gov.au/providers/registered-ndis-providers/provider-obligations-and-requirements/unregistered-provider>>.



It also administers the Serious Incidents Response Scheme for home care services, which are the type of aged care services that are likely to be delivered in level 3 residential services. This scheme requires service providers to report incidents including:

- (a) unreasonable use of force against the care recipient;
- (b) unlawful sexual contact, or inappropriate sexual conduct, inflicted on the care recipient;
- (c) psychological or emotional abuse of the care recipient;
- (d) unexpected death of the care recipient;
- (e) stealing from, or financial coercion of, the care recipient by a \*staff member of the provider;
- (f) neglect of the care recipient;
- (g) use of a \*restrictive practice in relation to the care recipient (other than in circumstances set out in the Quality of Care Principles);
- (h) unexplained absence of the care recipient from the [aged care] residential care services of the provider.<sup>48</sup>

Some residents may be eligible to receive services through other schemes such as the National Injury Insurance Scheme Queensland, or veterans' care services, each of which are overseen by different agencies and have different safeguards and processes for addressing any issues raised.

Figure 1 illustrates the legislative framework that applies to level 3 residential services in Queensland. It highlights, amongst other issues, the level of regulatory complexity and entanglement associated with the regulation of accommodation and services at local, state, and federal levels. It also describes the key systemic issues and recommendation contained in this report.

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<sup>48</sup> *Aged Care Act 1997* (Cth) s 54-3(2). \* denotes that definitions are included in the legislation.



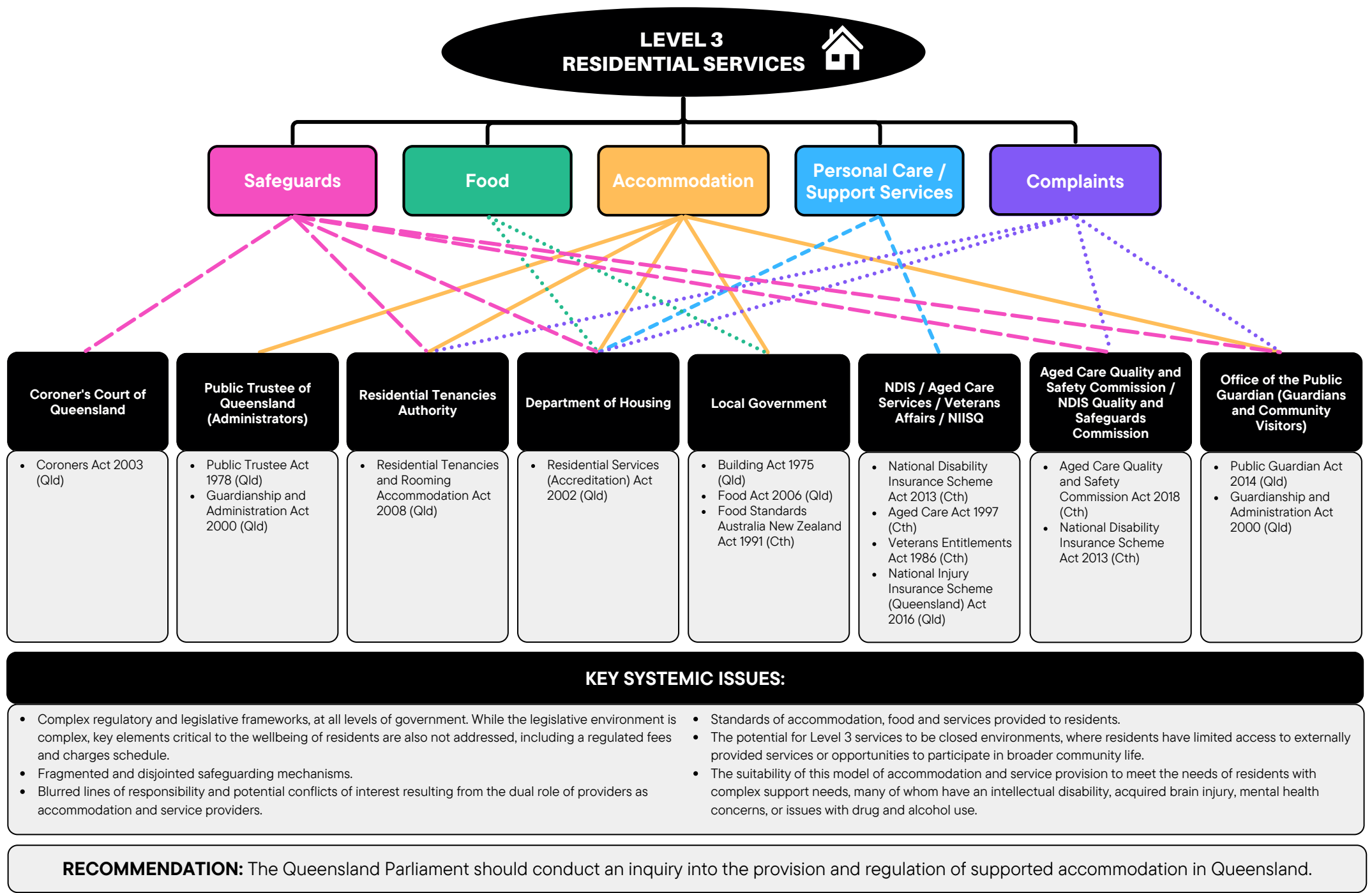


Figure 1. Overview of the legislative framework and key systemic issues for level 3 residential services in Queensland.

# Issues for level 3 residential services

Stakeholders identified a number of issues affecting the lives of people living in level 3 residential services, including people who may have impaired decision-making ability.

## Level 3 residential services within the broader housing and support context

During the consultation process, stakeholders raised the issue of where level 3 residential services sit within the broader housing and support sectors.

Level 3 residential services were often described by stakeholders as 'filling a gap' in the housing and support sectors. They were viewed by some as the private sector responding to an unmet need resulting from challenges people face in accessing support across multiple systems, including the housing, disability, aged care, mental health, and criminal justice systems. As a result, level 3 residential services are accessed by a range of people with complex needs.

Some were of the view that there are advantages associated with having level 3 residential services that can respond to a broad range of needs within the community. For example, this can enable the provision of services to people with complex disability who may otherwise have difficulty finding an appropriate specialised service.

However, several stakeholders noted that providing a general response to a wide range of needs may mean that a best practice response to the specific needs of residents within these settings is not always being provided.

Some stakeholders suggested that more specialised services are required to better meet the complex needs of many of the current residents of level 3 residential services. This could include, for example, specific services to address the needs of people with disability, or people who require aged care or mental health services, or people exiting the prison system. Stakeholders held different views as to whether these specialised services should be provided as elements of level 3 residential services, or whether they should be provided through other government portfolio areas such as disability, health, aged care, and justice.

Stakeholders also expressed varying views as to whether level 3 residential services should be considered housing or homelessness services.

Some explained that, for many residents, the level 3 residential service was their home and enabled them to avoid homelessness.

However, others noted that level 3 residential services in their current form may fall within the definition of homelessness adopted by the Australian Bureau of Statistics, which suggests that:

When a person does not have suitable accommodation alternatives, they are considered homeless if their current living arrangement:

- is in a dwelling that is inadequate; or
- has no tenure, or if their initial tenure is short and not extendable; or
- does not allow them to have control of, and access to space for social relations.<sup>49</sup>

Some stakeholders also noted that, as a consequence of level 3 residential services being viewed as housing services, residents are typically not regarded as homeless for the purpose of their interactions with homelessness services, which otherwise could provide them with access to supports and alternative forms of accommodation.

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<sup>49</sup> Australian Bureau of Statistics, *Information paper – A statistical definition of homelessness*, cat. no. 4922.0, 2012, p. 7.



In Australia and internationally, Housing First is considered to be a best practice model for responding to homelessness, particularly for people with complex needs.<sup>50</sup> A central feature of this model is the prioritisation of permanent housing. Housing and support are also separated under this model, meaning that housing is not conditional upon participating in support services or addressing other health and wellbeing issues.<sup>51</sup> For residents who access supports, they are able to continue to access these supports if they move into alternative housing. Residents can also access external service providers.

It is not clear how readily this best practice model could be adopted in level 3 residential services if they were to be considered homelessness services.

### Questions to consider

1. Is the current model by which level 3 residential services are provided – which typically sees private providers delivering accommodation and support services at the cost of a majority of a resident's Disability Support Pension – an appropriate one for Queensland into the future?
2. Should new models of service delivery that meet the needs of particular cohorts of residents (e.g. residents with significant mental health concerns or with significant drug and alcohol use) be trialled?

## Costs and charges

The fees charged to residents for accommodation, meals, and personal care in residential services are not regulated and the DOH has no oversight of the amount of money being charged by level 3 residential service providers. As a result, the amount can vary between services, as can the quality of services being received for this payment.

As noted, stakeholders reported that many level 3 residential service providers charge residents between 70 and 85 per cent of their pension (often the Disability Support Pension), and the full amount of any Rent Assistance payments that they receive. Some residents may also be paying fees for additional services.

While the amount charged for rent is not clear and would potentially differ across level 3 residential services, if it exceeds 30 per cent of a person's income, they may be considered to be in 'housing stress'.<sup>52</sup> Housing stress is when 'housing costs such as mortgage repayments or rent are more than 30% of the household disposable income, and the household is in the bottom 40% of the equivalised income distribution'.<sup>53</sup> This is used as an indicator of housing affordability, on the understanding that where the proportion of income spent on housing is too high, this will affect a person's ability to purchase other essentials.

Many stakeholders suggested that, for many residents, the amount charged for level 3 residential services can result in limited money being available to spend on other goods or services. This can also contribute to feelings of social isolation, as many residents may not be able to afford to travel to participate in social or community-based activities.

The cost of level 3 residential services can also act as a barrier to residents accessing appropriate supports. For example, one stakeholder noted that some people who need the personal care

<sup>50</sup> C. Roggenbuck, *Housing First: An evidence review of implementation, effectiveness and outcomes*, Australian Housing and Urban Research Institute Limited, Melbourne, 2022.

<sup>51</sup> C. Roggenbuck, *Housing First: An evidence review of implementation, effectiveness and outcomes*, Australian Housing and Urban Research Institute Limited, Melbourne, 2022.

<sup>52</sup> Australian Institute of Health and Welfare, *Housing affordability: Low income households in housing stress* <<https://www.housingdata.gov.au/visualisation/housing-affordability/low-income-households-in-housing-stress#:~:text=A%20household%20is%20considered%20in,income%20adjusted%20by%20household%20needs>>.

<sup>53</sup> Australian Institute of Health and Welfare, *Housing affordability: Low income households in housing stress* <<https://www.housingdata.gov.au/visualisation/housing-affordability/low-income-households-in-housing-stress#:~:text=A%20household%20is%20considered%20in,income%20adjusted%20by%20household%20needs>>.



provided within a level 3 residential service may instead choose to live in a service that does not provide personal care and is cheaper, as they consider the costs of level 3 residential services to be too high. Another stakeholder reported that some services may refuse potential residents whose income support payments are considered too low due to the types of financial support they are able to access.

Some stakeholders suggested that the fees charged to residents are reflective of the costs associated with operating these services.

Others suggested that, for some level 3 residential services, for example services where residents share a small room with others and the quality of the facilities, food and/or support provided is poor, the charges do not reflect a fair price or value for money for residents.

Stakeholders also reported that there is often limited transparency around how much residents are being charged for the different components of their accommodation and support, which can make it difficult to determine if a resident is being charged appropriately or if they are receiving the services for which they have been charged. This can be a particular problem for residents who are also receiving supports through the NDIS. This issue is discussed further below.

### Questions to consider

3. Are current charges for level 3 residential services reasonable?
  - a. Do they enable residents to have sufficient disposable income to ensure a reasonable quality of life?
  - b. Do they enable providers to deliver quality services on a financially viable basis?
  - c. Should a cap be placed on the amount that residents are able to be charged?
4. Should greater transparency be required of level 3 residential service providers concerning the fees charged for accommodation, food, and personal care services?

## Regulation

### Service standards

Stakeholders suggested that the quality of level 3 residential services varies across service providers. They noted that, while there may be some level 3 residential services where residents are receiving appropriate accommodation and supports, there are services where critical issues exist. Examples of issues described include:

- unsuitable physical environments, including issues with hygiene and cleanliness, accessibility, and appropriateness for people with disability;
- poorly maintained environments that create safety and privacy risks, for example broken locks on bathroom doors;
- a general lack of space and privacy for residents;
- strict house rules that limit residents' freedom and choice;
- poor food quality and/or an inadequate amount of food;
- limited access to food or snacks outside of designated meal times;
- difficulty accessing external service providers such as health care providers or advocates;
- difficulty accessing the broader community;
- challenges with relationships between residents, which can lead to conflict and concerns about personal safety;
- inadequate support services to meet residents' needs, or poor quality of personal care or support services.

Many of these concerns reflect issues that relate to the accreditation criteria for residential services.



Several stakeholders suggested that the current regulation of level 3 residential services is insufficient to ensure that all residents receive quality services. They expressed concern that there is limited regulation of the quality and appropriateness of personal care services provided within level 3 residential services, which can lead to significant variation in the quality of services provided.

Stakeholders also suggested that regulation relating to food services often focuses on hygiene standards, and that there is less emphasis on food quality or enabling residents to make choices about food or the time at which they eat. While a best practice guide that provides information about healthy eating in level 3 residential services is available and provides information on the preparation of nutritious meals, it is not clear how this is assessed during audits and in situations where complaints are made about these issues.

A review of deaths in care of people with disability, including in level 3 residential services, conducted by an expert panel for the Coroners Court of Queensland identified opportunities for the accreditation and assessment process to be improved through the tightening of the standards used.<sup>54</sup> The Panel's final report notes that:

Standards are provided for the accreditation and assessment processes in accordance with regulatory requirements, however the Panel determined that there appears to be a tick and flick approach to these assessments, with consensus among all members that while current standards are based on regulation, there was a need for them to be tightened.

For example, while there is a standard for how services and support should be provided, there is not one prescribed way of achieving this. Consequently, there were inconsistencies in the interpretation of the standards even within the nine facilities that were reviewed.<sup>55</sup>

The documentation used by the DOH to conduct audits in compliance with the legislation was not available at the time of writing this report. Consequently, the extent to which this issue may have been addressed since the publication of the expert panel's report is unclear.

The extent to which residents and relevant representative agencies are involved in processes relating to the regulation of level 3 residential services, including audits, is also unclear.

Some stakeholders also noted the need to ensure that models of level 3 residential services provide high standards of accommodation and services for people living in the community, and promote choice and control for residents. There exist concerns that the current system could enable a single service provider to control many aspects of a person's life and that many residents in these settings have limited contact with the broader community and risk becoming isolated. In this way, without appropriate oversight and monitoring, these settings can become quite institutionalised, which is linked to poor resident experiences and wellbeing.

### Questions to consider

5. Do current service standards set appropriate benchmarks for the provision of level 3 residential services, particularly in relation to personal care?
6. Should the assessment of whether level 3 residential services meet particular standards require more thorough evidence, including greater on-site monitoring and more direct engagement with residents and relevant representative agencies?
7. Should the residential services regulator be required to publicly report on the compliance of service providers with accreditation standards?

<sup>54</sup> Coroners Court of Queensland, *Deaths in care (Disability) Expert review panel final report*, n.d.

<sup>55</sup> Coroners Court of Queensland, *Deaths in care (Disability) Expert review panel final report*, n.d., p. 20.





## Staff

Under the *Residential Services (Accreditation) Regulation*, services that are accredited at level 3 are required to ensure that 'staff who provide personal care services hold a current qualification for the administration of first aid and cardiopulmonary resuscitation'.<sup>56</sup>

Many stakeholders suggested that, given the complex needs of many residents in these settings, this was not sufficient training to ensure residents receive appropriate care. They indicated that further training to support knowledge and skills in areas such as disability, mental health, de-escalation of conflict, and the provision of trauma-informed care, were required.

The ratio of staff to residents was also raised as a concern by stakeholders, who noted that this varies across providers, but that there were often too few staff on site given the complex needs of residents, particularly during weekends and outside business hours.

Given the complex, challenging, and often stressful situations that staff can be required to manage in these environments, some stakeholders also reported that there was often limited support for staff during and after any incidents that occur.

Inadequate staff numbers, training, and support can result in situations not being managed effectively, such as a failure to de-escalate problematic scenarios. This can increase the risk of incidents and harm to residents and staff.

In these situations, staff may call emergency services such as the Queensland Police Service or Queensland Ambulance Service (QAS) to assist, which contributes to demand on these services that could potentially have been avoided.

During the period from 1 January 2023 to 31 March 2023, the QAS received 859 calls to attend level 3 residential services. The most common reasons provided for the call were coded by the QAS as 'psychiatric/ abnormal behaviour/ suicide attempt' (162 calls, 18.9%), 'sick person' (137 calls, 15.9%), and 'chest pain' (115 calls, 13.4%). This further highlights the need for appropriate responses to mental health concerns in these settings.<sup>57</sup>

SAPA has recently received funding from the DCSSDS as a peak body for level 3 residential services, which includes funding to develop and implement training resources for staff working in these services with the aim of strengthening their capabilities and improving service delivery.

### Questions to consider

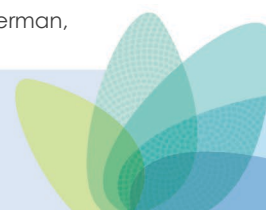
8. Are current minimum qualification and training requirements for staff of level 3 residential services appropriate?
9. How might greater assistance be provided to level 3 residential services to manage difficult scenarios, including those that occur outside business hours?

## The impact of the NDIS

The introduction of the NDIS has created opportunities for eligible people living in level 3 residential services to access disability-related supports and services. This has enabled some people to access funding for support that, previously, they would have had to pay for within their residential service. Some people may also be able to access additional support services through the NDIS that they would not be able to receive as part of a level 3 residential service.

<sup>56</sup> *Residential Services (Accreditation) Regulation 2018 (Qld) s 8(2)*.

<sup>57</sup> Letter and email attachment from Craig Emery, Commissioner, Queensland Ambulance Service, to John Chesterman, Queensland Public Advocate, 20 June 2023.





However, as noted in the MHLC interim report that explored issues relating to the NDIS and SRSs in Victoria:

The marketplace for disability supports is designed to work for people living with disabilities that have strong advocates and supportive families, with the capacity to navigate a complex system to identify and utilise effective supports. It is also built on trust that Australian businesses are run ethically and appropriately regulated.<sup>58</sup>

The operation of the NDIS in level 3 residential services in Queensland also creates some regulatory gaps and potential issues for residents, particularly those who have impaired decision-making ability and lack appropriate supports to navigate the system.

It should be noted that the NDIS is currently under review, and, amongst other potential changes, the Australian Government is considering whether people with psychosocial disability may be better supported by alternative systems and schemes outside of the NDIS in the future.<sup>59</sup> This may have implications for residents of level 3 residential services and the residential service sector.

### Conflicts of interest and transparency

In response to the introduction of the NDIS, many level 3 residential service providers have also become NDIS service providers. This is often achieved through the creation of a company to provide these services to residents that is separate to the company operating the level 3 residential service, but which is essentially operated by the same owners and management team.

There may be some benefits associated with having a level 3 residential service provider who also provides NDIS support services. For example, this will often mean staff members are familiar with residents and have established relationships, which could enhance the quality of care provided and support positive experiences of care for residents. This could also lead to increased efficiency and reduced costs for both the provider and the recipient of the support, as the service provider is often on-site and may be providing services to multiple residents.

However, this can also create conflicts of interest and issues with transparency.

There is little or no monitoring or regulation of the interface between services provided as a part of level 3 residential services and NDIS services, or payment for these services. This means that a person could receive the personal care support that would typically be provided as part of their level 3 residential service as part of their NDIS funded support, however the charge for their level 3 residential service may not be reduced to reflect this arrangement.

Many residents of level 3 residential services in Queensland are also under financial administration with the Public Trustee, and Public Trustee Officers are not permitted to view their clients' NDIS plans due to NDIA privacy policies. In the situation of level 3 residential services, this creates significant issues. It can mean that the Public Trustee may be authorising an accommodation and services payment to the level 3 residential service provider while having no knowledge of the type of disability supports being funded in their NDIS plan and whether they cover some of the services due to be provided under a level 3 residential service arrangement. This means that the accommodation service provider and the NDIS service provider can be paid twice for the provision of the same service – once by the NDIS as a funded disability support for the participant and again by the resident as part of their accommodation and services payment.

These issues with transparency and a lack of clear oversight can also create uncertainty about the extent to which residents are receiving the services that they are being charged for or that form part of their NDIS plan.

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<sup>58</sup> Mental Health Legal Centre, *Multiagency Choice and Control Project, 3-month interim report, 2023*, p. 1.

<sup>59</sup> J. Evans, 'People with psychosocial disability may be diverted from NDIS in future, as government forecasts 27,000 reduction in participant growth', *ABC News*, 28 June 2023 <<https://www.abc.net.au/news/2023-06-28/psychosocial-disability-ndis-future-inclusion/102534200>>.



There are also concerns that these arrangements can limit resident choice and control. Stakeholders reported that in some situations, residents may be discouraged or prevented from engaging external service providers to provide NDIS related supports, or may be forced to select the preferred NDIS service provider of the level 3 residential service.

It may also be difficult for residents to:

- change their NDIS service provider due to actual or perceived risk that it may affect their accommodation arrangements; or
- move out of the level 3 residential service as this could require them to change their NDIS service provider where the provider is essentially attached to the residential service.

Stakeholders reported that some providers also have separate companies that cover the full range of available NDIS supports, including supported independent living (SIL), support coordination, and plan management. This can mean that there is limited access to the site by any other independent external service providers, and limited oversight of service quality and the extent to which services are being delivered in accordance with a person's plan.

It was also noted by a stakeholder that some providers are asking residents to sign rooming agreements that specify conditions and payments around their NDIS supports. If a resident's tenancy is tied to their NDIS package, losing funding, or having their funding reduced, could affect their accommodation arrangements.

This is a particular concern for residents who may have the Public Trustee appointed as their financial administrator, as the Public Trustee will not sign these agreements due to not having oversight of their clients' NDIS plans.

While most stakeholders who participated in the consultation for this project raised this issue in relation to the NDIS and level 3 residential services, similar issues exist with support received through other sectors such as the aged care sector. It should also be noted that the integration of accommodation and personal supports is a central feature of the current model of level 3 residential services.

### Questions to consider

10. Further to question 4, should greater transparency be required concerning the fees that are charged to residents when their level 3 residential service provider, or a closely related entity, also provides them with NDIS-funded services?
11. When a level 3 residential service resident chooses their accommodation provider, or a closely related entity, as their NDIS service provider, what evidence should the service provider be required to provide to demonstrate that the resident has exercised an independent choice?
12. Is the monitoring of NDIS-funded services provided to residents of level 3 residential services adequate?

## Abuse, neglect, and exploitation of NDIS participants

There are reports that NDIS participants with high-value support packages living in residential services, or similar services, may be at risk of abuse, neglect, and exploitation.

The report recently released by the MHLC on SRSs in Victoria noted that:

'Choice and control' for people living with psychosocial disabilities in congregate care environments is only theoretical. The current system enables, and in many cases facilitates and financially rewards, exploitative and coercive practices. These practices include limiting



access to supports, neglect, emotional manipulation, bribery, financial abuse and kidnapping.<sup>60</sup>

Stories have emerged about residents being financially abused and coerced into changing accommodation providers to enable unscrupulous providers to access their NDIS funds. For example:

There is a growing trend of predatory companies utilising Supported Independent Living (SIL) resources to increase their income revenue. Currently companies can collect residents, take them to undisclosed locations and syphon the funding from their packages.<sup>61</sup>

While stakeholders did not directly discuss these issues during the current project, there are concerns that similar practices may exist in other states and territories, including Queensland.

## Oversight and safeguards

There are also concerns that if all residents of a level 3 residential service receive NDIS supports (from either the level 3 residential service itself if they are also an NDIS service provider, or an external NDIS service provider), then the owner or manager of the residential service can reduce their accreditation level from level 3 to level 1 (or level 1 and 2) only. This means that a key safeguard afforded to people living in level 3 residential services, visits from the Queensland Public Guardian's official Community Visitor Program, are no longer provided. In this way, the interface between residential services and the NDIS effectively creates an avenue through which level 3 residential service providers can avoid this oversight.

In addition to visiting level 3 residential services, community visitors are able to visit accommodation settings where some relevant classes of support are provided under the NDIS, which would potentially include some level 1 or 2 residential services. The classes of support include:

- a) high intensity daily personal activities;
- b) assistance with daily life tasks in a group or shared living arrangement;
- c) specialist positive behaviour support that involves the use of a restrictive practice;
- d) specialist disability accommodation.<sup>62</sup>

The *Public Guardian Act* currently includes a positive obligation on NDIS service providers that provide these classes of support to give the Public Guardian required information, which includes the providers' contact details as well as the 'address of each visitable site at which the registered NDIS provider'<sup>63</sup> provides those services or supports listed above.

It remains very difficult, however, to determine whether all residential service providers are both aware of, and comply with, this obligation.

When community visitors do visit level 3 residential services, they may also face barriers in speaking to residents and identifying issues.

The MHLIC interim report recently noted some potential challenges for community visitors trying to visit SRSs in Victoria:

When people, including regulators and community visitors, visit residents to check in with them, managers insist on being present. Whilst this is presented as safeguarding, it makes it impossible to safely discuss with residents any issues of concern that involve the accommodation.<sup>64</sup>

Oversight of services and service providers is further reduced in situations where the service provider is an unregistered provider of NDIS supports.

<sup>60</sup> Mental Health Legal Centre, *Multiagency Choice and Control Project, 3-month interim report, 2023*, p. 1.

<sup>61</sup> Mental Health Legal Centre, *Multiagency Choice and Control Project, 3-month interim report, 2023*, p. 2.

<sup>62</sup> *Public Guardian Act 2014* (Qld) s 39 (definition of 'relevant class of supports').

<sup>63</sup> *Public Guardian Regulation 2014* (Qld) s 4.

<sup>64</sup> Mental Health Legal Centre, *Multiagency Choice and Control Project, 3-month interim report, 2023*, p.7.



All NDIS providers are required to comply with the Code of Conduct and have a mechanism for the management of complaints.

However, only registered providers must adhere to other requirements, such as compliance with NDIS Practice Standards, audits, and notifying the NDIS Quality and Safeguards Commission of reportable incidents.<sup>65</sup>

There are some services that must be delivered by registered NDIS service providers. These include:

- specialist disability accommodation
- supports or services during which there is or is likely to be a need to use a regulated restrictive practice
- specialist behaviour supports that involve undertaking behaviour support assessment of the participant or developing a behaviour support plan for the participant.<sup>66</sup>

However, there is no requirement for service providers providing other services to become registered.

Some NDIS service providers operating within level 3 residential services could be unregistered providers and subject to less oversight by the NDIS Quality and Safeguards Commission than registered NDIS service providers.

The reduced oversight and safeguards are a particular concern where the NDIS service is owned by or linked to the level 3 residential service provider and is the only provider of NDIS services for residents, as this means there will be limited engagement with external, independent services and organisations. This will also mean that there is limited independent oversight of whether services are actually being provided, or whether the services are being delivered appropriately and in accordance with a person's NDIS plan.

#### Question to consider

13. How can existing safeguards be improved to provide better protections for residents living in level 3 residential services?

## Home modifications

While there are many residents with disability living in level 3 residential services, stakeholders noted that the physical environment at some sites is inappropriate for people with disability. This affects residents' safety, wellbeing, and their ability to participate in activities.

Some residents may be able to access funding for home modifications through the NDIS to improve the accessibility of their living environment. However, there may also be reluctance from the NDIS to fund modifications in what is considered by many to be temporary or transitional accommodation. Further, some level 3 residential service providers may be reluctant to allow significant modifications to be made, even if funding is available, particularly in shared spaces. Should any modifications be made, if the resident later wants or needs to move out, they may also be faced with needing to remove the modifications using NDIS funding or at their own expense.

## Promoting skills and independence

Stakeholders also raised concerns about support for residents aiming to build their skills or maintain their independence while residing in level 3 residential services.

<sup>65</sup> NDIS Quality and Safeguards Commission, *Unregistered provider obligations* (07 July 2022) <<https://www.ndiscommission.gov.au/providers/registered-ndis-providers/provider-obligations-and-requirements/unregistered-provider>>.

<sup>66</sup> NDIS Quality and Safeguards Commission, *Unregistered provider obligations* (07 July 2022) <<https://www.ndiscommission.gov.au/providers/registered-ndis-providers/provider-obligations-and-requirements/unregistered-provider>>.



For example, under the NDIS (as well as other care and support systems such as aged care), eligible residents may receive funding for support with the preparation of food, with the aim of supporting or developing their skills and independence.

Some level 3 residential services may have a kitchen that can be used for this purpose.

However, residents' use of kitchens can create issues where the level 3 residential service provider provides meals for residents and has received level 2 residential service accreditation.

Level 3 residential services that provide meal services are required to have commercial kitchens and adhere to the Australia New Zealand Food Standards Code. This includes the requirement that:

- persons undertaking or supervising food handling operations have –
  - (a) skills in food safety and food hygiene matters; and
  - (b) knowledge of food safety and food hygiene matters, commensurate with their work activities.<sup>67</sup>

This means that, unless there is also a separate kitchen for private use, residents in these settings are typically not able to use the commercial kitchen, and their food must instead be prepared by trained staff. This does not support or promote the independence or skill development of residents.

#### Question to consider

14. Are there unintended consequences from the participation of residents of level 3 residential services in the NDIS that warrant regulatory reforms?

## Safeguards

Many stakeholders indicated that there are limited safeguards to protect the human rights and safety of residents living in level 3 residential services, and to ensure an appropriate response when a situation of concern arises.

Several topics relating to safeguards for residents of level 3 residential services have already been discussed in this report.

For example, the regulation and accreditation of service providers forms a key safeguard for residents. However, many stakeholders felt that the current standards are insufficient to protect residents' rights and safety.

Community visitors can also provide a key safeguard for people living in level 3 residential services. However, in situations where personal care services are provided through a registered NDIS provider as part of a resident's NDIS package, service providers are able to reduce the level of service accreditation to level 1 or 2, effectively limiting access to this safeguard for residents. (See the discussion on p. 35 concerning the NDIS service settings visited by community visitors.)

Stakeholders also identified additional concerns relating to safeguards for residents, including a lack of clear accountability, challenges with complaints mechanisms, and limited tenancy protections.

They also noted the importance of building the skills of residents to understand their rights and their confidence in engaging with these safeguards.

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<sup>67</sup> Australia New Zealand Food Standards Code, Standard 3.2.2 Food safety practices and general requirements (Australia Only) 1994 s 3(1).



## Accountability

Multiple agencies are involved in the regulation of level 3 residential services and the services that residents receive in these settings. This can lead to confusion about the agency responsible for particular issues, and a fragmented approach to safeguarding the rights and wellbeing of residents.

Similar issues were highlighted in SRs in Victoria, with the recent MHLC report noting that:

With so many regulatory authorities there is no clear accountability for the conditions that people living with psychosocial disability are subjected to.<sup>68</sup>

The extent to which regular communication or collaboration occurs between these agencies in Queensland is unclear.

## Complaints mechanisms

Navigation of the complaints process provides an example of how a lack of clear accountability within the sector can prevent timely responses to issues of concern.

If a resident in a level 3 residential service has a complaint or issue they would like to raise, there are a number of agencies that they may be able to report the issue to, depending on the type of concern.

Residents may be able to raise their concerns directly with the level 3 residential service provider.

They may also be able to escalate some complaints, for example those that relate to issues addressed in the residential service accreditation criteria, to the DOH.

The RTA provides a dispute resolution process for resolving tenancy disputes. If the matter is unable to be resolved or is considered unsuitable for conciliation, for example disputes about the provision of food services and personal care services to a resident who has signed a rooming accommodation agreement, an application can be made to the Queensland Civil and Administrative Tribunal for a decision.<sup>69</sup>

If the resident is receiving NDIS services or aged care services while living in a level 3 residential service, they are able to report issues and complaints about these services to the NDIS Quality and Safeguards Commission or the Aged Care Quality and Safety Commission.

Residents in level 3 residential services can also speak to community visitors from the Office of the Public Guardian, who are able to lodge complaints with relevant agencies on their behalf.

Given the number of agencies that can be involved, stakeholders report that it is often confusing and unclear to residents who they should contact about their complaint or concern. For people with impaired decision-making ability or other complex needs, it can also be difficult to navigate these systems without assistance.

Stakeholders also noted that there is often no single appropriately identified agency to speak to about concerns relating to the quality of personal care supports provided as part of level 3 residential services.

There can be further uncertainty in situations where a service provider is both the provider of level 3 residential services and NDIS services. One stakeholder noted challenges with matters that relate to both accommodation and NDIS support services. There can be further issues in situations where the

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<sup>68</sup> Mental Health Legal Centre, *Multiagency Choice and Control Project, 3-month interim report, 2023*, p. 4.

<sup>69</sup> Residential Tenancies Authority, *Matters unsuitable for conciliation* <<https://www.rta.qld.gov.au/disputes/matters-unsuitable-for-conciliation>>.





provider is an unregistered NDIS service provider, and therefore is not subject to the same oversight and monitoring as registered services.

Stakeholders noted that some residents may not be aware that they are able to lodge a complaint, or may prefer not to make a complaint due to fear that it may have an impact on the accommodation or supports that they receive.

If a resident does make a complaint, for example to their level 3 residential service provider, the process for escalating their concerns is not clear.

Stakeholders suggested that many residents could benefit from access to independent advocacy, which can support the resident to understand their rights and help them to have their preferences or concerns heard. However, several stakeholders also noted that it can be difficult for residents to access this type of support, as many may not be aware that they are able to contact an advocate for assistance. Additionally, some residents may not have access to their own phone and instead use a shared phone, which may be located in or near the manager's office. This may deter some residents from seeking assistance.

Some stakeholders also reported that it can be difficult for advocates to obtain entry to some services to speak with residents. However, others reported that they did not have any problems entering services. It is likely that there are differences across services in how access by external service providers, including advocates, is managed.

#### Question to consider

15. Should a 'no wrong door' approach be established under which residents of level 3 residential services are assisted to lodge complaints about service provision across a range of service sectors, including the accommodation, NDIS, and aged care sectors?

### Protections for tenancy under rooming agreements

Some stakeholders expressed concerns that rooming agreements have limited protections for people in level 3 residential services, as the period of notice required for a Notice to Leave is typically shorter for rooming agreements compared to general tenancy agreements.<sup>70</sup>

Stakeholders expressed particular concern that residents could be given a Notice to Leave immediately where the provider believes that:

- (a) the resident has used the resident's room or common areas for an illegal purpose; or
- (b) the resident, or a guest of the resident, has intentionally or recklessly—
  - (i) destroyed or seriously damaged a part of the rental premises or a facility in the rental premises; or
  - (ii) endangered another person in the rental premises; or
  - (iii) significantly interfered with the reasonable peace, comfort or privacy of another resident or another resident's appropriate use of the other resident's room or common areas.<sup>71</sup>

In comparison, tenants in public or community housing must be given seven days' notice to leave on the grounds of a serious breach.

Stakeholders noted that, for people in level 3 residential services, immediate eviction results in the loss of both their accommodation and any supports provided as part of the service. They also risk losing access to other funded supports, such as those provided under their NDIS package, if they are not able to find alternative accommodation in which their service provider can deliver these services.

<sup>70</sup> QSTARS, *Lessor ends the tenancy*, <<https://qstars.org.au/tenancies/lessor-ends-the-tenancy/>>.

<sup>71</sup> *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) s 370(1).



Securing alternative accommodation can be a challenge for people living in level 3 residential services, so immediate eviction often results in the person having nowhere else to go, with limited assistance to identify suitable alternative accommodation or to access necessary support services.

Some stakeholders also suggested that the criteria for a serious breach of a rooming agreement can create challenges due to the complex needs and behaviours of many residents, particularly where people are not in an appropriate environment or are not receiving appropriate support to assist with a de-escalation or change in particular behaviours.

In situations where a resident has left a level 3 residential service, either of their own choosing or following a Notice to Leave, bond disputes can also be challenging to navigate. Residents often share rooms with others, so it can be difficult to determine responsibility for any damage caused to the property. One stakeholder also noted that when a service provider claims the bond, it can be difficult for people to dispute this, as they may not be able to navigate the system. Additionally, if the person is evicted from the level 3 residential service, they may be forced to stay in improvised dwellings or to sleep rough, which means that they may be unable to access the support or resources required to dispute this claim.

### Question to consider

16. Do current regulatory requirements concerning rooming agreements adequately protect the rights of residents of level 3 residential services?

## Informal safeguards and capacity building

In addition to formal safeguarding mechanisms, such as those described above, informal safeguards such as self-advocacy and networks of support can also provide an important safeguard for residents of level 3 residential services.

The Safeguards and Quality Issues Paper published by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability describes a number of informal safeguards that, when combined with formal safeguarding mechanisms, can assist to promote autonomy, independence and control while also supporting safety.<sup>72</sup> Examples of informal safeguards include:

- building individuals' skills, independence and confidence
- supporting people from specific cultural groups, such as First Nations and culturally and linguistically diverse communities to build their understanding and knowledge of disability-specific supports and services
- enabling self-advocacy to empower people with disability to identify concerns and speak out when they arise
- communication supports and informal advocacy for people with disability who require them, for example having a trusted person attend when being admitted to hospital
- building a network of trusted individuals around a person with disability to provide informal oversight and support which may include professional disability advocates
- additional support that may be needed by people who do not have informal supports (such as family or other advocates), people who face communication barriers, and people with high support needs.<sup>73</sup>

Stakeholders noted that there are residents in level 3 residential services who do not understand their rights or the actions they can take if they have concerns or complaints about the services that they are receiving.

<sup>72</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Issues paper: Safeguards and quality* (2020).

<sup>73</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Issues paper: Safeguards and quality* (2020) pp. 3-4.





As noted above, some residents may also be reluctant to make complaints due to fear of their services or support being affected. Others may need support to make complaints or to navigate systems for complaints management, such as from a family member or friend, or an advocate.

### Questions to consider

17. What additional steps should be taken to ensure that residents of level 3 residential services understand and are able to exercise their rights?
18. How can the voice of residents become more central to the regulation of level 3 residential services?

## Access to sufficient and appropriate supports

Many stakeholders expressed concerns about the appropriateness of supports received by residents in level 3 residential services, including personal care received as a component of the level 3 residential service, and supports provided by other systems.

### The suitability of personal care services in level 3 residential services

As noted, stakeholders described concerns relating to the quality of personal care services and the adequacy of staff training to meet the often-complex needs of people living in these settings.

They also indicated that while the personal care provided by level 3 residential services could include assistance with medication, day-to-day finances, and hygiene management, in practice the support provided is often limited to assisting residents with their medication. It is not clear if, in some circumstances, this may be due to other supports being provided as part of a resident's NDIS package, or as a result of resident preferences.

Stakeholders also suggested that the level of personal care provided as part of level 3 residential services was typically insufficient or unsuitable to meet the needs of many of the people living in these settings who may have complex needs relating to their disability, mental health, or drug and alcohol use.

This is a particular concern for residents with complex needs who require higher levels of support but who are not eligible for funding and support under government systems and schemes such as the NDIS and the aged care system, or who choose not to engage with these systems.

The Coroners Court of Queensland Deaths in Care (Disability) report also discussed this issue, noting that there may be people living in level 3 residential services whose needs would be more appropriately managed in other settings. The report noted that:

persons with high care needs should not be in certain types of supported accommodation, as their care needs exceeded that which could reasonably be expected to be provided in these types of settings (i.e., level 3 residential services).<sup>74</sup>

It is not clear how providers of level 3 residential services currently determine whether the needs of a potential or current resident can be, or are being, appropriately met by their current staff and the types of services they offer. There does not appear to be a standardised process for this, so this may vary across service providers.

The project being undertaken by the DCSSDS and SAPA, which seeks to develop a non-clinical assessment tool for use in level 3 residential services, may support providers to conduct more standardised assessments of resident needs in the future. However, it is not clear if this tool could

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<sup>74</sup> Coroners Court of Queensland, *Deaths in care (Disability) Expert review panel final report*, n.d., p. 18.



also be used to determine whether the accommodation would be suitable for a potential resident or if other housing and support services would better meet their needs.

#### Questions to consider

19. Should a standardised intake assessment process be developed and implemented for potential residents of level 3 residential services to ensure that their accommodation and support needs will be able to be met in this setting?
20. How might the service and support needs of level 3 residential services be reliably and regularly assessed?

### Access to funding and supports through other systems

Residents of level 3 residential services who may be eligible to receive support through other systems, such as the NDIS and aged care, can experience a range of challenges in accessing this support.

Stakeholders noted that some residents' NDIS packages are insufficient to meet their support needs, particularly those with complex needs. There may be a number of reasons that participants are not receiving sufficient NDIS services or funding, however some stakeholders noted that people living in level 3 residential services often lack the informal support to assist them to advocate for additional funding and supports.

Other stakeholders described situations where residents of level 3 residential services have appropriate NDIS packages, but do not have the skills or support to effectively use their funding.

Additionally, stakeholders noted that there are residents who are not eligible for supports through the NDIS, aged care, or other national or state-based schemes, or who are not willing to engage with these systems, and therefore do not receive any support other than the limited services provided by the level 3 residential service provider.

Residents may also need to engage with multiple government systems and often will have limited support to assist them in navigating these complex interfaces, which can prevent them from accessing the support that they require.

Several stakeholders suggested that many residents, and particularly those with complex needs, may require assistance from a case manager, or someone with a similar role, to support them to navigate systems and access the services that they need.

One stakeholder also noted that, prior to the introduction of the NDIS, the Queensland Government had provided funding for some services that could be accessed by residents of some level 3 residential services. Relevant examples include funding for support with showering and visits from mental health professionals and dentists. Funding for these services is no longer provided at a state level, which undoubtedly reduces service access for some residents.

#### Question to consider

21. Should greater assistance be provided to residents of level 3 residential services who need to navigate and engage with multiple service systems (including in the fields of housing, NDIS, aged care, mental health, alcohol and other drugs, and the justice system)?



## Access to external service providers

Even if residents are able to pay for, or secure funding for, support services in addition to those provided as part of the level 3 residential service, stakeholders noted that they can experience challenges in accessing external service providers to deliver these supports.

Access to service providers is a matter considered as part of the level 1 accreditation process, including that:

- Residents have full access to each of the following (each an **external service provider**)—
  - (a) an advocate;
  - (b) a professional case worker;
  - (c) other providers of health, disability, welfare or other professional services.
- Residents who have asked for help from an external service provider have full access to the external service provider by way of visits to or from the external service provider.
- Residents have the freedom to choose external service providers, who are independent of the service provider, without fear of retaliation.<sup>75</sup>

Access to external service providers is also a matter considered for accreditation as a level 3 residential service, including that 'personal care services for residents are delivered, to the extent possible, through entities external to the residential service'.<sup>76</sup>

However, several stakeholders suggested that there were some level 3 residential services where access to external providers was refused, or where it was made very difficult for residents to access these services.

The physical environment within level 3 residential services can also create barriers to contacting external services. For example, one stakeholder noted that it could be difficult for residents to contact an independent advocate as they may need to use the shared phone provided by the accommodation service, which they may have to wait to use as it is shared with others. The phone may also be located in an area that lacks privacy, which may deter residents from contacting external services.

Some stakeholders also suggested that some external service providers avoid delivering services in some residential services due to concerns about the safety of their staff.

As noted in the section about the NDIS, stakeholders also raised concerns about situations where the services used by residents were also owned by the level 3 residential service provider, meaning that there is effectively only one service provider involved in all aspects of a person's care and support.

### Question to consider

22. What changes are required to ensure that residents of level 3 residential services are able to access external services, including advocacy services?

## Other issues

### Unregistered residential services

Registration and accreditation are a requirement for providers of residential services that meet the criteria established in the *Residential Services (Accreditation) Act*.<sup>77</sup> However, a number of

<sup>75</sup> *Residential Services (Accreditation) Regulation 2018* (Qld), s 6(2).

<sup>76</sup> *Residential Services (Accreditation) Regulation 2018* (Qld), s 8(2).

<sup>77</sup> *Residential Services (Accreditation) Act 2002* (Qld) s 4.



stakeholders suggested that there are services that meet the criteria for residential services, but that are not registered.

In some cases, the introduction of the NDIS may have contributed to confusion about the need to register services, as previously disability accommodation services that were provided under the *Disability Services Act 2006* (Qld) were considered exempt from registering as residential services. However, now that many disability supports are provided under the NDIS, services that meet the criteria for residential services are required to register.

To address this issue, the DOH is undertaking work to communicate with providers of accommodation (other than existing residential services) and assist them to determine if they should be registered and accredited as a residential service provider.

However, the identification of unregistered services that meet the registration criteria remains a challenge.

### Question to consider

23. How might unregistered services that meet the current level 3 residential services criteria, and that are therefore required to obtain registration and accreditation, be more reliably identified?

## Emerging, unregulated models of accommodation

There are also models of accommodation emerging that offer similar services to level 3 residential services to a similar cohort of people, but that do not meet the criteria for residential services, and are therefore largely unregulated.

One example is accommodation where supports and services are provided, however residents have access to kitchenettes and ensuites and do not have to share these facilities, meaning that these settings do not fall within the definition of residential services.

Another example is group housing provided to residents who receive NDIS SIL funding, sometimes referred to unofficially as 'SIL housing' that, in some cases, is not required to register as a residential service in Queensland, depending on the tenancy arrangements in place.

Stakeholders expressed concerns that many of these accommodation services appear to target their services towards people with disability or complex needs who may be at risk of abuse or exploitation, with limited regulation and safeguards to protect their human rights and wellbeing.

Many of these models may reflect a response to unmet need in the housing market and may provide an opportunity for people to move out of level 3 residential services and into an alternative form of housing.

It is critical that people who reside in level 3 residential services are able to choose (or be supported to choose) their living arrangements and that they are able to move out of residential services and into alternative housing arrangements where this is their preference.

However, stakeholders expressed concerns that some residents may be forced or coerced into moving into alternative accommodation and that people may be at greater risk of abuse, neglect, or exploitation in these unregulated environments.

Similar concerns have been raised about accommodation in other states, including in SRSs in Victoria.

The recent MHLC interim report highlighted a range of unscrupulous practices by accommodation providers that seek to take advantage of residents, particularly those with high-value NDIS



packages. This includes the use of fast food and cigarettes to convince residents to change providers, moving residents to undisclosed locations overnight, and separating people from their support networks.<sup>78</sup>

When concerns are identified about arrangements in these emerging models of accommodation, particularly in relation to the quality of accommodation and support, there is no clear agency with the responsibility and powers to investigate and address these issues.

### Question to consider

24. What regulatory steps should be taken to better protect residents of level 3 residential services from predatory provider behaviour?

## Decision-making

For people with impaired decision-making ability, finding and securing accommodation can be further complicated by the existence of other people who are legally responsible for some of their personal decision-making, such as a guardian, attorney under an enduring power of attorney, plan nominee under the NDIS, or other representative for decision-making. They may also have a person appointed for financial decisions, such as an administrator, attorney, or nominee in the social security system and NDIS, who may also need to be involved in accommodation-related decisions. If a person has both kinds of decision-maker (personal and financial), they may not necessarily be the same person or entity.

The RTA has produced a fact sheet with information for when residents, or potential residents, may have impaired decision-making ability and are renting rooms in rooming accommodation that is covered by the *Residential Tenancies and Rooming Accommodation Act*.<sup>79</sup>

However, it can be difficult for level 3 residential service providers to find out whether a person has decision-making ability and is legally able to sign documents, or whether a person has an appointed decision-maker or may require a decision-maker to be appointed.

In situations where a person does have an appointed decision-maker, it can be difficult for the level 3 residential service provider to identify the person and contact them when a decision is required.

Stakeholders noted that, for clients who have the Public Guardian appointed for decisions related to accommodation, it can be difficult to contact the guardian on weekends and after hours. The timeliness of decision-making by appointed guardians was also said to be an issue, as delays can result in people losing their place in their preferred accommodation setting when trying to enter level 3 residential services or transition to alternative housing arrangements.

Stakeholders also noted that the Public Trustee will not sign general tenancy agreements for clients as a protective measure to ensure that a resident does not have to share responsibility for unpaid rent or damage caused by other residents. While being protective of a person's finances, an unintended consequence of this practice is to limit the options available for those looking to move out of level 3 residential services and into alternative housing arrangements, particularly when looking to share accommodation with others.

One stakeholder also noted that some level 3 residential service providers may apply to the Queensland Civil and Administrative Tribunal to challenge a person's decision-making ability and apply for a guardianship order, in an attempt to prevent the person from moving out.

<sup>78</sup> Mental Health Legal Centre, *Multiagency Choice and Control Project, 3-month interim report*, 2023.

<sup>79</sup> Residential Tenancies Authority, *Residents with impaired capacity*, fact sheet, 2021.



In Victoria, there are also reports of people seeking to have guardians appointed for residents in SRSs to help protect them from abuse or exploitation.<sup>80</sup> As was noted in the MHLC interim report:

It has been necessary to take out guardianship on behalf of some particularly vulnerable residents to protect them from kidnap but this is fraught with difficulties as a system-wide protection or response to risk.<sup>81</sup>

There is increasing recognition of the importance of shifting away from models of substitute decision making towards supported decision making wherever possible to enable people to make their own decisions and exercise their legal capacity. However, the extent to which supported decision making occurs within these environments is unclear.

#### Question to consider

25. How might residents, and potential residents, of level 3 residential services be better supported to make their own accommodation and service-related decisions?

### The impact of zero tolerance policies

Rooming agreements and provider policies can also create challenges in maintaining tenancies for people with complex conditions that include drug and alcohol use.

In Australia, the National Drug Strategy 2017-2026 adopts a harm minimisation approach, which does not condone drug use, but rather recognises that:

drug use carries substantial risks, and that drug-users require a range of supports to progressively reduce drug-related harm to themselves and the general community, including families.<sup>82</sup>

Stakeholders suggested that many level 3 residential service providers implement 'zero tolerance' policies in relation to drug and alcohol use on site. This means that the use of drugs or alcohol could result in immediate eviction from the property.

While these policies have likely been implemented with the aim of protecting residents and staff, stakeholders noted that this was not consistent with a harm minimisation approach. This was a particular concern given that problematic alcohol or drug use may be a key issue for many people living in level 3 residential services.

One stakeholder also suggested that fear of eviction due to zero tolerance policies may also prevent some residents from seeking assistance for issues relating to drug and alcohol use, including from medical and emergency services, which can have serious consequences.

#### Question to consider

26. Has the adoption of 'zero tolerance' policies by some level 3 residential service providers had unintended consequences that require a regulatory response?

### The use of restrictive practices

Several stakeholders raised concerns about the use of restrictive practices within level 3 residential services, noting that the extent to which these practices are being appropriately authorised and used in these settings is unclear.

<sup>80</sup> Mental Health Legal Centre, *Multiagency Choice and Control Project, 3-month interim report, 2023*.

<sup>81</sup> Mental Health Legal Centre, *Multiagency Choice and Control Project, 3-month interim report, 2023*, p. 5.

<sup>82</sup> Department of Health, *National Drug Strategy 2017-2026*, 2017, p. 6.





Restrictive practices restrict the rights or movement of a person and include seclusion, physical restraint, mechanical restraint, chemical restraint, or environmental restraint. These practices affect the human rights of the person on whom the practices are used, so it is critical that they are used only as a last resort and with appropriate authorisation.<sup>83</sup>

As the Public Advocate's reports on adult safeguarding in Queensland discussed, the process for authorising restrictive practices in Queensland is complex and can create a level of uncertainty for service providers.<sup>84</sup> There are also a range of challenges associated with the consent-based model of authorisation, which have been detailed in the Public Advocate's reform options paper titled *Improving the regulation of restrictive practices in Queensland: a way forward*,<sup>85</sup> and more recently, an article published in the *Australian Ageing Agenda* titled 'A way forward on restrictive practice regulation'.<sup>86</sup>

Volume Two of the Public Advocate's Adult Safeguarding in Queensland Report recommended that:

The Queensland Government should adopt a senior practitioner model for the authorisation of restrictive practices that can be utilised across sectors including the disability, aged care, and health sectors.<sup>87</sup>

A review of the framework for the authorisation of restrictive practices for disability services in Queensland is currently underway.

### Question to consider

27. How should the use of restrictive practices in level 3 residential services be minimised and more effectively regulated?

## Emergency and disaster planning

During the recent COVID-19 pandemic, new concepts surrounding health management were introduced to emergency management.

Currently, under the *Residential Services (Accreditation) Regulation*, the following matters are considered as part of level 1 accreditation:

### Security and emergencies

- The service provider has a safety and emergency plan that includes procedures for any situation requiring immediate attention and remedial action, including, for example, a serious incident or extreme weather event at the service.
- Staff and associates of the service provider are aware of, trained in and capable of implementing the procedures in the safety and emergency plan.
- The service provider takes reasonable action to ensure residents are aware of the procedures in the safety and emergency plan.
- The service provider takes reasonable action to ensure emergency services personnel and vehicles have access to the registered premises at all times.<sup>88</sup>

However, the development of these requirements pre-dates the COVID-19 pandemic and may need to be reviewed.

<sup>83</sup> The Public Advocate (Qld), *Improving the regulation of restrictive practices in Queensland: A way forward*, reform options paper, 5 October 2021.

<sup>84</sup> Public Advocate (Qld), *Adult safeguarding in Queensland, Volume 1: Identifying the gaps*, July 2022; Public Advocate (Qld), *Adult Safeguarding in Queensland, Volume 2: Reform recommendations*, November 2022.

<sup>85</sup> The Public Advocate (Qld), *Improving the regulation of restrictive practices in Queensland: A way forward*, reform options paper, 5 October 2021.

<sup>86</sup> J. Chesterman, *A way forward on restrictive practice regulation*, *Australian Ageing Agenda*, 2023.

<sup>87</sup> Public Advocate (Qld), *Adult Safeguarding in Queensland, Volume 2: Reform recommendations*, November 2022.

<sup>88</sup> *Residential Services (Accreditation) Regulation 2018* (Qld) s 6(3).





### Question to consider

28. Are current disaster planning measures adequate across level 3 residential services?

## Pathways out of level 3 residential services

Most stakeholders suggested that level 3 residential services would ideally be transitional accommodation and supports accessed by people while they seek alternative appropriate and stable accommodation and support services.

In practice, there appear to be limited pathways out of level 3 residential services for those who wish to leave, which can result in many people becoming 'stuck' in these settings.

Residents seeking to move out of level 3 residential services and into alternative accommodation arrangements can face a range of challenges in accessing appropriate housing and supports, as described in the sections above, that prevent them from doing so.

Many stakeholders also noted that there can be challenges associated with having transitional accommodation operated by for-profit organisations. This includes the observation that, given the costs and efforts required to bring new residents into the service, there will be limited incentive for providers to support residents to transition to alternative accommodation.

Stakeholders suggested that more support was needed for residents to develop their skills and support them to move into alternative housing, where this is their preference.

### Question to consider

29. How might residents of level 3 residential services be assisted to develop skills that will enable them to move into other accommodation settings, where this is their preference?



# Conclusion

In Queensland, level 3 residential services provide accommodation, personal care, and often food services, to people who experience a range of challenges in accessing these services through other systems. It is likely that a significant number of people living in these settings have complex support needs, coupled with impaired decision-making ability, which can place them at risk of abuse, neglect, and exploitation.

Stakeholders consulted for the purpose of this report identified a range of issues within level 3 residential services that affect the safety, human rights, and wellbeing of residents.

The key systemic issues highlighted include:

- The standards of accommodation, food and services provided to residents.
- The complex regulatory and legislative frameworks involving all levels of government. While the legislative environment is complex, key elements critical to the wellbeing of residents are also not addressed, including a regulated fees and charges schedule.
- Fragmented and disjointed safeguarding mechanisms.
- Blurred lines of responsibility and potential conflicts of interest resulting from the dual role of providers as accommodation and service providers. This is heightened if residents are also NDIS participants, as many level 3 residential service providers (or closely related entities) are also NDIS service providers.
- The potential for level 3 residential services to be closed environments where residents have limited access to externally provided services or opportunities to participate in broader community life.
- The suitability of this model of accommodation and service provision to meet the needs of residents with complex support needs, many of whom have an intellectual disability, acquired brain injury, mental health concerns or issues with drug and alcohol use.

Feedback from stakeholders also highlights the need for further discussion about the role of level 3 residential services in the broader housing and homelessness sector. This includes consideration of the purpose of these services, how services should be designed to achieve this purpose, and how they should be regulated to maintain quality and ensure the best outcomes for residents.

Further consultation with stakeholders, including residents in level 3 residential services, should be conducted to explore these issues in greater detail.

## Recommendation

### **The Queensland Parliament should conduct an inquiry into the provision and regulation of supported accommodation in Queensland.**

While this report focuses on the provision, and regulation by the state, of level 3 residential services as defined under the *Residential Services (Accreditation) Act 2002 (Qld)*, many of the concerns that are discussed in this report also apply to other residential services regulated by the Act (namely level 1 and level 2 services). In addition, some Queenslanders with significant support needs are now residing in other kinds of shared-living arrangements, including those made possible by the provision of support services funded by the National Disability Insurance Scheme (NDIS).

It would make sense for the proposed parliamentary inquiry to have terms of reference that are broad enough to enable it to examine, and recommend improvements to:

- the provision of accommodation and support services to Queenslanders in this variety of settings; and
- the complex state and federal regulatory arrangements that apply.



In terms of the proposed inquiry's processes, thought might be given to the potential engagement of an independent non-government organisation to support residents to contribute their views on the services and support they receive, and associated regulatory requirements.

The relevant parliamentary committee might also seek answers to the following questions (which particularly relate to level 3 residential services):

### **The level 3 residential services model**

1. Is the current model by which level 3 residential services are provided – which typically sees private providers delivering accommodation and support services at the cost of a majority of a resident's Disability Support Pension – an appropriate one for Queensland into the future?
2. Should new models of service delivery that meet the needs of particular cohorts of residents (e.g. residents with significant mental health concerns or with significant drug and alcohol use) be trialled?

### **Costs and charges**

3. Are current charges for level 3 residential services reasonable?
  - a. Do they enable residents to have sufficient disposable income to ensure a reasonable quality of life?
  - b. Do they enable providers to deliver quality services on a financially viable basis?
  - c. Should a cap be placed on the amount that residents are able to be charged?
4. Should greater transparency be required of level 3 residential service providers concerning the fees charged for accommodation, food, and personal care services?

### **Service standards**

5. Do current service standards set appropriate benchmarks for the provision of level 3 residential services, particularly in relation to personal care?
6. Should the assessment of whether level 3 residential services meet particular standards require more thorough evidence, including greater on-site monitoring and more direct engagement with residents and relevant representative agencies?
7. Should the residential services regulator be required to publicly report on the compliance of service providers with accreditation standards?

### **Staff**

8. Are current minimum qualification and training requirements for staff of level 3 residential services appropriate?
9. How might greater assistance be provided to level 3 residential services to manage difficult scenarios, including those that occur outside business hours?

### **Conflicts of interest and transparency**

10. Further to question 4, should greater transparency be required concerning the fees that are charged to residents when their level 3 residential service provider, or a closely related entity, also provides them with NDIS-funded services?
11. When a level 3 residential service resident chooses their accommodation provider, or a closely related entity, as their NDIS service provider, what evidence should the service provider be required to provide to demonstrate that the resident has exercised an independent choice?
12. Is the monitoring of NDIS-funded services provided to residents of level 3 residential services adequate?

### **Oversight and safeguards**

13. How can existing safeguards be improved to provide better protections for residents living in level 3 residential services?



### **Promoting skills and independence**

14. Are there unintended consequences from the participation of residents of level 3 residential services in the NDIS that warrant regulatory reforms?

### **Complaints mechanisms**

15. Should a 'no wrong door' approach be established under which residents of level 3 residential services are assisted to lodge complaints about service provision across a range of service sectors, including the accommodation, NDIS, and aged care sectors?

### **Rooming agreements**

16. Do current regulatory requirements concerning rooming agreements adequately protect the rights of residents of level 3 residential services?

### **Informal safeguards and capacity building**

17. What additional steps should be taken to ensure that residents of level 3 residential services understand and are able to exercise their rights?
18. How can the voice of residents become more central to the regulation of level 3 residential services?

### **The suitability of personal care services**

19. Should a standardised intake assessment process be developed and implemented for potential residents of level 3 residential services to ensure that their accommodation and support needs will be able to be met in this setting?
20. How might the service and support needs of residents of level 3 residential services be reliably and regularly assessed?

### **Access to funding**

21. Should greater assistance be provided to residents of level 3 residential services who need to navigate and engage with multiple service systems (including in the fields of housing, NDIS, aged care, mental health, alcohol and other drugs, and the justice system)?

### **External service providers**

22. What changes are required to ensure that residents of level 3 residential services are able to access external services, including advocacy services?

### **Unregistered residential services**

23. How might unregistered services that meet the current level 3 residential services criteria, and that are therefore required to obtain registration and accreditation, be more reliably identified?

### **Emerging, unregulated models of accommodation**

24. What regulatory steps should be taken to better protect residents of level 3 residential services from predatory provider behaviour?

### **Decision-making**

25. How might residents, and potential residents, of level 3 residential services be better supported to make their own accommodation and service-related decisions?



### **Zero tolerance policies**

26. Has the adoption of 'zero tolerance' policies by some level 3 residential service providers had unintended consequences that require a regulatory response?

### **Restrictive practices**

27. How should the use of restrictive practices in level 3 residential services be minimised and more effectively regulated?

### **Emergency and disaster planning**

28. Are current disaster planning measures adequate across level 3 residential services?

### **Pathways out of level 3 residential services**

29. How might residents of level 3 residential services be assisted to develop skills that will enable them to move into other accommodation settings, where this is their preference?



# Appendix:

## Stakeholder engagement

Representatives from the following organisations participated in individual discussions on level 3 residential services for the purpose of this work:

- ADA Law
- Brisbane Youth Services
- Caxton Legal Centre
- Common Ground
- Council to Homeless Persons Queensland
- Department of Child Safety, Seniors and Disability Services
- Department of Housing
- Footprints
- Micah
- Office of the Public Guardian
- QShelter
- Queensland Advocacy for Inclusion
- Queensland Ambulance Service
- Queensland Council of Social Service
- Queensland Health
- Queensland Mental Health Commission
- Queensland Police Service Vulnerable Persons Unit
- Queenslanders with Disability Network
- Speaking Up for You
- Supported Accommodation Providers Association
- Tenants Queensland
- The Public Trustee

