



National Disability Insurance Scheme (Authorisations) Bill 2019

Submission to the Social Policy Scrutiny Committee

1 April 2019

Darwin Community Legal Service (“DCLS”) is a free, confidential service. We assist disadvantaged members of the community to protect their legal rights. We work towards a community where everyone has access to legal advice and support. We seek to challenge unjust laws and procedures and to ensure that people are aware of their legal rights.

The Seniors and Disability Rights Service (SDRS) operates within DCLS as an advocacy service for seniors and people with disabilities who want to know about their rights and how to protect them.

Submission summary

DCLS welcomes the introduction of this legislation and supports its intention to provide protection to vulnerable people with disabilities. There has been a significant gap in regulation of restrictive practices in NT private disability services for some time. With the implementation of the NDIS there is a greater need for this gap to be addressed as people with disabilities who exhibit challenging behaviours move into the care of private service providers.

Our key concern is the limited coverage of the proposed Bill. Many people with challenging behaviours necessitating the use of restrictive practices are likely to be eligible for NDIS supports and would therefore be protected by this legislation. However, there may be people with disabilities who are not NDIS eligible and therefore will not receive the same protections. We are aware that this concern has been raised by other stakeholders in the process of consulting on this Bill. We also note that our other key client group, older people, remain largely unprotected from restrictive practices in NT aged care and hospital settings.

Specific comments

1. Scope of the Bill

DCLS is concerned that individuals in the following scenarios do not receive protection under this Bill:

- People with disabilities in education settings (regardless of NDIS participation). For example, a child with disabilities in a school may be subjected to seclusion and other forms of restrictive practice. There is no legal oversight of restrictive practices for people with disabilities in these circumstances.
- People with disabilities in a hospital (except secure care inpatients in mental health facilities), especially in circumstances of acute or long-term care. Regardless of NDIS participation, there is no clear legal oversight for use of restrictive practices by health staff with disability patients.

We also take this opportunity to comment on the lack of regulation around restrictive practices for older people in aged care and hospital settings. The proposed bill focuses on people with disabilities but there are known issues with the use of seclusion, chemical restraint and other practices that infringe on the rights of older people in these environments.

We encourage the adoption of a broader regulatory framework in the near future to ensure that restrictive practices are minimised and used safely for all people with disabilities in a range of settings – not just NDIS participants. We also encourage working with national authorities and other jurisdictions to establish similar protections for older people.

2. Supporting providers

We acknowledge that this legislation is vital in providing protection for vulnerable people with disabilities. However, it also adds to the burden of compliance for an already under-resourced disability market. The Committee will be aware that we have a small market of active NDIS providers in the NT with limited resources and significant staff training and retention issues. There are also new providers entering this space without significant experience in delivering disability services to people with challenging behaviours.

All providers will need substantial support to understand and comply with this legislation, particularly those operating with limited resources in remote areas. We understand that the NDIS Quality and Safeguards Commission will be providing some information to service providers from June 2019. We recommend that government also delivers sufficient education and support to ensure that providers are not overwhelmed by the burden of compliance and their services remain available to vulnerable clients.

3. Reporting unauthorised use of restrictive practices

The Bill appears to focus on practices that the Senior Practitioner may authorise and does not provide information about reporting of restrictive practices that do not comply with the legislation. It is important that clear information is given to all stakeholders about how to report if they observe any restrictive practices being used without Senior Practitioner authorisation, and how to report prohibited practices that cannot be authorised by the Senior Practitioner under Clause 17.

Education about the new regulatory framework should include clear information about where and how to report these matters. For NDIS participants the reporting body will likely be the NDIS Quality and Safeguards Commission from 1 July onwards. For non-NDIS participants not covered by this legislation, the relevant reporting body is potentially the Health and Community Services Complaints Commission. A distinction should also be drawn for more serious situations where criminal conduct may be occurring, and when relevant authorities should be contacted (i.e. Police).

We recommend that the Senior Practitioner and Department of Health provide clear information to stakeholders about how and where to report these matters in the lead up to and following implementation of this legislation.

4. Resourcing for the Senior Practitioner

The Senior Practitioner will need supporting staff and funding to effectively carry out their many functions set out in Clause 10. It is essential that government commits adequate resources to this statutory position so that the authorisation process may operate as intended. Without sufficient resources for stakeholder education and capacity building it will be challenging to effectively monitor and authorise restrictive practices, educate providers about their obligations and thereby protect people with disabilities who are covered by the legislation.

5. Interaction with NDIS Safety and Quality Commission

We understand that this legislation is intended to operate alongside the National NDIS Quality and Safeguards Framework and the NDIS Quality and Safeguards Commission currently have a separate national Senior Practitioner. It is not clear how the NT Senior Practitioner and their staff will interact with the National Senior Practitioner and the Commission. It would be useful for government to provide clear information about the respective roles and the overall governance structure for restrictive practices.