



1 April 2019

Attention: Ms Julia Knight
Social Policy Scrutiny Committee
Legislative Assembly of the Northern Territory
GPO Box 3721, DARWIN NT 0801

Dear Ms Knight,

Re: Submission for consideration by the Social Policy Scrutiny Committee in relation to NDIS (Authorisations Bill 2019) for the authorisation of restrictive practices in the National Disability Insurance Scheme

Thank you for the opportunity to comment on the proposed legislation in relation to authorisation of Restrictive practices in the Northern Territory.

After reading the proposed legislation, some further consideration may be needed in the following areas:

1. Definitions - there is no definition for "Harm" in the proposed bill. Queensland legislation (Disability Services Act (2006) Part 6 Positive Behaviour support and restrictive practices S144) defines this as

harm to a person means –

- (a) Physical harm to the person; or
- (b) A serious risk of physical harm to the person; or
- (c) Damage to property involving a serious risk of physical harm to the person

It's worth noting too that Victorian legislation defines harm as including emotional and psychological harm to the person.

The current NDIS (Restrictive Practices and Behaviour Support) Rules 2018 also do not define harm in their list of definitions.

2. **Immunity from prosecution** process for Service providers while awaiting approval of an interim PBSP.

There are instances when clients have engaged in behaviour that is harmful to themselves or others that immediate action is required. For example – a client in Queensland recently picked up a knife and threw this at the support worker while escalated. He threw this with such force that it stuck in the door,

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fortunately missing the worker. As a result of his action, our duty of care towards staff and to the client, required that we as a service provider, needed to instruct the support staff to immediately lock away all sharps that could potentially be used as a weapon.

The following day (the incident happened out of hours) we followed the process of making an application to Disability Services Qld for a Short Term Application (STA). Once an application is made, Services can take the necessary actions to protect the client(s) and the staff, as it allows Services a 30 day period of immunity to continue to utilize the needed Restrictive Practice without prosecution. In this case restricted access to Knives, scissors and other sharps (RATO) is being utilized.

During this 30 day period, Disability Services then make a determination as to whether or not the Restrictive Practice is warranted. This decision is based on incident reports and any other evidence provided by the service and to undertake any other consultation with family members / stakeholders or treatment specialists such as psychiatrists to make their determination.

If they agree that Restrictive Practices are warranted, they then require that an application is made for a Restrictive Practices Guardian to be appointed via QCAT and for the service to implement positive behaviour strategies while a full Positive Behaviour Support Plan is developed and then sent to the Guardian, usually within a 6 month timeframe.

This 6 month timeframe is important, as it allows the suitably qualified and experienced Clinician to Consult with stakeholders, gather data via behaviour recording tools over a period of 1-2 months, complete direct observations of the client in the home and community, conduct assessments such as ABAS and Functional Behaviour Assessments, trial strategies that may work specific to that client while waiting for other assessments to be completed such as Occupational therapy sensory needs assessments and Speech therapy communication assessments before formulating a comprehensive and individualized Positive Behaviour Support Plan (PBSP) .

These Restrictive Practices PBSP's are then submitted 6 weeks prior to their expiry date to allow time for Guardian's to assess them and approve the content prior to their expiry date.

A current gap in Queensland law is that if the Public Guardian is understaffed or overwhelmed with work, then these plans may not be approved within the expiry date timeframe – which again leaves the Service open to prosecution for continuing to utilize an unauthorized Restrictive Practice, but who have met all requirements of the QCAT order and the law in every other instance.

It is impractical and dangerous for clients and staff to suddenly cease Restrictive Practices while waiting for formal approval. For example some forms of Chemical Restraint – if ceased suddenly can cause medical harm to the client- so there is a tacit understanding that occurs that if the PBSP has been submitted 6 weeks prior to expiry but that the cause of the delay is due to the Public Guardian's ability at that time to respond, then no withdrawals of Restrictive Practices are usually made by the service. Technically, however, it could be argued that the Service is in breach of the legislation at this time.

Some concession allowing Services to implement Restrictive practices as an immediate safety response without prosecution into the new proposed NT legislation would be most welcome.

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Please do not hesitate to contact me should you require any further information or have any queries.
Thank you for your kind consideration of our submission.

Kind regards



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