

**NATIONAL DISABILITY INSURANCE SCHEME (AUTHORISATIONS) BILL  
(Serial 83)**

**Ms FYLES:** The bill was referred to the Social Policy Scrutiny Committee for an inquiry and report. I thank the Social Policy Scrutiny Committee for their consideration of the bill and their timely report back to parliament. I acknowledge Chair and the members of that committee, as well as the secretariat, who I know provide great support.

There was a call for public submissions and a public hearing was held. Five public submissions were received from key stakeholders: the Community Visitor Program; the Office of the Public Guardian; Health and Community Services Complaints Commission, Life Without Barriers, and Darwin Community Legal Service.

I thank these stakeholders for taking the time to look at the proposed legislation, to make a submission and also to those who appeared before the committee at the public hearing. All submissions were supportive of the intent of the bill and welcomed its introduction, acknowledging that it will meet the Northern Territory's obligation with an authorisation process for the use of restrictive practice.

The committee made recommendations that the bill be passed with amendments and I will discuss these shortly. For the most part, concerns were raised outside the scope of the bill or related to operational matters that are provider-for-NDIS rules. I will now take the time to address some of these concerns.

The main concern was raised about the limited scope of the bill. Submissions called for the bill to apply for all people with a disability not just NDIS participants and to apply across a range of settings including residential aged care settings, educational institutions, health institutions such as hospitals, and also correctional facilities.

The Office of the Public Guardian, Darwin Community Legal Service and the Community Visitor Program expressed similar concerns about the targeted scope of the bill. The Community Visitor noted that in the Australian Capital Territory, the *Senior Practitioner Act 2018 (ACT)* adopts a broader approach where the legislation ensures that restrictive practices authorisation and monitoring is in place with education, disability and child protection and other regulated settings.

Each jurisdiction is at a different stage of meeting their obligations in regards to restrictive practices under the NDIS rules. In developing the bill, the Department of Health consulted with other jurisdictions on their approach to determine what model would best suit the Northern Territory's context. The bill has been modelled on this consultation along with consultation on the NDIS Commission and Senior Practitioners from other jurisdictions.

The bill was only ever intended to include NDIS participants receiving support from registered NDIS service providers and is only applicable to a very small cohort of NDIS participants as it is only for individuals who have extreme behaviours of concern. I note the committee recommended that to ensure consistency, the government develops and implements a whole-of-government policy which aligns with the intent of the proposed legislation with regards to the use of restrictive practices.

The bill is concerned with the authorisation of restrictive practices for NDIS participants in receipt of a service provided by an NDIS service provider. In all circumstances covered by the bill, monitoring and oversight of restrictive practice functions are the responsibility of the NDIS Commission and is the jurisdiction of the Commonwealth. It will be the responsibility of the service systems to have their own legislation and policies regarding the restrictive practices in respective settings.

In line with this recommendation, government will ask that all government agencies consider either amending or implementing policies that will align with the intent of the bill with regards to the use of restrictive practice in their respective service settings.

The independence of the role of the Senior Practitioner and their scope was also raised in the stakeholder's submissions. We have heard that today in this House. The Senior Practitioner is an administrative function to authorise a restrictive practice and does not have an investigation or oversight function.

The framework for behaviour support developed through the quality and safeguarding group that reports to the COAG Disability Reform Council separates the role of authorising a restrictive practice to state and territory entities and the monitoring and oversight of the restrictive practice to the NDIS Commission. This creates separation of functions and powers.

It was noted by the Community Visitor that the role of the Senior Practitioner would need significant resourcing to support the implementation of the bill for capacity building amongst service providers. I wish to provide reassurance that Budget 2019 includes funding for establishing authorisation processes for the use of restrictive practices in the Northern Territory, including the role of the Senior Practitioner and support staff.

This funding will allow the Senior Practitioner to support and build capacity of participants, their families and carers, and service providers to work towards the elimination of restrictive practices. Some stakeholders raised concern with the level of detail provided in regards to the authorisation of the restrictive practices in this bill.

I reiterate the comments of the department during the committee process that for the most part, concerns raised by submitters addressed the NDIS (Restrictive Practices and Behaviours Support) Rules 2018 and the associated NDIS (Incident Management and Reportable Incidents) Rules 2018 which underpin the authorisation provisions within the bill.

After the passage of this legislation, recruitment to the position of Senior Practitioner will be undertaken. Until this role can be filled, a staff member will be identified to undertake the role on a temporary basis. Work will commence to introduce the authorisation framework to stakeholders across the Territory via communiques and information sessions and the development of guidance materials.

The Department of Health is also committed to the review of the *Disability Services Act 1993* following the commencement of this legislation.

The committee has also made recommendations that the government defer the consideration to safeguarding the independence of the senior practitioner and that a review of the operation of the legislation be conducted with a report to be tabled in the Legislative Assembly as soon as possible after the first year of operation.

The senior practitioner will be an organisational placement within the Department of Health but will be independent from the Office of Disability. In line with these recommendations, a review will be conducted as soon as practicable after the first year of operation of the legislation. That will also include the review of the functions of the senior practitioner.

The new legislation will provide protection for the most vulnerable people in the Northern Territory. It will prevent exposure to harm from unnecessary use of restrictive practices by providing a legislative framework. This act will enable the Northern Territory Government to meet its obligations under the NDIS Quality and Safeguarding Framework to operationalise the NDIS restrictive practices authorisation arrangements from 1 July 2019, when the NDIS is at full scheme in the Northern Territory.

The act will provide for the regulation of restrictive practices for participants of the scheme. It will also establish the new role of the senior practitioner, who will have responsibility to authorise the use of restrictive practices and disallow inappropriate requests for restrictive practices.

The bill provides for an internal review of the decision of the senior practitioner by a public sector employee appointed by the CEO of the Department of Health. The bill also allows for the Northern Territory Civil and Administrative Tribunal to have jurisdiction to review a decision of the internal reviewer.

I provided comment on the committee's work and the amendments, and I have circulated the proposed amendments. They are in line with the committee's recommendation and were circulated earlier this morning. I notified all members of my intention.

I sincerely thank the officers of the Department of Health and the Parliamentary Counsel for the excellent work they have dedicated to the development, consultation and progress of this legislation. I acknowledge the staff in my office also.

Madam Acting Deputy Speaker, I commend the bill to the Assembly.

Motion agreed to; bill read a second time.

### **Consideration in detail.**

Clauses 1 and 2, by leave, taken together and agreed to.

Clause 3:

**Ms FYLES:** Mr Deputy Speaker, I move amendment 1 to clause 3 that the bill be amended to address typographical errors when referring to the following definitions: 'environment restraint', that (b) is replaced with (e); 'mechanical restraint', that (b) is replaced with (c); 'physical restraint', that (b) is replaced with (d); 'seclusion', that (b) is replaced with (a).

These amendments ensure the bill correctly references the corresponding definitions for 'environment restraint', 'mechanical restraint', 'physical restraint' and 'seclusion' in the NDIS Behaviour Support and Restrictive Practices Rules 2018.

Amendment agreed to.

**Ms FYLES:** Mr Deputy Speaker, I move amendment 2 to clause 3. I move that in the definition of mechanical restraint, (b) is omitted and replaced with (c).

Amendment agreed to.

Clause 3, as amended, agreed to.

**Ms FYLES:** Mr Deputy Speaker, I move amendment 3 to clause 3, the definition of physical restraint. I move that (b) is omitted and replaced with (d).

Amendment agreed to.

**Ms FYLES:** Mr Deputy Speaker, I move amendment 4 to clause 3. I move that in the definition of seclusion, (a) is omitted and replaced with (a).

Amendment agreed to.

Clause 3, as amended, agreed to.

Clause 4, by leave, agreed to.

Clause 5:

**Ms FYLES:** Mr Deputy Speaker, I move amendment 5 to clause 5. I move that it includes an additional principle related to participant's rights and that in section (1) (j) the full stop following the word 'practice' is omitted and replaced by a semi-colon.

Amendment agreed to.

**Ms FYLES:** Mr Deputy Speaker, I move amendment 6 to clause 5. I move that an additional principle, (k), is added to acknowledge that participants have the same right as other members of Australian society, of the pursuit of grievance in relation to services. The inclusion of the principle was a recommendation of the Social Policy Scrutiny Committee and made pursuant to submissions received from the public.

The inclusion of this principle ensures that the National Disability Insurance Scheme (Authorisations) Bill reflects the principles detailed in the *Disability Services Act 1993* and the national disability standards.

The inclusion of this principle ensures the National Disability Insurance Scheme Authorisation Bill reflects the principles detailed in the *Disability Services Act 1993* and the National Disability Standards.

Amendment agreed to.

**Ms FYLES:** Mr Deputy Speaker, I move amendment 7 to clause 5 is further amended to include an additional principle in relation to a participant's right to have their service reviewed. After clause 5(2) insert section 3, the service must be regularly reviewed for its suitability for the participant.

The Social Policy Scrutiny Committee also recommended the inclusion of this additional principle. The inclusion of the principle ensures NDIS providers will review the services they provide in line with the guiding principles. This will result in participants receiving relevant services that are continuously working towards the reduction and elimination of restrictive practices.

Clause 5, as amended, agreed to.

The remainder of the bill, by leave, taken as a whole and agreed to.

**Ms FYLES (Disabilities):** Mr Deputy Speaker, I move that the bill be now read a third time.

Motion agreed to; bill read a third time.

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