

Ms Julia Knight
The Secretary
Social Policy Scrutiny Committee

By Email: SPSC@nt.gov.au

Dear Ms Knight

RE: NATIONAL DISABILITY INSURANCE SCHEME (AUTHORISATIONS) BILL 2019

The Health and Community Services Complaints Commission (HCSCC) acknowledges the necessity of this Bill which will establish the Office of the Senior Practitioner, define the meaning of the term restrictive practice as well as define prohibited restrictive practices. The Bill will have direct application from 1 July 2019 when the NDIS Quality and Safeguards Commission will commence its oversight and regulatory functions in the Northern Territory.

This submission addresses the question as to whether the Bill has sufficient regard to the rights and liberties of all individuals with disabilities.

The conclusion to the Statement of compatibility with human rights states that “The Bill advances the protection of the rights of people with disability in Australia consistent with the Convention of the Rights of Persons with a Disability and provides extra safeguards for the use of restrictive practices.” This statement implies that the rights of **all** people with disability are protected, and secondly that the rights of all people with disability are protected with **all** service providers. The application of the bill only applies to “participants” - that group of people who will receive services funded under the NDIS, and only applies if the services are directly funded by the NDIS.

This is a far smaller group than any previously accepted definition of disability, including that which applies in the *Health and Community Services Complaints Commission Act*.

The Bill does not protect the rights of people with disability not eligible for NDIS funding who may be subject to restrictive practices. The Bill does not protect the rights of people with disability subject to restrictive practices from non-NDIS funded services, for example in prison, in hospital, in aged care or mental health facilities or in schools. It can be argued that this group is in a much more vulnerable position than “participants”. A recent November 2018 report by the NSW Ombudsman titled “***Abuse and neglect of vulnerable adults in NSW – the need for action***” provides some salient illustrations of abuse and neglect which would fall outside the powers intended in this bill.

People with disability not protected by the Bill

People with disability whose rights are not protected by the Bill include forensic disability clients; people with disability in hospital waiting accommodation; people with disability receiving services via the Motor Accident Compensation (MAC) Scheme; people with disability who have not accessed the NDIS or who are not eligible for NDIS funding; and some young people with disability living at home and attending school. For ease of reference, people with disability in these groups not funded to receive services from the NDIS will be referred to as non-participants.

There is a need to identify those people with disabilities who are non-participants to ensure universality in the application of immutable principles (such as prohibited restrictive practices described at clause 17 of the Bill). This demographic is unknown with some estimates as high as 90%. See for instance the report of Australian Human Rights Commission ***Violence against people with disability in institutional settings – February 2018*** which estimates that “*the NDIS and the NDIS Quality and Safeguarding Framework, when fully rolled out across Australia, will only support approximately 10 per cent of people with disability in Australia*”

Issues

1. Non-participants may be subjected to restrictive practices with or without a Behaviour Support Plan (BSP). The following is pertinent:

1.1 The Bill establishes the Office of the Senior Practitioner to authorise BSPs containing restrictive practices only for participants of NDIS funded services (participants). Non-participants do not get the same protection, that is, BSPs for non-participants will not be authorised.

Possible solution

Consequentially amend the *Disability Services Act* to establish the role of the Senior Practitioner for people with disability with a BSP who are not participants. The amended Act should prohibit the use of restrictive practices in government and non-government disability services if not authorised by the Senior Practitioner. It should not be limited to clients of the Office of Disability.

1.2 The Bill defines prohibited restrictive practices for participants. Non-participants are not provided with this protection.

Possible solution

Amend the *Disability Services Act* to detail prohibited practices for all non-participants receiving government and non-government disability services in the NT. This would require amending the *Disability Services Act* to cover all people with disability living in the NT. It should not be limited to clients of the Office of Disability.

1.3 Once restrictive practices are authorised under NT legislation, their use with participants will be oversighted by the NDIS Quality and Safeguards Commission. There will be limited oversight of restrictive practices used with non-participants. In the NT, only forensic disability clients (and only those living in certain accommodations) who are subject to the use of restrictive practices will have access to oversight through the Community Visitor Program.

Possible solution

Amend the *Disability Services Act* to enable a properly resourced and legislatively empowered Community Visitor Program to oversight and monitor the use of restrictive practices for all non-participants.

2. People with disability who are participants may be subjected to restrictive practices without oversight when receiving services which are not funded by the NDIS. For example, a participant may be admitted to hospital and be subjected to restrictive practices such as restraint or a closed environment. There is no requirement that these practices are authorised by the Senior Practitioner and there is no independent oversight.

Possible solution

This is a complex issue requiring a whole of government approach. The HCSCC recommends a policy solution in the short term which would require all use of restrictive practices with people with disability to be oversighted by the CVP with expanded powers and resources. This must be supported by legislation as a means of ensuring that restrictions on liberty occur only in limited, properly regulated circumstances.

The HCSCC supports the bill while noting that its application is limited and it affords no protections to the greater population of people with disabilities who are at higher risk of violence, abuse and unauthorised restrictive practices.

The HCSCC recommends urgent action to identify these people and their circumstances so that government can adequately protect them with legal, inspectorial and regulatory actions which complement this bill.

Yours sincerely



STEPHEN DUNHAM
COMMISSIONER

3 April 2019