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SOCIAL POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

National Disability Insurance Scheme (Authorisations) Bill 2019

10.30 am, Monday, 1 April 2019

Litchfield Room, Level 3, Parliament House, Darwin

Members:

Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Mrs Lia Finocchiaro MLA, Member for Spillett
Mrs Robyn Lambley MLA, Deputy Chair, Member for Araluen
Ms Sandra Nelson MLA, Member for Katherine

Witnesses:

Samantha Livesley: Senior Director, Office of Disability, Department of Health

Válli Camara: Senior Policy Officer, Office of Disability, Department of Health

NATIONAL DISABILITY INSURANCE SCHEME (AUTHORISATIONS) BILL 2019

Office of Disability Department of Health

Madam CHAIR: Good morning everyone and thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Social Policy Scrutiny Committee.

On behalf of the committee I welcome everyone to this public briefing on the National Disability Insurance Scheme (Authorisations) Bill 2019. I ask everyone to make sure that your phones are switched to silent. I acknowledge that this public briefing is being held on the land of the Larrakia people and I pay my respects to Larrakia elders past, present and emerging. I also acknowledge my fellow committee members in attendance today: Sandra Nelson, Member for Katherine; and Robyn Lambley, Member for Araluen on the phone. The Member for Spillett, Lia Finocchiaro will be joining us as well.

I welcome to the table to give evidence to the committee from the Office of Disability in the Department of Health, Samantha Livesley, Senior Director and Válli Camara, Senior Policy Officer. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public briefing and is being webcast through the Assembly's website. A transcript will be made for use by the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private. I will ask each witness to state their name for the record and the capacity in which they appear. I will then ask you to make a brief opening statement before proceeding to the committee's questions. Could each of you please state your name and the capacity in which you are appearing this morning?

Ms LIVESLEY: I am Samantha Livesley and I am the Senior Director of the Office of Disability in the Department of Health.

Ms CAMARA: My name is Válli Camara and I am the Senior Policy Officer with the Office of Disability in the Department of Health.

Madam CHAIR: Ms Livesley would you like to make an opening statement?

Ms LIVESLEY: In terms of an overview the introduction of the National Disability Insurance Scheme is one of the largest social reforms since the introduction of Medicare. It is changing the way that disability supports are funded and provided to people with a disability and providing greater choice and control of services.

The NDIS Quality and Safeguards Commission, which we will refer to as the NDIS commission, has been established to provide the role of quality oversight and safeguarding of the services provided to NDIS participants. As a signatory to the NDIS, the Northern Territory has worked with the Commonwealth, states and territories and the NDIS Commission to develop and further refine the quality and safeguards for NDIS participants.

As part of the NDIS quality and safeguarding framework, the National Disability Insurance (Restrictive Practices and Scheme Behaviour Support) Rules 2018: outline the reporting and oversight arrangements to reduce and eliminate the use of restrictive practices in the NDIS; sets out the conditions of registration for providers delivering specialist support and providers for use restrictive practices in the course of delivering those supports; transition arrangements for those providers; and requires providers to comply with any state and territory authorisation arrangements in relation to the use of restrictive practices.

This bill needed to be developed to meet the Northern Territory's obligations under the NDIS Quality and Safeguarding Framework. The bill is one part of a suite of safeguards to protect the human rights of a person with a disability within the NT NDIS Restrictive Practices Authorisation Framework. This specific legislation was developed to protect NDIS participants from abuse and neglect with the explicit objective of eliminating reducing the use of restrictive practices in disability service provision.

Madam CHAIR: Thank you very much. I will open it up to the committee for any questions.

Mrs FINOCCHIARO: Thank you for coming this morning. This is our briefing as part the scrutiny committee to inform ourselves of the details of the bill. Is this the first tranche of reform? Ms Livesley, you indicated that there is more that will be coming through.

Ms LIVESLEY: This is the legislation and as part of that we are also establishing a senior practitioner who will be within the Department of Health who will authorise the inclusion of restrictive practice and a behaviour support plan. As part of their role, they will also be doing capacity building and support to providers and participants around restrictive practice.

Madam CHAIR: Could you tell me if there already is an existing position who looks after—what was the position that you called it?

Ms LIVESLEY: Senior practitioner.

Madam CHAIR: I understand a senior practitioner position is being created to look after NDIS participants. Is there an equivalent for those who are not included in the NDIS?

Ms LIVESLEY: There is in terms of our forensic disability clients. That would be embedded within our community visitor program but that is within our *Disabilities Service Act* and Part IIA of the Criminal Code.

Mrs FINOCCHIARO: Are we the last jurisdiction to have implemented this framework?

Ms LIVESLEY: No. All jurisdictions are in different stages of development. We have developed legislation. Some jurisdictions who do it by policy rather than legislation and one of those is New South Wales. All jurisdictions are looking at their existing legislation to amend it to align it to the national quality and safeguards frameworks and the requirements of the NDIS commission.

Ms NELSON: Why are we doing it by legislation and not policy?

Ms CAMARA: We felt that legislation provided more security and safeguarding for people with disabilities. New South Wales are currently reviewing their policy and are looking to put in legislation. That is the advice they have provided us.

Ms NELSON: I am concerned about us putting it into legislation. This is like an organic thing that is happening nationally. There has been significant changes to the NDIS on a national level from the federal government and changes that have been detrimental to people that are already on disability as well. If we are embedding it into legislation, where is the flexibility in that?

Ms LIVESLEY: There will be flexibility in terms of regulations and there will be policy and guidelines under the senior practitioner in terms of how it operates. It is within the legislation in terms of high level safeguarding, noting that the use of restrictive practice is something that we all have to commitment to eliminate. We felt it was better to embed it within legislation—as we touched on in terms of high level safeguarding.

Ms NELSON: I am always worried when we are embedding something in legislation and there have been so many changes since the introduction of the NDIS on a national level. Could you briefly explain and clarify the term of restrictive practices?

Ms LIVESLEY: Our definition of restrictive practice would cover off chemical restraint, physical restraint—I am just trying to find the definitions for you.

Ms CAMARA: In the proposed bill we are saying that a restrictive practice means any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with a disability and includes the following: seclusion; chemical restraint; mechanical restraint; physical restraint; and environment restraint.

Ms NELSON: Who gets to determines that?

Ms LIVESLEY: There will be behaviour support practitioners who will be accredited by the NDIS commission in terms of their competency framework. They will be developing the behaviour support plans and they will be submitted to the senior practitioner for authorisation and review. Once that is authorised and in place, providers need to report to the NDIS commission on the use of restrictive practice.

Ms NELSON: What guidance and training are we giving to the providers in regards to this?

Ms LIVESLEY: The NDIS commission is doing a series of information and provision to service providers as well as the senior practitioner who will have a role in supporting providers and building their capacity in this regard.

Mrs FINOCCHIARO: Who was consulted as part of developing this legislation?

Ms LIVESLEY: We developed a discussion paper which we released publicly and held two information sessions, one in Darwin and one in Alice Springs. This was in October last year. We also held one on one meetings and consultations with some of our key stakeholders which included the community visitor program, the Office of the Public Guardian, the Health and Community Services Complaints Commission and National Disability Services NT—which is the peak body for disability service providers.

Mrs FINOCCHIARO: Was there a main concern coming out of those consultations?

Ms LIVESLEY: There were three main themes that came out of the consultations. One was ensuring that the office of the senior practitioner was not part of the Office of Disability to ensure that there was a separation and no conflict. Feedback from the mental health sector was that this process was not applicable to participants with a mental illness. The third was that the framework itself—that request was that it should encompass all people with a disability, not just those who are NDIS participants.

This is around the NDIS commission and the NDIS Quality and Safeguarding Framework and it is just in relation to people who are participants of the NDIS.

Madam CHAIR: Ms Livesley am I correct in saying that there is already legislation in place that provides safeguards and the use of restrictive practices for those participants outside of the NDIS?

Ms LIVESLEY: Only for those clients within our forensic disability service who are provided support directly by the Department of Health.

Madam CHAIR: Will we find that the provisions of this bill will treat NDIS clients completely different to those who are not NDIS clients in regards to restrictive practices?

Ms LIVESLEY: No, there should be an alignment. We will be doing a review of our *Disability Services Act* to align definitions after July 1. There will be NDIS participants who are not in our forensic service and will report to the NDIS commission.

Madam CHAIR: Ms Lambley, do you have any questions?

Mrs LAMBLEY: Thank you. What was the second point you made of the three main concerns? The second one about mental health, could you repeat that please?

Ms LIVESLEY: It was that feedback from the mental health sector was that this was not applicable to people with a mental illness.

Mrs LAMBLEY: Okay. Could you explain how this works? This is Northern Territory legislation pertaining to people with a disability that come into the NT government health system. Is that correct?

Ms LIVESLEY: No. This is for people with a disability who are NDIS participants.

Mrs LAMBLEY: All NDIS participants?

Ms LIVESLEY: Yes. NDIS participants.

Mrs LAMBLEY: In the Northern Territory?

Ms LIVESLEY: Yes. This is legislation in terms of state and territories having the responsibility to do the authorisation of the behaviour support plans.

Mrs LAMBLEY: Right. What is currently in place to oversee these restrictive practices?

Ms LIVESLEY: Outside of the Department of Health run services, there is not anything in place at this stage.

Mrs LAMBLEY: Okay. What about within the Northern Territory Department of Health?

Ms LIVESLEY: Within our *Disability Services Act*, the section on secure care.

Mrs LAMBLEY: Okay. Will this take the place of that current legislation within the secure care section?

Ms LIVESLEY: No, that is a different function. That will still continue.

Mrs LAMBLEY: That is all I have at the moment, thank you.

Madam CHAIR: Thank you Ms Lambley. I want to clarify—the Northern Territory is moving away from restrictive practices, is that where we are going? We do not want to see people...

Ms LIVESLEY: Yes, all governments are committed to the elimination of restrictive practice.

Mrs FINOCCHIARO: But currently in the Territory we have no regulatory framework for private providers?

Ms LIVESLEY: Yes.

Madam CHAIR: I have met at least half a dozen new entities under the NDIS who have sprung up to provide services. I assume that will continue going forward. How do they come into the fold? Do they contact the NDIS commission to find out how they can get the information to gear up and be covered under this?

I am worried about those who have not had the opportunity to be consulted about it, springing up to provide services to Territorians in need. How are they going to be engaged in that process going forward?

Ms LIVESLEY: The NDIS commission is developing a communication strategy around the rollout of information and support to providers. From July 1, the NDIS commission will be responsible for the registration and oversight of registration of providers.

Madam CHAIR: Is that a commission that will be based here in the Northern Territory?

Ms LIVESLEY: It will have an office.

Madam CHAIR: Will it be our own?

Ms LIVESLEY: No, it is a Commonwealth commission. It is a statutory authority and will have an office in each state and territory. They are establishing an office in Darwin.

Madam CHAIR: Will they work side by side with the senior practitioner? But the senior practitioner will not be located in that office?

Ms LIVESLEY: No. The practitioner is a Northern Territory Government employee.

Madam CHAIR: Thank you.

Mrs FINOCCHIARO: So you could have a provider that has to comply with this legislation for its NDIS patients but could have other private patients and be able to use restrictive practices?

Ms NELSON: Exactly.

Ms LIVESLEY: In terms of non-NDIS participants?

Mrs FINOCCHIARO: Yes.

Ms LIVESLEY: They could be but I would want to understand who those people were—that were applying restrictive practice to those who fell outside the NDIS.

Mrs FINOCCHIARO: Technically speaking, because in the Territory we do not have any laws that govern it other than for NDIS patients. It is a theoretical question—I am company and I have 10 NDIS and 10 non-NDIS clients, there are laws ensure that I do not use restrictive practices for my 10 NDIS clients but there are not laws for my other 10. Not to say I would be using them but there is nothing that governs that.

Madam CHAIR: Interesting. Am I right in saying that this bill will ensure that NDIS participants, if they need to have restrictive practices used to keep them safe and well, are there certain circumstances that are already overseen? This is an individualised set of circumstances—what is in place for me will be completely different from what is in place for another NDIS participant. Will I have a personalised plan to say that if I requires that support then these are the circumstances and that options a, b, c, d and e have to be tried before restrictive practices will be condoned?

Ms LIVESLEY: Yes. That behaviour support plan is an individual plan for that particular person. Not every NDIS participant will have one.

Ms NELSON: Is that embedded in legislation currently?

Ms LIVESLEY: In terms of the behaviour support plan?

Ms NELSON: Yes.

Ms LIVESLEY: That will be part of the authorisation but it is also the NDIS's person centred and individual program. There is not a blanket approach in terms of approval of restrictive practice for all NDIS participants. It is on a person by person basis.

Ms NELSON: What about the non-NDIS participants in regards to restrictive practices?

Ms LIVESLEY: This legislation is only for NDIS participants.

Mrs FINOCCHIARO: So none of this applies.

Ms NELSON: None of this applies to non-NDIS participants?

Ms LIVESLEY: Yes.

Madam CHAIR: But that will be picked up in a further review of the *Disability Services Act*?

Ms LIVESLEY: That will be in terms of our forensic clients. If there are people falling outside the NDIS with a restrictive practice being applied, there would need to be a process of understanding the needs of that person and why they needed a restrictive practice.

Ms NELSON: How is this going to work? I am going to assume that we have NDIS participants who are currently incarcerated or in youth detention. How is this legislation going to work with the legislation or policies we have in place in regards to restraints in prisons?

Ms LIVESLEY: This will not be applied in a prison setting because that will be covered under the *Correctional Services Act* if they are a prisoner. It would be different if they are a forensic disability client which is under the *Disability Services Act* and Part IIA of the Criminal Code.

Mrs FINOCCHIARO: With the three main themes that came out of the consultation—you said that some of the people you consulted wanted it to apply to everyone not just NDIS participants but this is specific to NDIS at this stage. The other two were around mental health and that the senior practitioner not be part of the Office of Disability. Does this bill fall in line with that community feedback? Will the senior practitioner not be part of the Office of Disability?

Ms LIVESLEY: That will be an organisational placement decision by the Department of Health.

Mrs FINOCCHIARO: Does it exempt people with a mental illness?

Ms CAMARA: That is around the treatment. A positive behaviour support plan is not necessarily appropriate support for someone with a mental illness because it is a medical issue and is why those behaviours are in place. There are medication and treatment options through psychosocial rehabilitation programs. Positive behaviour support plans work better with someone with an intellectual disability and it is the function of the behaviour that we are trying to address as opposed to a medical issue.

That is why the mental health programs said that it is not applicable. There will be other treatment options available to them however, if they have a dual disability a positive behaviour support plan might be the appropriate way to manage their behaviours. That will be up to April the behaviour support practitioners to

work with the families, guardians and service providers to determine the best way to manage someone's behaviour.

Mrs FINOCCHIARO: So you might have a mental illness but be a NDIS patient for a different reason and therefore the treatment of your mental illness is not governed by this legislation?

Ms LIVESLEY: You may be included as a NDIS participant with a psychosocial disability. That is how you are included in the NDIS and the supports you are receiving are individualised based on your own needs. You would imagine that someone with a mental illness will be receiving treatment from a mental health program, private GP or psychiatrist. They will manage the treatment of the mental illness and the NDIS may provide support needs due to the supports required by the psychosocial disability.

Madam CHAIR: So we have full switch on of the NDIS in the Northern Territory on July 1?

Ms LIVESLEY: Yes.

Madam CHAIR: What would be the implications if the legislation does not pass before July 1?

Ms LIVESLEY: In terms of having the senior practitioner in place it can be managed through policy and guidelines as an interim measure.

Madam CHAIR: Ms Lambley, do you have any other questions?

Mrs LAMBLEY: No, thank you.

Madam CHAIR: Member for Katherine?

Ms NELSON: No, I will reserve my questions.

Mrs FINOCCHIARO: Is the senior practitioner going to be a federally funded position?

Ms LIVESLEY: No, it is an NT funded position.

Mrs FINOCCHIARO: So why do we need to wait for this to have that position? Is it just the natural process?

Ms LIVESLEY: It is part of the framework in terms of the legislation plus having the senior practitioner. We are going through the process of establishing the position. It is not a position that we have had before.

Mrs FINOCCHIARO: Technically you do not need the legislation to be able to go and do that?

Ms LIVESLEY: No.

Mrs FINOCCHIARO: Thank you.

Madam CHAIR: No further questions from the committee?

Thank you very much, that concludes our public briefing. Thank you for taking the time to appear before us this morning.