

Statement of compatibility with human rights

Prepared in accordance with the Thirteenth Assembly Sessional Orders (part 12.3) as adopted on 24 August 2017.

NORTHERN TERRITORY NATIONAL DISABILITY INSURANCE SCHEME (AUTHORISATIONS) BILL 2019

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (C'ith).

Overview of the Bill

This Bill will provide safeguards around the use of restrictive practices to a NDIS participant who requires their use due to behaviours of concern that place the participant or others at risk of harm.

The Bill will affect NDIS participants (who display behaviours of concern and require the use of restrictive practices), their guardian if they have one, their family, the NDIS Behaviour Support Practitioner and the NDIS Service Provider(s) involved in their care and support.

The Bill has been developed to provide a legislative base for the authorisation of the use of restrictive practices for an NDIS participant in the NT. It must be noted that different entities will authorise the use of a restrictive practices and monitor the use of restrictive practices in the NDIS, creating further safeguards.

The approach taken in the NDIS Quality and Safeguarding Framework has a focus on the reduction and elimination of the use of restrictive practices in line with the UN Convention on the Rights of Persons with Disabilities (CRPD) by promoting behaviour support strategies including positive behaviour support and imposing significant oversight requirements where restrictive practices are used as a last resort. It uses a variety of regulatory mechanisms to develop a holistic system for the safeguarding of the human rights of people with a disability.

Human rights implications

This Bill engages a number of rights referred to in the *Convention on the Rights of Persons with Disabilities (CRPD) New York, March 2007*.

The Right to Liberty and security of the person – Article 14 (CRPD)

This Bill does engage and potentially limit the right to liberty and security of the person as restrictive practices can have the effect of limiting the rights of freedom of movement of a person with disability.

However, this Bill establishes law to regulate any deprivation of liberty and has been designed to ensure that any restrictive practices permitted in positive behaviour support plans are the least restrictive way of protecting the person or other people from harm. Also the Bill includes a range of safeguards including the requirement for authorisation of the plan in accordance with guidelines and clear principles, consideration and approval by the Senior Practitioners and review mechanisms.

The Right to freedom from torture or cruel, inhuman or degrading treatment or punishment (Article 15, CRPD)

The Bill was developed having regard for this article and supports this right as Clause 12 of the Bill lists prohibited restrictive practices as being

- a) Aversion;
- b) Overcorrection;

- c) Misuse of medication;
- d) Denial of key needs;
- e) Practices related to degradation or vilification;
- f) Practices which limit or deny access to community, culture and language;
- g) In relation to a child – seclusion; and
- h) Any other restrictive practice prescribed by regulation.

The Right to Respect for Privacy (Article 22 CRPD)

The Bill may limit an individual's right to privacy particularly in relation to information exchange as Clause 13 allows the Senior Practitioner to seek and request further information from parties to assist in the authorisation process.

In addition, there are penalties for the unauthorised disclosure of personal information (Clause 29) and for providing misleading information (Clause 30).

The right to privacy is relative and may be limited to the extent necessary, reasonable and proportionate to achieve a demonstrated and justifiable purpose. Requiring the Senior Practitioner to be satisfied on reasonable grounds that providing the information is necessary for the services of the Senior Practitioner's functions prior to giving them protected information will help to ensure the limitation on the right to privacy. In view of the purpose of this Bill it is appropriate and necessary that the Senior Practitioner may give and receive protection information to a range of necessary entities.

Conclusion

The Bill is compatible with human rights. It positively affects the right of freedom from torture or cruel, inhuman or degrading treatment or punishment by stating the prohibited restrictive practices that will never be permissible nor authorised by the Senior Practitioner.

Whilst the Bill limits an individual's right to liberty and privacy of information, those limitations are proportionate, justifiable and necessary to achieve the objective. 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.