

SOCIAL POLICY SCRUTINY COMMITTEE
NATIONAL DISABILITY INSURANCE SCHEME (AUTHORISATIONS) BILL
DEPARTMENT OF HEALTH RESPONSE TO WRITTEN QUESTIONS

Clause 1 – Short Title	
1 a)	Is there any particular reason why the title of the Bill does not refer to restrictive practices? The short titles are determined by the Chief Parliamentary Counsel.
Clause 3 – Definitions	
2 a)	Under what legislation can such orders be made? We can't anticipate under what legislation the orders might be, so the Office of Parliamentary Counsel drafted the note in a general way.
2 b)	Why is the legislative basis for such orders not explicitly stated in the Bill? It is intended to indicate that the behaviour support plan may contain legally binding restrictions e.g. orders directing supervision, monitoring and management conditions and are considered authorised. These orders should be integrated into the participant's behaviour support plan and must clearly set out the details and limits of the restrictions permitted under the lawful order.
Clause 4 – Application of Act	
3 a)	What mechanisms are, or will be, in place to ensure the NDIS participants in receipt of services or supports from non NDIS service sectors (such as education, aged care, health care or correctional services) are not subjected to the use of unauthorised and unmonitored restrictive practices? This falls outside the scope of this Bill. It is the responsibility of other service systems to have their own legislation and policies regarding the use of restrictive practices in their respective settings.

3 b)	<p>Where an NDIS participant is in an education setting, for example, and is accompanied by an NDIS provider staff, what authorisation and monitoring of restrictive practices apply to the education service provider?</p>	<p>This Bill is concerned with the authorisation of restrictive practices for NDIS participants in receipt of a service provided by Registered NDIS providers. Monitoring and oversight of restrictive practice functions are the responsibility of the NDIS Commission and is the jurisdiction of the Commonwealth.</p> <p>If the education service provider is a NDIS registered provider of behaviour supports, any use of restrictive practices will be included in the NDIS participants' behaviour support plan. Authorisation of the restrictive behaviour must be obtained as per the requirements of this Bill.</p> <p>If the education service provider is not a NDIS registered provider of behaviour supports, they would need to comply with the Department of Education's policies and procedures with regard to use of restrictive practice.</p>
3 c)	<p>Was any consideration given to adopting a broader approach similar to that provided for under the Senior Practitioner Act 2018 (ACT), whereby restrictive practices authorisation and monitoring is applicable to the provision of education, disability, care and protection of children services and any other services prescribed by regulation?</p>	<p>Yes, consideration was given to other approaches and models as part of the development of the model for the authorisation of restrictive practices in the Northern Territory. This included consultation with other jurisdictions.</p>
4 a)	<p>Can you provide the Committee with an update as to the status of the National review into Community Visitor Schemes?</p>	<p>The review of Community Visitor Schemes sits outside the scope of this Bill.</p> <p>The Department of Social Services engaged a consultant to conduct a national review of Community Visitor Schemes. The purpose of the review was to consider the role, if any, of community visiting in the context of the NDIS when fully implemented in 2020. The report will be considered by the Disability Reform Council.</p>

4 b)	How will the rollout of full NDIS implementation in the Territory as of 1 July affect the operations of the NT Community Visitor Program?	<p>The full roll out of the NDIS in the NT from 1 July 2019 will not affect the operation of the NT Community Visitor Program (CVP). The CVP is responsible for monitoring residential services operated by the Office of Disability through their capacity to visit, inspect records, report, advocate and make recommendations as defined in Part 6 of the <i>Disability Services Act 2016</i>.</p>
5 a)	How will the operation of clause 4(2) impact on the role and operations of the Community Visitor Program in relation to NDIS participants where they are also a person to whom Part 4 of the Disability Services Act 1993 applies?	<p>The Community Visitor Program will not have an oversight role for restrictive practices for NDIS participants whose behaviour support is provided by an NDIS Behaviour Support Practitioner and NDIS service provider. This will be the role of the NDIS Commission. The existing role of the Community Visitor Program, as per Part 6 of the <i>Disability Services Act 2016</i> will not change, with the exception of the inquiry function relating to the use of restrictive interventions for NDIS participants, as this will be overseen by the NDIS Commission. Consequential amendments to the <i>Disability Services Act 2016</i> will be required.</p>
5 b)	How will Part 4 of the Disability Services Act continue to operate if the Bill is implemented?	<p>Part 4 of the <i>Disability Services Act 2016</i> will continue to operate in its current form for non-NDIS participants as these clients will not be subject to the new Bill.</p>
6 a)	What consideration was given to the interaction between the proposed legislation and the Mental Health and Related Services Act during the drafting of the Bill?	<p>The mental health sector provided feedback during the consultations that this legislation and behaviour support in general is not applicable to people with a mental illness. The mental health sector stated that functional behavioural assessment is appropriate for someone with cognitive impairment but not in the context of mental illness or psychiatric disability where the behaviour is driven by psychiatric symptomatology and requires a medical response.</p> <p>If a person has a dual diagnosis of intellectual disability and mental illness, the behaviour support plan would be implemented in the community and disability care facilities. However, if they were mentally unwell and required treatment for their mental illness, the</p>

		<i>Mental Health and Related Services Act 1998 (the Act)</i> would apply as the restraint and seclusion referred to in the Act is for treatment and / or compliance with treatment for their mental illness.
6 b)	How will anomalies such as that identified by the NT Community Visitor Program be addressed if the Bill is implemented as currently drafted?	As per the response for 6 (a), there are no anomalies identified.
Clause 5 – Principles		
7 a)	Given that this is a guiding principle for treatment and care in the Disability Services Act 1993 and the National Disability Standards, can you clarify why it is not included as a principle in the Bill?	The Office of Disability is supportive of this feedback and will propose amendments to the Bill to include the right to review in the guiding principles.
7 b)	Can you also explain why, in contrast to the existing principles in the Disability Services Act 1993, the National Disability Standards and the Disability Services (Principles and Objectives) Instrument 2018 (Cth), the Bill does not include that 'participants have the same right of pursuit as other members of Australian society of the pursuit of grievance in relation to services'?	As per the response for 7 (a), the Office of Disability is supportive of this feedback and will propose amendments to the Bill to include this principle.
Part 2 – Senior Practitioner		
8 a)	Can you clarify for the Committee how the NT Senior Practitioner will interact with the National Senior Practitioner and the NDIS Commission?	<p>The framework for behaviour support, developed through the Quality and Safeguarding subgroup that reports to the COAG Disability Reform Council separates the roles of authorising of restrictive practices to state and territory entities and the monitoring and oversight of restrictive practices to the NDIS Commission, creating a separation of functions and powers.</p> <p>The NT Senior Practitioner will be a suitably qualified and experienced senior NTG employee. The NDIS Commission is establishing an office in Darwin (as of 1 July 2019) and the NT Senior Practitioner will be also based in Darwin. The NT Senior Practitioner's interaction with the NDIS Commission will be facilitated through operational guidelines and subject to a</p>

		<p>structured governance arrangement. Information on authorised restrictive practices will be shared with the NDIS Commission through an ICT system to enable effective monitoring by the NDIS Commission.</p>
8 b)	<p>What information is currently available to the NDIS providers, NDIS Behaviour Support Practitioners, participants and participant's guardians regarding the respective roles of the NT Senior Practitioner, the National Senior Practitioner and the NDIS Commission, and the overall governance structure for restrictive practices?</p>	<p>In the lead up to the NDIS Commission being operational in the NT, there will be significant engagement with the sector and information sessions conducted regarding the framework and roles and responsibilities of the different parties involved in behaviour support. An information session is currently being planned for mid-May 2019 for service providers and behaviour support practitioners.</p> <p>The NDIS Commission has a web site that covers all their functions and has a tab specific for behaviour support https://www.ndiscommission.gov.au/providers/behaviour-support. This website provides an overview of the Commission's role in general with links to the legislation and the Behaviour Support Rules. The NDIS Commission has advised that they will be conducting extensive stakeholder engagement once they have a presence in the NT. They are currently recruiting to the NT Based NDIS Commission roles.</p>
9 a)	<p>Given that the Minister cannot appoint a person as a community visitor if they employed by, or have a direct interest in any contract with the Agency, can you clarify why a similar provision does not apply to the appointment of the Senior Practitioner?</p>	<p>The role of the Senior Practitioner is different from that of the community visitor in that it is an administrative function to authorise restrictive practices and does not have an investigative function. The Senior Practitioner is governed and must abide by the <i>Public Sector Employment and Management Act 1993</i> and associated regulations and Employment Instructions.</p> <p>The Senior Practitioner will not be registered as a NDIS Specialist Behaviour Support Practitioner and therefore will not be developing behaviour support plans, thus eliminating that potential conflict of authorising their own behaviour support plans.</p>

9 b)	Was any consideration given to the model adopted in the ACT where the Office of the Senior Practitioner is located within the Community Services portfolio with formal links with the ACT Human Rights Commission?	<p>The Community Services portfolio in the ACT incorporates a broad cross section of community services' policy and program areas and includes disability, seniors, multicultural affairs, children and families, housing, Aboriginal and Torres Strait Islanders, women, youth, veteran affairs, safer families, and child development.</p> <p>It is proposed that the Senior Practitioner does not sit within the Office of Disability to reduce any perceived conflict.</p> <p>There is no Human Rights Commission in the NT. The Senior Practitioner will develop working arrangements with relevant statutory bodies of the Northern Territory.</p>
10 a)	While it is noted that the Bill provides for the Senior Practitioner to delegate their powers and functions to a suitably qualified public sector employee, what provisions are in place to ensure that ongoing operation of the position in the event that the Senior Practitioner resigns unexpectedly or is incapacitated due to illness?	<p>Clause 13 allows for the Senior Practitioner to delegate their powers and functions under the Act to a public sector employee if they are satisfied that they have the qualifications, clinical experience and personal qualities necessary to exercise the Senior Practitioner's powers and perform their functions.</p> <p>This would be the applicable clause in the event that the Senior Practitioner resigns unexpectedly or is incapacitated due to illness.</p>
10 b)	Was any consideration given to the inclusion of a resignation and termination appointment clause similar to that provided under section 52 of the Disability Services Act 1993? If not, why?	<p>The Senior Practitioner is governed and must abide by the <i>Public Sector Employment and Management Act 1993</i> and associated regulations and Employment Instructions.</p>
11 a)	How would it impact on the operation of the legislation if the Bill were amended to require that the Senior Practitioner prepare an Annual Report similar to that provided for in equivalent legislation in Tasmania and the ACT?	<p>As the Senior Practitioner is not a statutory position, KPI's will be developed and reported against in the Department of Health's Annual Report.</p>
Part 3 – Authorisations		
12 a)	Given that the NDIS Rules provide for unauthorised 'single emergency use' of a restrictive practice, and existing provisions under sections 41 and 42 of the Disability Services Act 1993	<p>This Bill sets out the authorisation process for restrictive practices to NDIS participants in the delivery of services to participant in accordance with a behaviour support plan (or interim support</p>

	<p>provide that it is not an offence to use an unauthorised restrictive practice in situations where there is an imminent risk of the person causing serious physical harm to them self or others, can you clarify why the Bill does not include similar provisions?</p>	<p>plan). The reporting and monitoring of emergency or unauthorised restrictive practices is the jurisdiction of the NDIS Quality and Safeguards Commission.</p>
12 b)	<p>Noting that the ACT is currently considering amendments to the Senior Practitioner Act 2018 following the identification of issues in the early implementation of the Act due to the absence of provisions relating to the emergency use of restrictive practices in duty of care situations, what impact would it have on the operation of the legislation if the Bill was amended to provide for the use of an unauthorised restrictive practice in an emergency?</p>	<p>The <i>Senior Practitioner Act (ACT) 2018</i> has broader scope than this Bill and operates in settings outside of the NDIS. As this Bill only applies to registered NDIS providers, the <i>National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018</i> cover the use of a restrictive practice in an emergency.</p>
13 a)	<p>When considering applications for authorisation or interim authorisation for restrictive practices, what access will the NT Senior Practitioner have to information held by the NDIS Commission regarding interactions between the Commission and the NDIS provider such as that outlined by the Office of the Public Guardian?</p>	<p>The National Disability Insurance Scheme (Protection and Disclosure of Information - Commissioner) Rules 2018 (the Rules) set out when the NDIS Commission can make disclosures of protected information. The Rules provide under section 20 when the Commissioner may disclose information to Departments or authorities following either a request from the Department or the Commissioner's own initiative. The Commissioner may have regard to the functions, powers or responsibilities of the NT Senior Practitioner, as proposed in this Bill, when deciding to disclose information. The NT Senior Practitioner may request information from the NDIS Commission in the performance of the Senior Practitioner's functions.</p> <p>Under section 14(2)(vi) the NDIS provider is compelled to provide any other information relevant to the application, and under section 14(3) the Senior Practitioner may request further information from the NDIS provider.</p>
14 a)	<p>Was any consideration given to the inclusion of time frames within which the Senior Practitioner is required to respond to an application for authorisation or interim authorisation of a restrictive practice? If not, why?</p>	<p>The Bill allows for the Senior Practitioner to make guidelines, including guidelines in relation to the use of restrictive practices. These guidelines will outline the processes to operationalise the Bill, such as the timeframes within which the Senior Practitioner is</p>

		required to respond to an application for authorisation or interim authorisation of a restrictive practice.
15 a)	Can you explain why then, in contrast to existing provisions in the Disability Services Act 1993 and equivalent legislation elsewhere in Australia, the Bill does not include any offence provisions for the unauthorised use of restrictive practices in instances other than emergency use in duty of care situations?	This Bill is concerned with the authorisation of restrictive practices for NDIS participants in receipt of a service provided by an NDIS provider. Monitoring and oversight of restrictive practice functions are the responsibility of the NDIS Commission and is the jurisdiction of the Commonwealth.
15 b)	What consideration was given to potential offence provisions during consultations with key stakeholders and drafting of the Bill?	As per the response for 15 (a), offence provisions of this Bill were not included in the consultations with key stakeholders. The stakeholder consultations centred on a discussion paper on the NT NDIS Authorisation Framework. The Senior Practitioner does not have the function of investigating complaints in the Bill, so does not have the equivalent directions making power (and hence there is no offence for failing to comply with a direction).
16 a)	Has there been any consideration regarding inclusion of a similar provision in the proposed legislation?	The <i>Senior Practitioner Act (ACT) 2018</i> has broader scope than this Bill. The <i>Senior Practitioner Act (ACT) 2018</i> authorises the Senior Practitioner to receive complaints, conduct investigations and issue directions following an investigation. This Bill does not create powers for the NT Senior Practitioner to conduct investigations or monitor the ongoing use of restrictive practices under a behaviour support plan as this is the jurisdiction of the NDIS Commission. Accordingly, as the NT Senior Practitioner does have investigatory powers the position cannot issue a direction to a registered NDIS service provider.
17 a)	Given that it is understood that the NT Community Visitor Program advocated for these inclusions during the consultation process, on what basis was it determined not to include them in the Bill?	Consideration was given to the itemising of other restrictive practices within the legislation. However, consultation with other Senior Practitioners interstate and experts in the field advised to limit the range of restrictive practices listed in the legislation to what was in the NDIS Commission Behaviour Support Rules

		<p>and include an 'other' category. A prescriptive list can inadvertently create limitations that may prevent a provider seeking authorisation of a restrictive practice if it is not identified on the list.</p>
<p>18 a)</p>	<p>Clause 28 – Review by NTCAT</p> <p>Was any consideration given to the inclusion of provisions for the establishment of an Independent Review Panel similar to that provided for under sections 40 and 70 of the Disability Services Act 1993? If not, why?</p>	<p>Consideration was given regarding the inclusion and establishment of an Independent Review Panel. However, NTCAT was chosen for the review function because it is an established forum to review a wide range of administrative decisions. NTCAT has over 30 members from diverse professional backgrounds that are available to be a part of the Tribunal, including (but not limited to) doctors, lawyers and psychologists.</p>