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Public Briefing Transcript

National Disability Insurance Scheme (Worker Clearance) Bill 2019

10.00 am, Wednesday 30 October 2019
Litchfield Room, Level 3, Parliament House, Darwin

Members: Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Mr Gary Higgins MLA, Member for Daly
Mrs Kate Worden MLA, Member for Sanderson

Witnesses: *Department of Health*
Samantha Livesley: Senior Director, Office of Disability
Michelle Wright: Acting Deputy Director, Office of Disability
Rosa Nardone: Senior Policy Officer, Office of Disability

NATIONAL DISABILITY INSURANCE SCHEME (WORKER CLEARANCE) BILL 2019

Department of Health

Madam CHAIR: Good morning, ladies. Thank you for joining us a few minutes early. I will start with my introduction and we will get into the public briefing.

Good morning, everyone. 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 (Worker Clearance) Bill 2019.

I acknowledge my fellow committee members in attendance today via teleconference: the Member for Sanderson, Kate Worden; and the Member for Daly, Gary Higgins.

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, Michael Wright, Acting Deputy Director and Rosa Nardone, 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 which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the briefing, 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 before inviting you to make a brief opening statement, and then proceeding to the committee's questions.

Could you each please state your name and the capacity in which you are appearing this morning. Can I also ask you to keep in mind in you can talk a little louder than you normally would, it would make it easier for Kate and Gary to hear you down the line. Thank you.

Ms LIVESLEY: Good morning. It is Samantha Livesley, Senior Director, Office of Disability.

Ms WRIGHT: Good morning. Michelle Wright, Acting Deputy Director, Office of Disability, Department of Health.

Ms NARDONE: Good morning. Rosa Nardone, Senior Policy Officer, Office of Disability.

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

Ms LIVESLEY: Good morning, everyone. Thank you for the opportunity this morning.

The NDIS represents a fundamental change to how supports for people with disability are funded and delivered across Australia. The NDIS is designed to produce major benefits for people with disability, their families and the broader community.

In December 2006, COAG endorsed the National Disability Insurance Scheme Quality and Safeguarding Framework. As part of this framework, the Commonwealth, states and territories have agreed to implement nationally consistent worker screening arrangements by 1 July 2020. This will replace the different arrangements operating in most states and territories and set a single national screening check for all NDIS workers.

Once fully rolled out, the NDIS worker screening check will enable a screened worker to deliver NDIS services and supports in any state or territory, or to any employer delivering services and supports under the NDIS. This will reduce paperwork for workers and employers and increase safety for participants.

Worker screening will deter individuals who pose an unacceptable risk of harm from seeking work in the sector and reduces the potential for providers to employ workers who pose an unacceptable risk of harm to people with disability. Worker screening also has a corrective affect in prohibiting those persons who pose

an unacceptable risk or who have previously caused harm to a vulnerable person from having more than incidental contact with people with disability when working with a registered NDIS provider.

Currently, the *Care and Protection of Children Act* and its subordinate regulations provide the legislative basis for the NT's Working with Children checks, which we call the Ochre Card. The existing legislation is not capable of authorising all the requirements and objectives of nationally consistent NDIS worker screening and monitoring and, as such, new legislation is required.

The level of risk to the safety and wellbeing of NDIS participants is unacceptably high without appropriate risk-based nationally consistent worker screening and ongoing monitoring in place. The objective of the screening is to:

- protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services under the NDIS by demonstrating that the rights of people with disability to be safe and protected are a high community priority
- reducing the potential for providers to employ or engage individuals who pose an unacceptable risk of harm to people with disability
- prohibiting individuals who have a history of harm against people with disability from having more than incidental contact with people with disability when working for a registered NDIS provider
- deterring individuals who pose a high risk of harm from seeking work in the NDIS sector.

To realise these objectives, NDIS worker screening will be guided by the following principles:

- Human rights based—the paramount consideration is the right of people with disability to live lives free from abuse, violence, neglect and exploitation consistent with the United Nations Conventions on the Rights of Person with Disabilities.
- Provider duty of care—employers have the primary responsibility for ensuring that they do not engage unsuitable people and that their workers are not acting or behaving in any way that puts people with disability at risk.
- Risk based—ensuring decisions are made based on the potential risk an individual worker poses after assessing the details of a range of relevant information.
- Proportionality—ensuring that only workers whose roles pose a significant opportunity for harm are required to be screened.
- Consistency—ensuring that the NDIS worker screening assessment delivers the same outcome, regardless of the jurisdiction in which the assessment was undertaken.
- Privacy and appropriate use of information—an individual's information obtained in the course of conducting an NDIS worker screening assessment will not be used for an improper purpose and will be protected from inappropriate disclosure.
- Natural Justice, procedural fairness and transparency—ensuring NDIS worker screening processes and decisions will be independent and fair.
- Efficiency and effectiveness—streamlined and simplified screening process for workers and providers who operate across jurisdictions, with a single screening process for all NDIS worker roles.

The legislation will apply to workers of NDIS providers who are registered with the NDIS Quality and Safeguards Commission. They will be required to have a valid and current NDIS worker screening clearance if they

- are involved in the direct delivery of specified supports and services to people with disability, or
- are likely to have more than incidental contact with people with disability as a normal part of their duties, or
- or are key personnel such as those holding executive, senior management, operational positions with a registered NDIS provider—for example, this could include the Chief Executive Officer, Chairperson or a board member.

The worker screening clearance will be optional for the following workers:

- Workers employed by NDIS registered providers who do not have more than incidental contact with people with disability as a normal part of their jobs such as administrative support staff. They will not be mandated by the legislation to undergo an NDIS worker screening clearance, but may choose to do so.
- Self-managing NDIS participants will not be mandated to engage in NDIS provider registered with the commission and may knowingly choose to engage a worker without an NDIS worker screening clearance. This is because self-managing participants are not under formal guardianship arrangements and have capacity to assess risk and make their own decisions when it comes to choosing who they want to provide their NDIS-funded supports. Formal regulatory requirements for this group of workers has been minimised to preserve the self-managing participant's rights to exercise informed choice and control. Even though worker screening will not be mandated for this group of employees, it will be strongly encouraged.

People not able to apply.

Workers not engaged in NDIS work are not eligible to apply for an NDIS worker screening clearance. The clearance has not been designed as a replacement or alternative worker screening tool for other workforces which engage with vulnerable people such as the aged care sector or Territorians who work with children when they will still be required to hold an Ochre Card.

The development of the National Quality and Safeguarding Framework was informed by national consultations undertaken by the Commonwealth across Australia. They did face-to-face forums as well as written submissions that informed their framework; the Northern Territory was included in this approach. Peak bodies were provided with a further opportunity to consider a detailed consultation paper and were invited to provide those further submissions. This was all considered and incorporated into the Intergovernmental Agreement for Nationally Consistent Worker Screening—which we refer to as the IGA—agreed to by jurisdictions in June 2018. That forms the base policy on which all jurisdictions are developing their legislation.

In September prior to the introduction of the bill this year, the Department of Health released the information paper. The paper outlined the rationale for worker screening, including:

- the need for national consistency;
- consultation undertaken to date;
- elements of the bill including safeguards for participants and avenues for review or decisions for workers.

The paper was distributed to a range of stakeholders across the Territory.

Some feedback we have received to date from some NGOs regard: employee misconduct and employer/employee requirements; the cost of an NDIS worker clearance check, including if there will be any concessions for volunteers; and prohibiting people who have criminal records who are family members appointing participants in remote areas when they are the only support option.

Further information was given to clarify the obligations of an employer if they become away of an employee misconduct and how this information may relate to worker screening. Under the NDIS Code of Conduct, the employer must mandatorily report any worker misconduct to the NDIS Quality and Safeguards Commission. The Worker Screening Unit may take such evidence into consideration when assessing the risk of harm a potential worker may pose to a person with a disability.

There will also be a requirement under the NDIS worker clearance Act for a person applying for an NDIS worker screening clearance to declare any relevant workplace misconduct in their application process.

In relation to the question on fees, there is no nationally consistent position on what the cost of an NDIS worker screening clearance will be, including if there will be concessions for volunteers. However, it is envisioned that the application fee will be based on partial cost recovery in recognition of the financial impact and affordability for workers in the sector. Further work has also been done at a national level to ensure the cost of the clearance across jurisdictions is similar. The cost of applying for this clearance will be determined and documented in future regulations which will be created under the legislation.

With regard to prohibiting people with criminal records from supporting people with disability in remote communities, advice was provided that is consistent with the United Nations Conventions on the Rights of Persons with Disabilities—that is, that people with disability living in remote areas have a right to receive supports that meet their needs, as well as to feel safe and protected. Providing exemptions for persons who would usually be excluded from obtaining a clearance because of the lack of any other support available creates a precedent that may place participants at risk of harm. Rather than creating this risk, efforts should

be better placed in building market capability and upskilling the community. Also, as previously mentioned, self-managing NDIS participants may choose to employ providers or workers who do not have worker clearance.

The NDIS Bill is the first tier of the legislation required to support the introduction of nationally consistent worker screening for NDIS in the NT. Section 62 of the bill determines that the Administrator may make regulations under the Act. For example, these regulations may be made that will further define the following aspects of the clearance that include: defining offences into offence categories; establishing fees; setting key time frames; identifying corresponding legislation in other jurisdictions; identifying authorised screening units in other jurisdictions; and further defining the requirements of the application process.

Madam CHAIR: Thank you very much. I will now go down the line to Gary and Kate to ask if they have any questions for the committee?

Mr HIGGINS: Yes. Have we done any costings on implementing this legislation? Specifically in the minister's speech in parliament, there was reference to developing a new computer system or modifying an existing one. Have we looked at any of those costs?

Ms LIVESLEY: We are in the process of finalising a business case to engage appropriate expertise to look at our existing systems and to put forward a proposal about the best fit for a worker screening ICT solution for the NDIS, but one that could potentially also be incorporated into the future for other worker screening requirements. That is work that is about to commence.

Mr HIGGINS: Yes. Have we had any indication on the cost? I know you said you are getting a consultant to have a look at it, but do we have any indication on cost there?

Ms LIVESLEY: Not at this stage, no.

Mr HIGGINS: Okay. The other question is this has to fit in with a lot of the Commonwealth stuff, so are we in line with their timing, or ahead or behind? Where are we with that? How do we match up with them?

Ms LIVESLEY: I think we are in line. All states and territories and the Commonwealth still have work to do in that we are at different stages of legislation and development of our ICT solutions. Knowing that there will also be a national database that all states and territories need to interface with, there is still development work that needs to be undertaken. But I think we are in line with where other jurisdictions and the Commonwealth are.

Mr HIGGINS: Okay. That is all I have.

Mrs WORDEN: I have one about clarification between—you touched on it a little but I was not left feeling overly sure. In the Northern Territory, obviously this does not negate the need for an Ochre Card in some employment opportunities, but what happens if they have to get the national worker clearance? What does that mean for them with the Ochre Card? Will we say, 'That is okay, you can just do one and not worry about the other'?

Ms LIVESLEY: No. If you were doing work with children as well as with NDIS participants—be that the NDIS participant is a child or not—you would still require both clearances.

Mrs WORDEN: Obviously, there is a cost to both?

Ms LIVESLEY: Yes.

Mrs WORDEN: We will require people to do two? One does not ...

Ms LIVESLEY: At this stage, yes, while there are two separate clearances. We would require them, if they are working with children and NDIS participants, to have the two separate worker screening clearances.

Mrs WORDEN: Has there been a thought to allowing one? Obviously, you are looking for the same factors—and I am no expert?

Ms WRIGHT: Yes, Kate. The Northern Territory will consider moving towards implementing a vulnerable persons' check in the future. That vulnerable persons' check will take into consideration the national

consistency of the NDIS check, the working with children checks, and any future requirements coming from the Royal Commissions into the Aged Care System and the Care and Protection of People with Disabilities.

There is still a bit of work that has to be done with that. We need to do further work with Territory Families, obviously, to see how we can get that to work together.

It is noted that there will be an impost in the short term while we work together to address that vulnerable persons' check, and to see how we can perhaps look at that small group of people it will affect in the short term, where a person who is working with a child with a disability will be required to have the two cards. That is simply because of the two pieces of legislation that are existing at the same time.

But it has been noted ...

Mrs WORDEN: Sorry, there is nothing we can put in this legislation that says if you have to have this, there is no requirement for the Ochre Card? There is no way of doing that?

Ms WRIGHT: There may be. That has been brought up with Territory Families, but it requires their further consideration.

Mrs WORDEN: My issue is the cost. Applying for an Ochre Card is not cheap and some of the people working in the disability sector are probably the poorest—lowest paid. It is not a lucrative area. And we will ask them to do it twice. Obviously, some of the checks would be doubled up. It would be good if we could have a solution. I am not overly comfortable that we are asking an extra impost when we already have a system in place.

Sorry, I am just thinking of the people in the disability sector and what they might say when they are told, 'Sorry, you have to get another one'.

Ms WRIGHT: Yes, that is noted.

Mrs WORDEN: Noted or action being taken? This legislation, obviously, is coming forward very shortly and these people will be affected.

Ms WRIGHT: Yes, they will. At this point in time, there is action currently being undertaken with Territory Families to see if the issue can be addressed.

Mrs WORDEN: So, you are telling me it cannot be addressed through the legislation?

Ms WRIGHT: I cannot talk on behalf of Territory Families, I am afraid.

Mrs WORDEN: No, no your legislation you are talking to us about today—something put in so this one overrides the requirement for an Ochre Card?

Ms WRIGHT: Yes, that would affect their legislation, so it must be done with them.

Ms LIVESLEY: We are in discussions with Territory Families on that matter, but for us, we need to stand up the NDIS worker clearance process in legislation and operationalise that.

Mrs WORDEN: But this does not have to be in place until 1 July next year?

Ms LIVESLEY: By 1 July, yes. But as I said, we are in discussion ...

Mrs WORDEN: But we still have six months that we can work that out so that people do not have to pay twice?

Ms WRIGHT: That is correct.

Mrs WORDEN: So, when will we enact this legislation? When will it come into effect?

Ms LIVESLEY: The parliamentary schedule is for February at this stage.

Mrs WORDEN: Oh, well, I might have to ask some more questions offline about that because I believe that has to be fixed. We cannot be asking people to do two of the same checks through two different bits of legislation when they are probably the lowest earners in our community. We just cannot do that. Sorry.

Ms WRIGHT: No, I thank you for that comment.

Madam CHAIR: On that, did you say that aged care workers have to go through a separate screening check at the moment?

Ms LIVESLEY: They will probably just have a police check, but that would be under the provisions of the Commonwealth *Aged Care Act* and the requirements for aged care workers.

Madam CHAIR: Okay. I have a few questions. Who made the decision that the people who provide services to self-managed NDIS participants do not have to be worker screened through a nationally consistent worker screening process?

Ms LIVESLEY: It was aligned to the provisions of the NDIS about choice and control. We strongly encourage people to use people who obviously held a clearance, but if an individual who is self-managing had someone they really wanted to use and they did not have one, then, yes.

Madam CHAIR: I am assuming there would be a different complaints mechanism for those who self-manage and the wrong thing is done against them by somebody who has not had a nationally consistent worker screening, as opposed to somebody who is self-managed and they go through a provider who has been through that screening check?

Ms LIVESLEY: Depending on what had occurred and whether you needed to make a formal report to the police or if they were already working for a provider of some sort—obviously alerting their employer.

Madam CHAIR: Would it be up to a service provider to decide whether or not they cover the fee for a worker screening check for their staff? Sam, you referred to admin staff—those who do not directly engage with NDIS participants. They are not mandated, which I think is quite acceptable.

Ms LIVESLEY: Yes.

Madam CHAIR: Yes, is it up to the ...

Ms LIVESLEY: It would be up to each organisation about whether they were to cover those costs or not.

Madam CHAIR: Do you know how the NDIS worker screening clearance will actually differ from a working with children check in practicality? What would be different between both of those?

Ms WRIGHT: The major difference between the two is that the NDIS worker clearance is Australia-wide. It is linked up to every other jurisdiction. It also has what we call real time monitoring. If a person commits an offence, say, six months after they have been given their clearance, that offence will be picked up the very next day in the jurisdiction where that offence was committed. Then it is circulated around each linked worker screening unit and that person will be identified immediately. That does not occur in the current Ochre Card.

Madam CHAIR: Excellent. That pretty much answered my next question, Michelle.

Thank you very much for participating in our public briefing today. That was very interesting.

Ms LIVESLEY: Thank you.

The committee concluded.
