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SOCIAL POLICY SCRUTINY COMMITTEE

Public Hearing Transcript

National Disability Insurance Scheme (Authorisations) Bill 2019

10.15 am, Friday, 12 April 2019

Litchfield Room, Level 3, Parliament House, Darwin

Members: Mrs Robyn Lambley MLA, Deputy Chair, Member for Araluen
Mrs Lia Finocchiaro MLA, Member for Spillett
Ms Sandra Nelson MLA, Member for Katherine

Witnesses:

Darwin Community Legal Service
Linda Weatherhead: Executive Director
Leigh Kinsela: Senior Advocate, Seniors and Disability Rights Service

NT Community Visitor Program
Sally Sievers: Principal Community Visitor

Office of the Public Guardian
Beth Walker: Public Guardian

Office of Disability – Department of Health
Samantha Livesley: Senior Director
Robyn Westerman: Senior Manager NDIS Implementation
Válli Camara: Senior Policy Officer

NATIONAL DISABILITY INSURANCE SCHEME (AUTHORISATIONS) BILL 2019

DARWIN COMMUNITY LEGAL SERVICE

Madam DEPUTY CHAIR: Good morning, everyone. Thank you for joining us. I am Robyn Lambley, the Member for Araluen and Deputy Chair of the Social Policy Scrutiny Committee. On behalf of the committee I welcome everyone to this public hearing on the National Disability Insurance Scheme (Authorisations) Bill 2019.

I acknowledge that this public briefing is being held on the land of the Larrakia people and I pay my respect to Larrakia elders past, present and emerging.

I also acknowledge my fellow committee members in attendance today: the Member for Spillett, Lia Finocchiaro, and via teleconference the Member for Katherine, Sandra Nelson.

I welcome to the table to give evidence to the committee from the Darwin Community Legal Service, Linda Weatherhead, Executive Director and Leigh Kinsela, Senior Advocate, Seniors and Disability Rights Service. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing some additional information 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 hearing 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 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.

Could you please state your name for the record and the capacity in which you are appearing? We have about half an hour for this session.

Ms KNIGHT: Fifteen minutes.

Madam DEPUTY CHAIR: Fifteen minutes, so very concise. If you could introduce yourselves, thank you very much.

Ms WEATHERHEAD: Linda Weatherhead, Executive Director, Darwin Community Legal Service.

Ms KINSELA: Leigh Kinsela, Senior Advocate, Darwin Community Legal Service.

Madam DEPUTY CHAIR: We have read your submission. Would you like to ask some questions, Lia?

Mrs FINOCCHIARO: Yes, sure. Thank you so much for coming. We know time is tight, but we value the fact that you provided a submission. We wanted to trash out a couple of extra points. Notably, this bill obviously only relates to NDIS clients, but then it leaves this question about restrictive practices for non-NDIS clients. Could you expand on how that is a concern and how you think it could be addresses—that is, does that require amendments to the Disability Services Act? Could you talk to that more generally, thank you?

Ms KINSELA: We can comment on what we feel the issues are with the scope. In our submission, we have not commented a lot on possible solutions, so I might leave that perhaps for Linda to comment on. But, yes, our main concern is that it only covers NDIS participants. We know that it is 10% or less of people with disabilities across Australia have access to NDIS.

Yes, it is likely that people with really complex and challenging behaviours are more likely to have access to the NDIS, which is great. That is the cohort of people who are possibly more likely to be subject to restrictive practices, but it still leaves a gap. I want to talk about that in two aspects. The first gap is for NDIS participants, who will only be covered when they are receiving services from a service providers—that is our understanding of the legislation.

There are a variety of other contexts where they will not receive protection. For example, a child with a disability in the school setting may be subject to seclusion—being locked in a classroom. A person with a disability and challenging behaviours who is admitted to hospital in an acute setting could be subject to chemical or physical restraint. A person who has complex disabilities in a drug and alcohol rehabilitation centre—there is no coverage there. Even if all these people are on the NDIS, the act does not protect them in those settings. There is also the prison environment. There is also a bit question mark over the application of the Corrections Act and how that interacts with this legislation.

The other part I wanted to talk about is obviously people who are not under the NDIS. An example of a group of people who might not be covered there is we know a lot of people with complex mental health conditions are not receiving access to the NDIS. That group has a lot of challenging behaviours. You might have, for example, a group

of people with difficult behaviours living in supported accommodation. They could be subject to restrictive practices and they do not receive protection under this legislation.

At the end of the day, that statement that was in the statement of compatibility with human rights, that all people with disabilities in the NT who are vulnerable will be protected by this legislation is just incorrect, unfortunately.

I understand there is a time frame that sits with this legislation—we need to have something in place for 1 July, with the Quality and Safeguards Commission coming to town. But it is important that we think about bringing something in, in the short term, to provide consistent protection for all vulnerable people with disabilities who might be subject to restrictive practices.

Linda, did you want to comment on solutions?

Ms WEATHERHEAD: I guess the solutions are a more challenging part. There are aspects of our submission which refer to areas of Commonwealth responsibility as well—being the aged care sector. One of the issues is in restrictive practices for people who are vulnerable and have challenging behaviours or certain impediments in how they are responding in a service provision setting.

We would like to ensure some consistency. One of the things we are seeing is the NDIS is racing ahead with some of these things and other areas are being left behind—for instance, those 90% of people who are not covered by the NDIS, or people in the ages care sector who also may have disabilities or who exhibit challenging behaviours because of other issues such as dementia and other things.

One of the things we hope to see is that the NT would join a chorus of other states, and even the Commonwealth, in looking at policy framework that looks at the various areas that a restrictive practices regime might impact, working together to adopt some consistent solutions.

We note that the recent Senate committee report on the inquiry into aged care quality—I am sorry, I do not have the reference for the whole inquiry name—indicated that they are keen to develop a consistent framework for looking at restrictive practices in the aged care sector. There are initiatives happening, but it is the joining up process.

I notice that our colleagues from the Office of Disability are here. They may be able to provide a bit more information about what is happening on a national level in those COAG discussions on this.

Mrs FINOCCHIARO: Is it fair to say that at present there is nothing in the Territory that governs restrictive practices? Whilst this will come in and only impact NDIS clients, it is the first piece of legislation that will govern this?

Ms KINSELA: That is correct. The Office of Disability and other witnesses who will be providing evidence after us can provide a better explanation of what the current legislative framework is. My understanding is there are some protections at the moment under the Mental Health and Related Services Act for people with disabilities—and the Disability Service Act. My understanding is it only applies to people who are under the care of the Office of Disability Forensic Unit.

Madam DEPUTY CHAIR: In your capacity in the Darwin Community Legal Service, are these abuses of restrictive practices—that is what you call it—something that is brought to your attention often? How often would that be?

Ms KINSELA: That is an interesting question. Obviously, for confidentiality reasons, we cannot comment on particular clients. What we can say is that we are aware of people who are potentially being subject to restrictive practices. I can give some examples of that. For example, staff members placing locks on fridges in supported independent living accommodation because there are clients with disabilities who are obese. That is a restriction. That is a restrictive practice and an example we are aware of.

Other examples are people turning off electric wheelchairs, restricting the freedom of movement of a person with a disability. We are aware of examples, as well, of kids with disabilities in the school setting being locked into classrooms. Obviously, we cannot provide more specific detail, but it is something we are aware of. More importantly, there is a significant group of people who are at risk of being subject to this. The main reason is because there is a lack of education and understanding of what restrictive practices are in the disability sector.

You have to factor in the unique NT context with that as well. We have lots of new and inexperienced disability providers coming to town. You have issues with resourcing, recruitment and retention. What we hope, with this legislation, is that there will be a strong education framework that comes alongside implementation, with the Office of Disability and the NDIA potentially working together to make sure that services providers are aware of restrictive practices.

As I said, support workers might not be aware that putting a lock on a fridge is a restrictive practice. For example, there might be two houses of supported independent accommodation, each with a number of clients with complex

disabilities. There might only be one vehicle available. So, what happens to those other clients who want to go out? Their right to engage with the community is taken away because of the lack of resources.

It is understanding the fine details about, particularly environmental restraint. When we think of restrictive practices, we think of physical or chemical restraint, strapping someone down and that sort of thing.

Madam DEPUTY CHAIR: Is there a delineation between—I am not familiar with the jargon or the words—positive and negative restrictive practices? Sometimes restrictive practices would have to be employed to protect people. Is that correct? Or is it generally seen as negative?

Ms KINSELA: I am not aware of that way of thinking.

Madam DEPUTY CHAIR: You are talking to someone who is cold. I am not coming in with any knowledge or background in this.

Ms KINSELA: That might be something that other witness are better placed to comment on. But the language of this legislation and the framework partly answers that—that is, that restrictive practices are never really an acceptable practice and should only be used in the most limited circumstances, yes. I do not think there really is a positive use of them. I would not use 'positive'.

Ms WEATHERHEAD: I can add something in relation to the issues we are seeing. A lot of them are related to lack of services. We know in the NT context, particularly when we have a market-based system, the NDIS has come in on top of an aged care system that is market based. We have a few markets. In some remote areas, we do not have any markets at all.

In getting service provision, service providers struggle with staffing and resources to run their services because the costs are quite high. There is not a lot of competition. For instance, one example we had was in relation to a regional area where a respite service was giving people in the accommodation their last drink at 5 pm at night because the people who were doing night shift did not have the capacity to assist people go to the toilet. It is those sorts of things that are really horrendous and you think, 'That is dreadful'. Then you realise they cannot get staff, they are not often able to train people and there is a lot of turnover.

A lot of the things we have seen—if we are talking about an enforcement regime, we also have to moderate that to a certain extent by understanding that the people who are providing services, in lots of case, are really up against it. They may be the only service provider in town. In lots of case we will have people who will tell us about these things but will not want to press a complaint because they are the only service provider in town, and any service is better than none.

When you are looking at the quality framework, it is really difficult in the Northern Territory because we are likely to be under par, particularly in a market-based environment because we are not generating profits and those profits cannot be reinvested into training and development, infrastructure and recruiting. There are real difficulties there. There is a bit of a balancing act to perform. But the lack of services is really a significant issue in this area.

Madam DEPUTY CHAIR: Do you have any more questions, Lia?

We have finished the time allocated, so thank you very much for coming along this morning. We really appreciate it.

Ms WEATHERHEAD: Thank you.

Ms KINSELA: Thank you.

The committee suspended.

NT COMMUNITY VISITOR PROGRAM

Madam DEPUTY CHAIR: Good morning. Thanks for joining us. I will go through my spiel again for those of you heard it 15 minutes ago. This is for the public record.

I am Robyn Lambley, the Member for Araluen and Deputy Chair of the Social Policy Scrutiny Committee. On behalf of the committee I welcome everyone to this public hearing into the National Disability Insurance Scheme (Authorisations) Bill 2019.

I acknowledge my colleague, Lia Finocchiaro, the Member for Spillett, and via teleconference, we have the Member for Katherine, Sandra Nelson.

I welcome to the table to give evidence this morning Sally Sievers, Principal Community Visitor. Welcome, Sally. We appreciate you taking the time to come along this morning and look forward to hearing your contribution.

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If at any time during the hearing, you are concerned that what you will say should not be made public, you may ask the committee to go into a closed session and take your evidence in private.

Could you please state your name and position for the public record, thank you.

Ms SIEVERS: I am Sally Sievers, the Principal Community Visitor and also the Anti-Discrimination Commissioner.

Madam DEPUTY CHAIR: Your submission was quite enlightening for us all on the Social Policy Scrutiny Committee. One of the main concerns you raised was that the bill does not extend far enough, which is what the previous people mentioned. Would you like to comment on that?

Ms SIEVERS: Yes. First of all, it is a great step forward, that we are, for the first time, having a process of planning and authorisation moving forward. Government is to be commended on putting this in place. Obviously, restrictive practice is a fundamental breach of people's human rights and having clear guidance on it is to be commended.

There has been a regime, which is what we have monitored as the community visitor for restrictive practices. The community visitor has—since a really long time—monitored seclusion and mechanical restraint in the mental health and related services area. In the ward in Alice Springs and also up here in Cowdy Ward and JRU. We have monitored that for years. In the last five years, we have monitored in that forensic disability space. There is a regime for the secure care facility in Alice Springs, the cottages at the prison and then there are a number of houses in the community where people who have orders—what are called Part IIA of the *Criminal Code Act*—in place.

It is a very similar regime that you have a positive behaviour support plan for people, and then the use of restrictive practices is set out in that. It is that idea that behaviour is how people who have complex needs are actually communicating.

There has been a process of monitoring, but it is only quite a small cohort. Interestingly, when we were doing what are called zero tolerance workshops over the last two years which were organised by the NDS—they travelling throughout the Territory trying to raise the consciousness of the industry about what restrictive practices were—it was interesting that a number of NGO providers thought that legislation applied to them. There were some people in the Territory—even though it only applies to the forensic—that has actually implemented that process in their supported accommodation, which is fantastic. They are a little further on that journey. It is a really long journey for our community to upskill people who work in disability about what restrictive practices are and how they can—basically, the aim nationally and internationally is for that elimination.

Yes, probably from the point of view of everyone you will hear from today, this is a missed opportunity to extend that out more broadly, than to NDIS participants, just because there is such a great need. We know that in other places where there have been senior practitioners, such as Victoria—we had a great workshop with the senior practitioner from Victoria last year—where he is sending his officers into schools so that the same practices which are happening in the disability space are then happening in schools. Obviously, here we would be thinking they should be following people into correctional facilities and aged care.

Once we have someone on board in the Northern Territory who has those skills as a senior practitioner, it would be optimal to start looking at all the other pieces of legislation to say, 'How can we have a consistent approach to restrictive practices across the whole of the Northern Territory, in every place that someone with a disability is? They should have that.'

One suggestion in this space—and this is just because my staff are totally passionate about people with a disability who do not fall under NDIS and are needing to have great support and be protected—is we would really love to be able to visit more houses and people with a disability than those who are just forensic patients. There is a really big concern for the people we know who are just in houses in the community where the only people who are in their lives are paid carers. So, the vulnerability of those people to things going wrong—primarily probably neglect—is really high.

Having some more prevention regimes such as planning of restrictive practices extending to people in the community, would be great, with a visiting scheme to be able to have a look at what is happening for those people where they are in those houses.

Mrs FINOCCHIARO: Whilst this will only affect NDIS patients, there is absolutely nothing for everyone else? That is an important role that the CVP …

Ms SIEVERS: No. CVP has nine or 10 people who have come into contact with the criminal justice system. That is all we get to monitor.

Mrs FINOCCHIARO: Okay. Is has been limited.

Ms SIEVERS: It is very limited. You have the very limited NDIS and then there is this whole other …

Mrs FINOCCHIARO: Everyone else.

Ms SIEVERS: … cohort. So, it is a great time to raise the vulnerability. Obviously, there is a Royal Commission into the vulnerability of this cohort. You would hope that once this system is in place, that you might be able to extend it …

Mrs FINOCCHIARO: Roll out.

Ms SIEVERS: … out and roll it out. The greater understanding of the role of looking at behaviour and seeing it as the way people are communicating, and more people having those skills is better for the most vulnerable people in our community.

Mrs FINOCCHIARO: Commissioner, can I ask about the role of the senior practitioner? This came out in a lot of the submissions—the importance of that being independent and not sitting within the Department of Health. Could you explain where best that person should fit to create that independence? Can you comment on that? If you are more comfortable, just talk to why they should be independent.

Ms SIEVERS: At the moment—and I do not know this moving forward—out of the houses we monitor nearly all of them, apart from one, are houses which are staffed by staff of the Department of Health. I do not know how that configuration is. It is obviously not for disability. They are probably all on contracts and that sort of thing, so they may not be permanent public servants. That may change in the future as more services providers come in.

But as long as Health has role in the service provision, having the person who oversights and authorises in the same department is a conflict. It is also about moving the senior practitioner and disability out of Health. There is basically that social concept that disability is not a health issue, it is a social construct.

In relation to how people get on—having it somewhere else so it can bring pressure in relation to resourcing—and be independent of the department would be ideal. Obviously, I am a realist that in the Northern Territory we have few independent places and everyone is really busy. There are a number of independent offices, so they put the Principal Community Visitor in our office to take it away from Health. There are others. The Health Complaints Commissioner is coming to speak later and other potential independents.

In the ACT, I have a colleague who is the Human Rights Commissioner, and she has children's commission, discrimination and disability. That role sits in that office and gets support from that office as well. It is like a human rights cluster of offices that sits in there.

Mrs FINOCCHIARO: So, one of those independent bodies, rather than, for example, moving it to Attorney-General or Chief Ministers? Move it right out, ideally?

Ms SIEVERS: Yes. The other issue is about how it is financed and resourced. This has a really big remit. There will be the remit where being an independent officer, you know they will be totally consumed with the authorising part of it, and processing all of the applications and seeing what is right. Then, if it is not really well resourced, the thing which will not happen is the education of the community.

That will be vital for the providers to be educated, but also the young people with intellectual disabilities we have been working with. They need to know when that person grabs their hand that that is a restrictive practice. They need to know that when they are told, 'We are taking your iPad for a day because you did not clean up the kitchen properly', that is a restrictive practice. The education is not just to providers, it is also to the disability community so they can identify it and say, 'No, stop. You are not allowed to do that to me.'

The independence comes from where it is place, but also how it is resourced.

Madam DEPUTY CHAIR: How many people will this apply to? Literally, how many people?

Ms SIEVERS: I do not know. The figure that has been bandied around is that it is 10%. It is three or four million people in Australia with a disability and then it is 10%. But the people from the Office of Disability will know.

Madam DEPUTY CHAIR: Would services have their own internal policy on restrictive practices generally?

Ms SIEVERS: Yes, definitely. What is really interesting from having been on that zero tolerance workshops—I went to the ones in Darwin and Katherine—is some of those providers who have come over from, say, Queensland, have brought their own processes over. They do not have a positive behaviour senior practitioner in their organisation here in the Northern Territory, so they send their behaviour support plans to Queensland for someone to have a look at them.

Basically, it is a dialogue. You discuss, 'Okay, we have this behaviour. How will we try to change it or modify it? If it is a last resort, do we use, for a short period of time, a restrictive practice?' It is a discussion about how you raise the quality of life and the skills of the person. Using the positive behaviour plan to do that would be the ideal.

Madam DEPUTY CHAIR: You said before how restrictive practices need to be eliminated. Is that an aspirational thing, or …

Ms SIEVERS: Australia is a signatory to it. It is in the starting comments of the explanatory memorandum. It says that there are two frameworks that this legislation goes to. One is the national framework for reducing and eliminating the use of restrictive practices in the disability sector—Australia has a framework for that. Then the second is the NDIS quality and safeguarding framework.

Madam DEPUTY CHAIR: So, the senior practitioner will authorise some restrictive practices? Is that correct?

Ms SIEVERS: Yes, but only if they are part of a positive behaviour support plan.

Madam DEPUTY CHAIR: Right. So …

Ms SIEVERS: It is a considered use of them. Under the legislation …

Madam DEPUTY CHAIR: Even though they need to be eliminated, there is some recognition that in some cases it is required …

Ms SIEVERS: You are working towards that, yes.

Madam DEPUTY CHAIR: Right. Okay.

Ms SIEVERS: Sometimes, in the forensic spaces that we work, there is a short-term use of a restrictive practice for a long-term gain in quality of life. That is the sort of thing that my staff report to me on what is happening for someone. This CVP monitors emergency uses that have to be reported on. It is the same as in the school setting. If you have an incident, everyone needs to look, consider and analyse it—debrief the people on it, deconstruct it and see how you can do something better the next time. It is a reflective practice you would really be aiming for.

Madam DEPUTY CHAIR: Is there anything else we had to …

Ms SIEVERS: It is something that staff become really passionate about—that this vulnerable cohort are protected and that we are moving towards a prevention regime.

Madam DEPUTY CHAIR: For those—did you say nine people?—you monitor …

Ms SIEVERS: Yes, nine to 10 or 12, yes.

Madam DEPUTY CHAIR: The goal with those people is to eventually take away the restrictive practices?

Ms SIEVERS: I do not have the day-to-day knowledge about what is in each of these plans. How the *Disability Services Act* works is before you come into one of these facilities like secure care, cottages or the houses, you are supposed to have a positive behaviour support plan. If your positive behaviour support plan has a restrictive practice in it, there is a heap of monitoring and reporting—and potentially, review of that—that can happen, in the knowledge that it is a breach of people's human rights.

So, I do not know about those aspirations. The aspirations of all of those people would be their behaviour and where they are in the world, so they can move back into the community, whether supported under NDIS or in other ways.

Madam DEPUTY CHAIR: At the moment, if, for example, a school employs a restrictive practice with a child—for example, maybe time out in a special room or something—what are the implications? Is that …

Ms SIEVERS: I only know about it because my partner works in this area, so it is not appropriate for me to talk about it.

Madam DEPUTY CHAIR: That would not be reported to you, for example, in your role as …

Ms SIEVERS: No, no, not at all, no.

Madam DEPUTY CHAIR: Okay.

Ms SIEVERS: Education, hospital, aged care facility …

Madam DEPUTY CHAIR: They would have their own policies?

Ms SIEVERS: You would hope.

Madam DEPUTY CHAIR: Yes. Okay. That sort of thing is not reported to you in your role as the commissioner?

Ms SIEVERS: No, no.

Madam DEPUTY CHAIR: Okay. You right?

Mrs FINOCCHIARO: Yes.

Madam DEPUTY CHAIR: Okay. Thank you very much, Sally Sievers.

Ms SIEVERS: Thank you.

The committee suspended.

OFFICE OF THE PUBLIC GUARDIAN

Madam DEPUTY CHAIR: Once again, I have to read through this script for the public record. My apologies for those of you who are listening to it for the third time.

I am Robyn Lambley, the Member for Araluen and Deputy Chair of the Social Policy Scrutiny Committee. On behalf of the committee I welcome everyone to this public hearing today into the National Disability Insurance Scheme (Authorisations) Bill 2019.

I acknowledge my fellow committee members, Lia Finocchiaro, the Member for Spillett, and I think we still have the Member for Katherine, Sandra Nelson, on the phone.

Ms NELSON: I am still here.

Madam DEPUTY CHAIR: Oh, good, Sandra. That is great.

I welcome to the table to give evidence to the committee from the Office of the Public Guardian, Beth Walker.. Welcome. We appreciate you taking the time to participate in this public hearing.

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If ,at any time during the hearing, you are concerned that what you say should not be made public, you may ask the committee to go into a closed session and take your evidence in private.

For the public record, could you please state your name and the capacity in which you are appearing, please, Beth?

Ms WALKER: Good morning. My name is Beth Walker and I am the Public Guardian of the Northern Territory.

Madam DEPUTY CHAIR: What does this legislation mean for you, Beth? I know you have given us a submission.

Ms WALKER: Maybe I can start off with explaining that the Office of the Public Guardian was established under the *Guardianship of Adults Act 2016*. It provided for the appointment of the Public Guardian as a statutory officer and aligned the Northern Territory with other jurisdictions in Australia. The act provides a legal framework for adults with impaired decision-making capacity to have substitute decision makers, as well as supported decision making in relation to personal or financial matters.

The definition of 'impaired capacity' under the *Guardianship of Adults Act 2016* is quite broad and captures adults with cognitive impairment from any cause including mental illness, dementia, intellectual disability and acquired brain injury.

In terms of this NDIS authorisation bill, we see it as critical. We applaud the Northern Territory government for undertaking this step and would strongly advocate that it needs to be legislation and not just policy, guidelines or procedures.

Restrictive practices impact on a person's human rights. It is a very significant issue. For a small number of people—as my colleague was talking about—there are points in time that restrictive practices might be necessary to achieve long-term advantage for someone. A good example of that would be someone exiting, perhaps, the prison on Part IIA, where for a short period of time there are some interventions that have been carefully thought out, documented and have the correct clinical input. Things can change for that person or someone's behaviour can change and they can remain living in the community.

Restrictive practices are a continuum. There are things like the locks on cupboards or doors, locks on houses or gates, putting someone into a bean bag or a soft chair they cannot get out of themselves, all the way up to seclusion and chemical restraint.

As the Public Guardian, we are appointed as a decision maker for 590 Territorians who have impaired capacity, as determined by NT Civil and Administrative Tribunal. Those people have a significant level of disability and we are appointed as their guardians.

We are often presented with behavioural support plans for input or comment. We also are involved with people who may not—as we heard earlier—have appropriate services or behavioural support plans and things are not going well for them. Members of the community and the general public are concerned about someone's behaviour and what is happening for them.

We are appointed as guardian for a lot of the people who are currently in secure care and the cottages. We applaud the legislation. Restrictive practices is a very important issue that we need to consider in the Territory. That is an outline of my offices' involvement in this.

I also echo the sentiments of my colleagues in the extent or coverage of the legislation.

Madam DEPUTY CHAIR: That it is not broad enough?

Ms WALKER: Yes. An example of that would be someone living in supported accommodation where they have a behavioural support plan. There may or may not be restrictive practices, but there are ways of working with that person. If they become unwell, they then are involved with health services and that health service does not have any onus on them or they might try to add new or different restrictive practices. That can create difficulties for that person when people are dealing with them differently in different domains.

In the submission and the original consultation, we strongly encouraged that this legislation incorporate all people with impaired capacity or disability in the Territory.

Madam DEPUTY CHAIR: In your capacity as the Public Guardian, are you made aware of issues of restrictive practices? Is that something you would commonly deal with?

Ms WALKER: I do not have a monitoring or authorisation role in relation to restrictive practices, but because we are guardian of some people, we become aware through stakeholders or visiting services that restrictive practices are being used. But there is no plan and, at the moment, there is no authorisation body for that. That could be forcibly holding someone's hands down while they are fed, locks on house doors, locks on bedroom doors. We have heard about the locks on fridges and cupboards. That is quite a common issue. Often, there is not a good clinical basis those items. If you ask people, 'Why are the cupboards locked?' there is often not a good answer. It is, 'That is always how it has been here.' Or it might be for one person in the house.

There has not been clear oversight about whether the cupboards still need to be locked. 'Could we change that? Could our staff deal with that situation differently so we do not even need to go down that pathway?' which would make that house a lot more like all our own homes.

Madam DEPUTY CHAIR: You are made aware of situations, but you are not in a position to do anything about it?

Ms WALKER: Well, we take action in complaining to service providers, take it up with perhaps Health and Community Complaints if we did not get a good response. We have people who have behavioural support plans. With the rollout of NDIS, unfortunately, it is very difficult to buy the services, but we are seeing people with resourcing in their plans to buy in specialists who can do positive behavioural plans.

We are involved in the process of what will the plan look like. Whilst we do not authorise it, we would raise concerns if that was outlandish or we felt that it was unnecessary. We see the types of things people are suggesting. I guess, as part of our role, we come across of these things and are aware of them being used, but we do not have any powers in authorisation or monitoring, which is why we are very excited by this legislation and look forward to the senior practitioner coming on board.

One of the issues we raised in our submission was that that senior practitioner is key to the legislation and the way that things happen and the progress we might make on this in the Territory. That person needs to have the appropriate skills, expertise and clinical oversight of working with people with disability—and I also add mental illness. We have quite a number of represented adults we are guardian for who have a diagnosed mental illness. They are clinically stable in terms of the mental illness, but they have behaviours of concern that go along with that mental illness. One of the good things about the NDIS is that we are starting to be able to get behaviour support plans for those people, but they are needing assistance with their behaviour, which is sometimes not related to their mental illness.

Madam DEPUTY CHAIR: Out of the 590 clients you have on guardianship, how many would this legislation apply to, approximately?

Ms WALKER: Probably about three-quarters of that 600 people would be already in the NDIS scheme. The other quarter of people who are under guardianship would be in the aged care system.

Madam DEPUTY CHAIR: Okay.

Ms WALKER: We are aware of aged care facilities wanting to use chemical restraint, physical restraint, facilities with locked keypads, which means that because I am living in that aged care facility—whether I need it or not—my freedom is restricted. I appreciate that is a Commonwealth responsibility and it will be doing some monitoring, but there is scope to look at—if you are a Northern Territory resident and you are vulnerable—that your human rights are protected and you are not subjected to actions by other people which restrict your personal liberty.

Madam DEPUTY CHAIR: Do you have any questions.

Mrs FINOCCHIARO: No.

Madam DEPUTY CHAIR: Thank you very much.

Ms WALKER: My pleasure. Good luck.

Madam DEPUTY CHAIR: Thank you for your time.

Sandra, do you have any questions. Sorry, Beth.

Ms NELSON: No, I do not have, thank you though.

Madam DEPUTY CHAIR: Thank you so much.

The committee suspended.

OFFICE OF DISABILITY
DEPARTMENT OF HEALTH

Madam DEPUTY CHAIR: We will kick off again. Thank you for joining us this morning. I am Robyn Lambley, the Member for Araluen and Deputy Chair of the Social Policy Scrutiny Committee. On behalf of the committee I welcome everyone to this public hearing into the National Disability Insurance Scheme (Authorisations) Bill 2019.

I acknowledge my colleague, the Member for Spillett, Lia Finocchiaro, and via teleconference, the Member for Katherine, Sandra Nelson.

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, Robyn Westerman—nice to see you, Robyn—Senior Manager NDIS Implementation and Válli Camara, Senior Policy Officer. Welcome

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 hearing which is being webcast through the Legislative 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 hearing, you are concerned that what you say should not be made public, you may ask the committee to go into a closed session and take your evidence in private.

Could you please state your name for the record and the capacity in which you are appearing?

Ms LIVESLEY: I am Samantha Livesley. I am the Senior Director of Office of Disability.

Ms WESTERMAN: Hi, I am Robyn Westerman. I am the Senior Manager for the NDIS Implementation as part of the Office of Disability.

Ms CAMARA: Good morning. I am Válli Camara. I am the Senior Policy Officer with the Office of Disability.

Madam DEPUTY CHAIR: Thank you. We have just received your response to our written questions, which I do not think any of us have had time to read through. As soon as we have a bit of time on our hands, we might go through some of the questions and get some more clarification.

Do you want to kick off, Lia? You have had a bit more time than the rest of us.

Mrs FINOCCHIARO: Yes. I am slightly fixated on the senior practitioner role and the independence of that. That seems to be a genuine theme running through our submissions. At our public briefing, obviously the department said at this time that has not been—I will not put words in your mouths, but essentially I will ask again if there has been any movement in that? Is there any clarification on where the senior practitioner will sit to create that independence that seemingly the industry is looking for—industry is the wrong word—the sector?

Ms LIVESLEY: Currently, the senior practitioner would still be within the Department of Health, but will not be reporting to me as the Senior Director of the Office of Disability, and will not be connected to this office.

Mrs FINOCCHIARO: They would work from that office, though?

Ms LIVESLEY: No.

Mrs FINOCCHIARO: Okay, so …

Ms LIVESLEY: We would all potentially be open—in the same building in that we will all be co-located in Health House, but it would not be operating from the Office of Disability.

Mrs FINOCCHIARO: Okay.

Madam DEPUTY CHAIR: Was there any consideration put into making the position independent of the Department of Health, as previous speakers have talked about? Is that something …

Ms LIVESLEY: Not at this stage. We would not rule that out as a further step. We have only just recently achieved the transfer of the Public Guardian after 20 years with the Department of Health to the Attorney-General's Department. The focus has been on establishing a process and the position, and getting the legislation in place. That could be something that could be looked at further down the track.

Madam DEPUTY CHAIR: How many clients do you think the senior practitioner will have upfront? Have you done some …

Ms CAMARA: Yes. We have done some work with the Victorian Senior Practitioner's Office. The advice from them, currently in Victoria, about 2.9% of their disability population has a restrictive practice within their behaviour support plan. They estimate that may increase to between 5% and 8% with the inclusion of environmental restraint.

If we look at our bilateral numbers, it equates to approximately 300 people—5% of the population may require a restrictive intervention as part of their behaviour support plan.

Mrs FINOCCHIARO: That is for the NT?

Ms CAMARA: That is for the Northern Territory.

Mrs FINOCCHIARO: About 300?

Ms CAMARA: Yes.

Mrs FINOCCHIARO: So, about 300 Territorians might require some restrictive practices detailed in their support plan?

Ms CAMARA: Yes. There may be more than that that require a behaviour support plan, but do not have restrictive practices within them.

Mrs FINOCCHIARO: But these are just NDIS clients?

Ms CAMARA: Yes.

Madam DEPUTY CHAIR: How will the senior practitioner identify clients? How will people come to their attention? Is there a referral system in place?

Ms WESTERMAN: When a person becomes an NDIS participant, they go through a process with the NDIA where they are assessed their needs are identified. If behaviour support has behaviour concerns, a section in their plan that they need a behaviour support plan is developed. As part of the whole process of registration of providers, there will be a behaviour support practitioner engaged through the plan. That person has to be a registered provider with the NDIS Commission and they have to meet quite a stringent framework of skills and experience.

That behaviour support practitioner will develop a plan and work with the service provider whether the participant is receiving the service. Through the behaviour support plan, if a restrictive practice is identified as needed, the behaviour support practitioner and the service provider will approach the senior practitioner for authorisation of that restrictive practice. So, there is quite a process that goes in place before a restrictive practice gets to the senior practitioner. There are quite a few safeguards in place before it gets there. Not anyone can say, 'I will develop a restrictive practice for this person'.

Madam DEPUTY CHAIR: Is a rationale provided to the senior practitioner as to why that restrictive practice is required?

Ms WESTERMAN: Yes, that would be in the behaviour support plan. Then, the senior practitioner will look to make sure it is the least restrictive practice required, is it even required, is there something else they could have done earlier down the track that would negate the need for it.

Madam DEPUTY CHAIR: Would it include the things that we have heard about this morning, like locks on cupboards and doors …

Ms WESTERMAN: There may be.

Madam DEPUTY CHAIR: … right across the continuum?

Ms CAMARA: Depending on the risk of the behaviour and harm to themselves and others—that will be what will be considered. If there is just a small risk to themselves or others, then there will be no need for restrictive practices to be implemented. You would expect that other strategies will be used first to try to educate the person or redirect them—or whatever it might be for the situation.

If the risk to themselves or others is great and there is an increased likelihood that that behaviour concern will occur quite regularly, that is when a restrictive practice might be included in the behaviour support plan. However, it would still be required that other work would be done with the participant to try to reduce the need for that through education and whatever it might be to reduce that behaviour of concern.

It is quite a lengthy process and the behaviour support plan is quite a comprehensive document that is a holistic document that looks at all parts of the person's life. In other ways it might be that the behaviour of concern might be because someone is having limited access to family. Then the strategy would be, 'How do we increase access to family?', rather than put in a restrictive practice. The goal is to eliminate and reduce the need for restrictive practice through other strategies.

Madam DEPUTY CHAIR: The first people we had this morning from the Darwin Community Legal Service mentioned that sometimes these restrictive practices are put in place because of a lack of resources and staffing. That is a reality, is it not? Is that something that this legislation considers, or how it is implemented?

Ms CAMARA: That is more a resourcing issue which is separate to this. The senior practitioner can do the capacity building and the education, alongside the NDIS Commission, to build the capacity of our service providers and support workers and increase their knowledge on better ways to be supporting people with disabilities, as opposed to straightaway locking fridges or cupboards, et cetera.

Mrs FINOCCHIARO: Presumably then the penalties have increased for the support worker who—maybe unknowingly—engages in restrictive practices? Does the bill increase or create penalties for that support worker who perhaps—the example earlier from the Public Guardian was restraining someone's hands whilst trying to feed them—using that example, if someone did that and it was not part of their behaviour support plan, would there then be a penalty?

Ms CAMARA: Because the senior practitioner does not have a monitoring and reporting function, there is no penalties within our bill. However, the NDIS Commission is responsible for monitoring and reporting. If that incident

happened and that restrictive practice to be put in place was not part of the behaviour support plan, that would be a critical incident, so a report would need to be put to the commission within five days, I believe, of the incident happening.

Then, if it is believed that that behaviour will be ongoing and that restrictive practice is required ongoing, they have one month to commence the process of an interim behaviour support plan. Then that process would go through the interim authorisation. They then have six months to develop a comprehensive behaviour support plan, looking at and identifying other strategies that may be better used.

Mrs FINOCCHIARO: Better used.

Ms CAMARA: Yes.

Mrs FINOCCHIARO: Whilst the senior practitioner is the person who is approving the use of restrictive practice and providing education and support to clinicians or carers—whatever the case might be—they do not have a monitoring or reporting role on RP in general, or breaches of RP?

Ms CAMARA: Yes that is correct. The NDIS Commission is responsible for all monitoring and reporting. They also have a responsibility for capacity building. They have a senior practitioner role and part of that role is to work with service providers and the behaviour support team of the NDIS Commission to increase knowledge of other strategies of restrictive practice et cetera. So, it is dual role between our senior practitioner and the NDIS senior practitioner for that education. It is a delineation, I guess, of an authorisation and monitoring function.

Mrs FINOCCHIARO: Presumably the senior practitioner will come across, as a first port of call, any breaches or uses of that practice? Is it then envisaged that the senior practitioner will be the one reporting to the commission—letting the commission know there might be a problem, even though they do not have a reporting role? If that person has that information, surely they have to tell the commission?

Ms CAMARA: Yes.

Mrs FINOCCHIARO: I find it really strange that the senior practitioner would have no reporting role.

Ms WESTERMAN: That was set up because through the whole process of designing the behaviour support rules there needed to be a different body authorising restrictive practice because it has such an infringement on human rights. Two separate bodies reporting and monitoring—it should not be the same body.

Mrs FINOCCHIARO: Is that how they have done it in other jurisdictions?

Ms WESTERMAN: Yes. It is Australia-wide through the NDIS Quality and Safeguards Working Group that reports to Senior Officials Working Group, which reports to the Disability Reform Council, that all states and territories authorise and the NDIS Commission monitors and reports. But there is strong communication between them, obviously.

Mrs FINOCCHIARO: How do other jurisdictions more broadly deal with restrictive practices? I know this is limited to NDIS, but for everyone who is not an NDIS client, are other jurisdictions the same as us? There is nothing else? Has any other jurisdiction, in addressing restrictive practice for NDIS clients, also woven in something for everyone else? You might not know.

Ms CAMARA: It is still early days. The other jurisdictions are still working on their legislation to have it link in with the new NDIS Quality and Safeguards Commission. The ACT has its *Senior Practitioner Act*, which is broader. However, they do the authorisation, but they also do the monitoring and reporting of themselves for education and child protection. It is the only jurisdiction, though, that is broader.

Mrs FINOCCHIARO: They have done …

Ms CAMARA: Yes.

Mrs FINOCCHIARO: Where have we gained most of our influence from in developing our scheme? Is there a particular jurisdiction we have lifted a lot from, or is it quite a hybrid?

Ms WESTERMAN: We were in the fortunate position in that we had a blank slate in that area, apart from what has happened in secure care in the *Disability Services Act*. We touched base with every state and territory to see what practices were used and what would work best in the Territory. We certainly recognised that we needed a big capacity-building component of the senior practitioner. Some states did not have the capacity-building bit as strong.

We have taken bits and pieces, but also worked with the NDIS Commission and other senior practitioners from other jurisdictions.

Madam DEPUTY CHAIR: What percentage of people with disability in the Northern Territory will not be included or protected by this legislation?

Ms LIVESLEY: Of the current clients of the Office of Disability we have identified as our disability clients outside of Allied Health, predominantly most of them have transitioned to the NDIS.

Madam DEPUTY CHAIR: You said before, Válli, that 2.9% of the disability population will be included, up to 5% …

Ms CAMARA: Have a requirement for restrictive practice.

Madam DEPUTY CHAIR: For restrictive practice. Right.

Ms CAMARA: There is a cohort who do not actually require restrictive …

Madam DEPUTY CHAIR: Oh, I am with you.

Ms CAMARA: … practices or even behaviour support plans. It is a very small cohort that requires restrictive practices.

Madam DEPUTY CHAIR: What is the disability population of the Northern Territory? Do you know how many people that includes?

Ms LIVESLEY: For the NDIS agreement, it is 6500 for the projected population in terms of NDIS participants.

Madam DEPUTY CHAIR: And what about non-NDIS?

Ms LIVESLEY: I do not have that figure at the top of my head. We would have to look at the survey of disability and aged care. But we would also need to interrogate the definition of disability and support needs in assuring it is aligning to what we would define as someone per the *Disability Services Act*.

There is a disparity in the reporting through the Survey of Disability, Ageing and Carers and what we see as our population base. We work through the bilateral agreement of our NDIS population of 6500. There may be other people who have lower level support needs who do not meet that NDIS eligibility threshold. But we were not providing support to those people beforehand within our specialist disability service because the NDIS Act is aligned to our *Disability Services Act* and our definitions.

Madam DEPUTY CHAIR: Okay. I guess the concern raised in the submissions we received—the consistent criticism was that people were falling through the cracks with this legislation. You are saying that that will not, in fact …

Ms LIVESLEY: Those comments of falling through the cracks for all those service systems are outside what we do in hospitals, schools and prisons. This legislation is focused on NDIS participants in receipt of an NDIS-funded service. It is not a broader catch-all for all service systems and all people.

Mrs FINOCCHIARO: Could it have been, though? Could it be connected to the patient—all NDIS patients, full stop, rather than receiving an NDIS service?

Ms LIVESLEY: You would have to consider the oversight monitoring and reporting body. It would be whole-of-government. It would be quite a significant piece of work.

Mrs FINOCCHIARO: Yes. The NDIS Commission and …

Ms LIVESLEY: Yes.

Mrs FINOCCHIARO: It could not necessarily go into a school?

Ms LIVESLEY: No. It is that aspect and bringing together all those mainstream service systems to reach a common understanding and agreement on where we want to be and who that would be and at what point, and what that looks like. We have addressed what we had to do for restrictive practice on the NDIS, and with the NDIS Commission, through this bill. People can see it as a first step, but there needs to be a broader approach. That would need to be up to those other agencies to consider education and health services and what that might look like for them.

Madam DEPUTY CHAIR: Sorry, I am not clear. There are 6500 people in the Northern Territory who are NDIS clients?

Ms LIVESLEY: As per a bilateral agreement with the Commonwealth.

Madam DEPUTY CHAIR: Right. You cannot tell me how many people with a disability are not NDIS clients? That is not clear or you do not have that information?

Ms LIVESLEY: I do not have that number, no. The clients we service when we were the Office of Disability—most have transitioned to the NDIS because they meet—to meet our old eligibility, they meet the eligibility of NDIS.

Madam DEPUTY CHAIR: So in the argument that this could be broader and more inclusive, it is not clear how many people we are talking about who are potentially missing out on this service provided by the senior practitioner and oversight of restrictive practices?

Ms WESTERMAN: Yes. Generally, if your disability is severe such that you need a behaviour support plan, you would meet the eligibility criteria for the NDIS. It is very unlikely if you have behaviours of concern and a cognitive disability that you needed that intervention—you would meet the eligibility of NDIS.

Madam DEPUTY CHAIR: Apart from aged care clients?

Ms LIVESLEY: They are governed by the Commonwealth *Aged Care Act* and they are not eligible for the NDIS—if you are over the age of 65.

Madam DEPUTY CHAIR: Okay. Was there any consideration—oh, okay, you have answered that question. Yes.

Mrs FINOCCHIARO: We might not really be talking about any cohort? Does the department have the ability to capture that information—how many clients in the Territory on a behaviour support plan are not NDIS? Would that be anywhere? Are the behaviour support plans required to be registered?

Ms LIVESLEY: Yes, but I do not think there would be someone who is not a disability client or NDIS participant with behaviour support plan.

Ms CAMARA: Behaviour support plans are generally for people with cognitive impairment, intellectual disability, so it is likely that they have required a specialised disability services and, therefore, clients of the Office of Disability. Those have transitions across to the NDIS.

Mrs FINOCCHIARO: I guess what we are talking about is those people who are not NDIS clients, but if in reality they all are, then we are not really talking about anybody?

Ms CAMARA: The concern is actually around other service systems, rather than people who are not NDIS participants.

Madam DEPUTY CHAIR: What about the …

Ms NELSON: Can I ask a question?

Madam DEPUTY CHAIR: Yes, Sandra.

Ms NELSON: Thank you. For clarification, are any other agencies registered as NDIS providers?

Ms LIVESLEY: Currently, yes, the NT Health is a registered provider through our commitment for transition.

Ms NELSON: Okay.

Ms CAMARA: And after-school services for Department of Education, whether they are independent or Department of Education, may also be registered providers.

Ms WESTERMAN: But there is a bit of a difference …

Ms NELSON: But …

Ms WESTERMAN: Oh, sorry.

Ms NELSON: Sorry, I did not hear that. Did you say that the Department of Education?

Ms LIVESLEY: Maybe for after-school services—after-school care.

Ms NELSON: Okay. What about the special education schools like, for example, Kintore Street School in Katherine?

Ms LIVESLEY: No, they are not registered because that is their core business—delivering education to Territory students.

Ms NELSON: I am sorry. I cannot hear you. What was that?

Ms LIVESLEY: Sorry. No, they are not registered because delivering education to a Territory student is their core business, regardless of whether the student has a disability or not.

Ms NELSON: What happens with students who have a disability who are attending Kintore Street School and there are some behavioural issues that require restraint? Are they covered under the Department of Education policies and procedures?

Ms LIVESLEY: Yes. The Department of Education is responsible for any policies and procedures related to the school services.

Ms NELSON: Okay. Is that compatible with what is being introduced through this NDIS legislation?

Ms CAMARA: I am not sure off the top of my head. That is outside my scope.

Mrs FINOCCHIARO: That is a good point. As part of this education campaign or this transition, will it not be appropriate for departments to align their policies with the intent of the legislation, to take the opportunity? The Department of Education might not be a registered NDIS provider, but is it not the appropriate time for them to bring their policy in line?

Ms CAMARA: That would be up to the Department of Education to decide. However, you would expect that as the NT is a small jurisdiction, there would be overflow of education opportunities the senior practitioner may have that other departments and service sectors may want to participate in and increase their knowledge of the area.

There are applied principles of COAG that other service systems are responsible for certain things for people with disabilities to ensure that they have access to services et cetera. All other service systems are responsible for their own policies and procedures on this. We cannot dictate that.

However, we can support them through the senior practitioner role to better educate them, potentially, to have new policies, et cetera, that may align to this.

Mrs FINOCCHIARO: Better.

Ms CAMARA: Yes.

Madam DEPUTY CHAIR: Was there any consideration to reviewing the legislation at some point in the future?

Ms LIVESLEY: This current bill?

Madam DEPUTY CHAIR: Yes, the bill, once it is in practice.

Ms LIVESLEY: There has not been consideration given at this stage, but it would not be ruled out, like any piece of legislation that is subject to review, depending on development of policies and programs.

Madam DEPUTY CHAIR: In response to one of the questions, which was:

> *Was any consideration given to the inclusion of provisions for the establishment of an independent review panel similar to that provided under sections 40 and 70 of the* Disability Services Act 1993*?*

Your response was:

> *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* **...**

And so on.

Could you explain a little more about that decision? Why was NTCAT chosen over an independent review panel?

Ms WESTERMAN: For the review, NTCAT is used as the second stage. There is a review before that is someone delegated by the CE with the appropriate qualifications and skills. That is the first review. Then, if there are issues with that review, NTCAT will be used.

The reasoning of that was that this is the process that they undertake currently and they have access to doctors, lawyers, psychologists—people with the appropriate knowledge to be reviewing the decision.

Madam DEPUTY CHAIR: Okay. I do not have any more questions. Sandra, do you have any more questions?

Ms NELSON: No, thank you.

Madam DEPUTY CHAIR: Thank you very much for your time. I really appreciate it.

Mrs FINOCCHIARO: Thank you.

Madam DEPUTY CHAIR: That concludes the hearing. Thank you all.

The committee concluded.
