Explanatory Statement

NATIONAL DISABILITY INSURANCE SCHEME (AUTHORISATIONS) BILL 2019

SERIAL NO. 83

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MINISTER FOR DISABILITIES

EXPLANATORY STATEMENT

GENERAL OUTLINE

The NT Government has previously agreed to two national frameworks: the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Sector and the NDIS Quality and Safeguarding Framework. These two imperatives give clear timeframes for the establishment and operation of a restrictive practice authorisation process and establishment of a Senior Practitioner role in the Northern Territory.

This Bill establishes the authorisation of restrictive practices for participants of the National Disability Insurance Scheme (NDIS). The Bill provides an operational structure for the new role of the Senior Practitioner.

The Bill reflects stakeholder consultation on the most appropriate oversight mechanism model for the new role. It also aims to reflect the requirements and expectations around the National Framework for Reducing and Eliminating the use of Restrictive Practices in the Disability Service Sector.

The purpose of this Bill is to:

a) provide for the regulation of restrictive practices for participants of the National Disability Insurance Scheme;

b) to create the new role of the Senior Practitioner to:

    a. authorise and disallow the use of restrictive practices;

    b. produce and disseminate polices, standards and guidelines to promote best practice, lead sector capacity building and improve awareness to minimise the use of restrictive practices; and

    c. capture and record the authorisation of restrictive practices that are deemed to be necessary.

This Bill will allow the protection of the most vulnerable people in the NT and prevent harm from the unnecessary use of restrictive practices.

NOTES ON CLAUSES

Clause 1. Short Title.

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *National Disability Insurance Scheme (Authorisations) Act 2019.*

Clause 2. Commencement

This clause sets out how the Act will be commenced. In this case this will be done by notice given by the Administrator in the Northern Territory Government Gazette.

Clause 3. Definitions

This clause is a formal provision that defines various words and expressions used in the Bill.

Clause 4. Application of the Act

This clause sets out how the Act will be applied. The Act applies in relation to NDIS providers that seek to apply restrictive practices to participants in the delivery of services to participants.

For participants who are also a person to whom Part 4 of the *Disability Services Act 1993* applies, this Act prevails.

Clause 5. Principles

This clause sets out a list of general principles underpinning the Act that NDIS providers must take into account when delivering services to participants with behaviour that has the potential to cause harm to themselves or others.

The principles focus on the rights of the participant and align with the *United Nations Convention on the Rights of Persons with Disabilities* of which Australia is a signatory.

These principles have been drawn from the Northern Territory *Disability Services Act 1993*, *Disability Services Act 1986 (Cth),* and the National Framework for Reducing and Eliminating the use of Restrictive Practices in the Disability Service Sector.

Clause 6. Definition of denial of key needs

This clause defines denial of key needs for the purposes of this act.

Clause 7. Meaning of *restrictive practice*

This clause defines a restrictive practice for the purpose of this Act and includes, but is not limited to the following:

- seclusion
- chemical restraint
- mechanical restraint
- physical restraint
- environmental restraint.

This definition ensures any practice or intervention that restricts the rights or freedom of movement of a person with a disability is covered by the scope of this Act.

Clause 8. Application of Criminal Code

This is a formal clause that provides for the application of Part IIAA of the Criminal Code to an offence against this Act, incorporating the general principles of criminal responsibility, establishes general defences, and deals with burden of proof.

Clause 9. Appointment of Senior Practitioner

This clause specifies that the Minister may appoint a public sector employee to be the Senior Practitioner only if the Minister is satisfied that the employee has the qualifications and clinical experience necessary to exercise the functions of the Senior Practitioner.

Clause 10. Functions

This clause provides for several functions of the Senior Practitioner. These functions include to promote the reduction and elimination of the use of restrictive practices by NDIS providers to the greatest extent possible, to disseminate information and provide education about restrictive practices and the rights of participants and build capacity in the disability service sector through increasing the level of awareness and understanding of restrictive practices within the sector and contributing to a reduction in the use of restrictive practices.

Clause 11. Powers

This provision allows the Senior Practitioner to do all things necessary or convenient to be done for, or in relation to, the performance of the Senior Practitioner's functions.

Clause 12. Guidelines

This provision allows the Senior Practitioner to make guidelines for this Act including guidelines in relation to the use of restrictive practices. In developing guidelines, the Senior Practitioner may consult with relevant stakeholders and community members as appropriate.

Clause 13. Delegation

This clause states that the Senior Practitioner may delegate the Senior Practitioner's powers and functions under this Act to another public sector employee, if the Senior Practitioner is satisfied that the employee has the training, experience and personal qualities necessary to exercise the function.

Clause 14. Application for authorisation or interim authorisation

This clause states that an NDIS provider may apply to the Senior Practitioner for an authorisation or an interim authorisation to use a restrictive practice on a participant in accordance with the participant's behaviour support plan. This clause also outlines the requirements of the application.

This clause provides for the Senior Practitioner requesting further information from the NDIS provider making the application and requires that this information is provided within 28 days after the request is made and allows that the Senior Practitioner may inspect the place where the restrictive practice is to be applied to the participant before deciding the application.

Clause 15. Authorisation or refusal to authorise restrictive practice

This clause provides for the Senior Practitioner receiving an application for authorisation of a restrictive practice and must consider the application and decide whether to:

a) grant the authorisation or interim authorisation; or

b) refuse to grant the authorisation or interim authorisation; or

c) propose an alternative restrictive practice for the authorisation or interim authorisation.

The Senior Practitioner must give written notice of the decision and the reasons for the decision to the NDIS provider who made the application as soon as reasonably practicable.

Clause 16. Grounds to authorise a restrictive practice

This clause outlines that conditions in which the Senior Practitioner may make an authorisation or interim authorisation.

Clause 17. Prohibited restrictive practices

This clause defines a prohibitive restrictive practice for the purpose of this Act.

Clause 18. Alternative restrictive practice

This clause allows for the Senior Practitioner to propose an alternative restrictive practice. The NDIS provider who made the application for authorisation may respond to the proposal within 28 days after the proposal is made.

When considering the response from the NDIS provider, the Senior Practitioner must then decide whether to authorise the alternative restrictive practice or refuse to authorise the alternative restrictive practice. The Senior Practitioner must give written notice of the decision and the reasons for the decision to the NDIS provider who made the application as soon as reasonably practicable.

Clause 19. Period of authorisation and interim authorisation

This clause holds that an authorisation of a restrictive practice is in place for 12 months for an authorisation and 6 months for an interim authorisation from the date the authorisation is made, unless otherwise specified by the Senior Practitioner in the authorisation.

Clause 20. Revocation of authorisation and interim authorisation

This clause allows for the Senior Practitioner to revoke an authorisation or interim authorisation for a restrictive practice at any time and must notify the NDIS provider of the revocation in writing.

Clause 21. Reviewable decisions

This clause states what constitutes a reviewable decision and who is considered an affected person in relation to a reviewable decision.

Clause 22. Application for review of authorisation decisions

This clause states that an affected person for a reviewable decision may apply to the CEO for an internal review of the decision in the approved form within 28 days after written notice of the decision is given to the affected person. The making of an application under this section does not stay the operation of the reviewable decision.

Clause 23. Appointment of internal reviewer

This clause allows that the CEO may appoint a public sector employee to review the decision and to make a recommendation to the CEO in relation to the decision under section 25(2). The CEO must be satisfied that the employee has the necessary qualifications, clinical experience and personal qualities necessary to review the reviewable decision.

This clause also provides that the CEO must give written notice of the appointment of an internal reviewer to each affected person for the decision and provide of copy of this notice to the internal reviewer at the same time.

Clause 24. Review of decision by internal reviewer

This clause provides for the internal reviewer to review the Senior Practitioner's decision.

This clause allows for the internal reviewer to reject an application without reviewing the decision in the following circumstances:

a) the application is frivolous or vexatious; or

b) the application was made after the period allowed by section 22 for making the application had expired; or

c) the application related to a matter that is the subject of an application to a court or tribunal.

Clause 25. Conduct of review by internal reviewer

This clause provides for the conditions which the internal reviewer needs to consider when reviewing the decision.

This clause details the options available to the internal reviewer when making their recommendation to the CEO.

Clause 26. Decision by CEO on internal review

This clause provides that after receiving a recommendation under section 25(2), the CEO must:

(a) affirm the decision; or

(b) vary the decision; or

(c) set aside the decision and substitute a new decision.

This clause also states that in making a decision under this section, the CEO is not bound by the recommendation made by the internal reviewer.

Clause 27. Notice of decision by CEO

This clause allows for the CEO to give written notice of the decision, as soon as practicable after making the decision under section 26, to the applicant for the internal review and each person who could have applied for an internal review of the decision under section 22.

This clause also states that the notice must include the CEO's decision and reasons for it and details of any right the person has under this Act to apply to NTCAT for a review of the CEO's decision.

Clause 28. Review by Civil and Administrative Tribunal

Clause 28 provides for the NTCAT to have jurisdiction to review a decision under section 26 and outlines who may apply to the Tribunal for a review of the decision.

Clause 29. Protection from liability

This clause provides a person with civil and criminal protections for an act done or omitted to be done in good faith while exercising a power or performance of a function as the CEO or the Senior Practitioner or an internal reviewer.

Clause 30. Unauthorised disclosure of confidential information

This clause sets out the offences of this Act to discourage a person from unauthorised disclosure of confidential information.

Clause 31. Misleading information

This clause sets out the offences of this Act to discourage a person from giving misleading information.

Clause 32. Approved forms

Clause 32 allows for the CEO to approve forms for this Act.

Clause 33. Regulations

This is a standard clause allowing the Administrator to make regulations under this Act.