



Australian Paediatric Society

The voice of rural child health

www.auspaediatrics.com.au

ABN 93 622 296 075

admin@auspaediatrics.org.au

Ms. Taryn Black
Director Strategy
Diabetes Australia
By email

23rd Feb 2023

Re Unlawfulness of Diabetes in Schools program

The Minister for Health, Hon. Mark Butler invited the Australian Paediatric Society to seek information from you, in your role of National Program Director of the federally funded Diabetes Australia Diabetes in Schools (DIS) Program, to clarify matters of legal compliance of the DIS program. The Federal Government is responsible for ensuring that Federal publicly funded programs are lawful.

Concerns that the **DIS program was unlawful** were raised in early 2017, when both the Australian Paediatric Society and independent consumer group Type 1 Voice raised issues of legal compliance and safety after Diabetes Australia altered fundamental aspects of the proposal. Both peak bodies were thereafter excluded from the DIS Expert Advisory Group. Subsequent publicly funded consultation reports, including legal reports, have been withheld from invested stakeholders access. The scope of those legal reports, and whether they comprehended identified issues of Workplace safety and insurance risk, has not been disclosed.

The **death of a student with Type 1 Diabetes whilst in the custody of a school**, has escalated the urgency to address issues of legal compliance of the DIS program and to find transparent solutions that protect **all** students with Type 1 Diabetes, schools, teachers, and medical staff.

The **administration of insulin**, a dangerous drug, to another person in the course of one's employment **requires a qualification** via an accredited and registered training organisation in accordance with various legal and regulatory provisions.

Minister Butler has unambiguously stated that the **Diabetes Australia DIS program confers no qualification** to school staff members to perform any complex health services or administer the drugs required for students with Type 1 Diabetes.

Yet your DIS program claims that **after completing the Level 3 3 DIS skills "training" module the "participants should be able to administer insulin with an insulin pen, syringe or insulin pump."** Your program even seems to empower school principals to "qualify" staff by simply being "identified" by the principal. **"Designated staff are identified by the principal to provide support for a student while at school or at school-related activities such as camps, excursions and sports events. In some cases, designated staff will administer insulin."**

These claims are false and unlawful. To state that Level 3 participants should be able to administer insulin clearly misleads schools and teachers into believing that the completion of the Diabetes

Australia DIS education module confers the authority and qualification required to undertake complex care and administer a dangerous drug (insulin) to children equivalent to a Div. 1 Registered Nurse. The result is that unsuspecting and unqualified school employees are being misinformed and led into a state of ignorance by the Diabetes Australia DIS program.

As the Program Director who established and led the DIS program, please supply the Minister and stakeholders with the following information pertaining to lawfulness of the DIS program:

Lawfulness – Drug administration by medically unqualified persons

1. Evidence that it is lawful for medically unqualified school employees to administer dangerous drugs (insulin) to children at school based on completion of the DIS program.

Lawfulness– Workplace drug administration

2. Evidence that demonstrates the existence of ANY other example of a workplace where it is considered lawful for medically unqualified employees to administer dangerous S4 drugs, especially given publicity about unqualified cosmetic workers being prosecuted for exactly that breach of law.
3. Why the school workplace as the only workplace whereby the use of the Diabetes Australia DIS program lawfully entitles unqualified employees to administer dangerous drugs to others. Can unqualified nursing home employees now legally be able to administer insulin based upon completion of the DIS program or a similar program that confers no qualification?
4. Evidence that the Diabetes Australia DIS program engaged, consulted, or was endorsed by WorkSafe, teacher unions and school insurers to ensure teachers and schools were not exposed by a program that requires them to assume responsibilities outside their scope of practice without requisite qualification and authorisation.
5. Evidence that the Diabetes Australia DIS program engaged, consulted and was endorsed by medical and nurses' unions, medical indemnity insurers and AHPRA to ensure doctors and nurses were not exposed by a program that requires them to assume responsibilities outside their scope of practice where the DIS requires them to train medically unqualified school employees and assess these employees' competence in administering dangerous drugs without the requisite qualification and authorisation.
6. Evidence to justify why the DIS program is exempt from the WorkSafe legal requirements under OHS law for the duty of schools to provide suitable staff "with essential and relevant qualifications to perform duties and responsibilities" for children's safety and protection and to fulfil their duties so as to not recklessly endanger persons (such as the student that died) at workplaces.

Duty of care - Obligatory vs Voluntary

7. Legal justification that the DIS is entitled to ignore duty of care obligations of school workplaces to keep employees and students safe from foreseeable harms by suggesting that education and training to appropriately manage type 1 diabetes at school is "voluntary".

Disclosure

8. Legal justification on how the Diabetes Australia contractual arrangement with health services, where financial inducements and exclusive dealings predetermine the medical care for patients

and facilitate the false pretence that schools are meeting their obligations, are lawful and consistent with the requirements for informed consent.

9. Evidence that insurers are aware and authorise the continued insurance of medical teams if they participate in the unlawful practices promoted by the Diabetes Australia DIS program and the “contractual” determination of prescribed treatment for patients.

Competition and Consumer law

10. Evidence and legal justification why the Diabetes Australia contracts with health services are exempt from the Australian Competition and Consumer legislation relating to “exclusive dealing” and “third line forcing” when those contracts stipulate that payment to health services are dependent upon the exclusive use DIS program which substantially reduces competition from the competing international award-winning e-learning program that has higher international standards of care.

Privacy law

11. Legal justification that exempts DIS from Australian Privacy legislation whereby health services are required to provide names of the various school staff members, who participate in the DIS program., without their informed consent.

Discrimination

12. Legal justification that exempts Diabetes Australia from Disability and Discrimination legislation by creating a funding model that discriminates against students whose care is in regional Australia. Diabetes Australia changed the proposed funding model in 2017 from a comprehensive model to a model that generously funds large metropolitan centres only.

Withholding publicly funded advice and associated public risk.

13. Justification why Diabetes Australia will not disclose publicly funded legal advice and other consultant advice relating to the lawfulness of the DIS, especially the withholding of legal advice concerning liabilities of schools in off campus activities. That advice, if disclosed, may have saved the life of Lachlan Cook. The school has claimed it was in a state of ignorance about their obligations whilst students with Type 1 Diabetes are in the custody of the school. Continued non-disclosure of such advice risks further avoidable tragedies.

We look forward to your early response, which must be copied to the Minister and all stakeholders.

Yours Sincerely



Dr Peter Goss FRACP

Chair Diabetes, Australian Paediatric Society

Cc Justine Cain, CEO Diabetes Australia; Board of Management Diabetes Australia; The Hon Mark Butler MP, Minister for Health; The Hon Richard Marles MP, Deputy Prime Minister, Member for Corio; The Hon Ged Kearny MP, Assistant Minister for Health and Aged Care; The Hon Emma McBride MP, Assistant Minister for Rural and Regional Health; The Hon Jason Clare MP, Minister for Education; The Hon Tony Burke MP, Minister for Employment and Workplace Relations; The Hon Mike Freeland MP, Member House of Reps Committee on Health; Executive Committee, Type 1 Voice