



March 2018

Submission to the Joint Standing Committee on the National Disability Insurance Scheme

Market Readiness

The Northern Territory Office of the Public Guardian (OPG) welcomes the opportunity to provide a submission to the Joint Standing Committee on the National Disability Insurance Scheme – Market Readiness.

The Office of the Public Guardian

The OPG is committed to providing adult guardianship services, information and advocacy that is responsive to the needs of the Northern Territory community and reflects contemporary, best practice guardianship principles within a human rights framework.

The *Guardianship of Adults Act* (the Act) came into effect on 28 July 2016. It seeks to recognise the overall wellbeing, human rights and fundamental freedoms of persons with impaired decision-making capacity and align with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The UNCRPD's purpose is to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”. Article 5 of the UNCRPD directs equal recognition of all persons and prohibits discrimination on the basis of disability.

The OPG was established under the Act which also provided for the statutory appointment of an independent Public Guardian, aligning the NT with other Australian jurisdictions. The Act provides a legal decision-making framework for adults with impaired decision-making capacity in relation to their personal or financial matters. The definition of impaired decision-making capacity under the Act is broad and captures adults with cognitive impairment from any cause including mental illness, dementia, intellectual disability or acquired brain injury.

Compared to other jurisdictions, the NT has the lowest number of adults under guardianship orders; however, has the highest percentage of the population under guardianship. A function of the Public Guardian is to advocate for adults with impaired decision-making capacity by promoting understanding and awareness of relevant issues. The National Disability Insurance Scheme (NDIS) will be crucial to many adults under guardianship in the Northern Territory as they will be participants of the scheme. The OPG welcomes initiatives that support a better life for those with a significant and permanent disability.

NDIS in the Northern Territory context

The Northern Territory and the Australian Government signed the *Bilateral Agreement between the Commonwealth and the Northern Territory: Transition to a NDIS* in May 2016. This agreement outlines the roles and responsibilities required to transition to full coverage in the Northern Territory. Furthermore, this agreement recognises the challenges the health and community service sectors encounter in the Territory's unique geographic and demographic context.

This agreement includes a monitoring arrangement that takes into account the circumstances encountered with rural and remote service delivery, and identifies risk-based strategies to address capacity issues at the outset.

The transition to a market-based system for service providers;

The transition to a market-based system for service providers is currently underway in the Northern Territory. The OPG notes that there is a great variation of understanding and readiness, potentially causing system issues for service providers. Significant support is required for service providers who are unsure of the proposed market-based system as requirements such as cash flow, method of claiming payments and access to the portal present additional complications for service providers. The Northern Territory call ill afford existing providers to cease operating.

Market data hasn't been readily accessible to assist service providers in understanding opportunities that might be available. Further to this, many service providers have not been operating within a business model so the move to NDIS is quite challenging around the business model unit price. Lack of examples under this model means service providers are unsure of what, and to whom, services are to be delivered.

The Capacity Building component of the scheme has seriously underestimated the needs of the sector in developing its ability to offer services under the NDIS. Equally, the delays in getting the Quality and Safeguarding Framework in place have led to concerns about service delivery and lack of avenues to pursue service quality issues for consumers. The ongoing development of the service sector will need to continue for many years to improve the actual capacity of the sector.

Participant readiness to navigate new markets;

Participant readiness to navigate new markets is extremely variable in the NT due to the lack of meaningful information and education being provided during this crucial pre-commencement period. This does not just apply to participants, but to families and other key individuals who would provide support to participants of the scheme. The Northern Territory has not seen a consumer-focused training and education program that would encourage the involvement of people who will be participants of the scheme. There is a need for a pragmatic approach to be adopted to ensure participant readiness; ideally a step-by-step approach would be provided to ensure participants understand how the scheme is going to work. Considering this scheme applies to members of the community who are the most vulnerable, the failure to develop a specific support service which would assist participants from start to finish is disappointing.

The lack of information provided to participants prior to, and during the planning stages, is a particular point of concern for the OPG. Put simply, this is due to the fact that people don't know what it is that they don't know. While line items and domains exist for all Territory regions, in many occasions, very little has been allocated in people's plans, which is presumably due to lack of knowledge of what is available. The OPG has been, and continues to be, committed to participating in all NDIS planning meetings for represented adults. It has been found that a person has to know the system to be able to navigate and make the system work. Given the scarcity of advocacy services across the Northern Territory, this creates an additional barrier to meaningful accessibility to the NDIS.

The website, for example, is difficult to navigate, with essential forms not being accessible online. Information is not clearly articulated to the public with regard to simple messages such as people must contact the NDIS phone line to be posted an Access Request Form.

Given that the system is complex for English-speaking, literate, well-educated people, the OPG is concerned that when additional layers of complexity such as illiteracy, English as a second language or a disability are introduced, further challenges are placed on participants. The OPG encourages a thorough review of how information is distributed to participants with a view of ensuring information is as clear and simple as possible. No clear access and equity strategy has been articulated by the NDIS to address the barriers.

The development of the disability workforce to support the emerging market;

Whilst the NT does have some very high-quality and dedicated service providers, their capacity has been hampered by the limited block funding model previously utilised in the NT. The NT does not have a comprehensive and competitive market as seen in other jurisdictions and, in many cases, lacks the capacity to provide the required services within the NDIS environment. The NT has significant workforce issues in remote areas across many industries with a lack of suitably-trained qualified people.

Notwithstanding the maturity of the NDIS marketplace, insufficient local demand, limited service delivery, workforce shortages and lack of infrastructure will produce 'weak' or 'thin' markets; primarily in rural, regional and remote areas. This is resulting in poorer outcomes for participants including less choice, higher prices and/or lower-quality supports and services.

As previously discussed, the NT has significant workforce issues. We have been advised the workforce will need to triple; however, it is unclear where the capacity to fill the necessary positions will come from, and how the workforce will be retained in such a transient setting. It will take a significant amount of time for existing service providers to adapt to the new scheme and for new service providers to enter the market. We understand that there is funding available for sector development; however, these plans will need to be examined and clearly communicated to service providers and participants to ensure they meet real needs. Neither of these issues, workforce and sector development, are going to be able to be addressed in the short term which creates difficulties for the transition.

On a positive note, funding has been granted to Charles Darwin University to run certificate III programs in remote communities. This is an example of an effective strategy for remote communities to develop and 'grow their own' and provides residents with an opportunity to live and work in their community. A holistic and coordinated approach is required across the Territory to leverage off such initiatives to obtain maximum results.

The OPG encourages the development of stewardship of agencies that can mentor, support and develop potential workers. Across the sector, the issue of support, supervision and training needs to be addressed. While larger agencies can undertake such development and training in-house, it is critical that there are non-specific agencies providing support to the smaller agencies. Early indication is that some of the aboriginal health agencies may be well-placed to take this on.

The OPG is concerned that the Territory's emerging market is going to fail due to the lack of a sufficient workforce and the lack of capacity to provide the required level of service. There is a need for a higher level of coordination to create a pool of appropriately-qualified staff that could be called upon by suitable agencies. The supporting infrastructure is to be developed incorporating coordination and monitoring. Consideration as to whether the NDIA may undertake this role is a point which requires review.

The impact of pricing on the development of the market;

Remote area pricing is an additional factor that needs to be taken into account for regional and remote areas of the Northern Territory. For example, the impact of working remotely can be seen in additional costs which do not reflect the standard costs of living. Financial viability of living in the NT will hamper the development of the market and may result in the sub-delivery of services due to lack of staffing. Strong consideration should be given to adjusting the Darwin area as remote and examining the current pricing for more remote areas.

The role of the NDIA as a market steward;

Within the bilateral agreement, there are monitoring arrangements that take into account the challenges associated with rural and remote service delivery with identified risk-based strategies to address capacity issues at the outset. These strategies may include the Provider of Last Resort Framework. The OPG advocated for the Provider of Last Resort to be enacted for Coordination of Support in Tennant Creek; however, this provision was not enacted. The OPG notes that while there may appear to be services in an area, the capacity and ability of service providers to meet client needs must be taken into account. In fact, the presence of registered service providers in areas does not presume the delivery viable services as this remains subject to service provider capacity. We recommend the development of a clear framework for the Provider of Last Resort to be prioritised to ensure participants in remote communities and thin markets are protected.

The OPG firmly believe that NDIA has a fundamental role in market stewardship and encourage NDIA to undertake a more assertive problem-solving role. The establishment of a problem-solving register for agencies and key stakeholders for specified locations would provide an avenue for problems to be directed to, addressed and resolved. An example of where such a course of action could have been beneficial is group homes in Nhulunbuy. The OPG believe such an assertive action, facilitating conversations around fixing the problem, could have resolved issues experienced during the trial.

Market intervention options to address thin markets, including in remote Indigenous communities;

It remains questionable as to whether the Northern Territory will have capacity to provide required services within the NDIS environment. Limited service delivery, a non-competitive marketplace, workforce shortages and a lack of infrastructure will produce 'weak' or 'thin' markets, primarily in regional and remote areas. This may result in poorer outcomes for participants, including less choice, higher prices and/or lower-quality supports and services. Importantly, in some areas of the Territory, the marketplace is non-existent and no services are currently available.

The high cost of living in the Northern Territory is an additional challenge for those in the low socio-economic circumstances. The Territory has the highest percentage of residents living in public housing, and overcrowded housing is an ongoing problem in most communities. Of those presently under guardianship to the Public Guardian, approximately 73 percent are Aboriginal or Torres Strait Islander, many of whom speak English as a second or third language with a significant number living in remote communities.

Given these factors, delivering services in the Northern Territory, including Darwin and the regional centres, is costly and, in many cases, requires additional specialised expertise. The Public Guardian has recommended the NDIA consider redesignating the Greater Darwin Region as a 'remote' location, and all other centres in the Territory as 'very remote' to more accurately reflect the realities of the costs and challenges of the NDIS transition.

The OPG encourages the NDIS to consider developing existing agencies and services that don't see themselves as traditional disability organisations such as local councils, swimming pools, schools and art centres. Consideration should be given to the development of two tiers of accreditation, taking into account services that directly support those with disability despite this not being their core business. This would encourage existing organisations to consider widening their business and would assist in addressing the thin markets experienced in regional and remote communities. Linking in with aboriginal-controlled agencies and encouraging them to develop services within their communities through 'Growing your Own' initiatives is a longer-term option that needs to be strongly supported by NDIA.

One consequence of thin markets can be seen in the failure of initial plans to be realised and the potential of this failure being misinterpreted as a reflection on individual support needs and leading to a subsequent reduction of funding. To date, there have been many requirements in existing plans where the desired services have not been available to be purchased. Optimistically, this situation will change as markets develop. It is therefore critical that plans have sufficient resource allocation to stimulate market growth thus enabling the range of desired market services becoming available. Whether the initial costs of set up for those services is taken into account in the participants plan is a point to be carefully considered by the NDIA. Plans should not be reduced unless the service is no longer required by the participant.

The provision of housing options for people with disability, with particular reference to the impact of Specialist Disability Accommodation (SDA) supports on the disability housing market;

The OPG is supportive of the concept of housing options for people with disability with particular reference to the impact of Specialist Disability Accommodation (SDA) supports on the disability housing market. However, of note, this initiative has not resulted in a large change in the Territory housing market as yet.

The impact of the Quality and Safeguarding Framework on the development of the market;

Whilst the OPG acknowledges the critical nature of the Quality and Safeguarding Framework, anecdotal reports have been received noting that service providers have found the requirements of accreditation to be so rigorous, as to have acted as a deterrent to some providers, especially mainstream providers, entering the market.

In addition, there is no clarity within this framework as to how issues of poor performance and substandard service provision will be addressed. The OPG notes there is a need for a local presence in all States and Territories to support participants in submitting complaints. At this time, it is unclear as to how the role of the Community Visitor Program may play into the future within this framework; however, independent third parties in this regard are seen to be essential to the success of the NDIS. It would be of concern to the OPG if the Quality and Safeguarding Framework was centralised and therefore reliant on the capacity of the participant to make a complaint.

The OPG notes that there have been business development grants available to assist agencies in determining their interest in participating in the NDIS including assistance in determining what preparation is required for accreditation. This is considered to be a useful strategy.

Provider of last resort arrangements, including for crisis accommodation; and

The process for enacting the Provider of Last Resort is not clear, nor is it clear who is responsible for responding to such requests. There is very limited crisis accommodation and support available in the Territory and there is a need for a lead agency to review this issue. The OPG notes that delays are currently being experienced in addressing crisis situations as a result of a critical supports market failure. The response to this issue needs to be coordinated, resourced and supported.

Any other related matters.

The OPG again thanks the Joint Standing Committee on the National Disability Insurance Scheme for providing an opportunity to make a submission on Market Readiness. The OPG is confident that in moving forward, the Northern Territory experience will be given thorough consideration, being the first and only implemented area of remote Australia with a high indigenous participation.