



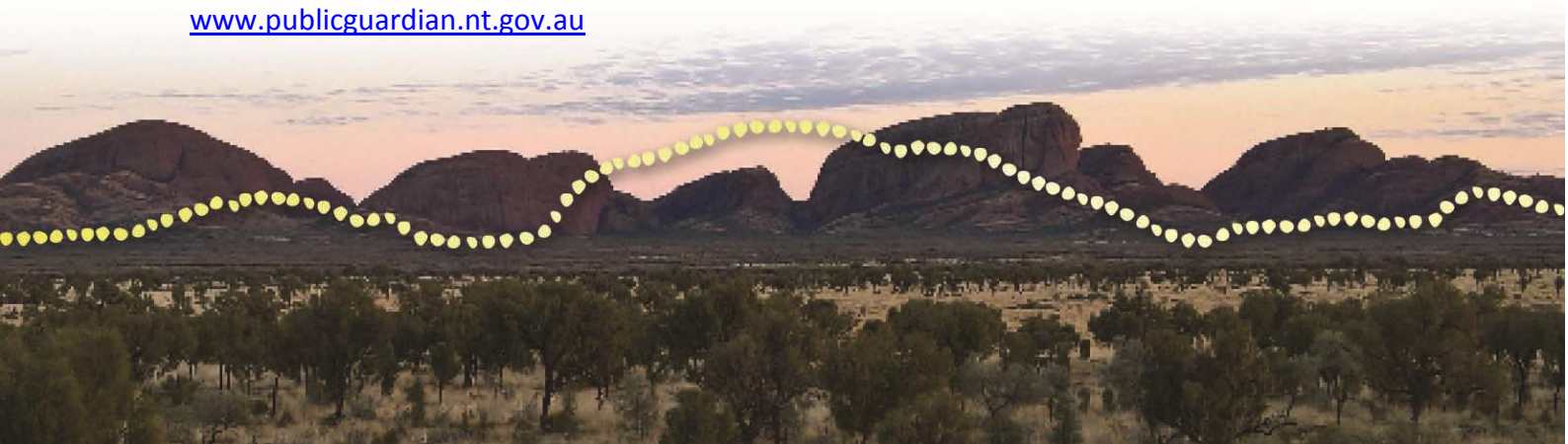
# **Northern Territory Office of the Public Guardian Submission to the Joint Standing Committee on the National Disability Insurance Scheme**

## **Inquiry into National Disability Insurance Scheme Planning**

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**Office of the Public Guardian**  
Darwin Corporate Park  
Building 3, Level 1, 631 Stuart Highway, Berrimah  
Postal: GPO Box 1722 Darwin NT 0801  
Tel: 1800 810 979  
[www.publicguardian.nt.gov.au](http://www.publicguardian.nt.gov.au)



## Introduction

The Northern Territory Office of the Public Guardian welcomes the opportunity to provide a submission to the Joint Standing Committee on the National Disability Insurance Scheme (NDIS) inquiry into NDIS Planning. This submission is based on experiences Office of the Public Guardian staff when participating in the NDIS planning process for represented adults and have noted where possible opportunities for improvement can be achieved.

The Office of the Public Guardian was established under the *Guardianship of Adults Act 2016*, which provides for the statutory appointment of an independent Public Guardian. The core functions of the Public Guardian are set out in section 61 of *the Guardianship of Adults Act 2016*, and include, but are not limited to:

- being a guardian for an adult when appointed by a guardianship order or acting under section 44 or 45;
- promoting access to support services for adults with impaired decision-making capacity and the guardians, families and carers of those adults;
- encouraging providers of support services to monitor and review the delivery of those services; and
- advocate for adults with impaired decision-making capacity generally, including by promoting understanding and awareness of relevant issues.

The Office of the Public Guardian teams are located in Alice Springs and Darwin, with the Public Guardian appointed sole or joint guardian for 645 adults during the 2018-19 reporting period. Since the inception of the NDIS the Office of the Public Guardian has assisted 351 represented adults become participants (figure as at 30 June 2019).

At the inception of the NDIS, the Northern Territory Public Guardian made a commitment that Adult Guardianship Officers would attend all planning meetings for their allocated represented adults. Despite the additional workload this placed on the Office, the outcomes achieved for represented adults was well worth it. This commitment also provided the office with unique insight into the planning process and provided a point of comparison due to the number of meetings attended to by our staff.

The Office of the Public Guardian has been working closely with the National Disability Insurance Agency (NDIA) in identifying changes that are required to ensure the best scheme is delivered to eligible Territorians. Approaches suitable for the Territory need to take into account remoteness, thin market and transient work population.

Guardianship orders come into effect when a person reaches the age of 18, therefore all experiences Office of the Public Guardian has in relation to NDIS is with participants between 18 to 64 years of age.

Overall, the Office of the Public Guardian has noted the planning experience and the level of quality of the plan is highly dependent on the planner. The discrepancies between plans for represented adults are often unexplainable and still has much room for improvement. The Office of the Public Guardian is confident the best scheme will be achieved if all parties work collaboratively together.

### **a) the experience, expertise and qualifications of planners**

The Office of the Public Guardian has extensive involvement in the planning process for represented adults and as a result can provide a unique perspective on the varying level of expertise and qualifications of planners. The Office has experienced planners of a high standard but have also unfortunately encountered planners that exhibit the following;

- poor knowledge around NDIS system
- lack of experience and confidence to conduct a planning meeting
- expertise in one particular disability area
- inability to remove personal perceptions and attitudes from the plan

The Office of the Public Guardian has concerns around the lack of understanding and communication skills some planners display during the planning conversation, despite being a key point of the position purpose. A focus on a skill set or a plan to develop said skills would ensure planners are comfortable in leading meetings and do not rely on the standard set of questions may see a higher level of plans being produced.

The way in which planning conversations are conducted are at times too complex and do not address the participant's level of understanding who have a cognitive impairment. Planners have been known to persevere and go through the list of questions when there are clear indicators the participant is not engaged in the process. The Office of the Public Guardian encourages a review of not only the questions asked in the meetings but also in the training of their staff to ensure these planning conversations can be undertaken in a clear and concise manner.

The office of the Public Guardian have found the varying levels of experience of the planners flows on to the level of plan a participant will receive. A lack of a depth of understanding of a participant's disability and the associated services and support programs needed or available have a negative impact on the plan a participant will receive. Further emphasis needs to be placed on ensuring planners work with participants and planning partners.

The OPG has been primarily dealing directly with NDIA planners however there is a significant push for us to deal with Local Area Coordinators both within NDIA and the external partners acting as Local Area Coordinators (LAC). It is the view of the Office of the Public Guardian that the external partners, in the Northern Territory this is Advanced Personal Management (APM), have the same or higher skill deficiencies as the NDIA planners which exacerbates the issues. The use of LAC's adds an additional layer of complexity, communication and opportunities for errors to occur and is not the preferred option of the Office of the Public Guardian.

### **b) the ability of planners to understand and address complex needs**

The ability of planners to understand and address the complex needs of participants is very dependent on the individual planner. The level of funding required for supports and services each NDIS participant receives is unique and it is important all planning experiences are positive and meets the needs of the participant. The Office of the Public Guardian has observed in NDIS plans and the quality of the plan depends on the individual planner which can mean the plan may not address the complex needs of participants.

Overall, planners are not always able to understand the complexities of a participant's disability and therefore the appropriate level of supports required for participants is not incorporated to the participants plan. An understanding of not only the support services that are currently available in

the Northern Territory, but also of what services could be provided to the participant must be considered and incorporated into NDIS plans to support the growth of the support industry.

There also appears to be a perception that if supports or a service is not available in the Northern Territory then the funding should be removed from the plan. This is not in line with participants needs nor does it encourage or stimulate market. This can also vary across the Northern Territory.

The Office of the Public Guardian notes that the Complex Support Needs Pathway has increased positively the outcomes for participants with complex needs but has also reduced the level of experienced planners within NDIA. This has given rise to some concerns in removing the more experienced planners from the general teams.

It is the view of the Office of the Public Guardian that if the planning process is not undertaken adequately by skilled and experienced planners then the resulting plans and outcomes for participants is sub optimal. This then results in the need for reviews of the plan that are often not conducted in a timely manner and require huge amounts of additional resources. The importance of the planning process needs to be recognised given the success of the scheme hinges on this process which should also be simplified to maximise participant participation.

### c) the ongoing training and professional development of planners

The Office of the Public Guardian has noted a general misconception of the principles of adult guardianship in the Northern Territory and key functions of guardians by NDIS planners. The guardianship principles are a set of decision-making principles that all guardians must follow and state that a guardian must always:

- act in the adult's 'best interests', in a way that least restricts their freedom of decision and action
- consider the adult's current and previously stated views and wishes
- support the adult to make their own decisions where feasible
- use their authority in line with the *Guardianship of Adults Act 2016*, the guardianship order and any other order of the Northern Territory Civil and Administrative Tribunal.

Planners should be encouraged to utilise the supported decision-making approach and not impose adult guardianship to all NDIS participants. Adult guardianship should only be considered when an adult has difficulty making and communicating decisions about important things in their life, and is not necessary for all participants of the NDIS.

The personal views of the planner are at times strongly applied to the outcome of the plans. This is not a professional practice and needs to be addressed. Ongoing training that would assist planners broaden their knowledge around different disability types, how to conduct a meeting and being more person centred is also encouraged by the Office of the Public Guardian.

#### **d) the overall number of planners relative to the demand for plans**

The Office of the Public Guardian has observed an insufficient number of planners in the Northern Territory when compared to the demand for new and the review of plans. Planning meetings are often postponed or completely overlooked with reasons such as staff leave, recruitment or training being provided.

The disproportionate number of planners available to the number of plans requiring action often results in both new and review of plans left untouched which at times leaves a participant in a vulnerable situation. By way of example, the Office of the Public Guardian is aware of a waiting time of over 6 months for an unscheduled plan review. This delay left the participant in a vulnerable situation with basic needs neglected.

#### **e) participant involvement in planning processes and the efficacy of introducing draft plans**

##### Participant involvement in planning process

The Office of the Public Guardian believe there is much room for improvement when it comes to encouraging participant involvement in the planning process. The involvement of participants is crucial in not only empowering the participant, but also ensures the rights and needs are acknowledged and adapted into the NDIS plan. While the Office of the Public Guardian has noted an increase in the use of interpreters for participants that speak English as a second language, cultural considerations during the planning process can still be improved.

Unfortunately, the planning process does not always draw optimal outcomes because of the general nature and structure of the meetings. In addition to this, the assessment tools that are used are not meaningful in all situations, nor is the process coming from a strengths approach. Instead, participants are asked to justify their deficits to enable funding to be allocated, which is very difficult for participants, guardians, carers and support providers. Inappropriately worded questions can exacerbate a participant who are not comfortable talking to a stranger about personal matters leading to critical information not being disclosed and basic supports not being included in plans. For example, a participant with a psychosocial disability not going to respond appropriately. There is a specific skill set required by planners to maximise participant involvement in planning meetings.

During planning meetings, the Office of the Public Guardian has observed instances where it is clear the participant does not understand what is being asked or is embarrassed about discussing personal matters. Additional support for participants during the planning process would assist in ensuring the participant understands what is being asked during the meeting. The Office of the Public Guardian would support additional training for planners that would address the lack of participant focus and involvement of approach during the planning meeting.

##### Efficacy of introducing draft plans

While the Office of the Public Guardian is supportive of introducing draft plans, there are concerns that the inclusion of additional steps would potentially draw out the process. A key issue requiring attention are the inconsistencies and the quality of the NDIS plans. The Office is concerned that this proposal could possibly inadvertently delay an already lengthy process.

There is a benefit in participants seeing draft plans, providing that there is highly responsive adjusting draft plans to allow earlier changes and negotiations to be made to the final plans. The following are instances in which draft plans may have been beneficial;

- discrepancies in what is discussed during the planning meetings and what is outlined in the support packages.

- planners have indicated the inclusion of specific funding for supports that then do not appear in the plan.
- Matters discussed during NDIS planning conversations not being captured in plan.
- Plans received have been found to be illogical.
- Planners indicating additional information being sought and this is often not followed up and not provided in the plan.

The introduction of draft plans could provide an opportunity to ensure plans are reflective of the real needs of the participants. The positive efficiencies of introducing draft plans following complex meetings would ensure matters discussed or stated to be followed up can be reviewed. This is dependant on the criteria around the plan with the ability to have aspects of the plan changed in a relatively short timeframe. The risk around introducing draft plans is that plans may sit unresolved for long periods of time, similar to the current plan review process, which would not be positive for participants.

#### **f) the incidence, severity and impact of plan gaps**

The impact of plan gaps can be quite significant for participants. The underestimate of core support funding can potentially place participants in vulnerable situations, which is a direct violation of their basic rights. Plan gaps often occur as a result of incorrect allocation of core funding to participants and can result in a number of dangerous situations, including inability to maintain current supports being received by the participant to homelessness.

An impact of plan gaps is that a comprehensive support strategy cannot be established for the participant with important aspects such as Specialist Support Coordination, Support Coordination, social and community access hours, behaviour assessment and support, specialised assessment such as occupational therapy and Supported Independent Living not having a funding allocation in the NDIS plan.

To date, the Office of the Public Guardian has submitted 54 plan reviews requested by the Top End Adult Guardianship.

The following are examples of plan gaps the Office is aware of;

- Not enough Core Supports in plan to maintain current supports (or increase when opportunity presents).
- Equipment for participants is not included in plans and are required to be separately assessed which triggers another plan review as it does not fit into an Occupational Therapy review.
- No SSC in Plan, as advocated for in planning meeting. Not enough Core Supports.
- Not enough Community access hours
- Matters identified in planning meetings such as behavioural assessment and support, social and community participation being excluded from plans, OT assessment not taken into account
- Insufficient allowance for Support Coordination and Core Supports
- Black and white views around issues of underspending which do not take into account specific circumstances
- Inadequate Core Supports and not sufficient S/Coordination funds
- No SIL in plans or understanding of accommodation needs/requirement

Participants without support persons that are not well versed in the NDIS, the processes available and the possible standard of a NDIS plan are disadvantaged.

#### **g) the reassessment process, including the incidence and impact of funding changes**

The NDIS reassessment process remains in need of additional resources at a local level if a true change and decrease in the time required for the completion of a reassessment request is to occur. The Office of the Public Guardian encourages the adoption of a holistic approach when a reassessment is undertaken, allowing considerations such as the developing market of support services in the Northern Territory to be taken into account.

Funding change should not occur when there has been a withdrawal of resources to a participant as it is often not indicative of the participants needs but indicative of the market. While this has been mentioned on a number of occasions, funding in NDIS plans is often not used as the service is not yet available or establishing in the Territory. If the funding is removed for a participants plan before the service can be established then the market will not have an opportunity to develop and mature.

There have been significant delays to reassessments due to NDIA resourcing issues and availability.

#### **h) the review process and means to streamline it**

Despite work undertaken in efforts to improve the review process, it remains convoluted with the number of early reviews indicative to initial planning failures. The Office is of the understanding the review process has been centralised to a national team and would be supportive of this being moved back to a local Northern Territory level. The responsiveness of the national team is unreliable and completely separated for the local knowledge of the Northern Territory team, which are not involved despite having a better understanding of local issues. The Office of the Public Guardian believe this review function should be brought back to the local level to ensure participants needs are met promptly and are not lost in the system.

#### **i) the incidence of appeals to the AAT and possible measures to reduce the number**

The Office of the Public Guardian has not had to approach the Administrative Appeals Tribunal as matters can be resolved at officer level, however believe improved processes and steps within the planning and review stages would reduce the number of appeals.

#### **j) the circumstances in which plans could be automatically rolled-over**

The circumstances the Office of the Public Guardian considers appropriate to trigger the automatic roll-over of plans would include;

- where the participant felt their plan was sufficient and their support needs were stable
- where there was a small surplus (\$5,000-10,000 unspent) in an indication that the plan is meeting the needs

#### **k) the circumstances in which longer plans could be introduced**

The Office of the Public Guardian would be supportive of the introduction of longer plans for participants providing specific criteria is established which identified participants that are eligible. Certain markers would include the participant being in a stable situation, resourcing meeting the needs of the person, increased independence or quality of life for the participant and all aspects of the plan progressing well.



### **l) the adequacy of the planning process for rural and regional participants**

The planning process for rural and regional participants lacks a coordinated approach, which is to the detriment to the overall purpose and outcome of the NDIS plan. Adequate notice needs to be provided to all support people to ensure a support person accompanies participants to planning conversations. The issues with the planning process faced in urban areas is amplified and exacerbated in rural and regional areas.

The Office of the Public Guardian often receives limited notice when NDIS planning meetings are scheduled to occur in remote communities. While options of attendance such as teleconference are offered, trying to undertake a planning meeting in this manner can lead to sub-optimal outcomes, making face-to-face meetings the preferred method. In addition to this, advanced notice would also ensure the Office of the Public Guardian staff could undertake appropriate preparations. This travel to remote and rural areas is significant cost to agencies such as the Office of the Public Guardian.

The Office of the Public Guardian would support and encourage more opportunities to go out to remote locations with NDIS Planners to attend planning meeting.

### **m) any other related matters**

#### Coordination of Supports

A significant issue that NDIA generally and in particular planners do not seem to appreciate the need for adequate levels of support coordination in participants plans. This is both initially but for many participants will be ongoing. Effective and adequate levels of support coordination is the foundation stone to the successful establishment and realisation of a participant's plan and goals.

It is concerning to see a theme of reduced support coordination and a reluctance to increase support coordination if the funded hours have been exhausted. For participants that the Office of the Public Guardian represents there are very limited informal supports available so the role of the support coordinator becomes even more critical. To a large degree the success of the scheme as well as individual participants relies on the support coordinator function. Support coordination should be funded generously to activate thin markets, develop services and enhance the lives of participants. This should not be reduced until the effectiveness and stability of the plan can be assessed and agreed to by the participant and their supporters. The current trend of reducing support coordination levels prematurely is concerning, and unachievable.

The Office of the Public Guardian is starting to see many high level positives from the implementation of the National Disability Insurance Scheme: such as participants mobility interstate, reduced numbers of younger people with a disability in hospital awaiting placement, reconnection with family in remote communities and positive changes to supports resulting in improved quality of life and outcomes for people with a disability. It is unfortunate that the current systemic flaws with the planning, fund allocation and review processes are hindering the development of the scheme and participant outcomes. The Office of the Public Guardian strongly encourages changes to these processes to achieve systemic improvements to maximise participant opportunities and outcomes.