



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

### **NDIS QUALITY AND SAFEGUARDS COMMISSION INQUIRY**

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**JULY 2020**

#### **Office of the Public Guardian**

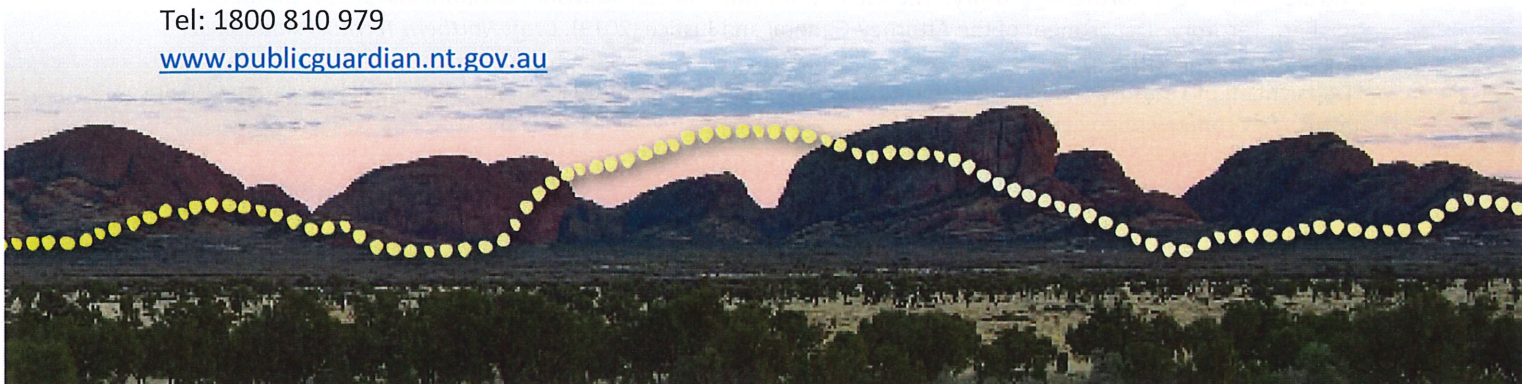
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## **Introduction**

The Northern Territory Office of the Public Guardian welcomes the opportunity to provide a submission to the Joint Standing Committee's inquiry into the National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission.

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 Darwin and Alice Springs and are responsible for providing guardianship services to approximately 590 adults represented by the Public Guardian. Compared to other jurisdictions, the Northern Territory has the lowest number of adults under guardianship orders, however, has the highest percentage of the population under guardianship.

Since the inception of the NDIS the Office of the Public Guardian has assisted 392 represented persons become NDIS participants (figure as at 30 June 2020) and has attended at many, if not all initial and review planning meetings. This involvement by the Office of the Public Guardian has provided significant insight into the experiences of NDIS participants and NDIS service providers in the Northern Territory.

It must be noted that as guardianship orders come into effect when a person reaches the age of 18, all experiences of the Office of the Public Guardian in relation to NDIS is with participants between 18 to 64 years of age.

## **The Northern Territory context**

While most Territorians live in regional centres, a significant number live in remote and very remote areas. For Aboriginal<sup>1</sup> people, who make up 30 percent of the Northern Territory population,<sup>2</sup>

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<sup>1</sup> The term Aboriginal is used in this document to refer to all people of Aboriginal and Torres Strait Islander descent who are living in the Northern Territory. The use of this term reflects the wishes of Aboriginal people in the Northern Territory. Department of the Attorney-General and Justice (2019). *Draft Northern Territory Aboriginal Justice Agreement 2019-2025*.

<sup>2</sup> Department of Treasury and Finance (NT), Population - Northern Territory Economy: Aboriginal Population (2018) <<https://nteconomy.nt.gov.au/population>>.



almost 77 percent live in remote or very remote areas<sup>3</sup>.

The Northern Territory's situation is unique and poses challenges for service delivery to a small population spread across vast distances. The sparse population, harsh climate and rough terrain mean health and other supports and services in many parts of the Territory are limited. The Northern Territory's transient population impacts the retention of the skilled workforce as capable individuals have many alternate options elsewhere in Australia. The high cost of living in the Northern Territory is an additional challenge for those in the low socio-economic circumstances.

The Northern Territory population is comprised of many culturally and linguistically diverse groups. Approximately 78 percent of people involved with the Office of the Public Guardian identify as Aboriginal. Many speak English as a second or third language with a significant number living in remote communities. The Office of the Public Guardian has observed a disconnect from country and culture, with a high level of represented adults that identify as Aboriginal experiencing significant difficulties in receiving appropriate support services, including health care, in remote communities.

#### ***The NDIS Quality and Safeguards Commission in the Northern Territory***

The NDIS Quality and Safeguards Commission (the Commission) has been in operation for 12 months in the Northern Territory, since 1 July 2019. The quality and safety of NDIS supports and services is essential to ensuring NDIS participants receive quality, individualised support through the NDIS. The Office of the Public Guardian unequivocally supports the work of the Commission and notes that for Northern Territory NDIS participants it provides a comprehensive quality and safety framework for disability services that has not previously existed.

Personnel within the Commission in the Northern Territory have demonstrated a strong commitment to the establishment and operation of the Commission across the Territory. The Office of the Public Guardian looks forward to continuing to work with the Commission to ensure safe and quality support and services for NDIS participants.

#### **a. The monitoring, investigation and enforcement powers available to the Commission, and how these powers are exercised in practice**

The Office of the Public Guardian endorses the monitoring, investigation and enforcement powers available to the Commission.

In relation to the registration and audit of NDIS service providers the Office of the Public Guardian advocates a consistent and comprehensive process that includes scrutiny of policy and practice and conversations with multiple stakeholders, including NDIS participants, their family and/or decision makers, staff of the NDIS service provider and external agencies working with the service provider. NDIS participants, their family and support networks should feel confident that the

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<sup>3</sup> Department of Treasury and Finance (NT), Population - Northern Territory Economy: Background (2018)  
<<https://nteconomy.nt.gov.au/population>>.

registration and audit process is comprehensive and ensures NDIS service providers are meeting or working towards meeting minimum and expected benchmarks of service delivery and performance and that participants are receiving quality service and support.

The Commission's power to investigate events affecting the rights and safety of NDIS participants is reliant upon the participant, their family, support network or advocate:

- being aware of their right to quality service and support
- being aware of their right to make a complaint to the Commission
- having the ability and/or support necessary to make a complaint to the Commission.

The awareness and ability of NDIS participants to make a complaint to the Commission would be enhanced by a community visitor service operating across NDIS service providers. In the Northern Territory the Community Visitor Program, an independent visitor service located in the Anti-Discrimination Commission has very limited scope and is only mandated to protect the rights of people receiving treatment from mental health services or disability secure care. The Office of the Public Guardian advocates for the expansion of this service to include all disability service providers, including NDIS service providers in the Northern Territory. Such an expansion would provide an independent voice for NDIS participants to make complaints to their NDIS service provider and/or to the Commission.

The regulation of the use of restrictive practices in the Northern Territory was minimal prior to the commencement of operation of the Commission and the commencement of the *NDIS Authorisations Act 2019* (NT). The Office of the Public Guardian welcomes the Commission's monitoring of the use of restrictive practices by NDIS service providers and its enforcement powers in relation to the unauthorised use of restrictive practices.

**b. The effectiveness of the Commission in responding to concerns, complaints and reportable incidents – including allegations of abuse and neglect of NDIS participants**

The Office of the Public Guardian has referred seven matters, including concerns, complaints and reportable incidents to the Commission since 1 July 2019. Five of these matters continue to be investigated.

The Commission's initial response to a concern, complaint or reportable incident and its assessment of whether there is an immediate or ongoing risk to the well-being of the NDIS participant or other participants demands certainty and timeliness. The experience of the Office of the Public Guardian is that this certainty and timeliness requires improvement. After a concern, complaint or reportable incident has been made to the Commission, the Commissions' assessment of risk and proposed plan or investigation to address the concern or complaint has, at times, been unclear to the Office of the Public Guardian, the participant and their family. This uncertainty creates confusion and risk for all stakeholders including the NDIS participant and the NDIS service provider.



Confusion between the service provider and the Office of the Public Guardian, as the participant's representative has occurred when the certainty and timeliness of the Commission's response has not been prompt. This is especially concerning in relation to immediate safety issues where there may be conflicting views between the service provider and our office.

The Commission should consider how this can be rectified so that the NDIS participant and their family and/or decision makers can be confident that there is no immediate or ongoing risk to the participant or have clear direction as to what needs to occur for any immediate or ongoing risk to be addressed.

**c. The adequacy and effectiveness of the NDIS Code of Conduct and the NDIS Practice Standards**

The Office of the Public Guardian endorses the NDIS Code of Conduct and the NDIS Practice Standards and advocates for a comprehensive and consistent registration and audit process to ensure quality of service and supports to all NDIS participants.

The incidents that the Office of the Public Guardian have reported to the NDIS Commission indicate that there is a range of understanding and application of the Practice Standards by Service providers. Additionally these incidents also demonstrated that the staff employed by service providers did not demonstrate an understanding of commitment to the NDIS Code of Conduct. Information and training for service providers and individual staff members should be strengthened and prioritised.

The short period of operation of the Commission in the Northern Territory has not allowed the Office of the Public Guardian to properly assess the adequacy and effectiveness of the NDIS Code of Conduct and NDIS Practice Standards. In principle the Office of the Public Guardian supports any recommendation to strengthen the implementation and compliance with the NDIS Code of Conduct and NDIS Practice Standards and resists any suggestion that they should be weakened.

**d. The adequacy and effectiveness of provider registration and worker screening arrangements, including the level of transparency and public access to information regarding the decisions taken by the Commission**

The Office of the Public Guardian advocates for a high level of transparency and public access to information regarding the decisions taken by the Commission. Accountability and consistency of decision-making by the Commission is essential to ensuring NDIS participant confidence and ensuring continuance improvement of quality service and support across all NDIS service providers.

The data available on the work of the Commission should be publically available and provide data specific to individual states and territories.

**e. The effectiveness of communication and engagement between the Commission and state and territory authorities**

The Office of the Public Guardian has experienced positive communication and engagement with the Commission. The Commission has conducted information sessions with adult guardianship officers and other personnel within the Office of the Public Guardian in relation to the Commission's functions and responsibilities generally and specifically in relation to restrictive practices. There has been an overall willingness and responsiveness to address inquiries from the Office of the Public Guardian. This solid collaborative relationship should be nurtured and strengthened into the future given the shared interests of the Commission and the Office of the Public Guardian.

**f. The human and financial resources available to the Commission, and whether these resources are adequate for the Commission to properly execute its functions**

The Office of the Public Guardian cannot comment directly to the adequacy of human and financial resources available to the Commission in the Northern Territory. There have been significant time delays in concluding the resolution of complaints made by our office that would indicate systems and human resource constraints. Therefore, it is important to note that the human and financial resources available to the Commission in the Northern Territory should reflect the Northern Territory's unique circumstances, including:

- a small but geographically dispersed population
- that Aboriginal people, who make up 30 percent of the Northern Territory population,<sup>4</sup> almost 77 percent live in remote or very remote areas<sup>5</sup>
- a culturally and linguistically diverse population.

**g. Management of the transition period, including impacts on other commonwealth and state-based oversight, safeguarding, and community engagement programs**

Prior to the commencement of operation of the NDIS Commission there was limited Territory-based oversight and safeguarding of disability service providers in the Northern Territory. The Office of the Public Guardian, NDIS participants and all key stakeholders in the disability sector welcome the work of the NDIS Commission in the Northern Territory. Anecdotal evidence is that NDIS service providers are committed to the new framework of regulation, monitoring and compliance and have transitioned appropriately. The creation and implementation of the NDIS Commission has had a corresponding positive impact on the protection and promotion of the human rights of people with a disability in the Northern Territory.

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<sup>4</sup> Department of Treasury and Finance (NT), Population - Northern Territory Economy: Aboriginal Population (2018) <<https://nteconomy.nt.gov.au/population>>.

<sup>5</sup> Department of Treasury and Finance (NT), Population - Northern Territory Economy: Background (2018) <<https://nteconomy.nt.gov.au/population>>.