

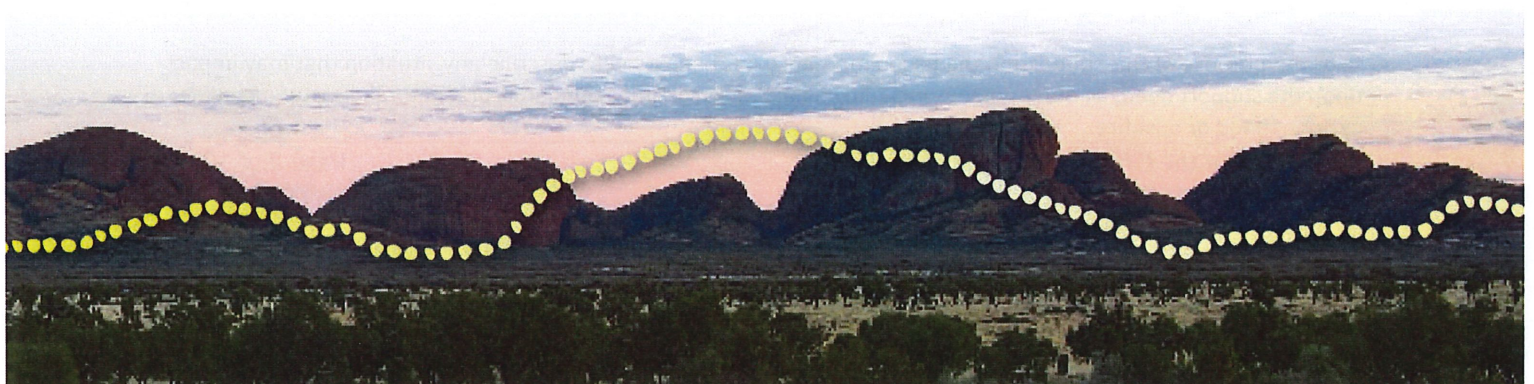


## Northern Territory Office of the Public Guardian Submission to the Royal Commission into Aged Care Quality and Safety

### IMPACT OF COVID-19 ON AGED CARE SERVICES

July 2020

**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 Royal Commission into Aged Care Quality and Safety regarding the impact of covid-19 on aged care services in the Northern Territory.

Established under the *Guardianship of Adults Act 2016* (the Act), the Office of the Public Guardian 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 Act provides a legal decision-making framework for adults with impaired decision-making capacity in relation to their personal or financial matters. It includes a broad definition of impaired decision-making capacity that captures adults with a cognitive impairment from any cause including mental illness, dementia, intellectual disability or acquired brain injury.

The Act recognises the overall wellbeing, human rights and fundamental freedoms of persons with impaired decision-making capacity and aligns 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 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.

A function of the Public Guardian is to advocate for persons with impaired decision-making capacity by promoting understanding and awareness of relevant issues. The Royal Commission's consideration of the impact of covid-19 on aged care services provides an opportunity to consider and reflect on lived experiences during the covid-19 pandemic but also to plan for future emergencies<sup>1</sup>.

---

<sup>1</sup> For the purpose of this submission the term emergency has been used to describe any situation that may impact upon the support needs of older persons including an act of terrorism, a pandemic or a natural disaster including cyclone, flood or bushfire.



### ***The Northern Territory context***

While most Territorians live in regional centres, a significant number live in remote and very remote areas. For Aboriginal<sup>2</sup> people, who make up 30 percent of the Northern Territory population,<sup>3</sup> almost 77 percent live in remote or very remote areas<sup>4</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. Each of these challenges is exacerbated during an emergency.

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 aged care, in remote communities.

The Northern Territory is prone to various natural disasters including cyclones, floods and bushfires. The Northern Territory Government source of truth for disaster and emergency response and information is Secure NT.

### ***The Northern Territory experience of the covid-19 pandemic***

The Office of the Public Guardian shares nationwide concern regarding the care and support of older Australians during the covid-19 pandemic.

The Northern Territory experience of the covid-19 pandemic has been greatly shaped by very low confirmed cases of covid-19 and as at the time of providing this submission, no deaths and no community transmission. Despite the subsequent achievement of these positive statistics, the response of the Northern Territory to the unfolding crisis nationally and globally was consistent with all other Australian states and territories. The Northern Territory was in unison with national lock downs of services and businesses, requirements of social distancing and restrictions on social

---

<sup>2</sup> The term Aboriginal is used throughout 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>3</sup> Department of Treasury and Finance (NT), Population - Northern Territory Economy: Aboriginal Population (2018) <<https://nteconomy.nt.gov.au/population>>.

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

gatherings. The Northern Territory led the closure of Territory borders and restrictions to remote Aboriginal communities.

During the covid-19 pandemic many remote and very remote communities in the Northern Territory were declared biosecurity areas and there were strict restrictions on all non-essential movement into these communities, including anyone wanting to re-enter a zone was required to self-isolate for 14 days. These measures of isolation and remoteness were designed to delay and possibly prevent an outbreak of covid-19 in these communities and they were successful.

In April 2020, following a relatively short period of strict restrictions, the Northern Territory started to ease restrictions ahead of the rest of Australia. At this time, all confirmed cases of covid-19 had resolved, there was no community transmission and there was mandatory quarantine requirements for all persons entering the Northern Territory. The Northern Territory was considered a safe haven, free of covid-19 and residents felt confident in returning to pre covid-19 activities.

With the new wave of covid-19 cases in Victoria and New South Wales and the opening of the Northern Territory borders on 17 July 2020 it is feared that covid-19 may be reintroduced to the Northern Territory and without the earlier restrictions will place a significant number of Territorians at risk, including older Territorians.

The Office of the Public Guardian witnessed both positive and negative experiences of older persons<sup>5</sup> during the covid-19 pandemic. This submission draws on those experiences and proposes recommendations for the Royal Commission's consideration. The Office of the Public Guardian advocates for recommendations from the Royal Commission that promote individualised and system level emergency planning for older persons. Individualised plans should be person centred and led by the person. System level planning should involve and engage older persons to ensure the rights of older persons are embedded across mainstream and aged care specific emergency planning.

Emergency response planning for Aboriginal communities must be community led by Aboriginal people within the community.

It is important to acknowledge that in many ways it is too soon for the true effects of the covid-19 pandemic to be gauged or measured. Many of the effects including people's mental health and long term health status following the restrictions will not be known for months or years.

### ***Emergency planning for older persons***

The Northern Territory is seasonally prone to natural disasters and emergencies including cyclones, floods and bushfires. The covid-19 pandemic has demonstrated the importance of individualised and system level planning for older persons.

---

<sup>5</sup> In the context of this submission older persons refers to older persons with impaired decision-making capacity.



The emergency response to the covid-19 pandemic was and continues to be unprecedented. For older persons in the Northern Territory it has highlighted a vulnerability and dependence on individual aged care providers to meet the person's physical, emotional, intellectual and health needs. This dependence exposes older persons to the risk of abuse and neglect. It can also create unrealistic expectations for the aged care provider if there is not the appropriate planning and expertise to meet the person's needs prior to the emergency.

It was the experience of the Office of the Public Guardian that the aged care sector was responsive to the needs of the majority and able to impose strict restrictions within aged care facilities but were challenged in addressing the individual needs and human rights of older persons during the covid-19 pandemic. Specific experiences include:

- Limited flexibility to provide appropriate support and management of behaviours of an older person living in an aged care facility who was non-compliant with restrictions recommended by the Australian Government and/or imposed by the aged care facility.
- Limited human and financial resources to provide electronic devices (and support for their use) to enable older persons to connect with family and other support networks.
- The reduced ability of aged care providers to meet the emotional, intellectual and support needs of older persons without the informal support that is offered through family and other networks of support.

The Office of the Public Guardian has received minimal commentary specific to the provision of in home supports during the covid-19 pandemic. Despite this minimal commentary, the Office of the Public Guardian has the following concerns regarding the provision of in home support to older persons as the pandemic continues and during any future emergencies:

- The adequate and appropriate services available to older persons to ensure food and other household item security. Grocery retailers in the Northern Territory are limited, especially in remote and very remote communities. It is essential that older persons are able to access preferred items to meet their health and budgetary needs.
- The ability of the Northern Territory social services workforce to meet the ongoing support needs of older persons if community transmission occurs in the Northern Territory and the social services workforce is affected. The size of this workforce means even a minimal number of covid-19 cases could have a significant affect upon service provision to older persons.
- The ability of aged care providers to meet the emotional, intellectual and support needs of older persons during an emergency without additional resources.

During an emergency service providers must be innovative and responsive to ensuring the needs of older persons are met. This may include measures such as meeting in open spaces with the person's family and/or friends and supporting the person from an appropriate distance to comply with any restrictions on social gathering numbers.

The Office of the Public Guardian advocates for individualised planning for all older persons during an emergency to address issues and concerns raised throughout this submission.

### Recommendation

All older persons receiving Commonwealth-funded aged care services, including within an aged care facility and in home support should have a person centred Emergency Plan. The Emergency Plan should, wherever possible be led by the person and should detail the required modifications to the person's support to meet their physical, emotional, intellectual and health needs during an emergency. It should be shared with relevant decision makers and service providers so that in an emergency there is an agreed understanding of expectations and responsibilities.

### Recommendation

Commonwealth and state and territory governments should consider how older persons who are not receiving Commonwealth-funded aged care services can be supported to prepare a person centred Emergency Plan. The Emergency Plan should be led by the person and should detail the required modifications to the person's support to meet their physical, emotional, intellectual and health needs during an emergency. It should be shared with relevant decision makers and service providers so that in an emergency there is an agreed understanding of expectations and responsibilities.

### ***System level emergency planning and response***

Commonwealth, state and territory governments must engage older persons and their advocates in all emergency and response planning and the rights of older persons in emergency planning must be embedded into government policy.

During the covid-19 pandemic there has been a clear focus on the vulnerability and protection of older persons. This may be attributed to the Australian Government being the primary funder and regulator of the aged care system and the Australian Government, together with National Cabinet, leading Australia's initial and early response to the covid-19 pandemic. This may not be true of other emergencies where the primary response will be led and implemented by the Northern Territory Government, but may still have a significant impact upon older persons.

The rapid response to address the recognised vulnerability of older persons during the covid-19 pandemic has impacted the emotional wellbeing of many older persons and their family and support networks. While necessary and justified, this response and its impact must be considered and inform future emergency planning. Governments and aged care providers must plan for how the support needs of older persons can be met during periods of emergency. For social distancing and social gathering restrictions there must be an acknowledgment that older persons may require support to access the community for health and social reasons. This acknowledgement must transpire into an emergency response that does not unfairly impact older persons because of their support needs.

Online resources and dedicated sources of truth, for example the Northern Territory Government's Secure NT webpage should include specific emergency information in relation to the rights and needs of older persons in an emergency. It may not always be obvious to neighbours, community members and informal supports that the supports for an older person may change during an emergency. Emergency business planning should include consideration of how mainstream businesses may meet the needs of older persons in an emergency.



Workforce challenges already experienced in the Northern Territory are exacerbated during an emergency and post emergency. System level planning must include strategies to ensure collaboration can occur between aged care providers to meet workforce challenges. With the Northern Territory Government having the greatest flexibility with respect to workforce and financial resources, emergency response planning should anticipate the situation where the government may need to be service provider of last resort for older persons in the Northern Territory. Planning for this occurrence should be negotiated in advance of any crisis.

#### Recommendation

The Commonwealth and Northern Territory Governments should commit to co-ordinated system level emergency planning and response that:

- engages older persons and their advocates in all emergency and response planning
- embeds the rights of older persons in emergency planning into government policy
- includes specific emergency information in relation to the rights and needs of older persons in all online resources and dedicated sources of truth, including the Secure NT webpage
- interfaces with the Northern Territory Government as the provider of last resort if required.

#### ***Accessible Information and support through technology***

##### Accessible information

Accessible information ensures older persons receive current and accurate information and are empowered in understanding the emergency and response and better able to self-advocate in relation to their rights and responsibilities during the emergency. Lack of accessible and accurate information leads to higher levels of anxiety about the situation.

During the covid-19 pandemic when every aspect of people's lives was impacted by updated restrictions and health and safety advice, accessible and accurate information was paramount. For many Australians this information was obtained via electronic news feeds and articles and social media. Dedicated Commonwealth and state and territory internet sites became sources of truth regarding the covid-19 pandemic and many watched or listened to live press conferences by government leaders and chief medical officers. Being informed of the latest advice and restrictions was essential to everyday life and planning into the future.

For the Northern Territory deaf and hard of hearing community access to the latest information was compromised by the Northern Territory having no accredited Auslan interpreters to provide Auslan interpretation of Northern Territory press conferences. Collaborative advocacy from DeafNT and other key organisations resulted in the Chief Minister's Office and ABC Darwin including a live cross to an Auslan interpreter so that updates from the Northern Territory Government were more accessible.

For Aboriginal people across the Northern Territory, the Aboriginal Community Health Organisations and other indigenous service providers demonstrated significant leadership and contribution to ensure all essential advice and information was delivered in language and via different mediums, including print and electronic. However, internet service in remote and very remote communities in the Northern Territory is poor and very limited. This significantly affected

the distribution of information in language and consequently the timeliness, quality and accuracy of information received by persons living in remote and very remote communities.

#### Support through technology

In addition to providing access to information, technology during the covid-19 pandemic also provided essential support to all individuals through the ability to communicate, to access social and health support and services, to stay connected with family and other support networks and for entertainment. This support significantly affected people's physical, emotional and intellectual health during the pandemic.

For older persons the support and entertainment that can be provided through technology may not have been familiar to them or their aged care provider at the commencement of the covid-19 pandemic. As the covid-19 pandemic has continued the Office of the Public Guardian has witnessed a willingness of aged care providers to engage differently with technology to support older persons. Future emergency planning should consider innovative ways to support older persons during an emergency and having consideration to the person's access to an appropriate device and access to the internet through a phone or Wifi network.

The strict restrictions imposed on all movement of persons into remote and very remote communities in the Northern Territory meant that the support that could and was provided through technology to people living in these communities was imperative for their continued support and health care. However the poor or very limited internet access in these communities and the limited number of devices or video conference facilities negatively impacted the support provided through technology during the covid-19 pandemic. Despite this limitation the Office of the Public Guardian is aware of aged care assessments being undertaken via online meeting platforms for persons living in a remote community during the pandemic.

For persons living in remote and very remote communities the use of shared phones or public phones for the purpose of support and health consultations negatively impacted the privacy and effectiveness of these consultations during the covid-19 pandemic.

#### Recommendation

The Commonwealth and Northern Territory Governments must provide an ongoing commitment to securing one or more Auslan interpreters to live and work in the Northern Territory. Open captions and an Auslan interpreter should be mandatory for all health and safety announcements during a time of emergency.

#### Recommendation

The Commonwealth and Northern Territory Governments should commit to infrastructure upgrades in remote communities so that all Territorians have access to internet and essential communications at all times and in times of emergency.

#### ***Oversight of services***

During the covid-19 pandemic all Australians experienced unprecedented restrictions on their daily movements and life. Individuals were either encouraged or directed to limit interactions with persons not living in their household. For older persons in the Northern Territory who receive support in their home or live in aged care facilities this meant a significant withdrawal of informal community-based safeguarding and oversight by family, friends, supporters and advocates.



Identification and notification of the needs of older persons or any concerns in relation to their care or support was reliant on the person's aged care provider. This reliance places older persons at risk of abuse or neglect, especially if their ability to self-advocate or notify others in relation to unmet needs is limited.

The existing Community Visitor Scheme operating within Commonwealth funded aged care services supports volunteers to visit and provide friendship and companionship to older people. It does not provide an oversight, advocacy or investigative role. This role is necessary during periods of emergency, when the infringement of rights and needs of older people is more likely, but also at all other times to combat the history of abuse and neglect that has been detailed in the Royal Commission's Interim Report.

#### Recommendation

The Commonwealth Government must give consideration to the development of the Community Visitor Scheme or the development of a new independent community visitor program to provide an oversight, advocacy and investigative function to all Commonwealth-funded aged care services.

#### ***Service provider response, training and access to personal protective equipment (PPE)***

The Office of the Public Guardian is aware of aged care providers employing management strategies and restrictions that exceeded the official restrictions imposed by or recommended by the Commonwealth or Northern Territory Governments. The rationale for these strategies and restrictions was the protection of older persons and/or their support staff, however were not always with adequate consideration to the rights of the individual or the consequence of the strategy or restriction. An element of fear and lack of adequate information is likely to have also contributed to these strategies and restrictions.

Early and appropriate training for aged care providers at the outset of the covid-19 pandemic is likely to have armed organisations and individuals with the knowledge and skills to employ appropriate and rights based strategies and reduced the risk of excessive, protectionist strategies.

Universal precautions should be in place across aged care providers to promote infection control at all times and not just during times of emergency. Part of these precautions should be access to appropriate and sufficient quantities of PPE.

#### Recommendation

In an emergency the Commonwealth and Northern Territory Governments must lead and implement coordinated planning and response to ensure accurate, timely and relevant guidance is provided to all aged care providers in the Northern Territory.

#### Recommendation

It should be mandatory for all Commonwealth funded aged care providers to provide:

- emergency training and planning for staff prior to and during emergencies
- infection control training for all staff
- PPE for all older persons receiving support and all personnel involved in their support.

#### ***Access to health care***

The Office of the Public Guardian endorses the six ethical principles for decision-making developed by leading Australian experts and published in their statement of concern, *COVID-19:*

*Human Rights, Disability and Ethical Decision Making* and the position statement of the Office of the Public Advocate Victoria, *An ethical framework for promoting the health of people with disability during the pandemic*. During the covid-19 pandemic the Office of the Public Guardian witnessed a failure by some sections of the health sector to fully appreciate the concerns shared by many persons with disability and their advocates in relation to health delivery during a pandemic that is ethical and human rights focused. With very low rates of covid-19 cases and no community transmission, for the time being Northern Territory health services have avoided making crisis decisions. With Northern Territory borders open to other Australian states and territories on 17 July 2020 it is likely that there will be more cases of covid-19 in the Northern Territory and there will be cases of community transmission.

The Office of the Public Guardian advocates for Northern Territory health services to endorse and embed the six ethical principles for decision-making detailed in the statement of concern *COVID-19: Human Rights, Disability and Ethical Decision Making* into all health care decision making and planning during the covid-19 pandemic.

Health care planning must include how older persons with complex health or behavioral needs may be accommodated to ensure the person's health care needs are met during an emergency.

The downside of strict restrictions on all non-essential movement into remote and very remote communities was that many of these communities rely on outreach services and activities, including health services. Despite many challenges and barriers, including poor or limited internet service, lack of access to appropriate facilities and devices, reduced transport options by road and air and limited interpreter services, the Office of the Public Guardian witnessed a commitment by health services to the continued delivery of health care in remote and very remote communities. This commitment was evidenced through:

- the timely and coordinated supply of medication and supply of and repairs to critical equipment
- the delivery of allied health services via phone and video conferencing.

#### Recommendation

Northern Territory health services should endorse and embed ethical principles for decision-making similar to those detailed in the statement of concern *COVID-19: Human Rights, Disability and Ethical Decision Making* into all health care decision making and planning during an emergency.