

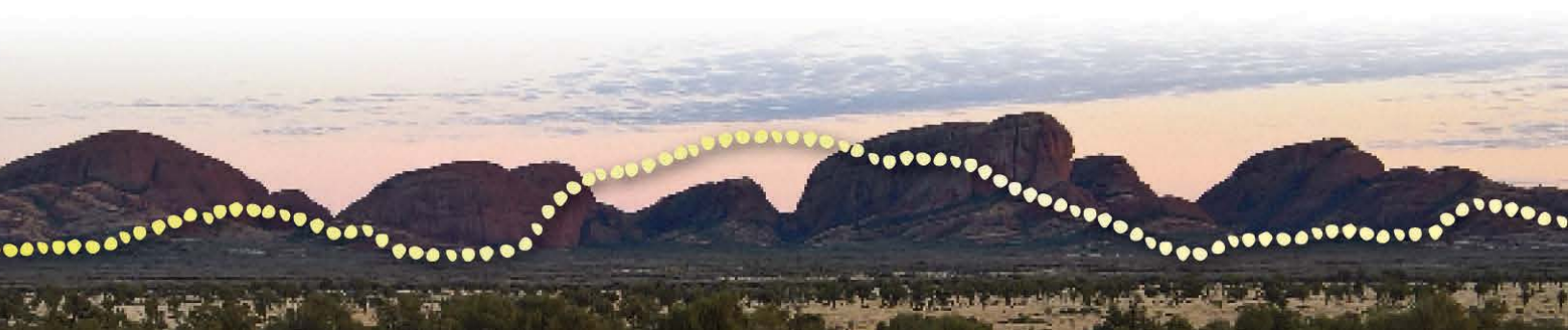


**Northern Territory Office of the Public Guardian Submission to the Royal Commission into
Violence, Abuse, Neglect and Exploitation of People with Disability**

**EMERGENCY PLANNING AND RESPONSE
Issues Paper**

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Introduction

The Northern Territory Office of the Public Guardian welcomes the opportunity to provide a submission to the Emergency Planning and Response Issues Paper released by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

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 inquiry into emergency planning and response for persons with disability provides an opportunity to consider and reflect on lived experiences during the covid-19 pandemic but also to plan for future emergencies¹.

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

The Northern Territory context

While most Territorians live in regional centres, a significant number live in remote and very remote areas. For Aboriginal² people, who make up thirty percent of the Northern Territory population,³ almost seventy seven percent live in remote or very remote areas⁴.

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 per cent 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 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 human rights of persons with disability during the covid-19 pandemic and endorses the Royal Commission's Statement of Concern. Many of the concerns and issues raised in the Statement of Concern have been experienced to some level in the Northern Territory.

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

² 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*.

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

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

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 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 opening of the Northern Territory borders on 17 July 2020 it is feared by some that covid-19 may be reintroduced to the Northern Territory and without the earlier restrictions will place a significant number of Territorians at risk.

The Office of the Public Guardian witnessed both positive and negative experiences of persons with disability⁵ 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 individualized and system level emergency planning for persons with disability. Individualized plans should be person centred and led by the person. System level planning should involve and engage persons with disability to ensure the rights of persons with disability are embedded across mainstream and disability 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 persons with disability

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 individualized and system level planning with and for persons with disability.

⁵ In the context of this submission persons with disability refers to persons with impaired decision-making capacity.

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

During the covid-19 pandemic the Office of the Public Guardian witnessed a varied response from service providers to meeting the needs of persons with disability. While the response of many providers was innovative and collaborative there were also responses that demonstrated a lack of understanding of the emergency, the human rights of the person with disability and the need for considered and individualized strategies.

Some of the experiences of the Office of the Public Guardian included:

- more visits with family and friends occurring inside the person's accommodation as an alternative to community access
- group community access activities were modified to 1:1 activities
- with the support of NDIS funding – the purchase of bikes for physical exercise and tablets for digital communication with family and friends
- the participation of the person in art classes and other social activities and peer groups online and via platforms such as Zoom
- service providers refusing visits from the NDIS support coordinator and guardian to the person's home
- no Wifi in supported accommodation for support workers or residents
- no personal access to an electronic device for the purpose of communicating and engaging with family and friends or for entertainment
- the refusal of the person with a disability back into their home if they left during "lockdown"
- service providers making unilateral decisions regarding community access and imposing additional restrictions without consultation with the person's guardian and without regard to the consequence of these restrictions and changes to the person's behaviour.

During an emergency service providers must be innovative and responsive to ensuring the needs of persons with disability are met. This may include measures such as meeting in open spaces with the person's family and/or friends and observing the person from an appropriate distance to comply with any restrictions on social gathering numbers. The service provider must also have a level of confidence that any reasonable funding variations to supporting the person will be honored through the person's NDIS plan.

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

Recommendation

All participants within the NDIS should be funded for support to prepare a person centred Emergency Plan. The Emergency Plan should be led by the participant 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 persons with a disability who are not receiving supports through the NDIS can be supported to prepare a person centred Emergency Plan. The Emergency Plan should be led by the participant 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 persons with disability in all emergency and response planning and the rights of persons with disability in emergency planning must be embedded into government policy.

During the covid-19 pandemic the Office of the Public Guardian witnessed the rights and needs of persons with disability being consumed within other groups of vulnerable persons. This failed to provide an accurate reflection of the needs and rights of persons with disability or identify how they may be supported by mainstream services and supports during the pandemic. For example, a person may require 1:1 or 2:1 support to access the community, including for health or social reasons. This support must be acknowledged and accommodated in any emergency response, including any social gathering restrictions so that persons with disability are not unfairly impacted by the restrictions and their support needs.

The covid-19 pandemic has highlighted the importance of persons with disability being members of their community and building an informal network of support through participation in mainstream services and activities. It is this community and informal network of support, together with the person's service providers and formal supports that can coordinate to meet the needs of the person during times of emergency.

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 persons with disability in an emergency. It may not always be obvious to neighbours, community members and informal supports that the supports for a person with disability may change during an emergency. Emergency business planning should include consideration of how mainstream businesses may meet the needs of persons with disability 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 service providers to meet workforce challenges. With the Northern Territory Government having the greatest flexibility with respect to workforce and

financial resources, emergency response planning must anticipate the government being service provider of last resort for persons with disability in the Northern Territory.

Recommendation

The National Disaster Risk Reduction Framework (2018) and the Australian Disaster Preparedness Framework (2018) incorporate the Sendai Framework recommendation to include people with disability in the design and implementation of accessible disaster risk plans.

Recommendation

Emergency and disaster planning for persons with disability should be included in the new National Disability Strategy 2021-20. Responsibilities for emergency and disaster planning for persons with disability should be clearly articulated in the new National Disability Agreement.

Recommendation

The Northern Territory Government should commit to system level emergency planning and response that:

- engages persons with disability in all emergency and response planning
- embeds the rights of persons with disability in emergency planning into government policy
- includes specific emergency information in relation to the rights and needs of persons with disability in all online resources and dedicated sources of truth, including the Secure NT webpage.

Accessible Information and support through technology

Accessible information

Accessible information ensures persons with disability 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.

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 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.

The Office of the Public Guardian witnessed difficulties for persons with disability receiving accessible information, especially in the early stages of the covid-19 pandemic. Access to the internet and/or access to Wifi also created barriers to persons with disability receiving accessible, accurate and current health and safety messages.

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.

For persons with disability living in supported accommodation access to an appropriate device and no or limited access to Wifi in their accommodation provided barriers to accessing accurate and current information for the residents and their support workers.

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 persons with disability the support and entertainment provided through technology was again impacted by 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.

Some of the experiences of the Office of the Public Guardian in relation to the support provided through technology included:

- with the support of NDIS funding – the purchase of tablets for digital communication with family and friends
- the participation of the person in art classes and other social activities and peer groups online and via platforms such as Zoom
- video conferencing and online meeting platforms such as Zoom offered a superior communication option for some persons with disability and increased the interaction of participants and enabled non-verbal communication and cues not possible during phone conversations
- no Wifi in supported accommodation for support workers or residents
- no personal access to an electronic device for the purpose of communicating and engaging with family and friends or for entertainment
- access to video conferencing facilities in remote communities was subject to availability and the agreement of individual providers

- support and health consultations conducted using shared phones or public phones negatively impacted the privacy and effectiveness of the consultation.

Recommendation

The Commonwealth and Northern Territory Governments must commit 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.

Recommendation

All persons with disability who are in receipt of government benefits or who have a minimum income should be entitled to subsidised internet and/or data allowances and subsidised electronic devices to enable essential communications at all times and in times of emergency.

Recommendation

All service providers for persons with disability including supported accommodation should have access to reasonable Wifi allowances to enable staff and residents access to essential information, communication with family and support networks and entertainment and engagement 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 persons with disability in the Northern Territory who live in supported accommodation, 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 persons with disability or any concerns in relation to their care or support was reliant on the service provider providing the person's support.

Formal oversight continued to be provided by the Northern Territory Community Visitor Program during the covid-19 pandemic. However this program, an independent 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 withdrawal of informal community based safeguarding for persons with disability (including those encompassed within the scope of the Community Visitor Program) placed persons with disability at significant risk of violence, abuse, neglect and exploitation.

Recommendation

The Northern Territory Government should commit to an expansion of the Community Visitor Program to encompass all disability service providers in the Northern Territory.

Recommendation

The NDIS Commission should commit to undertaking site visits of NDIS service providers during periods of emergency.

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

The Office of the Public Guardian contributed to the draft *Northern Territory Coronavirus (COVID-19) Public Health Disability Support Services Sub Plan*. The target audience of this sub plan was all essential disability support services for persons with a disability in the Northern Territory. It contained information in relation to disability support services requirements, preventive health advice, required actions if there was an outbreak of covid-19 in any supported accommodation or in home support service site, principles of isolation and quarantine, management of ill health care works and resources. The implementation and compliance with this sub plan is not known by the Office of the Public Guardian.

The Office of the Public Guardian witnessed individual service 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 persons with disability and/or their support staff, however were not 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 service providers and support staff 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 disability services 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 Northern Territory Government must lead and implement planning similar to the *Northern Territory Coronavirus (COVID-19) Public Health Disability Support Services Sub Plan* to ensure accurate, timely and relevant guidance is provided to disability service providers in the Northern Territory.

Recommendation

NDIS plans should include standard line items for:

- emergency training and planning for staff prior to and during emergencies
- mandatory training for staff in relation to infection control
- PPE for the participant and all service provider personnel involved in their support.

Recommendation

Commonwealth and state and territory governments should consider how persons with a disability who are not receiving supports through the NDIS and their carers and support workers can participate in funded emergency training and have sufficient access to PPE for the person, family and carers.

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 opening 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 persons with disability 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.

Housing

Many persons with disability under the guardianship of the Public Guardian live in supported accommodation with other persons with disability, receive support in their home or live in aged care facilities. These living arrangements presented challenges for persons with disability and service providers during the covid-19 pandemic. These challenges are likely to be evidenced in other types of emergency and include:

- the ability of service providers to self-isolate residents during periods of voluntary or mandatory quarantine
- the management of risk to other residents if an individual does not comply with voluntary or mandatory quarantine or with restrictions or social distancing
- the ability of service providers to urgently source alternative accommodation options during an emergency.

Recommendation

The Northern Territory Government's emergency response planning must anticipate the government being service provider of last resort for persons with disability in the Northern Territory during an emergency.