

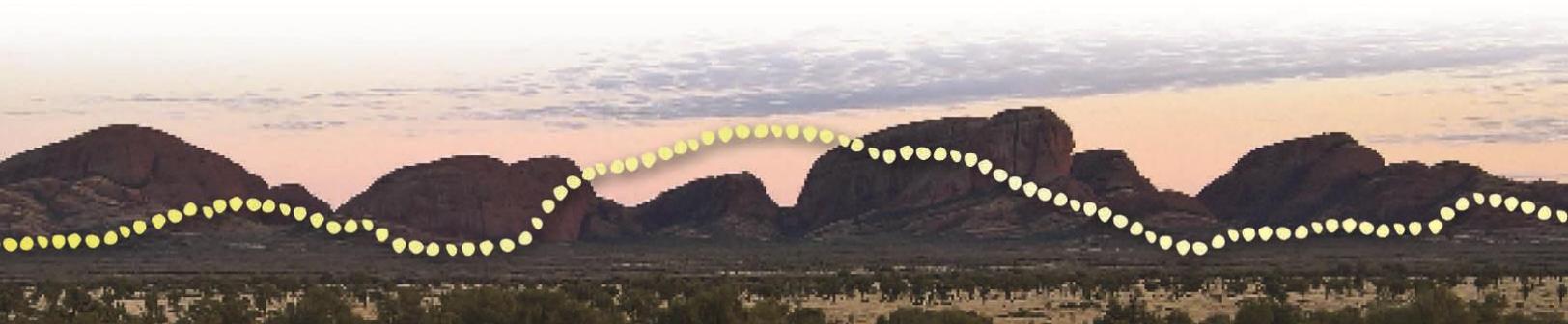


**Northern Territory Office of the Public Guardian Submission to the Royal Commission into
Violence, Abuse, Neglect and Exploitation of People with Disability**

**FIRST NATIONS PEOPLE WITH DISABILITY
Issues Paper**

October 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



Introduction

The Northern Territory Office of the Public Guardian welcomes the opportunity to provide a submission to the First Nations People with Disability 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 (CRPD). The CRPD'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 CRPD directs equal recognition of all persons and prohibits discrimination on the basis of disability.

There are currently 1,000 persons under a guardianship order in the Northern Territory. The Office of the Public Guardian teams are located in Darwin and Alice Springs and are responsible for providing guardianship services to approximately 580 of these persons. 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 the experience of First Nations People with Disability provides an opportunity to consider the experiences of Aboriginal¹ people with disability under guardianship in the Northern Territory and provide observations of the Office of the Public Guardian regarding what can be done to more effectively prevent and respond to violence, abuse, neglect and exploitation of Aboriginal people with disability.

¹ 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*.

The Northern Territory context

While most Territorians live in regional centres, a significant number live in remote and very remote areas. For Aboriginal people, who make up 30 percent of the Northern Territory population,² almost 77 percent live in remote or very remote areas³.

The Northern Territory's context 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 persons that identify as Aboriginal experiencing significant difficulties in receiving appropriate support services, including health care, allied services and behaviour support in remote communities.

A transient and insufficiently skilled workforce, language and communication barriers, the limited delivery of support services in remote and very remote communities and a disconnect from country are all factors that contribute to the violence, abuse, neglect and exploitation of Aboriginal people with disability.

The Office of the Public Guardian cannot contribute to the lived experiences of Aboriginal people with disability. Instead this submission aims to share observations and experiences of the Office of the Public Guardian regarding Aboriginal people with disability involved with guardianship. The interrelated social determinants of disability, health, housing, poverty, employment and justice and the associated disadvantage for Aboriginal people with disability is complex and overwhelming. Despite this complexity and overwhelm, the consistent message received by the Office of the Public Guardian is:

- Aboriginal people with disability want to receive supports and services on country so that they can stay connected to country, culture and family
- Aboriginal people want to lead and be involved in all planning, design and implementation of the delivery of services and support to Aboriginal people so that the services and supports are culturally appropriate and meet the needs of their specific community.

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

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

- Aboriginal people to access services and support provided by Aboriginal controlled organisations with Aboriginal staff.

Aboriginal Territorians and guardianship

Aboriginal Territorians are overrepresented in the population of people involved with guardianship in the Northern Territory. Despite representing just over 30 per cent of the total Northern Territory population Aboriginal Territorians comprised 57 per cent of persons with guardianship orders in 2019-2020. The Office of the Public Guardian is committed to understanding why Aboriginal people are overrepresented in the population of persons with guardianship orders in the Northern Territory. Potential areas for consideration include the interaction of social determinants such as health, housing and income with guardianship, the role of government agencies in guardianship for vulnerable populations, and mechanisms for embedding cultural safety for Aboriginal persons in guardianship systems and processes.

Of further concern is the high proportion of represented persons with Public Guardian involvement who identify as Aboriginal (77%), compared to the proportion of those with private guardians who identify as Aboriginal (30%). The Office of the Public Guardian continues to work with community organisations to develop strategies to promote the increased involvement of Aboriginal Territorians, in particular, in guardianship processes and support family and community members in undertaking the guardianship role.

Consequently, in 2020 the Office of the Public Guardian has partnered with the North Australian Aboriginal Justice Agency to establish a project to investigate barriers to participation by Aboriginal people in formal guardianship systems and processes. The aim of this project is to ensure that Aboriginal people are empowered to act as private guardians and that guardianship systems are culturally safe, appropriate and inclusive.

What are the experiences of Aboriginal people with disability regarding violence, abuse, neglect and exploitation?

It is the consistent observation of the Office of the Public Guardian that Aboriginal people with disability want to receive services and supports on country where they are connected to country, family and culture. On many occasions the violence, abuse, neglect and exploitation that Aboriginal people with disability experience is related to the limited supports and services available on country or to their relocation from country to a regional centre for the purpose of receiving health care, disability support or because they become involved in the justice system.

The experiences of Aboriginal people with disability regarding violence, abuse, neglect and exploitation must be considered in the context of the interrelated social determinants of health, housing, poverty, employment and justice. Conversely strategies to address the violence, abuse, neglect and exploitation of Aboriginal people with disability must also address these interrelated social determinants and their impact upon Aboriginal people with disability.

The Office of the Public Guardian has witnessed the following experiences of violence, abuse, neglect and exploitation of Aboriginal people with disability:

- limited services and supports available in remote and very remote communities to enable Aboriginal people with disability to receive disability support and health care in place
- culturally unsafe disability services which impact the interactions and outcomes of Aboriginal people with disability
- greater risk of the use of restrictive practices for Aboriginal people with disability due to unmet need impacted by communication barriers and relocation from country and family to receive disability support or health care in regional centres or due to involvement with the justice system
- greater risk of becoming involved in the justice system as an offender or a victim of crime when receiving supports from culturally unsafe services and further impacted by communication barriers and the person's disconnection from country, culture and family
- limited access to interpreters and appropriate communication aids across all aspects of the person's life resulting in unmet needs, poor health outcomes, increased interaction with the justice system, the embedding of existing discrimination or unconscious bias based on perceptions of non-compliance and disengagement and the silencing of Aboriginal people with disability
- the overrepresentation of Aboriginal people in the prison population
- the overrepresentation of Aboriginal people in hospitals
- limited accommodation options for Aboriginal people with disability, especially those with complex needs which also impacts an Aboriginal person's release from hospital or prison
- barriers to making complaints due to limited access to interpreters and electronic aids, limited self-advocacy skills and physical access to an individual or service to make a complaint
- health and justice outcomes based on systemic discrimination and not the Aboriginal person's individual circumstances
- food shortages and the use of the justice system as a means to ensure food security
- insufficient resources and support, including supported decision-making, to maintain and develop the person's self-advocacy and autonomy of decision and action
- limited resourcing and supports available for Aboriginal people with disability to return to country for significant events and the end stages of life.

NDIS specific experiences

The Office of the Public Guardian notes the NDIA Aboriginal and Torres Strait Islander Engagement Strategy and the NDIA Rural and Remote Strategy but questions their success and/or implementation. The Office of the Public Guardian continues to witness a number of challenges that impact the range and extent of supports included in NDIS plans, particularly for Aboriginal people with disability. These challenges lead to poorer outcomes for participants within the NDIS framework and relate in large part to the reliance of the NDIS funding model on existing service availability and perceptions of, and actual service delivery barriers in remote regions. They

predominantly affect Aboriginal people with disability who exercise their cultural and human right to remain in place on country and include:

- services are thin on the ground or non-existent in remote and very remote communities
- inadequate service inclusions and supports are provided for complex NDIS participants
- poor cultural awareness and assumptions impact NDIS/participant interactions and outcomes, especially with regard to an Aboriginal person's connection to country, culture and family and the desire to remain in place on country or return to country
- NDIS workforce retention issues lead to inconsistent supports and fractured participant and stakeholder relationships
- the NDIS funding model fails to incentivise the entry of new operators and reduces options and outcomes for remote-area participants which significantly affects Aboriginal people with disability who choose to remain in place on country
- the NDIS has been unsuccessful in positioning itself as an industry of choice for Aboriginal workforce in remote and very remote communities and in regional centres.

Justice specific experiences

The inability of the justice system to meet the needs of people with disability disproportionately affects Aboriginal people with disability who are overrepresented in the Northern Territory prison population and also as victims of crime⁴. Specific experiences of violence, abuse, neglect and exploitation of Aboriginal people with disability in the justice system include:

- the longer detention or indefinite detention of Aboriginal people with disability who have been found unfit to plead or not guilty by reason of mental impairment under Part IIA of the *Criminal Code Act 1983 (NT)* due to difficulties in securing appropriate housing and support options to meet the complex needs of the person
- inadequate screening of Aboriginal prisoners for cognitive disabilities and other health diagnosis that may impact the Aboriginal person, including hearing tests
- insufficient use of interpreters, communication aids and cultural brokers to engage with Aboriginal people with disability, as offenders, victims and witnesses
- greater risk of being subject to restrictive practices or abuse by other prisoners, in response to behaviour that is attributable to unmet need and removal from country, culture, family and support networks
- inability of the prison system to address personalised health and support needs, including incontinence and hygiene needs
- barriers to make complaints or to seek advocacy in relation to the justice system including culturally appropriate processes, knowledge of the right of complaint and/or advocacy, access to interpreters and systems that support complaint and advocacy processes
- insufficient multiagency approaches to assist and support Aboriginal people with complex needs involved in the justice system.

⁴ See the Office of the Public Guardian's submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability the Criminal Justice System Issues Paper, March 2020

Health specific experiences

The prevalence of disability in Aboriginal people and disparity in health is well documented⁵. This prevalence and disparity significantly impacts Aboriginal people with disability accessing health care in hospitals and acute care settings which are ill equipped to meet the individualised needs of people with disability, including Aboriginal people with disability who are overrepresented in hospital admission numbers. Specific experiences of violence, abuse, neglect and exploitation of Aboriginal people with disability accessing health care include:

- insufficient use of interpreters, communication aids and cultural brokers to engage with Aboriginal people with disability to diagnose, plan and obtain informed consent to health care and for appropriate discharge planning
- the limited provision of health services in remote and very remote regions meaning Aboriginal people needing ongoing, specialised or complex health care are required to move from country to regional centres where they are disconnected from country, culture and family and without the adequate support to address the effects of this disconnection
- diagnostic overshadowing increased as a result of the person's Aboriginality and disability resulting in limited or poor health outcomes
- greater risk of being subject to restrictive practices, in response to behaviours that are attributable to the person's unmet need through disconnection from country, culture and family and communication barriers
- longer hospital admissions due to difficulties in securing appropriate housing and support options to meet the complex needs of the person
- barriers to obtaining health care from hospitals and general practitioner clinics in regional centres including transport costs, distance and communication barriers and limited support from family who are living on country
- insufficient resourcing of health care clinics for Aboriginal people and specifically Aboriginal people with disability
- barriers to make complaints or to seek advocacy in relation to health care including culturally appropriate processes, knowledge of the right of complaint and/or advocacy, access to interpreters and systems that support complaint and advocacy processes.

How can current systems better prevent or respond to experiences of violence, abuse, neglect and exploitation of Aboriginal people with disability?

The overwhelming submission of Aboriginal people and their representative organisations is that any strategy, policy or system that impacts an Aboriginal community should be informed by Aboriginal people within the community and should build on the strengths and expertise of that community. Strategies to better prevent or respond to experiences of violence, abuse, neglect and exploitation of Aboriginal people with disability must be considered in tandem with the interrelated social determinants of health, housing, poverty, employment and justice.

⁵ See the Office of the Public Guardian's submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability Health Care for People with Cognitive Disability Issues Paper, March 2020

To inform recommendations regarding current systems and how they can better prevent or respond to experiences of violence, abuse, neglect and exploitation of Aboriginal people with disability the Office of the Public Guardian recommends the Royal Commission consider the approach taken to develop the Northern Territory Aboriginal Justice Agreement as detailed in the document, Pathways to the Northern Territory Aboriginal Justice Agreement (the Pathways document). The Pathways document is a companion document to the draft Northern Territory Aboriginal Justice Agreement (the Agreement) and details the extensive consultations, the background information, consultation findings and the evidence that informed the development of the Agreement. The Pathways document articulates the need to extensively consult with Aboriginal people to understand their experiences and the underlying factors that lead to the violence, abuse, neglect and exploitation of Aboriginal people with disability and to develop solutions to address these underlying factors in partnership with Aboriginal people.

The Office of the Public Guardian supports the acknowledgement of racism as a fundamental factor that influences and contributes to Aboriginal people's lived experiences of disadvantage. To combat racism it is necessary to enact legislation, policies, regulations and governance and complaint structures that strengthen and meet the needs of Aboriginal people, that enable Aboriginal leadership and self determination to thrive, while dismantling systemic and institutionalised racism.⁶

What could be done to strengthen disability support and advocacy services for Aboriginal people with disability?

The Office of the Public Guardian strongly advocates for the development of any solutions to strengthen disability support and advocacy services for Aboriginal people with disability to be after extensive consultation with Aboriginal people, Aboriginal people with disability and their family and carers and representative groups. These solutions should be informed by and tailored to each community and may include:

- workforce strategies aimed at training Aboriginal people in disability support so that they may support family and other community members on country or in regional centres and receive remuneration for care and support that they may already be undertaking on an unpaid basis
- culturally safe disability support provided by members of the community or where this is not possible service providers and support staff who have received appropriate cultural training from or endorsed by the relevant community
- increased funding and engagement of interpreters across all aspects of the life of the Aboriginal person with disability to empower the person to express their needs and views
- increased funding and engagement of cultural brokers to help inform individualised planning and implementation of strategies to meet the needs of Aboriginal people with disability in a culturally appropriate manner

⁶ Leanne Liddle, Director of the Aboriginal Justice Unit (Northern Territory Government) 2019 Menzie Oration, 31 October 2019

- market strategies to incentivise the development of disability support services in remote and very remote communities
- the development of a culturally safe community visitor service or the expansion of the existing Northern Territory Community Visitor Service to provide an independent voice to Aboriginal people with disability receiving disability support or aged care support in both regional and remote settings
- the continued resourcing of Aboriginal representative groups to provide individualised advocacy and a collective voice for Aboriginal people, including Aboriginal people with disability such as the North Australian Aboriginal Justice Agency and the Australian Medical Services Alliance Northern Territory.

Examples of good practice for Aboriginal people with disability

The Office of the Public Guardian has witnessed many examples of good practice that have led to positive outcomes for Aboriginal people with disability including:

- the funding and engagement of cultural brokers under the NDIS to meet the needs and goals of Aboriginal people with disability
- the recognition within the NDIS of the need for specialised supports and funding for people with disability with complex needs, including Aboriginal people with disability and the associated introduction of the NDIS Complex Support Needs Pathway, Specialist Disability Accommodation and Specialist Support Coordination
- multidisciplinary and coordinated approaches by multiple agencies to develop individualised, person centred plans to meet the needs of Aboriginal people with disability
- representative health, advocacy and legal providers providing culturally safe services and representative and individualised responses
- mainstream services and disability support services that are culturally appropriate and recognise the cultural needs of Aboriginal people with disability
- acknowledgement, funding and access to support through the NDIS for return to country visits and permanent relocation options where available for Aboriginal people with disability.

Current levels of violence, abuse, neglect and exploitation of Aboriginal people with disability is not acceptable and the Office of the Public Guardian is strongly supportive of initiatives that will address these levels and their underlying causes. It is essential that strategies are developed and implemented so that culturally competent support is accessible to Aboriginal people with disability in their location of choice therefore promoting continued connection with country, culture and family. Any strategies must be owned and co-designed by Aboriginal people to best meet their unique needs.