



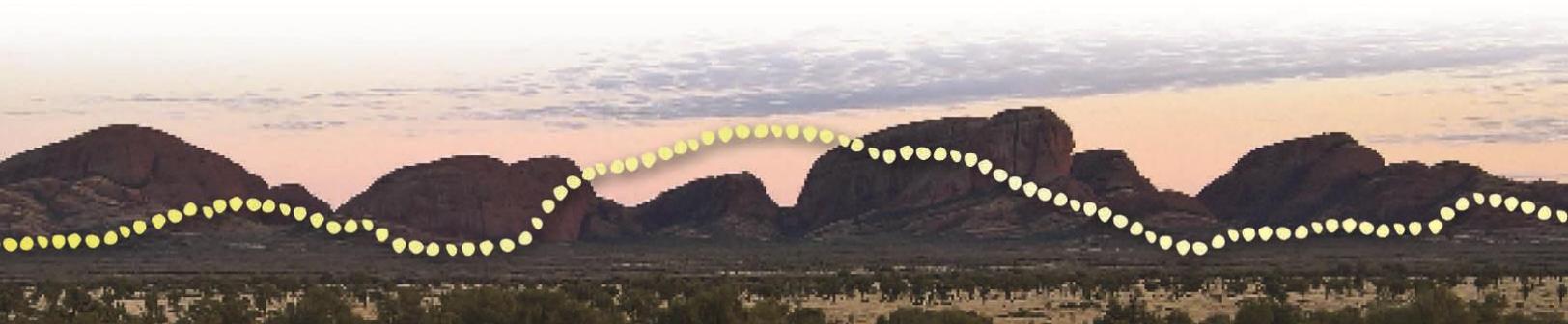
**Northern Territory Office of the Public Guardian Submission to the Royal Commission into  
Violence, Abuse, Neglect and Exploitation of People with Disability**

**SAFEGUARDS AND QUALITY  
Issues Paper**

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

The Office of the Public Guardian is committed to safeguarding and promoting the human rights of people with impaired decision-making capacity by 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.

It is an independent office established under the *Guardianship of Adults Act 2016* (the Act). 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 1,056 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 606 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.

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

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

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<sup>1</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>2</sup> Department of Treasury and Finance (NT), Population - Northern Territory Economy: Aboriginal Population (2018) <https://nteconomy.nt.gov.au/population>.

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

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.

Any national consideration of services and supports for people with disability must give consideration to the Northern Territory's unique context.

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

#### ***What are the best ways to safeguard people with disability who may be at risk of violence, abuse, neglect and exploitation both when they use services and in other areas of their lives?***

Safeguarding people with disability who may be at risk of violence, abuse, neglect and exploitation is multifaceted and includes:

- creating good lives for people with disability through person centred services and supports and empowerment of the person to exercise choice and control in decisions affecting them
- effecting attitudinal change toward people with disability across governments, private enterprise and the wider community to recognise the rights of people with disability and their value to communities and society
- active inclusion and engagement of people with disability in their community to develop and strengthen informal safeguards around them
- developing and strengthening formal safeguards for people with disability through laws, policies and practices to ensure disability and mainstream services are providing quality services and supports to people with disability and upholding the human rights of people with disability
- identifying people with disability who may be at risk of violence, abuse, neglect and exploitation and developing person centred strategies and plans with the person to:
  - build informal and formal supports around them to minimise any risk and
  - develop and maintain the person's skills to identify and respond to any violence, abuse, neglect and exploitation, including how to communicate this to their informal and formal supports.

***How can quality services help to prevent violence, abuse, neglect and exploitation of people with disability? What are the features of those quality services?***

Quality services help to prevent violence, abuse, neglect and exploitation by centring people with disability at the core of all supports and services provided and empowering them to exercise choice and control in their lives. When the person with disability (and their safety, wellbeing and autonomy of decision) is core to all supports and services the risk of any action or event that results in violence, abuse, neglect and exploitation to the person is reduced. Quality services that are monitoring their support and services and implementing continuous improvement through feedback and complaint processes are more likely to identify and appropriately respond to instances of violence, abuse, neglect and exploitation and thereby reduce and minimise the risk of reoccurrence.

Features of quality services include:

- qualified and trained workforce committed to the rights of people with disability
- person centred support and services developed with the person with disability
- transparency of the service, including their operations, performance data, complaints processes, policies and procedures
- person centred positive behaviour support that reduces and eliminates the need to use restrictive practices
- feedback and complaints processes that are accessible and transparent and encourage engagement without any fear of negative consequences to a person's supports or service provision
- culturally safe disability support provided by members of a person's community or where this is not possible service providers and support staff who have received appropriate cultural training from or endorsed by the person's community or cultural brokers.

***How can safeguarding laws, practices or policy frameworks (including the NDIS Quality and Safeguarding Framework) be improved to better prevent, reduce and respond to violence, abuse, neglect and exploitation of people with disability. Identify Australian and international examples of good practice.***

The experiences of people with disability being shared with the Royal Commission, the number of reportable incidents being advised to the Quality and Safeguards Commission (the Commission) and the reports being made to the National Disability Abuse and Neglect Hotline are evidence of the continued violence, abuse, neglect and exploitation being experienced by people with disability in Australia. These experiences are being echoed by represented persons involved with the Office of the Public Guardian. Safeguarding laws, practices and policy frameworks across Australia must be enhanced and strengthened to protect the rights of people with disability to live free from violence, abuse, neglect and exploitation.

*Within the NDIS*

The NDIS Quality and Safeguarding Framework, with the introduction of the NDIS Commission in the Northern Territory on 1 July 2019 provides a comprehensive quality and safety framework for

Northern Territory NDIS participants and disability service providers that has not previously existed. The Office of the Public Guardian endorses the NDIS Quality and Safeguarding Framework and unequivocally supports the work of the NDIS Commission but advocates for further strengthening as follows:-

- The registration and auditing of NDIS service providers must be a robust, consistent and comprehensive process that includes independent 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.
- Tiers of registration should be considered to encourage the growth of new providers, to reflect the size and services of the provider and to align with the community or culture in which the provider is operating. For service providers providing services where any risk of violence, abuse, neglect and exploitation to a person with disability (by that provider) is minimal, due to the nature of the service or because of other safeguards (the participant is supported by a support person) the registration and auditing requirements can be disproportionate to any risk for a participant receiving the service. This can be a deterrent to a quality service provider entering the NDIS market as a registered provider. In remote Aboriginal communities the registration and auditing process for providers should reflect the community's culture and expectations while still providing appropriate safeguards for people with disability receiving supports and services from the provider. How this can be achieved should be determined in consultation with the Aboriginal community and relevant representative groups.
- The NDIS 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 the participant's right to quality service and support and their right to make a complaint to the Commission and their ability and/or support necessary to make the complaint to the Commission. The investigative powers of the NDIS Commission should be reviewed and amended as necessary to allow the NDIS Commission to investigate general concerns about the safety or wellbeing of a NDIS participant and to initiate investigations of its own motion.
- A community visitor service should exist for NDIS participants, either as part of the functions of the NDIS Commission or under state and territory community visitor services. 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. A community visitor service that includes NDIS providers would provide an independent voice for NDIS participants to identify and make complaints to their NDIS service provider and/or to the Commission. This is particularly important for participants with complex support and communication needs who have limited engagement in the community, and who due to their disability may not be able to access complaint pathways.
- The NDIS Code of Conduct and the NDIS Practice Standards must be known and understood by the NDIS workforce, service providers and participants. They must become

the only accepted standard of practice by workers in the industry. Funded awareness campaigns and training in relation to the Code of Conduct and Practice Standards should occur for all NDIS stakeholders to ensure there is comprehensive awareness, understanding and practical application of these documents. The NDIS Code of Conduct should be strengthened to mandate best practice in delivering services and supports to address areas of conduct which are not best practice but do not amount to obvious or immediate violence, abuse, neglect or exploitation of a person with disability.

- The NDIS Commission should publish jurisdiction specific data on its functions including the number, type and outcome of investigations.
- The cost associated with quality and safety needs to be built into the NDIS at a sufficient level to promote and encourage quality service provision.

### Beyond the NDIS

With the exception of anti-discrimination legislation, safeguarding laws, policies and practices applicable to government agencies, private enterprise or community organisations are largely dependent upon regulatory frameworks governing the type of service or support being delivered and the initiatives of the specific agency, enterprise or organisation. To strengthen safeguarding for people with disability the Office of the Public Guardian advocates for the development of human rights legislation in the Northern Territory to recognise the rights of people with disability across all areas of their life and mandate minimum expectations of all services, including government agencies, private enterprise and community organisations in their engagement, support and service delivery to people with disability.

The Office of the Public Guardian endorses the finalisation of a new National Disability Strategy and suggests that the realisation of the Strategy's vision to create "an inclusive Australian society that enables people with disability to fulfil their potential as equal members of the community" will lead to systemic changes across communities and reduce the experiences of people with disability to violence, abuse, neglect and exploitation. The realisation of this vision demands mainstream services, including government agencies, private enterprise and community organisations consider the rights and needs of people with disability and how their service or organisation can safeguard these rights in the development of their policies and practices. When mainstream services achieve this outcome the risk of violence, abuse, neglect and exploitation will be reduced for people with disability in these services.

### Restrictive Practices

The use of restrictive practices is a significant infringement upon a person's human rights. The prevalence of the use of restrictive practices for people with disability, both historically and presently, demands comprehensive safeguards to reduce and eliminate their use. The *NDIS Authorisations Act 2019* (NT) provides a regulatory framework to authorise and monitor the use of restrictive practices by NDIS service providers for NDIS participants in the Northern Territory. However, the limited scope of this legislation to only NDIS service providers and NDIS participants has meant that many Territorians with disability who receive services and supports from other

service sectors, including aged care, education, justice and health, fall outside the authorisation framework. Many of these individuals continue to be subject to restrictive practices in the absence of positive behaviour support and a legislated authorisation and monitoring framework for the use of those practices.

The Office of the Public Guardian continues to advocate for further legislation in the Northern Territory to provide a regulatory framework for the authorisation and monitoring of the use of restrictive practices for people with disability across all service sectors<sup>4</sup>. This could be achieved through amendment to the *NDIS Authorisations Act 2019* (NT) to capture all service sectors or through the introduction of new legislation, but is essential to safeguarding the human rights of people with disability in the Northern Territory.

***What can be done to uphold independence, choice and control for people with disability when implementing safeguards against violence, abuse, neglect and exploitation?***

Safeguarding strategies should be tailored to a person's individual needs and vulnerabilities. In many instances strong, informal safeguards will be the most flexible means of ensuring a person is safeguarded against violence, abuse, neglect and exploitation while upholding the person's independence, choice and control. Strong informal safeguards can be achieved through maintaining and strengthening the person's family support and connections, building community connections through involvement and engagement with organisations and mainstream services and building the communication and advocacy skills of the person with disability.

The Office of the Public Guardian advocates for NDIS plans to include an explicit safety or safeguard goal and an associated strategy so that supports and services tailored to the person's individual safety and safeguarding can be funded through their NDIS plan. For example plans may include a goal such as 'I will live free from violence, abuse, neglect and exploitation.' Funded supports linked to this goal might include:

- support to enable the person to develop their own safety plan with an appropriate professional and engaging in skill development to enact this plan
- skill development in related areas such as healthy relationships, sexual safety, saying 'no' in uncomfortable situations, how to raise concerns/complaints and related skill areas
- advocacy funding to enable the person to develop their self advocacy skills and/or to engage an advocate for identified areas where advocacy is or is likely to be required during the duration of the person's NDIS plan
- supported decision-making funding to enable the person to be supported in decision-making across all aspects of their life.

Funded safeguarding training should be mandatory for all members of the NDIS workforce to increase the awareness and understanding of safeguarding frameworks and their importance in

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<sup>4</sup> For more information see the Office of the Public Guardian's submission to the Royal Commissions' Restrictive Practices Issues Paper, September 2020.

upholding the rights of people with disability and reducing the risk of violence, abuse, neglect and exploitation of people with disability.

***What challenges are presented by the different safeguarding approaches used across Australian jurisdictions and across different types of services?***

The different safeguarding approaches and the level and scope of safeguards available to people with disability across Australian jurisdictions is a significant challenge in itself. The NDIS Quality and Safeguards Framework is the first comprehensive, uniform disability safeguarding framework to be implemented throughout Australia and for NDIS participants moving between Australian jurisdictions provides a level of consistency and certainty regarding service provision expectations and response.

With the exception of anti-discrimination legislation, when people with disability are accessing services and supports outside the NDIS, safeguarding is largely reliant upon legislation, policies and procedures specific to the government agency, private enterprise or community organisation. This creates challenges for people with disability in identifying their specific rights, the obligations of the agency, private enterprise or organisation they are interacting with and navigating correct processes to ensure their rights are upheld, including through complaint mechanisms. These challenges are further exacerbated in the Northern Territory by the following factors:-

- Advocacy services for people with disability in the Northern Territory are limited with one service in Darwin and one service in Alice Springs. No or very limited advocacy services are available in regional, remote and very remote communities. The funding for the existing advocacy services is specific and not available to persons with disability across all areas of their life where advocacy may be required. Anecdotal evidence suggests these services are financially under resourced.
- Community visitor services in the Northern Territory are limited. The Northern Territory 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. There is no independent visitor service with oversight of all disability service providers, including NDIS service providers in the Northern Territory.
- There is no legally recognised and/or appropriately funded supported decision-making framework in the Northern Territory. In the absence of legally recognised support persons or the recognition of some communication aids for people with disability, some government agencies, private enterprise and community organisations are reluctant to rely upon the decision/s of the person with disability.

***What role does, or should independent monitoring and oversight play in safeguarding the rights of people with disability to live free from violence, abuse, neglect and exploitation? Should the NDIS Quality and Safeguards Commission be taking a more active role in ensuring service providers are adhering to appropriate standards, particularly during the pandemic crisis?***

Independent monitoring and oversight plays a significant role in safeguarding the rights of people with disability by providing an independent mechanism to recognise and respond to instances or potential instances of violence, abuse, neglect and exploitation of people with disability. It allows transparency and visibility of a service that may not otherwise be achieved. It is especially important for people with impaired decision-making capacity, people who face communication barriers, including culturally and linguistically diverse persons and people with limited access to informal or other formal safeguards. The Office of the Public Guardian advocates for independent monitoring and oversight across all disability providers and mainstream providers who routinely provide services and support to people with disability.

Regular independent monitoring and oversight of NDIS providers is a concerning gap in the NDIS Quality and Safeguards Framework. The Office of the Public Guardian strongly advocates for independent visitor services for NDIS providers, at all times but in particular during the pandemic crisis and at other times of emergency. It is at times of emergency that the risk to people with disability of being subject to violence, abuse, neglect and exploitation is increased through workforce issues, limited or stretched resources and services, including health care across the wider community and the removal of informal safeguards such as family and community organisations and services.

***What safeguards are required for people who may need additional support, such as people who do not have informal supports like families or other advocates, people who face communication barriers, and people with high support needs?***

Independent, accessible safeguards are necessary for people who require additional support including people who do not have informal supports like family or other advocates, people who face communication barriers and people with high support needs. These safeguards should be independent of the providers of services and support and may include one of or a combination of, formal advocacy services, community visitor services and formal supported decision-making support. Individualised safeguards such as formal advocacy and formal supported decision-making support should be funded through the person's NDIS plan.

Additional safeguards for a person may be linked to an assessment of the person's level of vulnerability to the risk of violence, abuse, neglect and exploitation. The Office of the Public Guardian echoes the findings of the South Australian Safeguarding Task Force<sup>5</sup> for the NDIA to develop a clear, transparent concept of "vulnerability" for NDIS participants. A participant's level of vulnerability should be determined during the planning phase and reviewed at plan reviews or

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<sup>5</sup> Safeguarding Taskforce (Government of South Australia), *Final Report* (31 July 202), 9.

at significant life events of the participant and should inform funded plan supports and services necessary to reduce the participant's risk of violence, abuse, neglect or exploitation.

In particular if a participant is considered vulnerable funded support coordination should be automatically included in their plan and should continue to be funded until such time that the participant's vulnerability status changes. Funded support coordination in a participant's plan ensures the participant has a single point of contact to assist them to implement their plan, to navigate the NDIA and to identify and access safeguarding frameworks and processes. The NDIA must acknowledge the safeguarding factor that is provided by sufficient and effective support coordination and that many people with a disability will require support coordination indefinitely, even if the level required varies, and fund accordingly. This requires appropriate scheme design and policy changes particularly for groups of people such as those involved with statutory decision-making bodies like the Public Guardian or Public Trustee.

***How can informal safeguards be strengthened to prevent or reduce violence, abuse, neglect and exploitation of people with disability? What are the ways in which people with disability develop personal capacity to safeguard at different stages of their lives and as circumstances change? Are there systems in place to support this capacity development?***

Informal safeguards can be strengthened to prevent or reduce violence, abuse, neglect and exploitation of people with disability by ensuring the person with disability is active in their own decision-making and an active participant within their own community. The wider community need to be aware of the rights of people with disability and how they can uphold these rights and also how to report any concerns of violence, abuse, neglect and exploitation of the person.

People with disability develop personal capacity to safeguard at different stages of their lives and as circumstances change by developing communication, decision-making and self advocacy skills. The development of these skills should be routinely included in a person's NDIS plan until the person has mastered and can maintain the required skills.

People with disability, their family and others interested in the person's wellbeing and safety should be aware of safeguarding frameworks and complaint and feedback processes. Complaint and feedback processes should be accessible and transparent and give confidence that complaints and feedback will be considered and handled respectfully and appropriately to ensure the safety of the person with disability but also the safety and confidentiality of the person making the complaint.

***How can safeguards and complaints processes be improved to better meet the life of First Nations people, women, culturally and linguistically diverse people, LGBTIQ+ people, and/or children and young people with disability?***

The Office of the Public Guardian strongly advocates for safeguard and complaints processes to be strengthened to better meet the needs of every member of our diverse community. Specific strategies need to be developed to ensure that safeguards and complaints processes are accessible

to the identified groups in our community who are often disenfranchised by standard systems. These strategies should be co-designed by people with lived experience.

The high proportion of Aboriginal people involved with the Office of the Public Guardian (seventy eight percent of all represented persons involved with the Office of the Public Guardian) provides some insight into the experiences and challenges of Aboriginal people with a disability. Overwhelmingly, Aboriginal people request that any initiatives to better meet their needs must be done in consultation with Aboriginal people, Aboriginal people with disability and their family and carers and representative groups. Improvements should be informed by and tailored to each community and may include:

- workforce strategies aimed at training Aboriginal people in advocacy skills and safeguarding processes so that they may advocate for family and other community members on country or in regional centres and where appropriate, receive remuneration for this advocacy
- culturally safe safeguards and complaints processes provided by members of the community or where this is not possible service providers 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, including during complaints processes
- increased funding and engagement of cultural brokers to help inform individualised planning and implementation of safety strategies to safeguard the rights of Aboriginal people with disability in a culturally appropriate manner
- 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.

***What else should the Disability Royal Commission know?***

Safeguarding people with disability who may be at risk of violence, abuse, neglect and exploitation is multifaceted, and includes quality services, the promotion, education and skill development of the whole community about human rights and the strengthening of laws, policies and procedures to guarantee quality disability and mainstream services and to ensure the human rights of people with disability are upheld. It is a fundamental recognition that safeguarding for people with disability upholds their human rights of choice and control and dignity of risk and does not denigrate these rights in the names of protection or safeguarding.

Quality and safeguarding for people with disability is the responsibility of the whole community. It is society's collective responsibility to contribute to quality services and the development of creative and innovative strategies to prevent violence, abuse, neglect and exploitation of people with disability and to appropriately respond when violence, abuse, neglect and exploitation does occur. The impact of these acts, including trauma, injury and even death, demands systemic strategies to prevent them from occurring.