

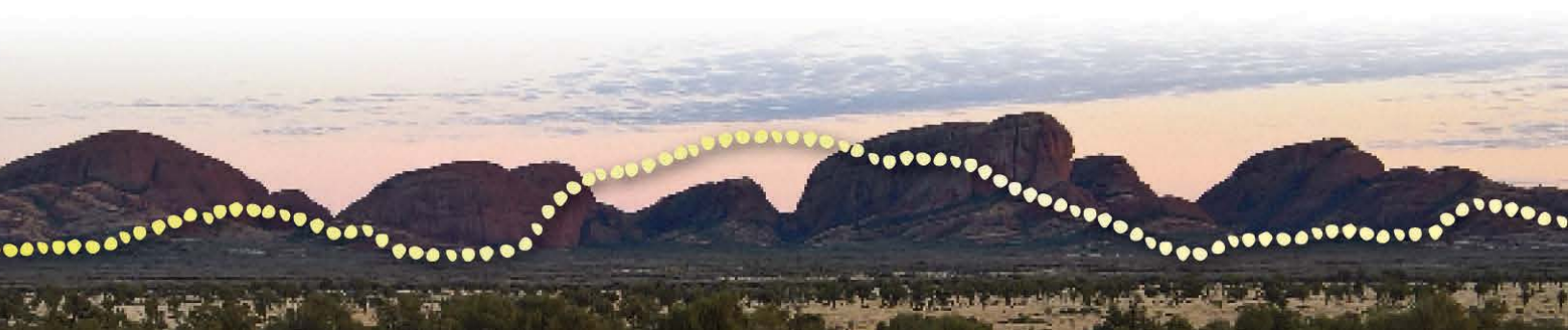


**Northern Territory Office of the Public Guardian Submission to the Royal Commission into
Violence, Abuse, Neglect and Exploitation of People with Disability**

**RIGHTS AND ATTITUDES
Issues Paper**

August 2020

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Introduction

The Northern Territory Office of the Public Guardian welcomes the opportunity to provide a submission to the Rights and Attitudes 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.

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 the awareness and recognition of the rights of people with disability¹ and attitudes towards people with disability provides an opportunity to consider the experiences of people with disability under guardianship in the Northern Territory and how these experiences may influence change to improve the participation of people with disability in all aspects of their life.

¹ In the context of this submission people with disability refers to people with impaired decision-making capacity
Submission of the Office of the Public Guardian

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 30 percent of the Northern Territory population,³ almost 77 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.

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

A human rights based approach to recognise the rights of people with disability

Australia has ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) and has agreed to respect, promote and fulfil the rights described in that Convention. While there is general community awareness of the rights of people with disability it is the experience of the Office of the Public Guardian that there is still considerable work to be undertaken to increase the awareness:

- for people with disability of their own rights as set out in the CRPD
- of the broader community as to the rights of people with disability as set out in the CRPD and what this means in practice for governments, private enterprises and community organisations.

A lack of awareness and recognition of the rights of people with disability has resulted in the exposure of people with disability to violence, abuse, neglect and exploitation across all aspects of their life including in the following ways:

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>>.

- reduced and poor health outcomes as a result of barriers to accessing health care⁵
- over representation of people with disability in the criminal justice system⁶
- unauthorised and unjustified use of restrictive practices for people with disability⁷
- the over utilisation of guardianship for people with disability.

Initiatives and strategies to increase the awareness and recognition of the rights of people with disability must be consistent and co-ordinated across all Australian governments and comprehensive to apply to all service sectors, governments, private enterprises and community organisations. History has demonstrated that the rights of people with disability must be embedded within legislation and policy to ensure sustained change and therefore Australia's ratification and support of the CRPD must be fully adopted into Australian domestic law for the rights of people with disability to be fully recognised across all aspects of their life. The Office of the Public Guardian endorses a new National Disability Strategy to continue reflecting Australia's commitment to the rights of people with disability as set out in the CRPD.

Recommendation

All state and territory governments should enact human rights legislation to formally adopt the rights in the CRPD into domestic law.

Recommendation

The Commonwealth and state and territory governments must commit to finalising, adopting and implementing a new National Disability Strategy that aims to:

- achieve the vision of an inclusive Australian society that enables people with disability to fulfil their potential as equal members of the community
- promote and guide action and reform across all Australian governments, private enterprises and the wider community.

Attitudes towards people with disability

The Office of the Public Guardian supports the commentary contained within the Issues Paper in relation to attitudes towards people with disability and agrees the impact of negative attitudes towards people with disability is that they are subject to violence, abuse, neglect and exploitation. For the Office of the Public Guardian this has been witnessed by guardianship being used as a means to reduce the liability and exposure of health care providers, service providers and financial institutions who may be reluctant to rely upon the consent or instructions of a person with disability.

⁵ See the NT Office of the Public Guardian submission to the Disability Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability – Health care for people with cognitive disability Issues Paper, March 2020

⁶ See the NT Office of the Public Guardian submission to the Disability Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability – The criminal justice system Issues Paper, March 2020

⁷ Specific examples of this will be outlined in the NT Office of the Public Guardian submission to the Disability Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability – Restrictive practices Issues Paper in August 2020

A change in attitudes towards people with disability is fundamental for governments, private enterprises and the wider community to recognise the rights of people with disability across all aspects of their life and to reduce their risk of exposure to violence, abuse, neglect and exploitation. It is the shared responsibility of people with disability, advocacy groups, service providers and governments to continue raising awareness of the rights of people with disability and how individual and collective attitudes can shape life experiences and outcomes for people with disability.

It is the experience of the Office of the Public Guardian that attitudinal change will come with:

- participation of the person with disability across all aspects of their own decision-making
- social inclusion of the person with disability in all aspects of community life
- recognition of the contribution that people with disability make to our society through lived experiences of all sectors of the community with people with disability

In the Northern Territory the Office of the Public Guardian advocates for the following three key initiatives to enable and increase participation in decision-making, social inclusion and recognition of the contribution of people with disability:

1. supported decision-making
2. advocacy
3. community visitor services.

1. Supported decision-making

Supported decision-making recognises the right of people with disability to be actively involved in all decisions that affect them and that appropriate support may be required for this to occur. Supported decision-making has a two-fold effect of recognising the rights of the person with disability to exercise their own decision-making authority but also increases the awareness and understanding of others within the community of the rights of people with disability.

In the Northern Territory the capacity of people with disability to participate in all aspects of their own decision-making will be enhanced by a legally recognised and appropriately funded supported decision-making framework, including appropriate support services, that provides an alternative to traditional guardianship in which the guardian becomes a substitute decision-maker.

Recommendation

Recognition of supported decision-making should be mandated across all legislation and policy to ensure the right of people with disability to be fully involved in all decisions affecting them.

Recommendation

The Commonwealth and state and territory governments should fund supports for people with disability to be supported to exercise their own decision-making. For National Disability Insurance Scheme (NDIS) participants this may occur through the NDIS. For non-NDIS participants the

Commonwealth and state and territory governments should determine an appropriate supported decision-making framework and funding model.

Recommendation

The Northern Territory Government must consider amendments to the *Guardianship of Adults Act 2016* to include a supported decision-making framework that provides an alternative to traditional guardianship in which the guardian becomes a substitute decision maker.

2. Advocacy for people with disability

Advocacy services are fundamental to ensuring people with disability know and understand their own rights and are empowered to take action to ensure these rights are recognised. In the Northern Territory advocacy services for people with disability are limited with one service in Darwin and one service in Alice Springs. Increased advocacy services are needed to meet the needs of people with disability in the Northern Territory and to actively advocate for individual resolutions and systemic changes.

Self-advocacy for people with disability provides an opportunity for people with disability to be empowered to speak up and advocate about life experiences in the moment and, where appropriate to seek immediate resolution without the need to refer to an advocacy service. It is the experience of the Office of the Public Guardian that the development of self-advocacy skills for people with disability will result in increased participation in decision-making and social inclusion for people with disability and in turn lead to attitudinal change.

Recommendation

The Commonwealth and Northern Territory Governments should commit to increased funding for advocacy services across the Northern Territory for people with disability.

Recommendation

Advocacy services and representative groups should be appropriately funded to provide group and 1:1 training to develop self-advocacy skills for people with disability and to develop appropriate resources for people with disability to understand and develop their self-advocacy skills and expertise.

Recommendation

All participants within the NDIS should be funded to develop their self-advocacy skills.

3. Community visitor services

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. The Office of the Public Guardian advocates for the expansion of this service to include all disability service providers, including

National Disability Insurance Scheme service providers in the Northern Territory. Such an expansion would provide an independent voice for people with disability to exercise their rights in relation to the supports they are receiving.

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.

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