

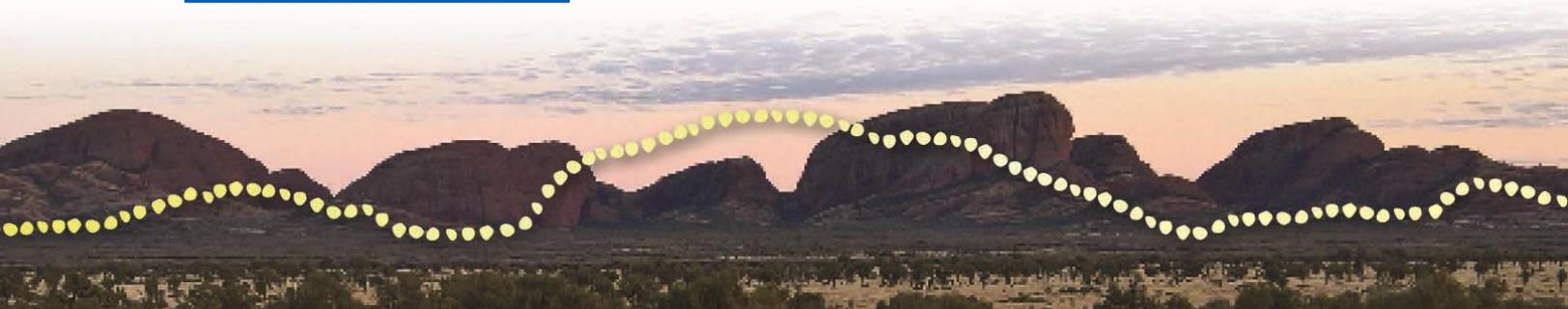


# Northern Territory Office of the Public Guardian Submission to the National Disability Insurance Agency

## SUPPORT FOR DECISION MAKING CONSULTATION

**AUGUST 2021**

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## **Introduction**

The Northern Territory Office of the Public Guardian welcomes the opportunity to provide a submission to the National Disability Insurance Agency's support for decision making consultation.

The Office of the Public Guardian was established under the *Guardianship of Adults Act 2016*, which provides for the statutory appointment of an independent Public Guardian. The core functions of the Public Guardian are set out in section 61 of the *Guardianship of Adults Act 2016*, and include, but are not limited to:

- being a guardian for an adult when appointed by a guardianship order or acting under section 44 or 45;
- promoting access to support services for adults with impaired decision-making capacity and the guardians, families and carers of those adults;
- encouraging providers of support services to monitor and review the delivery of those services; and
- advocate for adults with impaired decision-making capacity generally, including by promoting understanding and awareness of relevant issues.

The Office of the Public Guardian teams are located in Darwin and Alice Springs and are responsible for providing guardianship services to approximately 612<sup>1</sup> 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.

## **The Northern Territory context**

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

The Northern Territory's situation is unique and poses challenges for service delivery to a small population spread across vast distances. The sparse population, harsh climate and rough terrain mean health and other supports and services in many parts of the Territory are limited. The Northern Territory's transient population impacts the retention of the skilled workforce as capable

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<sup>1</sup> Current as at 25 August 2021.

<sup>2</sup> The term Aboriginal is used in 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). *Northern Territory Aboriginal Justice Agreement 2021-2027*.

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

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

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 77 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 and disability supports, in remote communities.

### ***The NDIS in the Northern Territory***

Transition to full NDIS arrangements was completed in the Northern Territory on 1 July 2019. The 2 years of full NDIS arrangements has seen significant change for all stakeholders in the Northern Territory and many challenges including thin markets and work force development continue to demand strategic and coordinated approaches to ensure participants can purchase required supports through NDIS funding in their preferred location. The NDIA's efforts to develop specific approaches to address these challenges and that take into account the Northern Territory's demographic characteristics and circumstances are acknowledged but these efforts must continue.

There are currently 390 represented persons<sup>5</sup> involved with the Public Guardian who are NDIS participants. The Office of the Public Guardian has attended many, if not all initial and review planning meetings for these participants in addition to the initial and review planning meetings of past participants. This involvement has provided significant insight into the experiences of participants including how they have been engaged or disengaged with their decision making within the NDIS<sup>6</sup>. Overall the Office of the Public Guardian has noted an over reliance on substitute decision making and the appointment of substitute decision makers for participants who do not have complete or uninterrupted decision making capacity or who cannot exercise decision making in the absence of appropriate support. This is despite a recognition by the NDIA that the appointment of a substitute decision maker is not a prerequisite to a person engaging with the NDIS.

For Aboriginal participants living in remote and very remote locations the need to relocate away from Country and their family and cultural networks to access NDIS supports in regional centres significantly impacts the decision making supports that would otherwise be available to them if they remained on country.

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<sup>5</sup>For the purpose of this submission represented person means a person who is under a guardianship order and the Public Guardian is appointed with decision-making authority for this person.

<sup>6</sup> As guardianship orders come into effect when a person reaches the age of 18, all experiences of the Office of the Public Guardian in relation to the NDIS is with participants between 18 to 64 years of age.

### ***The NDIS Support for Decision Making Policy***

The Office of the Public Guardian welcomes the creation of a Support for Decision Making Policy as detailed in the *Consultation Paper: Supporting you to make your own decisions* (the consultation paper). Support for decision making in the NDIS is critical to ensuring a participant maintains their decision making autonomy and that guardianship and other forms of substitute decision making are only relied upon as a last resort. If support for decision making is effective, including through skill development of the participant, the need for the appointment of a substitute decision maker for engagement with the NDIS can be negated. Significantly, appropriate skill development may also negate the need for guardianship in all aspects of the participant's life. Skill development, including assertive communication, self-advocacy, making complaints, safety of self and social skills and ongoing support for decision making should form an integral part of all NDIS plans unless specifically rejected by the participant.

The introduction of a Support for Decision Making Policy must be accompanied with complimentary measures that simplify engaging with and navigating the NDIS and which address elements of the NDIS which have historically reinforced the need for the appointment of substitute decision makers. These measures include:

- the introduction of simplified and standardized service agreements that participants and their support networks can understand
- a single point of contact for participants and their support networks such as a support coordinator so that participants do not need to liaise with multiple contacts within the NDIS, each with a different purpose
- reduced administration and red-tape for participants and supporters with the view to simplifying and streamlining requirements and the quantity of transactions.

In relation to the proposed Support for Decision Making Policy the Office of the Public Guardian makes the following key comments:-

- Training of personnel employed within the NDIA will be critical to the successful implementation of the initiatives proposed in the consultation paper. NDIA personnel are the face of the NDIA for participants and their supporters. It is essential that these personnel are able to model support for decision making during all engagement of the participant with the NDIA but especially during the planning and review processes. Additionally the NDIA will be responsible for leading the education and training for supporters and all stakeholders across the NDIS who will be integral to support for decision making, including local area coordinators, plan managers and support coordinators.
- The Support for Decision Making Policy should:
  - be premised on the explicit presumption of each participant having decision making capacity
  - include the principle that decision making capacity is decision and time specific
  - include a presumption against the need for a participant to have a substitute decision maker, including a guardian or nominee
  - acknowledge that building the capacity of the participant includes funding for skill development in the participant's plan

- acknowledge that the appointment of a substitute decision maker does not negate the need for the participant to be engaged in all decision making
- draw on the work already undertaken in relation to best practice principles and practice in supported decision making, including the work by La Trobe University<sup>7</sup> and the University of New South Wales Social Policy Research Centre<sup>8</sup>.
- Decision supporters should be chosen by the participant and should reflect the circumstances and preference of the participant, including whether they would like to be supported by informal supporters or funded formal supporters, such as independent advocates.
- Participants who have no or little informal supports should be funded to engage formal supports such as independent advocates and attract higher levels of funded support coordination.
- Any initiatives that rely on community and voluntary supporters must be considered in the context of the Northern Territory and its unique demographic. The Northern Territory's small, dispersed and comparatively young and transient population means there is not always the sufficient population for initiatives of this type.
- Appropriate safeguards within the Support for Decision Making Policy might include recognized training for supporters and a pathway for the engagement of an independent advocate where there is evidence of a conflict of interest for a supporter or a supporter is unduly influencing a participant's decision making. Consideration may also be given to an independent review process in relation to a supporter's conduct or actions, for example to the NDIS Quality and Safeguards Commission.
- The proposed formal process to assess a participant's decision making capacity should be transparent and the participant and their supporters should have the right to formally respond to any assessment of a participant's decision making capacity.
- The NDIA should engage with Aboriginal people and their representative organisations as to how Aboriginal participants who are disconnected from family and cultural networks for the purpose of accessing NDIS supports in regional centres may be appropriately supported in their decision making.

### **Conclusion**

The proposed Support for Decision Making Policy is a critical initiative for participants to uphold their right to autonomy of decision making to the greatest extent possible. Support for decision making and skill development of participants has significant potential to reduce the need for the appointment of a guardian for participants who may have decision making capacity when appropriately supported. The appropriate funding of required supports in relation to supported decision making should be viewed as a reasonable and necessary disability support in NDIS plans.

The introduction of the proposed policy must be accompanied with complimentary measures that simplify engaging with and navigating the NDIS and which address elements of the NDIS which have historically reinforced the need for the appointment of substitute decision makers and

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<sup>7</sup> See La Trobe Support for Decision Making Practice Framework Learning Resource available at <https://www.supportforddecisionmakingresource.com.au>

<sup>8</sup> See UNSW Social Policy Research Centre (2021), *Good Practice in Supported Decision-making for People with Disability Final Report* available at <https://apo.org.au/sites/default/files/resource-files/2021-06/apo-nid313465.PDF>

removed the participant from the decision making process including complex service agreements and complex pathways to engage with and navigate the NDIS.

The Office of the Public Guardian recommends the Support for Decision Making Policy and the Operational Guideline be informed by participants and their representative organisations and be made available for comment before they are finalised and implemented.