

Royal Commission into Violence, Abuse, Neglect
and Exploitation of People with Disability
Lodged by email: DRCsubmissions@royalcommission.gov.au

31 December 2022

Dear Commissioners,

Submission to the Royal Commission by Darwin Community Legal Service
Lived experience highlights multiplicity of factors in the NT continuing to expose people with disability to violence, abuse, neglect and exploitation

This submission aims to contribute to continuing momentum for positive change in support of people with disability in the NT – by people with disability, by society and by all contributors.

This includes increased action by representative bodies, governments, the public and private sectors, by institutions, service providers, and all others, including ourselves.

For any questions about this submission please contact Judy Harrison, DCLS Chief Executive Officer, Rachael Bowker or DCLS Seniors and Disability Rights Service Senior Advocate Jess Brugmans.

Regards,



Judy Harrison
Principal Solicitor

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Dated: 31 December 2022

About DCLS

Darwin Community Legal Service ('DCLS') is a non-profit community-based effort committed to legal and social justice and the protection and expansion of rights, fairness, and wellbeing in the Northern Territory.

DCLS is the only generalist community legal service in the NT and is the only non-profit legal service which specifically aims to assist older people and people with disability.

The main services within DCLS are the General Legal Service (GLS), the Seniors and Disability Rights Service (SDRS) and the Tenants' Advice Service (TAS). Some programs are NT-wide, and others are geographically specific, but the programs work together enabling integrated socio-legal client support.

Additional DCLS initiatives include:

- NT Older Person's Safety from Abuse initiative including NT Older Person's Abuse Information Line
- Aged Care Financial Advocacy
- NDIS Appeals Advocacy
- Homeless Legal Outreach, and
- NT Veterans' Legal Service.

DCLS provides legal and advocacy assistance in relation to social security legal issues, credit and debt, consumer, employment, discrimination, tenancy, adult guardianship, and related matters. Staff include advocates with expertise in aged care, health specialisations, disability, community services and staff who are legally trained.

This submission reflects engagements across DCLS service areas, interactions with numerous networks, systems and realities experienced by and affecting people with disability in the NT.

Glossary: terms used in the submission

Acronym	
AAT	Administrative Appeals Tribunal
DANA	Disability Advocacy Network Australia
DRC	Disability Royal Commission
ECA	Early Childhood Approach
FPDN	First Peoples Disability Network
NDIA	National Disability Insurance Agency

NDIS	National Disability Insurance Scheme
NT	Northern Territory of Australia
NTCAT	NT Civil and Administrative Tribunal
OPG	NT Office of the Public Guardian
OPT	NT Office of the Public Trustee
OSHC	Outside School Hours Care
SIL	Supported Independent Living
SDA	Specialist Disability Accommodation

Referring to Aboriginal people and de identified case studies

This submission applies the practice of referring to Aboriginal people in the NT in the way Aboriginal people in the NT wish to be addressed. For example, as stated in the NT Aboriginal Justice Agreement:

‘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.’¹

Case studies

The case studies in this submission are experiences across DCLS’ three practice areas and community engagements, and they have been deidentified.

¹ Northern Territory Aboriginal Justice Agreement 2021-27

https://justice.nt.gov.au/_data/assets/pdf_file/0005/1034546/nt-aboriginal-justice-agreement-2021-2027.pdf.

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1. Introduction

1.1 Lived experience is changing the paradigm

This submission focuses on lived experience, which is central in the Royal Commission’s approach.

Lived experience – which refers to the experiences of the person, and potentially of the group, who have experienced issues themselves – is a paradigm changing approach which is de-relegating the voices, perspectives, and leadership of people with disability.

Lived experience is helping to release people with disability from a plethora of constructs which have enabled and purported to normalise the individual and collective subordination of people with disability.

This is because ‘lived experience’ turns the tables to include consideration of responses to people from an accountability perspective. This includes:

- whether responders (including society) are really ‘hearing’ what people with disability have expressed and are expressing,
- how responders frame and scope their roles and responsibilities towards people with disability, including how responders frame their identities and their reasoning in these roles, and
- what responders do (or think they do), and how this compares with progressive, normative frameworks especially the Convention on the Rights of Persons with Disabilities (**‘CRPD’**).

In the context of the Royal Commission, and of people with disability expressing their lived experiences and perspectives generally – *lived experience* operates systemically and challenges socially, culturally, politically, economically, and structurally:

requiring re-evaluation of:	that is:
• knowledge systems	• epistemological reappraisal
• value systems	• axiological reappraisal
• frameworks	• ontological reappraisal
• accepted practice	• heuristic reappraisal
• individual and collective responsibility	• reflective and reflexive reappraisal

In in the NT, Australia and internationally, people with disability are de-centring externalist, moralised, medicalised, professionalised, and bureaucratised narratives about them, to require theories and models which are reflective of, and accountable to, their lived experience, diverse perspectives, and realities.

Further, First Nations people and First Nations organisations are providing models which highlight and amplify what is required for rights, inclusion, and wellbeing in the context of historical and contemporary lived experiences of settler-colonialism.

1.1.1 Transformational intentions

We recognise and celebrate that the transformational intentions of movements propelled by people with disability in the NT, Australia and internationally - go beyond 'reform' of services, laws, and other structures. The intention is not limited to 'reformist reform' - that is 'reform' limited to what the problematic institutions and systems to be reformed themselves consider reasonable.²

For example, transformational intentions resonant in and for the NT include:

- **Deincarcerating disability** – overcoming incarceration of young people and adults with disability in the NT due to chronic insufficiency of approaches, systems, and services.³
- **Decolonising disability** – overcoming dehistoricising, decontextualising, depoliticising and withholding power from First Nations people and First Nations organisations for self-determination.⁴
- **Depovertising disability** – overcoming the withholding of essentials for basic needs, health, and wellbeing.
- **Derepudiating disability** – overcoming the withholding of rights, wellbeing, and inclusion.
- **Dewarehousing disability** – overcoming relegating responses which primarily aim to contain, store or secure people with disability often asserted to be due to chronic lack of pathways and resources for alternatives.
- **Dequeueing disability** – overcoming queues, waiting times, bureaucratic blockages, queues to nothing, and going round in circles.

Further, the rights of people with disability in the NT to be free from violence, abuse, neglect, and exploitation - apply throughout the NT regardless of location and specifically include remote and very remote communities.

1.1.2 Royal Commission as part of a groundswell

We see the Royal Commission as part of a major, historic, shift in societal relations with people with disability. The shift involves deep and wide-ranging reappraisal which has been confronting appalling conduct and attitudes towards people with disability, in so many contexts.

² Thomas Mathiesen, *The Politics of Abolition Revisited*, Taylor & Francis Group, 2014, 25; Thomas Mathiesen, *The Politics of Abolition*, Wiley-Blackwell, 1974

³ Regarding the general issue: Eileen Baldry, 'Rights of Persons with Disability Not to Be Criminalised' in Elizabeth Stanley (ed), *Human Rights and Incarceration*, 2018, Palgrave Studies in Prisons and Penology; regarding the NT see for example: [Aboriginal Medical Service NT \('AMSANT'\) Response to Criminal Justice System Issues Paper for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability \('DRC'\)](#), 25 May 2020; [Darwin Community Legal Service, Response to Criminal Justice System Issues Paper for the DRC](#), 20 March 2020

⁴ David Hollinsworth, 'Decolonizing Indigenous disability in Australia', *Disability & Society* (2013) 28 (5), 601; Stefanie Puszkas, Corinne Walsh, Francis Markham, Jody Barney, Mandy Yap, Tony Dreise 'Towards the decolonisation of disability: A systematic review of disability conceptualisations, practices and experiences of First Nations people' (2022), 305, *Social Science and Medicine*, 1

Leadership by people with disability and by networks – and organisations by and for people with disability – are reshaping society by exposing and educating, reworking systems and relationships.

The Royal Commission has helped increase awareness that violence, abuse, neglect, and exploitation experienced by people with disability - has often been normalised or dismissed. Further, that often society as a whole has been bystander and perpetrator in the systemic de-validation of people with disability.

The Royal Commission's grounded processes have resulted in engagement by many people with disability, informal and formal carers and organisations in the NT and Australia wide. The Commission's presence in the NT early on, and repeated work to encourage and engage, has had recursive effects, with organisations, including DCLS participating in various ways, both individually and via networks and coalitions and in support of individuals, groups and communities.

A range of themed hearings helped draw important public submissions from the NT ranging over the period, with many recently contributing to Public Hearing 25 on the operation of the NDIS for First Nations people with disability, held in Alice Springs. The Commission has also received a substantial number of submissions – both public and private -from people with lived experience. DCLS Seniors and Disability Rights Service was active in aiding submission making, and we observed that for many people this process:

- was moving, deeply important and affirming,
- was the first experience of having 'voice' to be able to make a submission (about anything),
- enabled people to reflect on their part in collective action for change, and
- enabled people with disability to express their agency as actors hoping to also help others.

There has been consciousness raising for many and increased hopes for collective action. Many have experienced an increased sense of inclusion, having expressed themselves to be inter-connected.

However, the potential for disappointment and for people to feel let down or to lose heart, is present. This also applies to supporters and allies, many of whom regularly see injustice unfold – again repudiating and refusing the rights and needs of people with disability. There is potential for moral injury, in the sense of having tried hard but ultimately failed - if momentum and implementation is not achieved following on from the Royal Commission. This is a very poignant issue in the NT due to the pattern of high hopes inquiries and their aftermath. This includes:

- The Royal Commission into Aboriginal Deaths in Custody (1987-1991)⁵

⁵ National Reports 1-5, Regional Reports, Underlying Issues Report, and Reports on individual deaths in custody, on Austlii in the National Reconciliation Library: <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/> For more background see: <https://www.naa.gov.au/explore-collection/first-australians/royal-commission-aboriginal-deaths-custody>; Thalia Anthony, Kirrily Jordan, Tamara Walsh, Francis Markham & Megan Williams (2021). 30 years on: Royal Commission into Aboriginal Deaths in Custody recommendations remain unimplemented (Working Paper No. 140/2021), Centre for Aboriginal Economic Policy Research, Australian National University, online at: https://openresearch-repository.anu.edu.au/bitstream/1885/229826/2/WP_140_Anthony_et_al_2021.pdf

- Aboriginal and Torres Strait Islander Social Justice Commissioner, Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, (1995-1997)⁶
- The Little Children are Sacred Report (2006-2007),⁷ and
- The Royal Commission into the Protection and Detention of Children in the Northern Territory (2016-2019).⁸

With the latter, Counsel Assisting tried to avert the possibility of failure at the outset, by expressing how ‘Inquiry mentality’ be part of a pattern of persistent failure, where ‘reporting is accepted as a replacement for results’. That is, trying to warn and guard against, ritualised failure when he said:⁹

Our review of these reports makes good the proposition advanced by Commissioner Gooda at the Directions Hearing, when he said that there was not a need for more to be done “to describe the issues”.

With that observation we respectfully agree, but the very fact that there have been so many reports prepared already, and the very existence of this Commission after so much has been said and written, raises, we suggest, another issue altogether.

It invites the question as to whether there is a need to confront some sort of “Inquiry mentality”, in which investigation is allowed as a substitution for action, and reporting is accepted as a replacement for results. The bare fact that there has been so much said and written over such a long time is suggestive of a persistent failure that should not be allowed to endure.



However, we believe that there is positive change in the Northern Territory in terms of increasing accountability to people with disability. There is much greater understanding of how things have been

⁶ Human Rights and Equal Opportunity Commission Report, online at: <https://humanrights.gov.au/our-work/bringing-them-home-report-1997>; The Healing Foundation, Bringing them Home: 20 years on, 2017, online at: <https://healingfoundation.org.au/app/uploads/2017/05/Bringing-Them-Home-20-years-on-FINAL-SCREEN-1.pdf>; Professor Steve Larkin, Chair of The Healing Foundation, The stories of Australia’s stolen generations were told 25 years ago – did they fall on deaf ears?, The Guardian, 26 May 2022, online at: <https://www.theguardian.com/commentisfree/2022/may/26/the-stories-of-australias-stolen-generations-were-told-25-years-ago-did-they-fall-on-deaf-ears>

⁷ Ampe Akelyernemane Meke Mekarle “Little Children are Sacred” In our Law children are very sacred because they carry the two spring wells of water from our country within them, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse 2007; Thomas Oriti (ABC) talking to Yingiya Guyula, Indigenous community leader recalls impacts 15 years on from NT Intervention, ABC Radio 21 Jun 2022, (audio) at: <https://www.abc.net.au/news/2022-06-21/indigenous-community-leader-recalls-impacts-as-nt/13938466>

⁸ Established 1 March 2016, and Final Report tabled 17 November 2017, <https://www.royalcommission.gov.au/child-detention>; NATSILS [Submission](#) to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 21 Feb 21, Jacqueline Breen and Alex Barwick, Five years since the NT royal commission into youth detention and child protection, there is hope, disappointment and fear, ABC News 17 November 2022, <https://www.abc.net.au/news/2022-11-17/nt-don-dale-royal-commission-youth-detention-five-years/101655822>

⁹ Royal Commission into the Protection and Detention of Children in the Northern Territory, [Official Record, Counsel Assisting opening address](#) 11 October 2016, p. 4

and commitment to positive ways forward. There is also much to build on, and for the NT, many of these dimensions are expressed in the NT Disability Strategy 2022-2032 and diagram below):¹⁰

NT Disability Strategy – disability intersection



At the same time, there are so much to be done. Many people with disability are still being denied their human rights and are not safe from violence, abuse, neglect, or exploitation. Momentum must continue to achieve change across numerous domains to respond to the rights and needs of people with disability and ensure access to services and supports.’

1.1.3 Submission focuses is on building forward in the NT

This submission focuses on building forward in the NT in relation to people with disability being safe from violence, abuse, neglect, and exploitation.

We focus on issues, challenges, and opportunities and emphasise:

- federal and territory government responsibilities, and

¹⁰ NT Disability Strategy 2022-2032, p. 11, https://tfhc.nt.gov.au/data/assets/pdf_file/0020/1124183/disability-strategy.pdf

- the responsibilities of institutions, services, individuals, and society.

Which are responsibilities to protect, respect and fulfil the rights of people with disability.

1.2 Case studies reflect multiple and /or intersectional discrimination in the NT

Through case studies based in our work and engagements, the submission highlights some current themes in the NT which continue to expose many people with disability to abuse, neglect, violence, and exploitation.

We emphasise **multiple and/or intersectional discrimination** in accordance with:

- the Convention on the Rights of Persons with Disabilities ('CRPD'), and
- the prevalence of multiple and intersectional discrimination experienced by people with disability in the NT.

The United Nations Committee on the Rights of Persons with Disabilities has described multiple and /or intersectional discriminations, as follows:¹¹

19. Discrimination can be based on a single characteristic, such as disability or gender, or on multiple and/or intersecting characteristics. "Intersectional discrimination" occurs when a person with a disability or associated to disability suffers discrimination of any form on the basis of disability, combined with, colour, sex, language, religion, ethnic, gender or other status. Intersectional discrimination can appear as direct or indirect discrimination, denial of reasonable accommodation or harassment. For example, while the denial of access to general health-related information due to inaccessible format affects all persons on the basis of disability, the denial to a blind woman of access to family planning services restricts her rights based on the intersection of her gender and disability. In many cases, it is difficult to separate these grounds. States parties must address multiple and intersectional discrimination against persons with disabilities. "Multiple discrimination" according to the Committee is a situation where a person can experience discrimination on two or several grounds, in the sense that discrimination is compounded or aggravated. Intersectional discrimination refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable and thereby expose relevant individuals to unique types of disadvantage and discrimination.⁴

1.2.1 CRPD and multiple and intersectional discrimination in the NT

The Royal Commission's terms of reference include consideration of human rights and Australia's international obligations, especially the *Convention on the Rights of People with Disabilities* ('CRPD')

The overview of CPRD below, demonstrates that:

¹¹ Committee on the Rights of Persons with Disabilities, *General comment No. 6 on equality and non-discrimination*, 19th sess, UN Doc CRPD/C/GC/6, (6 April 2018), para [19]
<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no6-equality-and-non-discrimination>

- CPRD requires consideration of multiple and/or intersectional discrimination when focusing on the human rights of people with disability, and
- CPRD provides a strong normative framework to evaluate the extent to which the rights of people with disability are being respected, protected, promoted and fulfilled in the NT.¹²

<p>Articles 1-4 are foundational Articles that articulate the purpose, definitions and general principles of the Convention and establish general obligations for States Parties.</p>	<p>Article 1 – Purpose</p> <p>“The purpose of the present Convention 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.</p> <p>Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.</p> <p>Bold added, highlighting that the Convention applies a social model of disability.</p> <p>Article 3 – stipulates principles, namely:</p> <ul style="list-style-type: none"> A. Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons; B. Non-discrimination; C. Full and effective participation and inclusion in society; D. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; E. Equality of opportunity; F. Accessibility; G. Equality between men and women; H. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities <p>Article 4 – State parties obligations to realise the rights of people with disability</p>
<p>Article 5: Equality and non-discrimination</p>	<p>Article 6: Women with disabilities</p>

¹² Short descriptions of Articles 1-4 and articles 5-31, from Australian Human Rights Commission, Overview of the articles of the Convention on the Rights of Persons with Disabilities, online at: <https://humanrights.gov.au/our-work/disability-rights/overview-articles-convention-rights-persons-disabilities>

Everyone is entitled to the equal protection and benefit of the law without discrimination.	Countries must take all appropriate measures to ensure that women with disability are able to fully enjoy the rights and freedoms set out in the Convention.
Article 7: Children with disabilities The best interests of the child must be a primary consideration in all actions concerning children with disability.	Article 8: Awareness-raising Countries must raise awareness of the rights, capabilities and contributions of people with disability.
Article 9: Accessibility People with disability have the right to access all aspects of society on an equal basis with others including the physical environment, transportation, information and communications, and other facilities and services provided to the public.	Article 10: Right to life People with disability have the right to life. Countries must take all necessary measures to ensure that people with disability are able to effectively enjoy this right on an equal basis with others.
Article 11: Situations of risk and humanitarian emergencies Countries must take all necessary measures to ensure the protection and safety of all people with disability in situations of risk, including armed conflict, humanitarian emergencies and natural disasters.	Article 12: Equal recognition before the law People with disability have the right to recognition as people before the law. People with disability have legal capacity on an equal basis with others in all aspects of life. Countries must take appropriate measures to provide support to people with disability so that they can effectively exercise their legal capacity.
Article 13: Access to justice People with disability have the right to effective access to justice on an equal basis with others, including through the provision of appropriate accommodations.	Article 14: Liberty and security of person People with disability have the right to liberty and security of person on an equal basis with others.
Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment People with disability have the right to be free from torture and from cruel, inhuman or degrading treatment or punishment.	Article 16: Freedom from exploitation, violence and abuse People with disability have the right to be protected from all forms of exploitation, violence and abuse, including their gender based aspects, within and outside the home.
Article 17: Protecting the integrity of the person Every person with disability has a right to respect for his or her physical and mental integrity on an equal basis with others.	Article 18: Liberty of movement and nationality People with disability have the right to a nationality and liberty of movement.

<p>Article 19: Living independently and being included in the community People with disability have the right to live independently in the community.</p>	<p>Article 20: Personal mobility Countries must take effective and appropriate measures to ensure personal mobility for people with disability in the manner and time of their choice, and at affordable cost.</p>
<p>Article 21: Freedom of expression and opinion, and access to information People with disability have the right to express themselves, including the freedom to give and receive information and ideas through all forms of communication, including through accessible formats and technologies, sign languages, Braille, augmentative and alternative communication, mass media and all other accessible means of communication.</p>	<p>Article 22: Respect for privacy People with disability have the right to privacy. Information about people with disability, including personal information and information about their health should be protected.</p>
<p>Article 23: Respect for home and the family People with disability have the right to marry and to found a family. Countries must provide effective and appropriate support to people with disability in bringing up children, and provide alternative care to children with disability where the immediate family is unable to care for them.</p>	<p>Article 24: Education People with disability have a right to education without discrimination. Countries must provide reasonable accommodation and individualised support to maximise academic and social development.</p>
<p>Article 25: Health People with disability have the right to the enjoyment of the highest attainable standard of health without discrimination.</p>	<p>Article 26: Habilitation and rehabilitation Countries must take effective and appropriate measures to enable people with disability to develop, attain and maintain maximum ability, independence and participation through the provision of habilitation¹³ and rehabilitation services and programmes.</p>
<p>Article 27: Work and employment</p>	<p>Article 28: Adequate standard of living and social protection</p>

¹³ ‘Habilitation and rehabilitation are ‘interventions designed to optimize the functioning of individuals with impairments in interaction with their environment. The aim of habilitation is to assist individuals who acquire impairments congenitally or in early childhood to learn how to better function with them. The aim of rehabilitation, ... is to assist those who experience a loss in function as a result of acquiring an impairment to relearn how to perform daily activities to regain maximal function. By providing or restoring functions, or compensating for the loss or absence of a function or a functional limitation, habilitation and rehabilitation ultimately equip persons with disabilities to achieve a higher level of independence. ...’ per para 4, ‘Habilitation and rehabilitation under article 26 of the Convention on the Rights of Persons with Disabilities’, Report of the Office of the United Nations High Commissioner for Human Rights to the General Assembly, 21 January 2019, A/HRC/40/32 para 4, at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/012/52/PDF/G1901252.pdf?OpenElement>>

People with disability have the right to work, including the right to work in an environment that is open, inclusive and accessible.	People with disability have the right to an adequate standard of living including food, water, clothing and housing, and to effective social protection including poverty reduction and public housing programmes.
Article 29: Participation in political and public life People with disability have the right to participate in politics and in public affairs, as well as to vote and to be elected.	Article 30: Participation in cultural life, recreation, leisure and sport People with disability have the right to take part in cultural life on an equal basis with others, including access to cultural materials, performances and services, and to recreational, leisure and sporting activities.
Article 31: Statistics and data collection Countries must collect information about people with disability, with the active involvement of people with disability, so that they can better understand the barriers they experience and make the Convention rights real.	

1.2.2 Lived experiences of people with disability and rights-based reading

The submission centres the lived experiences of people with disability and rights-based reading. This focuses on what lived experiences indicate is going on in a particular situation and how rights help express this.

This is sometimes referred to as ‘reading against the text’ – meaning that the text (or a person) says a certain thing, such as ‘no, you are wrong’ and the ‘reader’ observes that statement or performance – and treats it – not as a fact (‘you are wrong’), but as an object of interest e.g. why is it being said, what is producing the statement / claim, whose rights /which rights are being advanced, what are its claims to authority/validity, what are the assumptions etc.).

1.3 Themes and structure of the submission

The following chart summarises some of the themes in multiple and intersectional discrimination experienced by people with disability in the NT which are illustrated in the submission.

Disability

- Attitudes and assumptions and their relationship with problematic theories and models
- External decisions about responses, rules, systems and resources with often relegate people with disability
- Unaccountability for problematic approaches, for power relations and for withholding resources
- How these approaches limit the agency, rights, wellbeing and inclusion of people with disability in the N

Remote and very remote location

- Geographic location, especially remoteness, is a major gap in human rights and discrimination law
- Discriminatory attitudes and conduct towards geographic remoteness is compounding for many people with disability in the NT
- Multi-system/ pervasive failure to approach remote living holistically in support of rights, wellbeing and inclusion
- Economic formulations (e.g. 'thin market', 'market failure') used metro-normatively and defensively against remote living

Socio-economic disadvantage

- Withholding resources and power to address basic needs with humanitarian, marginalising and other adverse effects
- Compounding disadvantage by perpetuating homelessness, insecure, inadequate or unsafe accommodation
- Compounding disadvantage through health care under/resourcing and rationing, culturally unsafe practices and failing to maximise agency
- Using frameworks and rules which are not functional for processes and outcomes to promote dignity, rights, wellbeing, and inclusion

Aboriginal peoples' perspectives and rights

- History subordinating practices towards Aboriginal people by settler-colonial institutions including promoting negative stereotypes
- Experiences of racism, including systemic racism in multiple systems and structures
- Aboriginal languages disrespected and treated as a problem or barrier by non-Aboriginal institutions, programs and services
- Lack of trust in interactions with government (reflecting individual /collective trauma)
- Withholding power and resources from Aboriginal people, communities and organisations

Diversity of people with disability

- Sterotyping and compartmentalising approaches to people with disability
- Unnecessarily and problematically intruding on agency and autonomy rather than aiming to maximise both
- Failing to use person-centred, rights-based, trauma informed, culturally safe practices
- Withholding power and resources from people with disability as reflected in institutional and service arrangements and outcomes

1.4 Maintaining momentum – accountability and key areas for change

Our main concern is maintaining and entrenching leadership from lived experience acknowledging

- the rights of people with disability to lead, and
- leadership by people with disability as the most powerful driver to maintain and increase momentum.

Other key areas for achieving, remonstrating and mutually propelling change are shown on the diagram below, namely:

- Societal change including changing attitudes, assumptions and improving responses
- Government and institutions driving forward
- Accessible, inclusive and accountable services
- Access to advocacy including legal help
- Accountability for overcoming violence, abuse, neglect, and exploitation inflicted on people with disability – through actions and omission, by individuals and by systems - and being accountable for addressing this to people with disability



1.5 Summary of recommendations

The following is a summary of the recommendations in the submission.

1	<p>Royal Commission public witnesses, submissions, and records – by jurisdiction – including NT</p> <ul style="list-style-type: none"> • The Royal Commission’s public online data base currently contains almost 6,000 records which can be filtered by type but not yet by jurisdiction. • Evidence and material relating to particular jurisdictions will be relevant in the future as part of the Commission’s legacy. • We request that a ‘by jurisdiction’ filter be added to those already available for the Commission’s public online data base.
2	<p>Leadership by people with disability</p> <p>Strategies to reduce and eliminate violence, abuse, neglect, and exploitation of people with disability in the NT must accord leadership to people with lived experience.</p> <p>This includes leadership by Aboriginal people with disability generally and in relation to efforts related to Aboriginal people with disability.</p> <p>Leadership by people with disability in the NT should be encouraged and assisted to apply broader strategic and systemic approaches, for the momentum and scope required</p>
3	<p>Needs based funding to meet obligations to people with disability in the NT</p> <p>Population based funding related to fiscal federalism is not delivering the resources and facilitation necessary to meet Australia’s obligations to people with disability in the NT. This applies to Aboriginal and non-Aboriginal people across the age spectrum from newborns to children, youth, adults and older people with disability.</p> <p>This is a major systemic weakness requiring substantially more effort to move to needs-based funding to substantially increase resource allocations to address the needs of people with disability in the NT.</p>
4	<p>Disability prevalence data to be upgraded for NT</p> <p>That the Commonwealth and NT:</p> <ul style="list-style-type: none"> • undertake a full review and compilation of available data relating to the prevalence, nature and needs of people with disability in the NT • provide an informed and authoritative re-estimate in substitution for the limitations of ABS SDAC statistics relating to disability in the NT • establish and maintain a disability data dashboard for the NT which provides access, in one location, to publicly available statistics and indicators relating to people with disability in the NT
5.	<p>Aboriginal community owned and led safety and wellbeing in the NT</p> <p>That a principled approach be implemented in support of Aboriginal community owned, community led and community empowering, culturally safe responses to violence, abuse,</p>

	neglect and exploitation impacting Aboriginal people in the NT
6	Strategies to ensure safety and wellbeing must include lived experience leadership Leadership by people with lived experience should be prioritised in strategies to address violence, abuse, neglect or exploitation of Aboriginal people with disability.
7.	Valuing systemic community advocacy and activism Efforts to ensure safety and wellbeing of people with disability should value systemic community advocacy and activism with groups and communities leading action for to achieve their solutions.
8	NDIA needs to be fit-for-purpose in the NT NDIA capability and culture need to fully adapt to the NT context to overcome implementation issues and ensure the NDIA is fit-for-purpose for the NT. DCLS and many others have recently made submissions to the Joint Standing Committee on the NDIA about these issues, which in addition to evidence provided directly to the Royal Commission can help guide key required reforms.
9	NDIS cultural safety – A wide range of issues to be addressed in NT A wide range of issues need to be addressed by the NDIA to enable culturally safe access and operation in the NT. This has been highlighted by numerous groups to the Royal Commission and to other inquiries including the Joint Parliamentary Standing Committee on the NDIA.
10	Introduce visitor and/or audit scheme for SIL facilities in the NT Introduce a visitor and/or or regular audit scheme for the NDIS Commission or advocates to regularly attend and monitor SIL facilities. Explore synergies with the NT Community Visitor Program which has been operating successfully and effectively since 2001.
11	Upgrade NDIS Commission escalation process in the NT Upgrade the NDIS Commission escalation processes in the Northern Territory to enable the NDIS Commission to act quickly in situations of suspected abuse, neglect, violence or exploitation by service providers.
12	Review the Justice Liaison Officer positions NT Justice Liaison Officer position should be reviewed to become more pro-active in identifying people in detention and prisons with disability who need help access the NDIS in a meaningful manner.
13	Solve the chronic / wicked systems collaboration failure The chronic / wicked systems collaboration failure in the NT around the access of people with disability in detention and prisons to NDIS applications, NDIS plans and supports needs a different approach – which involves engagement at much higher level, development of explicit (e.g. legislated) protocols and fully adequate resources to achieve stability, continuity and functionality. Commonwealth and NT should jointly ensure this problem is solved.

14	<p>Need for increased criminal and civil legal and advocacy support</p> <p>Increase resources to reflect needs for criminal and civil justice legal assistance and wrap around case management and specialist advocacy support for people coming into contact with the criminal justice system in the NT.</p> <p>This to provide proactive, trauma informed, responsive and positive support including:</p> <ul style="list-style-type: none"> • NDIS access, supports, reviews and appeals • Safety from violence, abuse, neglect and exploitation, • Civil law legal issues (e.g. tenancy including social and community housing, social security, debts, consumer, employment, child protection, family, discrimination, adult guardianship). • Holistic case management support joined up with culturally accessible and culturally safe financial counselling (including financial literacy), social work support. • Support / service models which deliver in communities and are a preventative and reliable (including long-term), as possible.
15	<p>Qualifications for Teacher Aides in the NT</p> <p>Review the qualification requirements for teacher aides for children with additional needs in the NT, including increased supervision by staff with degrees in early education and/or a speech pathology background.</p>
16	<p>Before and after school care and vacation care programs</p> <p>Agreements between the Department of Education and NDIA should reflect that children with additional needs accessing before/after hours and vacation care programs in the NT, should be in supported environments with correct staffing ratios and disability trained carers.</p>
17	<p>Map and address gaps where no or insufficient disability support in NT</p> <p>NT and Commonwealth undertake a joint mapping, led by lived experience to identify lack of alternatives to the NDIS for people with support needs in the NT where this is causing an outright gap in coverage. Also identify how lack of progress in addressing these lacunas, gaps and anomalies, which place the safety and wellbeing of people with disability at risk, have come about.</p> <p>Develop strategies and programs to address the gaps and learn from the evidence about how these issues arose in the first place, to avoid repetition.</p>
18	<p>Housing crisis for people with disability in the NT need vastly increased action</p> <p>The housing crisis for people with disability in the NT requires a greater sense of urgency, much more momentum and far greater resources to work on the multiplicity of issues.</p>
19	<p>No eviction of social housing tenants with disability into homelessness</p> <p>A national model social housing management policy to ensure the safety, rights and wellbeing of people with disability should be developed to require a housing first approach be continually applied to people with disability to avoid homelessness.</p> <p>This includes management of existing tenancies, where every effort should be made to sustain tenancies and where this is not possible at a particular location, to provide alternative realistic social housing options.</p>

	The Commonwealth should apply leadership in this area, such as by establishing principles and linking compliance via relevant program and funding conditions
20	<p>Disability policy impact analysis and human rights compatibility All policy and regulatory measures capable of impacting on the rights or wellbeing of people with disability should be subject to transparent, public scrutiny, fully incorporating lived experience.</p> <p>The proposed NT Remote Rent Framework is a case in point, where there is no publicly available disability policy impact analysis and serious reasons for concern.</p> <p>The Commonwealth should provide leadership with the NT and other jurisdictions as relevant, to develop and facilitate implementation of:</p> <ul style="list-style-type: none"> ▪ Model Disability Policy Impact Analysis and ▪ Model Disability Human Rights Compatibility Mechanisms
21	<p>Overhaul home modification process and increase advocacy and legal help A full review from lived experience be undertaken about the operation of NDIA home modification rules and procedures relating to owned homes (compared to rented) to overcome the dysfunctional process design, including misaligned assignment of risks and responsibilities, which can be overwhelming and abusive for NDIA participants.</p> <p>The review should also assess unmet needs for advocacy and legal help, with a view to both being funded on a needs-basis.</p>
22	<p>Develop disability modification guidelines for public and private landlords in the NT Develop disability modification guidelines from lived experience for implementation by public and private landlords in the NT. Increase requirements for landlords of social housing stock and implement funding arrangements in support.</p> <p>Address unmet needs for advocacy and legal help, with a view to both being funded on a needs-basis.</p>
23	<p>Addressing hospital to SIL/SDA delays in the NT The hospital to SIL/SDA delays in the NT are totally unacceptable as a response to the needs of people with disability, informal carers, the hospital system and the needs of others in the community for hospital services. The financial stress for people with disability caught in this situation, of being unable to be relocated from hospital to SIL/SDA, also represents abusive cost-shifting.</p> <p>The issues require action by multiple stakeholders including the Commonwealth, NDIA and the NT Government, plus exploration of legal options to address the impasse</p>
24	<p>Review of 'dead renting' accessible properties in the NT That the NDIA and NT undertake a review of 'dead renting' whereby a service provider rents but does not immediately achieve occupation / use of a disability accessible property – consequently reducing supply against a backdrop of chronic under supply.</p>

	The review should identify the impacts of this practice and what if any steps should be taken to increase supply.
25	<p>NDIA Supported Independent Living ('SIL') to include remote and very remote NT communities</p> <p>SIL support must be available in the locations needed in the NT. There is currently highly inadequate availability in remote and very remote communities, and this must be a priority area for action in accordance with the rights, needs and wellbeing of people with disability.</p>
26	<p>NDIA SIL cuts require urgent intervention</p> <p>NDIA SIL decision making will hopefully be corrected in the reform processes initiated by Minister Shorten and improved mechanisms for guiding the NDIA. However, at this point SIL cuts are still impacting participants and urgent intervention is required.</p>
27	<p>SDA requires funding overhaul, needs-based funding and accountability in the NT</p> <p>The availability of Specialist Disability Accommodation is so inadequate in the NT that it plays into the problem to imagine there are solutions within the existing framework. The overhaul requires moving to needs-based funding, which includes addressing SDA in remote and very remote communities. SDA is currently unaccountable to people with disability in the NT and nationally, and realignment on this aspect is likely to help drive needed change.</p>
28.	<p>Funding for disability housing and homelessness advocacy and legal help NT wide</p> <p>Housing issues and homelessness increase vulnerability of people with disability to violence, neglect, abuse, and exploitation. There are major, longstanding gaps in access to advocacy and legal help in relation to both in the NT.</p> <p>Addressing multiple policy objectives and rationales, funding should be provided for NT wide access, including and especially remote and very remote communities, to community-based advocacy and legal help focusing on individual support and assistance for people with disability and systemic advocacy by, with and for people with disability.</p>
29.	<p>Multiple measures to support workforce participation in NT</p> <p>Mechanisms are needed in the NT to map, monitor and propel the rights and wellbeing of people with disability in relation to access to work and in the workforce.</p> <p>Special facilitation should be given to the Aboriginal Peak Organisation NT to fully develop the Fair Work and Strong Families: Remote Development and Employment Scheme initiative for funding and implementation via a partnership with the Commonwealth.</p> <p>Substantial injection of resources required for numerous initiatives including ensuring people with disability in the NT have access to specialist advocacy and legal help.</p>
30.	<p>Increase supported employment places in the NT</p> <p>Substantially increase resources to achieve more supported employment places in the NT.</p>
31	<p>Supported employment - quality improvement regarding complaints</p> <p>The power imbalance for participants in supported employment can place these workers with disability in a highly vulnerable position when things are wrong – or go wrong – in the workplace.</p>

	<p>Arrangements for accreditation, complaints handling, complaints resolution and amends should be reviewed to ensure sufficient support for people with disability participating as workers in supported employment programs.</p>
32.	<p>Social security should support rights, employment and inclusion of people with disability The social security system should be reformed applying a human rights-based approach and a social model of disability in support of the rights, wellbeing and inclusion of people with disability.</p> <p>This applies to access to and participation in work and employment and all other dimensions. The social security system should not harm, disrespect and repudiate people with disability, which it all too frequently does at present.</p>
33.	<p>Needs based funding for Independent Disability Advocacy in the NT Increase disability advocacy funding to support service capacity to provide access to all people with disability in the NT who require advocacy support to reduce risks of violence, abuse, neglect and exploitation and enhance quality of life.</p> <p>Fully implement the recommendations about Independent Disability Advocacy in the DANA submission, December 2022 to the Royal Commission.</p>
34.	<p>Needs based funding for NT NDIS appeals advocacy. We repeat the recommendation made in the DCLS submission to the Joint Standing Committee on the NDIS Inquiry into NDIA Capability and Culture, namely that: ¹⁴ “An NT NDIS appeals advocacy and legal support plan is urgently needed for the NT. The plan should include:</p> <ul style="list-style-type: none"> • An immediate injection of funds for direct local access to specialist advocacy and legal support to for people appealing NDIS access, supports or related decisions. • A funding model which reflects the rights and needs of participants in the NT which the ‘blitz’ of matters currently before the AAT is being worked on. • A commitment for longer term planning, to develop model for NDIS advocacy and appeals support which reflects needs and the availability of multiple non-profits, including Aboriginal Legal Services and the Women’s Legal Services in the NT to be incorporated ongoing.”
35.	<p>Role out and funding of NDIS Appeals co-advocacy especially in the NT That NDIS Appeals Advocacy models for the NT should apply co-advocacy (advocate and lawyer together) and funding for NDIS Appeals Advocacy should reflect this. Recommendations by the Royal Commission should include a call for specific funding for co-advocacy to be delivered by community legal centres and non-profit legal services across Australia.</p>
36.	<p>Implement supported decision making in the NT</p>

¹⁴ Submission number 32, dated 14 October 2022, online at:
https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/CapabilityandCulture/Submissions

	<p>Law reform in the NT should cease the outdated practice of substituted decision making in adult guardianship and implement supported decision in furtherance of Article 12(4) of the Convention on the Rights of Persons with Disabilities.</p> <p>This should be accompanied by adequate funding of supported decision-making services.</p>
37.	<p>Funding of independent advocacy and legal help in adult guardianship</p> <p>The lack of any funding provision by the NT Government, and any collaboration by the Commonwealth to address this issue must be resolved. The North Australian Aboriginal Legal Service and Darwin Community Legal Service currently undertake the high majority of free legal assistance in in this area – reflective of the fact that the individuals concerned, informal carers do not have capacity to obtain private legal representation. NAAJA, DCLS and other community based non-profit legal services in the NT able to provide adult guardianship legal help should be funded to do so.</p>
38.	<p>Funding to increase access and implement supported decision making in the NT</p> <p>Resources for the NT Office of the Public Guardian and Public Trustee (OPG and PT) should be increased to reflect the workload and the importance of accessibility throughout the NT and effective case management.</p> <p>The implementation of supported decision making in the NT also should be accompanied by increased resources for the NT OPG and PT to fully implement and ensure good practice for supported decision making.</p> <p>Increased resources should also be provided for an NT specialist supported decision making service.</p>
39	<p>Funding for NT legal assistance for civil law legal needs of people living with mental health issues</p> <p>That DCLS be funded to:</p> <ul style="list-style-type: none"> • provide NT wide assistance to help address gaps in civil law legal help for people living with mental health conditions • help facilitate a NT wide response, and • help support mutual collaborative learning for NT wide implementation of mental health co-advocacy models <p>NAAJA also receive highest priority for funding plus the FVPLS, NT Women’s Legal Services and the NT Legal Aid Commission</p>
40	<p>NT wide plan for needs-based funding of social security legal help</p> <p>People with disability in the NT are impacted in multiple ways by lack of funding in the NT for social security legal help. There is currently no funding model and no identifiable funding. This applies to the Aboriginal Legal Service, Darwin Community Legal Service and all other non-profit legal services in the NT.</p> <p>The Commonwealth should provide funding to non-profit legal services in the NT to implement territory wide social security legal help, especially in remote and very remote communities and especially for the most vulnerable. The latter include people with disability who are among the most vulnerable members of the community across the NT.</p>

2. The Royal Commission as a resource for the NT

The Royal Commission is a resource for the NT, and all other Australian jurisdictions, for the future.

There is a substantial public online repository of material, relating to hearings as well as submissions.

It would greatly assist in what the Royal Commission delivers, if the Commission could upgrade filters to also enable material to be listed by jurisdiction – for example all witnesses and submissions which specifically related to the NT.

Recommendation 1: Royal Commission public records by jurisdiction – including NT

The Royal Commission's public online data base currently contains almost 6,000 records which can be filtered by type but not yet by jurisdiction. Evidence and material relating to particular jurisdictions will be relevant in the future as part of the Commission's legacy.

We request and recommend that a 'by jurisdiction' filter be added to those already available for the Commission's public online data base.

3. Being a person with disability in the Northern Territory

3.1 Leadership from lived experience in the NT

Leadership from lived experience is essential in the NT to ensure positive progress in and for the NT context.

The NT has a geographical and demographic make-up which is vastly different from other states and territories, with the highest levels of disadvantage, the smallest and most disbursed population, plus the Territory/Commonwealth distribution of powers and responsibilities.

Recommendation 2: Leadership by people with disability

Strategies to reduce and eliminate violence, abuse, neglect, and exploitation of people with disability in the NT must accord leadership to people with lived experience.

This includes leadership by Aboriginal people with disability generally and in relation to efforts related to Aboriginal people with disability.

Leadership by people with disability in the NT should be encouraged and assisted to apply broader strategic and systemic approaches, for the momentum and scope required

3.2 People with disability in the NT and achieving needs-based funding

The most recent estimates of the NT population indicate a population of about 250,000 with:

- Three main centres Darwin (about 86,788), Palmerston (about 39,500) and Alice Springs (about 28,600).
- The other main centres are Katherine (about 10,700), Nhulunbuy (about 2,570) and Tennant Creek (about 3,500) – see the table below¹⁵

The NT Government provides services to about 72 Aboriginal communities, 79 outstations¹⁶ with about 500 homelands in all.¹⁷

Aboriginal people make up almost 31% of the NT (see Figure # below) and Aboriginal people are the high majority of the population of remote and very remote communities in the NT.¹⁸

Main townships	Estimated resident population ¹	Proportion of total population
	Number	%
Darwin	86,688	34.8
Palmerston	39,514	15.9
Alice Springs	28,601	11.5
Katherine	10,727	4.3
Nhulunbuy	3,569	1.4
Tennant Creek	3,504	1.4

Regions	Estimated resident population	Proportion of total population
	Number	%
Greater Darwin	148,801	59.7
Alice Springs	40,693	16.3
Katherine	21,145	8.5
Daly - Tiwi - West Arnhem	18,021	7.2
East Arnhem	14,520	5.8
Barkly	6,020	2.4
Total	249,200	100

¹⁵ Northern Territory Department of Treasury and Finance, NT Population, including figures to June 2022, online at: <https://nteconomy.nt.gov.au/population>

¹⁶ See NT Government, Services to Remote Communities and Homelands, online at: <https://nt.gov.au/community/local-councils-remote-communities-and-homelands/services-to-remote-communities-and-homelands>

¹⁷ NT Department of Families, Housing and Communities, Homelands Program, see <https://tfhc.nt.gov.au/housing-and-homelessness/homelands>

¹⁸ Australian Institute of Health and Welfare, "Disability support for Indigenous Australians", Snapshot 2021

Table below Australian Bureau of Statistics 2021 Census¹⁹

Table 2: Aboriginal population and Aboriginal population share

	ERP	Growth	Proportion of jurisdictional population	
	June 2021	2016-2021	June 2016	June 2021
	Number	%	%	%
Northern Territory	76,736	2.9	30.3	30.8
New South Wales	339,546	27.8	3.4	4.2
Victoria	78,698	36.2	0.9	1.2
Queensland	273,224	23.5	4.6	5.2
South Australia	52,083	23.2	2.5	2.9
Western Australia	120,037	19.4	3.9	4.4
Tasmania	33,894	18.8	5.5	6.0
Australian Capital Territory	9,544	27.0	1.9	2.1
Australia	984,002	23.3	3.3	3.8

While vulnerabilities and levels of marginalisation are experienced by many non-Aboriginal and Aboriginal people in the NT, those in remote and very remote communities experience the highest cumulative and intersecting impacts of disadvantage.

- People with disability living in remote and very remote communities generally face greater barriers in accessing medical, disability, support services, advocacy assistance and legal help.
- The cost of having a disability is experienced exponentially by those outside of urban centres. Many services do not exist outside the major centres. This is limiting to the extent that it is often presented as a reason for a person to relocate – within the NT or interstate.
- People from remote areas are routinely given no choice and are forced to move to NT the largest centres of Darwin, Alice Springs or Katherine to receive supports.
- This can be to access medical services such as kidney dialysis, or disability supports such as Supported Independent Living (SIL).
- In terms of jurisdictional comparisons, the NT does not have the same services as other states or the ACT.

¹⁹ NT Government Department of Treasury and Finance, graphic, online at: <https://nteconomy.nt.gov.au/population#aboriginal>

- In the NT many medical specialists only exist, if at all, on a visiting basis in Darwin.
- Other supports, such as certain mental health or behaviour support services are not available at all in the NT.
- Most decisions that affect people with disability in remote and very remote communities are made in metro areas, especially Darwin or Canberra.
- Metro-normative decision making is often denying the rights of people with a disability in the NT especially by discriminatory attitudes towards location.
 - The needs of people living in remote and very remote communities are often effectively treated as problematic and unreasonable.

“Meet with a visiting medical service”

[NT public listing of visiting medical services – screen shot for Jan 1-9th 2023 (at 28/12/22)]²⁰

A	B	C	D	E	G	H
Visit Start Date	Visit End Date	Visit Status	Service Type	Visit Location	Region	clinic / referral_contact_ph Community_ID
29/12/2022	13/01/2023	Confirmed	Surgery (General)	Alice Springs	Central	(08) 8951 7777 10219
1/01/2023	8/01/2023	Confirmed	Surgery (Neurosurgery)	Darwin	Top End	(08) 8922 8888 290
2/01/2023	5/01/2023	Confirmed	Gastroenterology	Darwin	Top End	(08) 8922 8888 290
3/01/2023	3/01/2023	Confirmed	Obstetrics and Gynaecology	Katherine	Big Rivers	(08) 8971 0044 14071
3/01/2023	11/01/2023	Confirmed	Medical Retrieval	Alice Springs	Central	(08) 8951 7777 10219
3/01/2023	15/01/2023	Confirmed	Orthopaedics	Alice Springs	Central	(08) 8951 7777 10219
3/01/2023	4/01/2023	Confirmed	Mental Health	Maningrida	Top End	(08) 8979 5930 362
4/01/2023	4/01/2023	Confirmed	Obstetrics and Gynaecology	Pine Creek	Big Rivers	(08) 8976 1268 17626
4/01/2023	4/01/2023	Confirmed	Physiotherapy	Umbakumba (Groote Eylandt)	East Arnhem	8987 6772 555
5/01/2023	5/01/2023	Confirmed	Obstetrics and Gynaecology	Beswick (Wugularr)	Big Rivers	(08) 8975 4527, (08) 8975 4348 581
5/01/2023	5/01/2023	Confirmed	Obstetrics and Gynaecology	Barunga (Bamyili)	Big Rivers	(08) 8975 4164, (08) 8975 4509 580
5/01/2023	6/01/2023	Confirmed	Respiratory	Alice Springs	Central	(08) 8951 7777 10219
5/01/2023	7/01/2023	Confirmed	Gastroenterology	Alice Springs	Central	(08) 8951 7777 10219
5/01/2023	6/01/2023	Confirmed	Gastroenterology	Alice Springs	Central	(08) 8951 7777 10219
6/01/2023	12/01/2023	Confirmed	Sexual Health	Alice Springs	Central	(08) 8951 7777 10219
8/01/2023	15/01/2023	Confirmed	Surgery (Neurosurgery)	Darwin	Top End	(08) 8922 8888 290
9/01/2023	10/01/2023	Confirmed	Ophthalmology	Nhulunbuy (Gove)	East Arnhem	(08) 8987 0211 16222
9/01/2023	11/01/2023	Confirmed	Surgery (Vascular)	Alice Springs	Central	(08) 8951 7777 10219
9/01/2023	15/01/2023	Confirmed	Medical Retrieval	Alice Springs	Central	(08) 8951 7777 10219
9/01/2023	13/01/2023	Confirmed	Optometry	Tennant Creek	Barkly	(08) 8962 2633 18869
9/01/2023	11/01/2023	Confirmed	Mental Health	Wurrumiyanga (Nguui)	Top End	(08) 8978 3984 400
9/01/2023	12/01/2023	Confirmed	Mental Health	Wurrumiyanga (Nguui)	Top End	(08) 8978 3984 400
9/01/2023	13/01/2023	Scheduled	Pharmacy	Tennant Creek	Barkly	(08) 8962 4399 18869
9/01/2023	9/01/2023	Confirmed	Physiotherapy	Gunyangara (Marngarr, Ski Beach)	East Arnhem	8987 3800 514
10/01/2023	10/01/2023	Confirmed	Obstetrics and Gynaecology	Ngukurr (Roper River)	Big Rivers	(08) 8975 4351, (08) 8974 4310 633
10/01/2023	10/01/2023	Confirmed	Obstetrics and Gynaecology	Katherine	Big Rivers	(08) 8971 0044 14071
10/01/2023	10/01/2023	Confirmed	Obstetrics and Gynaecology	Yandijarra	Central	(08) 8956 4000 198

The specific circumstances in the NT have led to the NT Government and key organisations and networks calling for the federal program funding models to be reformed.

Across numerous federal program areas and bi-lateral and multi-lateral processes– the NT has called for a change to needs-based funding to address the failure of population-based models for the NT.

Population based models, are a mismatch to the nature and extent of needs. This includes the needs of people with disability in the NT – including the logistics and cost of meeting needs throughout the NT including remote and very remote community locations.

²⁰ Northern Territory Government, ‘Meet with a visiting medical service’, online at: <https://nt.gov.au/wellbeing/remote-health/meet-visiting-service>

Being a person with disability in the NT involves being adversely impacted by fiscal federalism, competitive federalism, and inter-governmental relations.

These mechanisms are often failing to deliver what is required in support of Aboriginal and non-Aboriginal people with disability in the NT including children, youth, adults and older people.

Recommendation 3: Needs based funding -obligations to people with disability in the NT

Population based funding related to fiscal federalism is not delivering the resources and facilitation necessary to meet Australia's obligations to people with disability in the NT. This applies to Aboriginal and non-Aboriginal people across the age spectrum from newborns to children, youth, adults, and older people with disability.

This is a major systemic weakness requiring substantially more effort to move to needs-based funding to substantially increase resource allocations to address the needs of people with disability in the NT.

3.3. Need for adequate and reliable statistics about disability in the NT

Although the federal Census includes information collection about whether a person has a need for assistance with core activities due to a long-term health condition, a disability or old age, the definition of 'core activities' is specific.²¹ It refers to activities which are essential to everyday living: self-care, mobility, and communication. The ABS explains that this "aims to identify people with more severe forms of disability that need personal support, rather than being a broad measure of people with a disability".²²

By comparison the Australian Bureau of Statistics Survey of Disability, Ageing and Carers ('SDAC') aims to collect a broader range of information about people with a disability including levels of severity. The ABS recommends the SDAC as 'the recommended source of disability prevalence data in Australia.'²³

However, unfortunately the SDRC is not sufficient for the NT.

3.3.1 Survey of Disability, Ageing and Carers in the NT

The NT Disability Strategy 2022-2032 notes that the ABS Survey of Disability, Ageing and Carers ('SDAC') figures²⁴ indicate that there are about 20,500 people with disability in the NT, and that with a population

²¹ABS Detailed Methodology, Understanding Disability Statistics, the Census and Survey of Disability, Ageing and Carers, online at: <https://www.abs.gov.au/statistics/detailed-methodology-information/information-papers/understanding-disability-statistics-census-and-survey-disability-ageing-and-carers>

²² Ibid.

²³ Ibid.

²⁴ Australian Bureau of Statistics. "Disability, Ageing and Carers, Australia: Summary of Findings." ABS, 2018, <https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/latest-release>

of about 250,000 this gives a prevalence rate of about 11.7% or around 1 in 9 (see the table 'People with disability by state or territory of usual residence – 2018, below').²⁵

The Strategy also notes that due to methodological limitations the figures are likely to be an underestimate.²⁶

People with disability by state or territory of usual residence - 2018 Download

State or territory of usual residence	2015			All with reported disability 2018		
	'000	%	RSE of Estimate (%)	'000	%	RSE of Estimate (%)
New South Wales	1372.4	18.1	2.3	1346.2	16.9	2.0
Victoria	1098.8	18.5	2.1	1098.2	17.0	2.2
Queensland	859.0	18.3	3.2	938.1	19.1	2.6
South Australia	382.7	22.9	2.4	332.5	19.4	5.7
Western Australia	362.7	14.6	3.1	411.5	16.4	2.5
Tasmania	131.7	25.8	2.8	140.1	26.8	6.2
Northern Territory	20.7	11.7	5.9	20.7	11.6	13.8
Australian Capital Territory	62.0	16.2	3.4	80.0	19.4	6.1
Total	4290.1	18.3	1.1	4367.2	17.7	1.2

In our submission the SDAC is highly questionable for the NT even though the ABS refers to the SDAC as:

“... the most detailed and comprehensive source of Australian disability data ...[and as].. the recommended source of data for providing accurate disability prevalence rates and is designed to measure and provide data on the entire spectrum of disability.”²⁷

The strange relativities in the SDAC statistics, with the NT being shown to have a lower prevalence rate than the Australian Capital Territory (being the next lowest with a prevalence rate of 16.2%), and Tasmania (with the highest prevalence rate of 28.8%) - strongly indicate methodological problems with the SDAC for the NT.

The SDAC methodology:

- involved a survey questionnaire part of which was offered to the primary carer to complete themselves, and
- the SDAC excluded:
 - very remote areas
 - discrete Aboriginal communities

²⁵ Northern Territory Government, 'Northern Territory Disability Strategy 2022-2032', accessed at: https://tfhc.nt.gov.au/_data/assets/pdf_file/0020/1124183/disability-strategy.pdf, 7

²⁶ Ibid, note 2, p. 26

²⁷ ABS, Understanding disability statistics in the Census and the Survey of Disability, Ageing and Carers An explanation of disability data available in the Census and other ABS sources, 27 July 2022, at: <https://www.abs.gov.au/statistics/detailed-methodology-information/information-papers/understanding-disability-statistics-census-and-survey-disability-ageing-and-carers>

- homeless hostels
- correctional institutions, and
- sources of data other than private dwellings, self-care retirement and health establishments providing long term care (over 3 months).²⁸

The 2018 SDAC was funded by several jurisdictions and aimed to deliver national data and data for these jurisdictions.²⁹

The methodology very likely produced a high level of un-enumeration of people with disability in the NT, attributable to:

- the exclusions
- the questionnaire and method of completion, and
- potentially higher rate of private dwelling non-participation due to demographic factors.

The NT Anti-Discrimination Commissioner has expressed concerns that factors relating to the cultural interface may have been a barrier including under-diagnosis of disability, non-labelling of disability in Aboriginal cultures, and communication issues.³⁰ The limitations have also been highlighted in work by a team at the University of Melbourne.³¹

Further, a highly credentialed and detailed study of three Indigenous communities (two in South Australia and one in Victoria), found that:

“.... the prevalence of disability at the three case study locations ... found that poor health and disability are major issues facing the Indigenous populations in these areas. Moreover, government data has not accurately captured the prevalence of impairment and disability in the Aboriginal population, nor the level of need for assistance. It also does not capture the complexity of disabling impairments or health conditions. Co-morbidities are common among the Indigenous populations studied. The study found that people were often hesitant to access disability services outside their family networks, as this tended to result in interference in their life and a loss of personal control.”³²

²⁸ Ibid, Explanatory notes – how the data is collected, at: <https://www.abs.gov.au/methodologies/disability-ageing-and-carers-australia-summary-findings/2018>

²⁹ “The 2018 SDAC was designed to provide reliable estimates at the national level and at the state level for each of the funding states (New South Wales, Victoria, Queensland, Western Australia). “: see ABS SDAC, ‘Accuracy’, in Quality declaration summary, online at: <https://www.abs.gov.au/methodologies/disability-ageing-and-carers-australia-summary-findings/2018>

³⁰ NT Anti-Discrimination Commissioner [Submission 88](#) to the Senate Standing Committee on Community Affairs, inquiry into the Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities.

³¹ Zoe Aitken, Nicola Fortune, Lauren Krnjacki, Samia Badji, George Disney, Anne Kavanagh, Methodology Paper Identification of people with disability in linked administrative data, University of Melbourne, 9 December 2021, pp. 5 & 12, online at: <https://ndda.dss.gov.au/wp-content/uploads/2022/12/identification-people-disability-linked-administrative-data-methodology-paper-1.pdf>

³² Elizabeth Grant, George Zillante, et.al, (2017) Lived experiences of housing and community infrastructure among Indigenous people with disability, Australian Housing and Urban Research Institute, Final Report No. 283. Available at: <https://www.ahuri.edu.au/sites/default/files/migration/documents/AHURI-Final-Report-283-Housing-and-Indigenousdisability-lived-experiences-of-housing-and-community-infrastructure.pdf>

3.3.2 NT and Commonwealth statistics including administrative data

Indicators of a much higher percentage of people with disability in the NT population are available via a range of sources including health data and NT and federal administrative data, for example:

- **Health data** – The recent NT Department of Health submission to the Joint Standing Committee on NDIS Inquiry into Capability and Culture, noted that:

“The NT population’s burden of disease per person is 80 percent higher than the total Australian population. The NT’s population has the lowest health outcomes in Australia, high levels of social disadvantage and many people live with the burden of disease. Most Territorians with these challenges are Aboriginal people”.³³

Reference can also be made to the National Aboriginal and Torres Strait Islander Health Survey, conducted by the ABS (last release 2019):³⁴

- The NATSIHS 2018–19 ‘collected data for those aged 15 and over on a broad definition of disability (that is, those reporting a limitation, restriction, impairment, disease or disorder that has lasted, or is expected to last, for six months or more that restricts everyday activities)’
- ‘In 2018–19, of Indigenous Australians aged 15 and over, 46% (248,100) reported they had a disability or restrictive long-term health condition, similar to the proportion reported in the 2014–15 National Aboriginal and Torres Strait Islander Social Survey (45%).....
- Around 9% (47,500) of Indigenous Australians aged 15 and over had a profound or severe core activity limitation with at least one activity of everyday living (self-care, mobility or communication) and 17% (93,300) reported a moderate or mild core activity limitation. A further 7% (38,100) reported they had a disability or restrictive long-term health condition that only restricted their engagement with school and/or employment activities
- After adjusting for differences in the age structure between the two populations, Indigenous Australians were 1.5 times as likely as non-Indigenous Australians to have a disability or restrictive long-term health condition (51% and 34%, respectively) and 2.6 times as likely to have a profound/severe core activity limitation (10% and 4%, respectively)’³⁵
- Almost four in 10 (38%) Aboriginal and Torres Strait Islander people reported they had a disability, and
- Eight per cent had a profound or severe disability

³³ Submission number 32, dated 14 October 2022, online at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/CapabilityandCulture/Submissions

³⁴ Australian Bureau of Statistics. "National Aboriginal and Torres Strait Islander Health Survey." ABS, 2018-19, <https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/national-aboriginal-and-torres-strait-islander-health-survey/latest-release>.

³⁵ Australian Institute of Health and Welfare and the National Indigenous Australian Agency, Aboriginal and Torres Strait Islander Health Performance Framework, Tier 1, Health Status and Outcome, 1.14 Disability, online at: <https://www.indigenoushpf.gov.au/measures/1-14-disability>

Additionally, the National Aboriginal and Torres Strait Islander Legal Service ('NATSILS') submission to the Royal Commission noted that:

"Some forms of disability are reported to be more prevalent in Aboriginal and Torres Strait Islander children and young people than their non-Indigenous counterparts. For example, Aboriginal and Torres Strait Islander children and young people are 12 times more likely to have a hearing impairment than non-Indigenous children and young people. The Australian Bureau of Statistics reports that 43% of Aboriginal and Torres Strait Islander people have hearing loss, this number is higher (59%) for people living in remote areas.²⁵ Aboriginal and Torres Strait Islander children are also more likely to be born with FASD and almost a third of Aboriginal and Torres Strait Islander adults experienced high levels of psychological distress, more than twice the rate of non-Indigenous people."³⁶

- **Child protection notifications** – NT Children's Commissioner Nicole Huck gave evidence to the Royal Commission that in 2019-2020 Territory Families received 25,500 child protection notifications of which 80% were notifications of Aboriginal children and young people. Of the total notifications, 19% had a recorded disability and 81% had recorded 'no disability', noting that:

'... this data is presented with caution as it is Territory Families data and it is understood that current (sic.) category titled 'no disability' does not sufficiently disaggregate between a child confirmed as not having a disability, and where there has been no inquiry of confirmation of disability for a child'³⁷

- **Corrections** – the Aboriginal Medical Services NT ('AMSANT') submission to the Royal Commission Response to the Criminal Justice System Issues Paper, included the following:

"In the NT, Aboriginal people are imprisoned at higher rates than anywhere else in the nation, comprising 84% of the adult prison population in 2018, compared to a national average of 28% (ABS 2018). This trend is even starker among the youth detention population where over 95% of young people sentenced or remanded in custody are Aboriginal on any given day [³⁸]. More often than not, these children and adults have experienced complex trauma and/or are living with a cognitive impairment, mental health condition or other disability. In order to understand why this is the case, we must understand the particular context of the NT."³⁹

- **NDIS** – in November 2022, DCLS summarised NDIS statistics for the NT in the DCLS submission to the Joint Standing Committee on the NDIS. For example, we noted that:

³⁶ NATSILS Submission to the Disability Royal Commission's Criminal Justice Issues Paper, May 2020 p. 12, online at: <https://www.natsils.org.au/wp-content/uploads/2020/12/7-May-2020-NATSILS-Submission-to-the-DRC-Legal-System-Issues-Paper-a036.pdf>

³⁷ Submission dated 27 November 2020, paras 38-40, quote at para 40, online at: <https://disability.royalcommission.gov.au/publications/exhibit-8-025-stat022400010001-statement-assistant-childrens-commissioner-nicole-huck-northern-territory>

³⁸ Reference in the original to: Refer to the Territory Families Youth Detention Census: <https://territoryfamilies.nt.gov.au/youthjustice/youth-detention-census>

³⁹ The AMSANT submission was echoed by other submissions including the Darwin Community Legal Service Submission, < <https://disability.royalcommission.gov.au/system/files/submission/ISS.001.00092.PDF>>

“In June 2022, the proportion of Aboriginal and Torres Strait Islander NDIS participants reached 50.4% in the NT⁴⁰ which compared with Aboriginal and Torres Strait Islander people making up 26.3% of the NT population.”⁴¹

Also, that 40.5% of NDIS participants in the NT were located in remote or very remote areas, the rest (55.9%) in Darwin being the only centre in the NT with a population over 50,000 people.⁴²

Table M.13 Participant profile per quarter by remoteness – Northern Territory ^{734 735}

Participant profile	Prior Quarters		2021-22 Q4		Total	
	N	%	N	%	N	%
Major cities	<11		<11		<11	
Population > 50,000	2,693	56.9%	127	55.9%	2,820	56.9%
Population between 15,000 and 50,000	<11		<11		<11	
Population between 5,000 and 15,000	<11		<11		<11	
Population less than 5,000	53	1.1%	<11		61	1.2%
Remote	944	19.9%	69	30.4%	1,013	20.4%
Very Remote	1,043	22.0%	23	10.1%	1,066	21.5%
Missing	<11		<11		<11	
Total	4,736	100.0%	227	100.0%	4,963	100.0%

Figure M.4 Number and proportion of remote/very remote participants over time incrementally (left) and cumulatively (right) – Northern Territory ^{736 737}



Figure 5: Tables M.13 participant profile per quarter by remoteness – Northern Territory and M.4 Number and proportion of remote/very remote participants over time.¹⁴

The DCLS submission also noted that:

“...there are concerning patterns in the outcome of access requests by disability. That is, there was a substantially lower rate of positive decisions in the first three quarters of 2021/22 for:

- Other sensory/speech (only 45% accepted),
- Other disabilities (only 56% accepted), and
- Other physical disabilities (only 61% accepted)

⁴⁰ NDIS Quarterly Report to disability ministers 30 June 2022, Appendix M, Northern Territory, Table M.8, p. 723, <https://www.ndis.gov.au/about-us/publications/quarterly-reports>

⁴¹ Australian Bureau of Statistics (1 July 2022), Northern Territory: Aboriginal and Torres Strait Islander population summary, ABS Website. 26.3% represented 61,000 people.

⁴² Ibid, DCLS submission, p. 12

With 'Other physical disabilities' declining further in the fourth quarter (only 48% accepted) and the other two declining to less than 11 access requests met resulting in no acceptance rate being reported⁴³....

Service providers are aware of the chronic shortage of allied health therapists and a range of other professional services required by people with a disability in the NT. This among other things, results in long waiting times for assessments related to NDIS applications and planning processes."⁴⁴

- **Adult guardianship** – as noted in the January 2019 DCLS submission to the Australian Guardianship and Administration Council ⁴⁵

"The NT faces specific challenges in relation to culture, disadvantage and lack of services:

- The Northern Territory has the highest per capita guardianship orders with the majority (75%) under public guardianship;
- Aboriginal people are disproportionately represented (over 50% of new applications vs 26% of the population);
- Most Aboriginal representation is often under state guardianship (78%);
- High incidence of disability and profound disability, particularly among the Aboriginal population;
- Existing high levels of vulnerability and disadvantage with special needs groups comprising 43% of the population, more than 10 times the national average.⁴⁶

⁴³ NDIS Quarterly Report to disability ministers 30 June 2022, Appendix M, Northern Territory, Table M.8T, p. 722, <https://www.ndis.gov.au/about-us/publications/quarterly-reports>

⁴⁴ Op. cit, DCLS submission, p. 10

⁴⁵ DCLS submission 25 January 2019, Maximising the participation of the person in guardianship proceedings – Draft guidelines for Australian tribunals, to the Australian Guardianship and Administration Council (AGAC), online at: <https://www.agac.org.au/assets/images/190125-Darwin-Community-Legal-Service.pdf>

⁴⁶ Alistair McLaren, Alternative Law Journal, 2018 43(2), The Northern Territory's adult guardianship scheme: Depriving the vulnerable of a voice, 113. Also see, for example Northern Territory Office of the Public Guardian Submission to the Joint Standing Committee on the National Disability Insurance Scheme, Scheme Implementation and Forecasting Inquiry, February 2022, online at: https://publicguardian.nt.gov.au/sites/default/files/2022_-_submission_to_joint_standing_committee_ndis_scheme_implementation_and_forecasting_final_report.pdf p. 1

Others source of administrative data relating to disability in the NT include:

NT	Commonwealth
<ul style="list-style-type: none"> • Territory Families • Territory Housing • Hospital admissions • Mental health • Corrections • Courts and Tribunals • Agencies receiving NT funding for relevant services 	<ul style="list-style-type: none"> • Department of Social Services e.g <ul style="list-style-type: none"> ○ Payment type – number -NT etc⁴⁷ ○ Income Management – NT⁴⁸ ○ Cashless Debit Card NT⁴⁹ ○ Disability Employment Services Monthly data • National Disability Insurance Agency • Department of Veterans Affairs • Department of Health • Agencies receiving federal funds for relevant services

Recommendation 4: Disability prevalence data to be upgraded for NT

That the Commonwealth and NT:

- undertake a full review and compilation of available data relating to the prevalence, nature and needs of people with disability in the NT
- provide an informed and authoritative re-estimate in substitution for the limitations of ABS SDAC statistics relating to disability in the NT
- establish and maintain a disability data dashboard for the NT which provides access, in one location, to publicly available statistics and indicators relating to people with disability in the NT

3.4 Aboriginal people with disability in the NT

As noted above, official figures about the number of people with disability and Aboriginal people with disability in the NT are likely to substantially underrepresent the true numbers.

However, there is no doubt that Aboriginal people in the NT experience disability at a substantially higher level of prevalence. This is also apparent from NDIS statistics with 2,611 (50.4)% of NDIS participants in the Northern Territory identifying as Indigenous⁵⁰ compared to 7.4% nationally.⁵¹

⁴⁷ Department of Social Services, DSS Payment Demographic Data, online at: <https://data.gov.au/data/dataset/dss-payment-demographic-data>

⁴⁸ Department of Social Services Data Sets: online at: <https://data.gov.au/data/organization/departments-of-social-services>

⁴⁹ Ibid.

⁵⁰ NDIS Quarterly Reports, NT Quarterly Report Dashboard, September 2022, online at: <https://www.ndis.gov.au/about-us/publications/quarterly-reports>

⁵¹ NDIS Quarterly Reports, National Quarterly Report Dashboard, September 2022, online, ibid.

The nature of disadvantage for Aboriginal people living with a disability, especially Aboriginal people living in remote communities, reflects intersectional, or 'double disadvantage'.⁵²

Scott Avery has noted that:

'..to fully understand the unique experiences of Aboriginal and Torres Strait Islander with disability, the research must recognise that they are a discrete group at an intersection of two marginalised populations..... Indigenous people who live with disability experience far greater inequality when it comes to social, health and well-being, compared to other population groups.'⁵³

That is, Aboriginal and Torres Strait Islander people are a discrete group at an intersection of racism and ableism. The NT Justice Agreement Implementation Strategy 2021-2027, notes that

"At every consultation to inform the development of the Agreement, participants identified systemic racism as a factor contributing to the high levels of disadvantage and the over-representation of Aboriginal people in the justice system.

....

Systemic racism is recognised as a major barrier to overcoming Aboriginal disadvantage and improving outcomes for Aboriginal people not just in the justice system but in relation to health, education, employment and all areas of life.'⁵⁴

This focus accords with the National Closing the Gap Agreement, preambular para 2 of which expresses experiences of 'entrenched disadvantage, political exclusion, intergenerational trauma and ongoing institutional racism'.⁵⁵

⁵² Lester Bostock, 'The Meares Oration: access and equity for people with a double disadvantage.' (1991) 2, Australian Disability Review, 3-8, and online at: https://fpdn.org.au/wp-content/uploads/2020/12/Bostock_1991.pdf

⁵³ Scott Avery., (2018) 'Culture is Inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability'. First Peoples Disability Network (Australia), p35.

⁵⁴ Northern Territory Aboriginal Justice Agreement Implementation Plan 2021–2027 Aim 3: Improve justice responses and services for Aboriginal Territorians, p. 33, online at: https://justice.nt.gov.au/_data/assets/pdf_file/0005/1034627/northern-territory-aboriginal-justice-agreement-implementation-strategy-2021-2027.pdf

⁵⁵ National Agreement on Closing the Gap, between all Australian Governments and the Coalition of Peaks, July 2020, online at: <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap>



CLOSING THE GAP

Partnership

Joint Council

National Agreement ▼

Implementation I

1. PREAMBLE

1. The Parties to this National Agreement on Closing the Gap (the Agreement) begin by acknowledging the Traditional Owners of the lands and waters on which Australians live and work, and pay respects to their Elders past, present and emerging.
2. The Parties also acknowledge the strength of Aboriginal and Torres Strait Islander people in sustaining the world's oldest living culture. Aboriginal and Torres Strait Islander people and their cultures have prevailed and endured despite too many experiencing entrenched disadvantage, political exclusion, intergenerational trauma and ongoing institutional racism.

For Aboriginal people with disability in remote communities, the intersections of racism and ableism can be present in, and compounded by, structures and approaches that have historically, and are still - withholding:

- Power and accountability
- Respect for Aboriginal cultures and treating culture, cultural obligations, and needs as peripheral
- Respect for languages, and treating the language skills of Aboriginal people for whom English is a second third or fourth language – as problematic
- Resources needed to:
 - end endemic poverty
 - overcome health disparities
 - overcome homelessness, address housing habitability, supply, and suitability
 - address education needs
 - achieve communications coverage, and
- Resources, control, and autonomy for economic inclusion, access to employment including supported employment

That is, Aboriginal people with disability in the NT, particularly those living in remote areas, experience a multiplicity of disadvantages including discrimination around: location, language, culture, income and employment, housing, education, and employment.

These factors compound and inter-relate leading to concerns along every measurable wellbeing metric. As Damian Griffis, CEO of the First Peoples Disability Network (FPDN) notes:

“Change can’t happen for our people with disability without recognising the systemic barriers, such as poverty, for Aboriginal people with disability.”⁵⁶

⁵⁶ Damian Griffis, CEO First Peoples Disability Network Australia from. Accessible at: <https://fpdn.org.au/damian-griffis-on-rn-breakfast/>, accessed on 8 November 2022.

These factors significantly affect the level of care and safety experienced by people with disability in the NT especially in remote and very remote communities. Further, Aboriginal people with disability in remote areas are at a greatly elevated risk of experiencing violence, abuse, neglect, or exploitation.

Case Study	Client A
Brief outline	Client A is an Aboriginal person, who lives in a remote NT community. One of A's family members is his carer. This family member receives carer payments from Services Australia. A became isolated when his carer left community, and it was unclear to A when the carer would return. A had difficulty notifying anyone of the situation. He was unsure how to seek help without harming family relationships and cultural obligations, as the carer was a family member. Client A was without a carer for 6 months until a new carer nominated.
Analysis	Illustrative of the need for community owned and community led culturally accessible, safe responses for Aboriginal people with disability in remote and very remote communities in the NT.

The priorities in the NT Disability Strategy 2022-32 include:

“Increase the choice of quality, culturally competent disability service providers across the Territory: a strong local disability workforce of skilled, local workers, an enhanced role for Aboriginal Community Controlled Organisations in the provision of disability services; culturally competent disability services; choice of services in rural and remote areas so that living outside of Darwin doesn't pose a disadvantage in terms of accessing services.”⁵⁷

Recommendation 5: Aboriginal community owned and led safety and wellbeing in the NT

That a principled approach be implemented in support of Aboriginal community owned, community led and community empowering, culturally safe responses to violence, abuse, neglect, and exploitation impacting Aboriginal people in the NT.

There has been little direct research into rates of violence, abuse, neglect, and exploitation affecting Aboriginal people with a disability living in remote and very remote areas. It is however known that Aboriginal people across Australia experience violence at a rate that is approximately 10 times that of the general population and that these numbers are increased by figures from remote and very remote areas.⁵⁸

There is a significantly higher chance than the national average, that a First Nations person with disability will experience violence/abuse/neglect/exploitation.⁵⁹

⁵⁷ NT Disability Strategy 2022-2032, p. 19, online at:

https://tfhc.nt.gov.au/data/assets/pdf_file/0020/1124183/disability-strategy.pdf

⁵⁸ Op. cit., Temple et.al, p1.

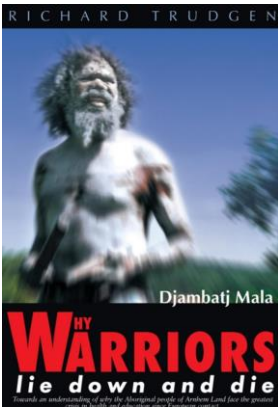
⁵⁹ Angeline Ferdinand et.al., (2019) Understanding Disability through the Lens of Aboriginal and Torres Strait Islander People, Melbourne Centre for Population and Global Health, Centre for Health Policy, University of Melbourne, p. 31 drawing on the Australian Bureau of Statistics, National Aboriginal and Torres Strait Islander Social Survey ('NATSISS'), online at: <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4714.0>

The research that has occurred in the disability field has not been specific to remote or very remote communities but still indicates a trend towards high levels of harm for First Nations people with disability. As noted by Temple et al:

‘In 2014–15, 17% of Aboriginal and Torres Strait Islander people aged 15–64 with disability experienced an instance of physical violence compared with 13% of those with no disability. Approximately 22% of those with a profound or severe disability reported experiencing the threat of physical violence.’⁶⁰

Client B	
Brief outline	Client B is an Aboriginal person, who lives in a remote community and suffers regular epileptic seizures. When this happens, B’s family believes that a spirit has possessed him and that they are able to drive the spirit away by hitting him with shoes. A visiting medical officer noticed this behaviour and worked with the family to stop hitting him.
Analysis	Illustrative of the need for contextualised support which <ul style="list-style-type: none">• extends assistance across the cultural interface• increases the wellbeing of people with disability, and• increases information and resources for carers, families, and communities.

⁶⁰ Jeromey Temple et al, (2020) 20 1752, Physical violence and violent threats reported by Aboriginal and Torres Strait Islander people with a disability: cross sectional evidence from a nationally representative survey, BMC Public Health, p1.



Part of the Foreword (right) by Rev. Dr Gondara in *Why warriors lie down and die*, which introduces the themes of education through dialogue to educate Yolŋu (Aboriginal people of Arnhem Land) about Balanda (non-Aboriginal people) ‘and participate as equals’ and for Wamut (Richard Trudgen, the author) “..to speak to Balanda about the real situation we face”.⁶¹

From *Wämut’s* influence and the dialogue that occurred, ARDS moved away from political confrontation into education through dialogue. We started concentrating on finding ways to educate and train Yolŋu so that they could really understand the strange world of the Balanda and participate as equals.

That is why I asked *Wämut* to write this book. Many books and papers have been written about the Yolŋu of Arnhem Land. This one is very different. It is written out of the pain experienced by living with the suffering that is everyday life for Yolŋu. But *Wämut* has not stopped there. Out of this pain has grown something very valuable in the form of new understandings and a new way for Yolŋu to learn about the foreign Balanda world.

I wanted *Wämut* to speak to Balanda about the real situation we face in our lives every day, a reality that is hard for people of another culture to imagine. I wanted him to show Balanda the important role they have in helping Yolŋu break through the confusion that confronts us. In doing it, *Wämut* has used many stories told by the people over the years. He has used health and education as main themes to talk about how communication breaks down and why government programs fail. He then brings together what others have found across the world to show this is not just a Yolŋu or Aboriginal problem, but a problem that exists whenever cultures and languages collide. Then he shares some insights about the way forward.

So I invite you to read this book. In that way we can walk together for a while and discover a more common path to solve the problems we face.

Rev. Dr. Djiniyini Gondarra OAM

Political leader of the Golumala clan

Chief Executive Officer of Aboriginal Resource and Development Services Inc. (ARDS)

Member of the Council for Aboriginal Reconciliation.

March 2000

⁶¹ Richard Trudgen, *Why warriors lie down and die: towards an understanding of why the Aboriginal people of Arnhem Land face the greatest crisis in health and education since European contact: djambatj mala* (9th printing, 2010), Why Warriors Pty Ltd, Nhulunbuy

Safety policies and procedures are sometimes not applied as they should be. This is particularly so when oversight/regulation may be conducted by an organisation that is based hundreds, sometimes thousands, of kilometres away.

In some cases, reporting violence, abuse, neglect or exploitation may risk retaliation from carers, extended family, or other community members. In other cases, where abuse has been reported, there may be reluctance to prioritise the investigation by often under-resourced remote law enforcement.

Client C	
Brief outline	Client C is an Aboriginal person, and lives in a remote community and attends a community care centre. C has an intellectual disability. He loves singing on the karaoke machine but mispronounces the words due to his impairment. It is common for community members to assault him when this happens. For C to enjoy signing without being exposed to violence sufficient care workers are needed to manage the situation. This works well when care centre staff stand with him when he sings but the centre is not sufficiently resourced to do this every time and the violence occurs when C is not supported.
Analysis	Illustrative of the need for resources for required staff ratios for safety of people with disability, behaviour management, safety of staff and all and proper care and wellbeing.

The lack of services in remote NT forcing people with higher support needs to relocate to urban areas disproportionately impacts Aboriginal people. Children with disability and high support needs for instance may not be able to access the supports they need in community.

Regularly, this means that a family, or part of the family needs to relocate to a city away from their country, community, and support systems to access services. In other instances, it may mean that children are placed in voluntary out of home care arrangements in cities to access care.

Systemic advocacy by Aboriginal people with disability in communities could help provide momentum to:

- assist agencies and services to improve their regulatory mechanisms,
- direct services to areas of greatest need and
- increase combined efforts for improved support.

This may also bring forward solutions which already exist within communities but need to be shared with decisionmakers.

Government agencies, NGOs and other stakeholders should support Aboriginal people with disability to achieve these goals of improving on broad social and economic disadvantages.

Photos below are from the Maningrida community effort with the DCLS Seniors and Disability Rights Service to resolve the problem of no wheelchair lift at the airport for commercial flights



We are seeking a wheelchair lift from Air North such as the one pictured below.



Image 1: Aircraft wheelchair lift example

Case Study	Client D
Brief outline	Client D is an Aboriginal person who lives in a remote community. D receives meals supports from a service provider as part D's NDIS support package. A support worker regularly delivered food for D at the family home. Initially a family member would take the food at the front door to pass on to D inside. At some point the support worker who delivers the meals returned to the house, and saw that the family was eating the food with none given to D. This prompted further investigation which indicated that it was common for family (including the nominated carer) to consume food that was delivered for D and not necessarily share with D.
Analysis	<p>This situation may indicate different things. It is unclear whether D is being harmed or benefited. If D is participating willingly in reciprocal sharing, and potentially fulfilling obligations, the situation may be positive. However, if D is being abused and neglected through his food being taken from him, D could be at risk.</p> <p>A culturally safe, nuanced approach is needed to understand the situation, which would likely involve engaging D in a safe and supportive way, likely by Aboriginal workers (if they feel comfortable to do so), suitable to D.</p> <p>The situation may also illustrate complexity in assumptions (and reflect differing cultural assumptions) about how supports through NDIS or Aged Care Packaging should operate in remote community contexts</p>

Recommendations 6: Strategies to ensure safety and wellbeing must include lived experience leadership

Leadership by people with lived experience should be prioritised in strategies to address violence, abuse, neglect or exploitation of Aboriginal people with disability.

Recommendation 7: Valuing systemic community advocacy and activism

Efforts to ensure safety and wellbeing of people with disability should value systemic community advocacy and activism with groups and communities leading action for to achieve their solutions.

4. NDIS in the NT

DCLS has made many submissions regarding the operation of the NDIA and NDIS in the NT.

The most recent DCLS submission is dated 15 November 2022, being submission 49 to the Joint Standing Committee on the NDIA Inquiry into Capability and Culture of the NDIS (**'DCLS submission on NDIA**

“Recommendations

1. NDIA capability and culture need to fully adapt to the NT context to overcome implementation issues and ensure the NDIA is fit-for-purpose for the NT.
2. The NDIA needs to make itself a more attractive workplace, which includes truly valuing lived experience, responsiveness and effectiveness and resolving cultural and capability issues causing poor performance. [see 3.1.1]
3. The NDIA should ensure sufficient staff in the NT in client and community facing roles, including planner, who should have appropriate backgrounds and experience. [see 3.1.1]
4. Delegation of decision-making powers should be increased so relevant NDIA planning staff, can make decisions up to a higher amount. [see 3.1.1]
5. The regional/remote contact centres should be re-established. Additionally, to help cement reform it is important to unpack why a decision to use the National Call Centre for the NT was made, including identifying and critiquing the thought processes, and/or culture, involved. [see 3.1.2]
6. Investment into creating a better work environment, better training, and support for NDIA staff.
7. The NDIA should ensure appropriate staff in the NT to engage with Aboriginal people and clients from culturally and linguistically diverse backgrounds. This should ensure sensitivity of staff, planners, and LACs, for what is often experienced as a deeply personal and intrusive process. [see 3.1.4]
8. Written information and communications by the NDIA should be properly customised, be respectful, clear, accurate, reasoned and fit-for-purpose. [see 3.2.1]
9. NDIA workflows should be reviewed to correct processes which result in conflicting information to participants via separate channels. [see 3.2.2]
10. The NDIA processes should be revised to reduce the requirements to re-justify repeatedly and needlessly. [See 3.2.3]
11. The application processes for Home and Living support services, such as Supported Independent Living and Supported Disability Accommodation and regular NDIS planning processes should be streamlined and harmonised to avoid duplication. [See 3.2.3]

⁶² DCLS submission to the Joint Parliamentary Standing Committee on the NDIS reference on NDIS Capability and Culture, are online at:
https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/CapabilityandCulture/Submissions.

12. The National Contact Centre ('NCC') needs to be overhauled to address the multiple, wide-ranging issues and negative impacts. As noted previously [at Recommendation 5] the regional and remote contact centres should be re-established. [see 3.2.4]
13. The NDIA should provide a direct line via the NCC or separately, for advocates and lawyers to be able to make inquiries and receive information. [see 3.2.4]
14. NDIA communications and systems for invoice payments need to be substantially improved to provide clear, accurate and timely information. There should be increased flexibility to enable providers to call and talk about invoices before and after decisions. [see 3.2.5]
15. A standard is required to ensure that planning meetings are undertaken face to face, with NDIA physically present, to promote clear and effective communication. [see 3.3.1]
16. Planning in the NT should be undertaken by NDIA itself and NDIA staff planners. [see 3.3.1]
17. All client interactions should start with a stated intention and purpose of the call and providing option to defer to a call back. [see 3.3.2]
18. Additionally, standards should ensure that a participant is entitled to:
- Defer a meeting which hasn't been set up properly in advance without any adverse consequences.
 - Have sufficient notice to exercise their choice to have informal and/or formal support for the meeting, such as a friend, family member or advocate.
 - Be told the relevance of questions they are asked, what the information is for and how it may be used
19. The NDIA should undertake further consultations with disability sectors about the circumstances in which first-person participant statements are effective, the pre-conditions for this and areas for improvement. [see 3.3.2]
20. NDIS workflow should include providing a draft plan to participants after a planning discussion and allowing for conversation to make necessary changes or provide more evidence if needed. [see 3.3.3]
21. The NDIA should upgrade contact arrangements for more continuity in contact points, especially for and in relation to participants and should implement continuous casework approaches as much as possible. [see 3.3.3]
22. The standard of NDIA decision making must be addressed to overcome the causes and prevalence of arbitrary and incorrect decisions. [see 3.3.4]
23. A non-technical approach should be applied to planning which treats the participant's needs as paramount. This includes where a LAC does not ask for everything needed by the participant in a planning meeting – that issues were not raised at this point should not limit review or appeal options. [see 3.3.5]

24. The NDIA's capabilities must include being able to fully absorb, appreciate and properly consider material relating to people's disabilities and support needs and cease the pattern of bringing insufficient care, knowledge, and skill. [see 3.3.5]

25. A Guidance should be urgently developed and implemented for NDIA decision making to avoid the NDIA unnecessarily and inappropriately requesting that the client to obtain further substantiation for requested supports when these are already substantiated by material provided. [see 3.3.5]

26. The NDIA must apply standards which require staff to refer to the specific material/ evidence they rely on when writing and communicating their decisions. [see 3.3.6]

27. Internal review must be reformed to be fit for purpose where the purposes are responsiveness and good process to the rights of people with a disability under the NDIA Act. [See 3.4.1]

28. New purpose specific NDIA model litigant guidelines should be developed. [See 3.4.2]

29. The potential benefits and mechanisms for the NDIA and/or lawyers acting for the NDIA to be subject to penalties for breaching the model litigant guidelines should be undertaken. [See 3.4.2]

30. That this Committee and/or the Minister undertake a review of legislative options to ensure interim and emergency supports where required while an appeal is underway. [see 3.4.3]

31. An NT NDIS appeals advocacy and legal support plan is urgently needed for the NT. The plan should include:

- An immediate injection of funds for direct local access to specialist advocacy and legal support to for people appealing NDIS access, supports or related decisions.
- A funding model which reflects the rights and needs of participants in the NT which the 'blitz' of matters currently before the AAT is being worked on.
- A commitment for longer term planning, to develop model for NDIS advocacy and appeals support which reflects needs and the availability of multiple non-profits, including Aboriginal Legal Services and the Women's Legal Services in the NT to be incorporated ongoing. [see 3.4.4]

We urge the Royal Commission to review the submissions to the Capability and Culture Inquiry, including the DCLS submission, for insight in some of the most pressing problems with how the NDIA conducts its operations.⁶³

In the following section we focus on a range of areas where we are seeing the greatest effects of compounding aspects of disadvantage.

Recommendation 8: NDIA needs to be fit-for-purpose in the NT

NDIA capability and culture need to fully adapt to the NT context to overcome implementation issues and ensure the NDIA is fit-for-purpose for the NT. DCLS and

⁶³ DCLS submission, *ibid*.

many others have recently made submissions to the Joint Standing Committee on the NDIA about these issues, which in addition to evidence provided directly to the Royal Commission can help guide key required reforms

4.1 The NDIS must become culturally safe for Aboriginal people in the NT

As outlined earlier a high proportion of NT NDIS participants are Aboriginal people.

On 30 September 2022, 2,611 out of 5,181 (non-Early Childhood Approach ('ECA')) NDIS participants in the NT identified as First Nations Australians, constituting 50.4% of NT NDIS participants.⁶⁴

As outlined in the DCLS submission on NDIA Capability and Culture, the NDIS is yet to achieve culturally safe implementation and operation in relation to Aboriginal people in the NT.

Currently, the NDIS is often not achieving required flexibility and often does not accept lived experience as evidence for requests where people are the experts on their lives and needs.

Case Study	Client E
Brief outline	Client E, an Aboriginal person who is a NDIS participant, lives in a remote community. Client E wants to move back to his home community, which is not the community he is in now. E's home community has some but not all service provider infrastructure in place to fully support E's needs. E has a supportive family member in this community, who would be able to provide the supports for E to on regular 'Return to Country' visits to explore if E might be able to move there permanently. E's family member asks the NDIA if they, as a family member, can provide paid supports to E as part of his NDIS plan. The family member provides extensive evidence, including proof of the cultural needs of E, as well as economic participation in E's home community that he is not able to achieve anywhere else. The NDIA initially does not make a decision, and then makes an unfavourable decision. E and his family spend 12 months at the Administrative Appeals Tribunal, where they finally receive permission to set up E's family member as a paid support.
Analysis	Illustrative of NDIA being unwilling to adapt to NT Aboriginal cultural and community realities and applying an inaccessible process.

Case Study	Client F
Brief outline	Client F is a child with disability in a remote community. F received an NDIS plan, but F's family received no assistance in understanding the NDIS or the supports they may be able to access. After one year, F's plan is reviewed, and the funding is cut significantly, the NDIA reasoning that as it was underutilized the funding must not be necessary. F's family sought assistance in appealing this decision. In the internal review our service argued for funding for therapists to travel to F's community to provide early intervention supports. In the internal review meeting the IRO admitted to having no understanding of the location or attributes of F's

⁶⁴ NDIA NT Dashboard as at 30 September 2022. Accessed at: <https://www.ndis.gov.au/about-us/publications/quarterly-reports>, p1.

	community. The IRO decision confirmed the decision under review. The plan was still cut. F's family decided not to pursue the appeal further, as even though they have attempted to engage with the NDIS for over a year, they have not seen any benefits to F.
Analysis	<p>Illustrative of the failure of the NDIA to adapt to circumstances and needs of NDIS participants in remote Aboriginal communities in the NT.</p> <p>Illustrative of the NDIA failing Aboriginal children and families in the NT.</p> <p>Illustrative of systemic factors which compound disadvantage for people with disability in remote communities in the NT.</p>

Concerns about the NDIA needing to substantially improve cultural safety in the NT have been recently raised with the Joint Standing Committee on the NDIA in submissions by the Northern Territory Department of Health (copy of the relevant section below):

- Cultural safety

- The NDIA has a reputation for a lack of cultural safety and poor cultural responsiveness in the processes of pre-access, access, planning and review.
- Many Aboriginal clients who are involved with the NDIA have not had the process explained properly to them which means they do not know what their rights are, what they can access from NDIA, the name of their COS provider or how to contact them.
- Other issues around cultural safety include:
 - Poor interpreter utilisation
 - Insufficient Community Connector workforce
 - Lack of support for existing Community Connectors
 - Reliance on centralised call centre and generic email
 - Standardised assessments being completed out of context.

The NT Government has also raised concerns in a submission to the Joint Standing Committee⁶⁵

⁶⁵ NT Government Submission to the Joint Standing Committee on the National Disability Insurance Scheme (NDIS) - Capability and Culture of the National Disability Insurance Agency (NDIA), dated 27 October 2022, submission 89 online at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/CapabilityandCulture/Submissions

Recommendation 2:

There is a need to make changes to the operational guidelines on employing family members living in remote Aboriginal communities to assist in developing a community-based disability workforce.

Recommendation 3:

Culturally competent engagement by the NDIA through an increased number of local Aboriginal people employed in the Northern Territory NDIA offices.

Recommendation 4:

A culturally safe and responsive framework on service design and delivery across the NDIA is essential. This would be led by strong leadership and the collective goal of better outcomes for Territorians with disability.

Recommendation 5:

Plans need to be translated to community languages and use terminology that is accessible to people who speak Aboriginal languages. Goals included by NDIS planners need to align with the reality of life in remote communities.

Recommendation 9: NDIS cultural safety – A wide range of issues to be addressed in NT

A wide range of issues need to be addressed by the NDIA to enable culturally safe access and operation in the NT. This has been highlighted by numerous groups to the Royal Commission and to other inquiries including the Joint Parliamentary Standing Committee on the NDIA.

4.2 The NDIA failing other vulnerable people with disability in the NT

NDIA rules and how the rules are applied in practice, are often disadvantaging other vulnerable NDIS participants or prospective participants in the NT including people with disability:

- in SIL facilities
- in correctional institutions
- that are medically ready for discharge
- outside of metropolitan areas
- experiencing homelessness
- mental ill health

4.2.1 Increase quality and safeguarding Supported Independent Living ('SIL') in the NT

There is very limited quality and safeguarding for people in individual or group home environments accessing SIL in the NT.

The NDIS Quality and Safeguards Commission ('**NDIS Commission**') does not have the resources or ambit to monitor what happens in SIL houses in the NT.

Additionally, there is no alternative oversight such as the NT Community Visitor Program which provides a level of oversight for people receiving certain treatment under the Mental Health and Related Services Act 1998 (NT) and the Disability Services Act 1993 (NT).⁶⁶

The Joint Standing Committee on the NDIS Report on the Inquiry into Supported Independent Living, tabled on 13 May 2020⁶⁷ recommended that:

Recommendation 43

8.69 The committee recommends that the National Disability Insurance Agency, with the Quality and Safeguards Commission, develop and publish service standards specifically for the delivery of Supported Independent Living services.

Recommendation 44

8.70 The committee recommends that the National Disability Insurance Agency and the Quality and Safeguards Commission take a more active role in monitoring the quality of services in residences where Supported Independent Living is delivered, to ensure that participants and advocates can readily identify and address concerns with service quality

However, the response from the then Australian Government was effectively neutral, being: ⁶⁸

[Regarding Recommendation 43]

“Noted

The Government notes the NDIS Practice Standards and overarching regulatory activities are appropriate for the regulation of NDIS supports and services to NDIS participants, including in sharing or group living settings.”

[Regarding Recommendation 44]

“Noted

The Government notes that the NDIS Practice Standards and overarching regulatory activities are appropriate for the regulation of NDIS supports and services to NDIS participants, including in sharing or group living settings. The NDIS Commission performs an ongoing monitoring function through its complaints, reportable incidents and registration functions.”

⁶⁶ For an overview see the Community Visitor Program Annual Report 2021-2, online at: https://cvp.nt.gov.au/_data/assets/pdf_file/0003/1171362/cvp-annual-report-2021-2022.pdf; the CVP web site: <https://cvp.nt.gov.au/our-programs/mental-health> and the CVP submission to the Royal Commission 29 April 2021, at: https://cvp.nt.gov.au/_data/assets/pdf_file/0010/1057492/CVP-Submission-RC-Disability.pdf

⁶⁷ Online at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/IndependentLiving/Report

⁶⁸ Australian Government response to the Joint Standing Committee on the National Disability Insurance Scheme (NDIS) report: Inquiry into Supported Independent Living, dated 24 August 2020, pp. 15-16, online at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/IndependentLiving/Government_Response

In DCLS experience, providers are not always forthcoming with access to their SIL properties or facilitating client's rights. This includes instances where providers block or trivialise access.

Case Study	Client G
Brief outline	<p>Client G is an NDIS participant living in a SIL property organized by provider XYZ. G's first language is not English, and he does not have a mobile phone or means of contacting his DCLS advocate directly. G depends on XYZ staff to help set appointments.</p> <p>Part of G's advocacy matter relates to the conduct of service provider XYZ, including breaches of the NDIS Code of Conduct⁶⁹ and Restrictive Practices.⁷⁰</p> <p>XYZ consistently delays G's advocate's contact attempts. XYZ's property is based in a rural area, which incurs significant travel time, making unsuccessful visits a large drain on time and resources, but the only way to assist H.</p> <p>During the course of assistance, G's advocate also attended G's residence to find that XYZ had moved him to another rural property in a different area, without informing G's advocate of this move.</p>
Analysis	<p>Current mechanisms are insufficient to ensure SIL providers are fulfilling their obligations towards clients and additional means of oversight and intervention are required. Current complaint and oversight is not sufficient in the NT.</p>

Recommendations 10: Introduce visitor and/or audit scheme for SIL facilities in the NT

Introduce a visitor and/or or regular audit scheme for the NDIS Commission or advocates to regularly attend and monitor SIL facilities.

Explore synergies with the NT Community Visitor Program which has been operating successfully and effectively since 2001.

Recommendation 11: Upgrade NDIS Commission escalation process in the NT

Upgrade the NDIS Commission escalation processes in the NT to enable the NDIS Commission to act quickly in situations of suspected abuse, neglect, violence, or exploitation by service providers.

⁶⁹ NDIS Code of Conduct Guide for Service Providers, March 2019, online at <https://www.ndiscommission.gov.au/about/ndis-code-conduct>

⁷⁰ NDIS Restrictive Practices Rules and Guides, online at: <https://www.ndiscommission.gov.au/providers/understanding-behaviour-support-and-restrictive-practices-providers>

4.2.3 People with disability in correctional institutions in the NT

People with disability in prisons and youth detention (including those on remand) in the NT are not adequately supported to access the NDIS or NDIS supports.

The North Australian Aboriginal Justice Agency ('NAAJA'), Aboriginal Peak Organisation NT, Aboriginal Medical Services NT and NT Legal Aid Commission and all organisations centrally involved in implementing the NT Aboriginal Justice Agreement are key sources in relation to these issues.

NAAJA's 2013 submission to the Australian Human Rights Commission, in response to Issues Paper: April 2013 'Access to justice in the criminal justice system for people with disability' provides important and still highly pertinent background.⁷¹

The DCLS Seniors and Disability Rights Service has also been working in this space and is concerned in collaboration with many other human rights focused collaborators) about the continuing, complex and often diabolical issues about trying to support and assist youth detainees and adults in prisons in relation to the NDIS access, planning, supports and changing circumstances, including release.

DCLS made a submission to the Royal Commission about this in response to the Criminal Justice System Issues Paper,⁷² which highlighted high rates of disability both diagnosed and undiagnosed among youth and adult in detention and prisons in the NT and major issues relating to the NDIS. Many other rights focused stakeholders also made submissions, raising similar concerns.⁷³

This is a grave issue in the NT which has the highest adult imprisonment rate in Australia and the second highest adult Aboriginal imprisonment rate, behind Western Australia (see tables below)⁷⁴ The NT has the highest juvenile detention rates in Australia (see tables below)⁷⁵ the high majority of whom are Aboriginal.

⁷¹ Available [here](#) on the Human Rights Commission web site

⁷² Darwin Community Legal Service Submission in Response to the Criminal Justice System Issues Paper, by the Royal Commission into Violence, Abuse, Neglect, and Exploitation of people with Disability, published 20 March 2020 ('DCLS 2020 submission'), online at: <https://disability.royalcommission.gov.au/publications/iss00100092>

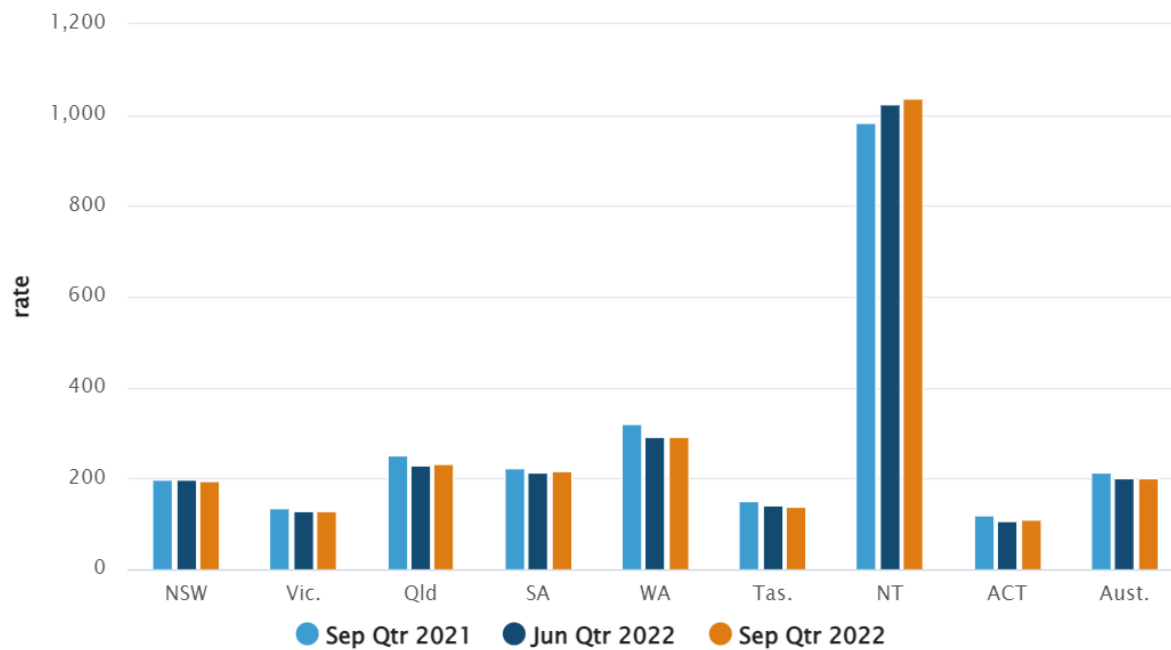
⁷³ NATSILS Submission to the Disability Royal Commission's Criminal Justice Issues Paper, May 2020 p. 12, online at: <https://www.natsils.org.au/wp-content/uploads/2020/12/7-May-2020-NATSILS-Submission-to-the-DRC-Legal-System-Issues-Paper-a036.pdf>; Megan Donahoe, Solicitor with the North Australian Aboriginal Justice Agency specialising in mental health law, evidence, to hearing 27, Conditions of Detention in the criminal justice system, 23 September 2022, Perth: <https://disability.royalcommission.gov.au/publications/public-hearing-27-conditions-detention-criminal-justice-system-perth-day-4>

⁷⁴ Australian Bureau of Statistics, (Sep-quarter-2022) *Corrective Services, Australia*, online at:

<https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/latest-release>

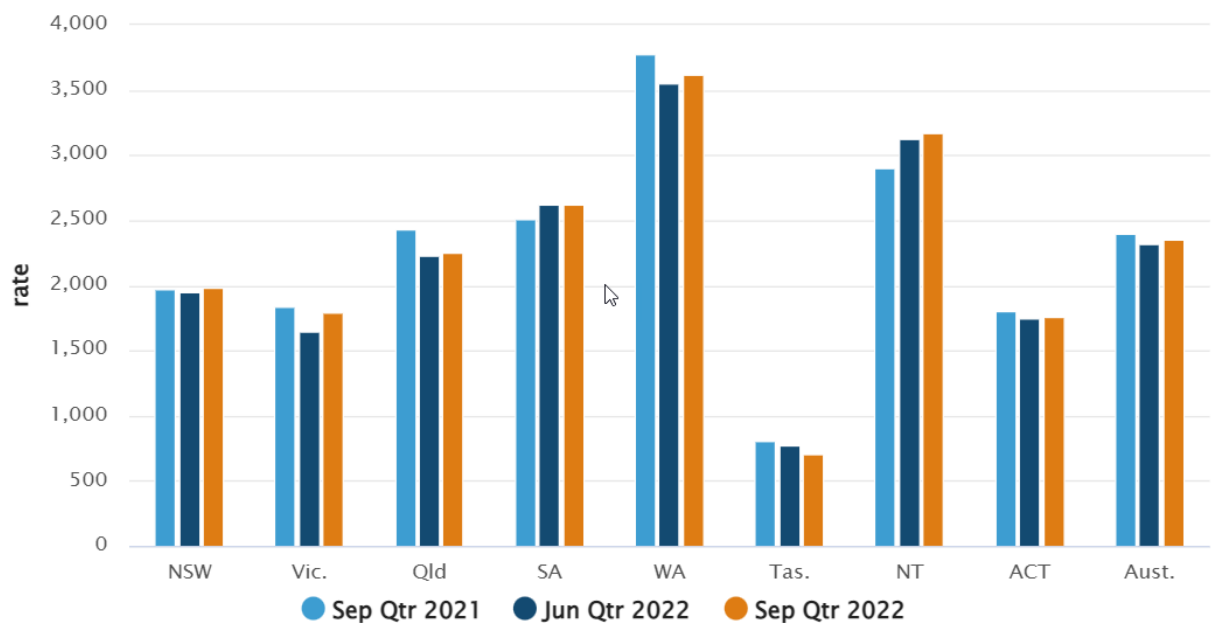
⁷⁵ Australian Institute of Health and Welfare (2022) *Youth Justice in Australia 2020–21*, catalogue number JUV 138, online at: <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2020-21/contents/summary>

Average daily imprisonment rate(a), By states and territories, Sep 2021, Jun 2022 and Sep 2022



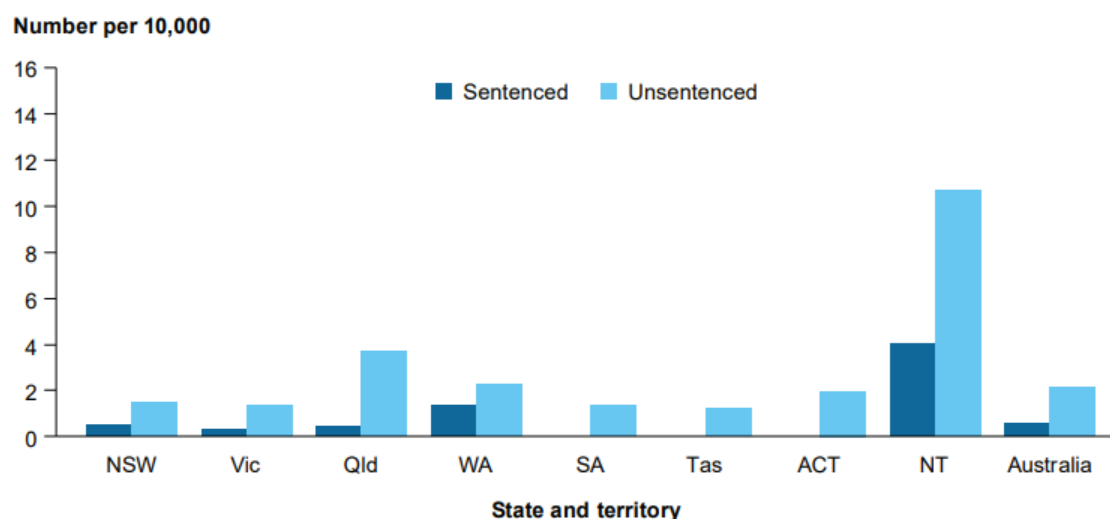
(a) Rate is the number of prisoners per 100,000 adult population. Based on average daily number.

Aboriginal and Torres Strait Islander imprisonment rate(a), By states and territories, Sep 2021, Jun 2022 and Sep 2022



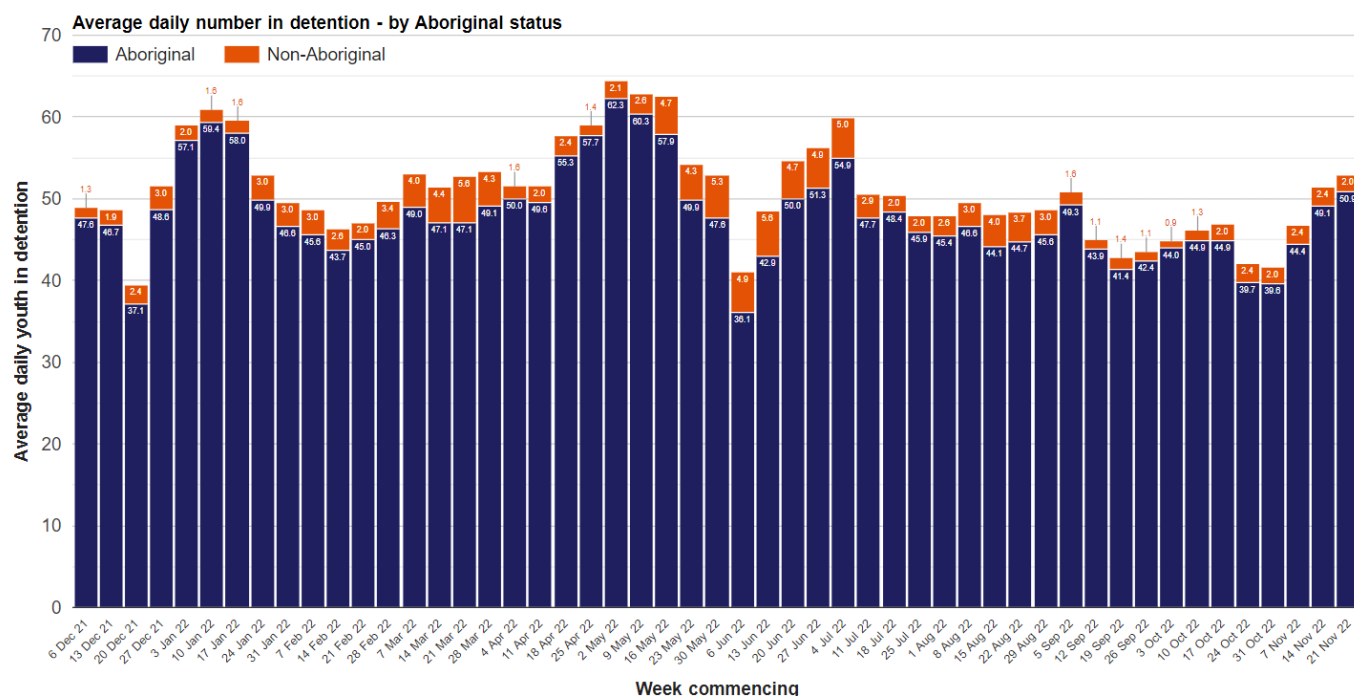
(a) Rate is the number of prisoners per 100,000 adult Aboriginal and Torres Strait Islander population. Based on average daily number.

Figure 5.2: Young people aged 10–17 in detention on an average day, by legal status and state and territory, 2020–21



NT Department of Territory Housing, Families and Communities – Youth Detention Census figures below, show Average daily number of youth in detention in the NT by Aboriginal status. The figure on the column on the far right is for 21 November 2022, showing 50.9 Aboriginal and 2 non-Aboriginal youth in detention.⁷⁶

Average daily number in detention – by Aboriginal status



⁷⁶ <https://tfhc.nt.gov.au/youth-justice/youth-detention-centres/youth-detention-census>

The problems about the NDIS-corrections interface are widely recognised and discussed among collaborating statutory bodies and NGO's in the NT - and has been raised in numerous ways with relevant NT and federal agencies.

On the next page we include a copy of a DCLS Seniors and Disability Rights Service presentation slide for stakeholders, highlighting how NDIS access and plans can work in detention and prisons and ways of facilitating both in the NT.

Our collaborations with statutory, service and NGO stakeholders around this issue has repeatedly come up against a labyrinth of responsibilities and chronic over-reliance on key-personnel and relationships – which regularly break down due to people moving on, positions being vacant, loss of corporate knowledge, insufficient resources, changing levels of engagement and – chronic inter-dependence, causing a domino effect which reduces effectiveness of the agencies still trying.

The situation has now been happening for years, and it needs a different approach – which involves engagement at much higher level, development of explicit (e.g. legislated) protocols and fully adequate resources to achieve stability, continuity and functionality.

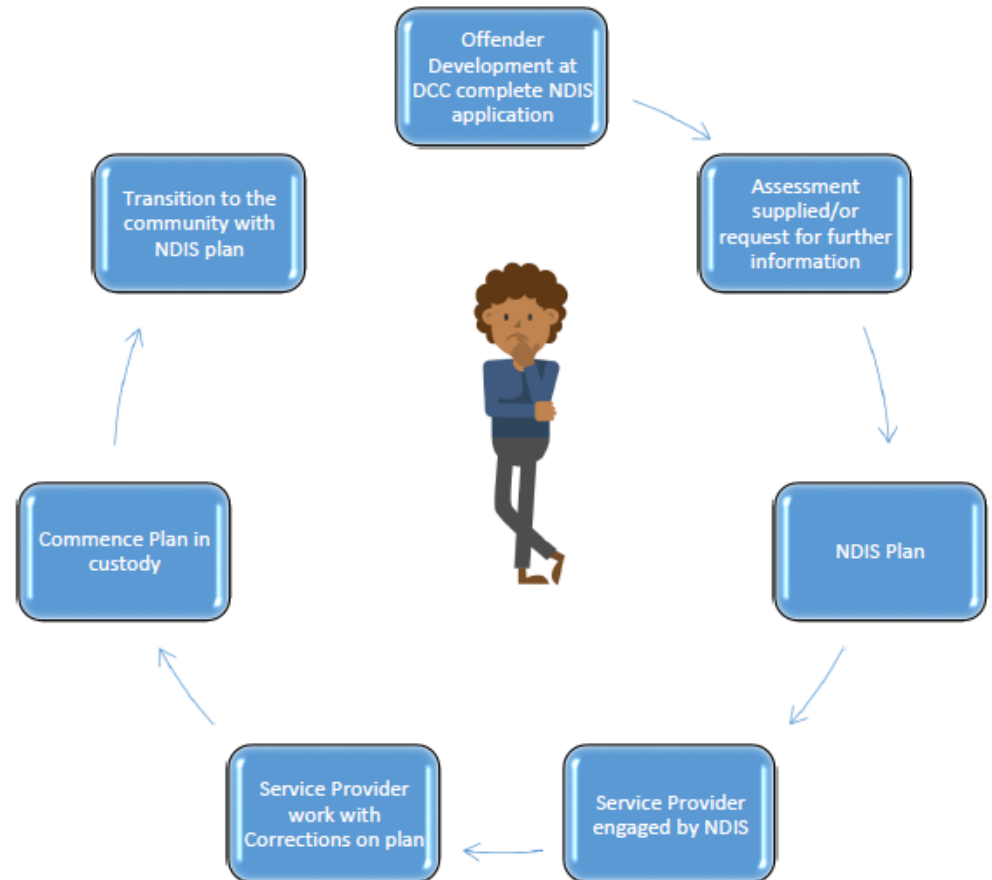
NDIS and NT Corrections applications

Barriers to success:

- Young people without permanent diagnosis
- Old reports not considered relevant by NDIS
- Lack of qualified persons at Darwin Correctional Centre (DCC) to complete Functional Assessment
- Northern Territory Correctional Services (NTCS) having no access to NTC community based disability services for assessments
- DOH Medical Practitioners unable to provide assessments to prisoners about their disability status
- NTCS not managing health in our facilities and therefore not able to access medical records – this is different to most other jurisdictions Corrections manage the delivery of Health/Medical services to prisoners
- Some treatment Services staff not participating in the assessment or access request process
- No NT Justice Liaison Officer
- NDIS Planner not participating in Reintegration planning with DCC Throughcare / PPO

Strategies to overcome barriers

- Include Darwin Community Legal Service (DCLS) in the application process: sdrs@dcls.org.au and 8982 1111
- Refer stalled or failed applications to DCLS
- Use tool provided by NTLAC to provide further information
- Ask PPO if the Parole Board can fund a fresh assessment
- Use NT.JUSTICE.LIAISON@ndis.gov.au for Justice related questions & advice and CSN.NT@ndis.gov.au for all Complex Planning
- Report blockages to RH but please ensure you get evidence/with names dates and other relevant data
- Get consents signed for all people who are being discussed in any shared case management meeting to overcome any legal concerns and blockages



In the DCLS 2020 submission⁷⁷ we noted [footnotes repeated from the original] that:

“Aboriginal people with disability experience cumulative and intersectional disadvantage. They are vastly overrepresented in the criminal justice system - with available evidence indicating significantly higher levels of cognitive impairment and mental health issues among Aboriginal and Torres Strait Islander people in prison.⁷⁸ Aboriginal prisoners in the Northern Territory also experience alarmingly higher rates of hearing loss than non-Indigenous prisoners.⁷⁹

Aboriginal children and young persons are more likely to be incarcerated today than at any other time since the release of the Royal Commission into Aboriginal Deaths in Custody final report in 1991⁸⁰ Comparable studies in Western Australian youth detention ("the **Banksia Hill study**") revealed staggering rates of Foetal Alcohol Spectrum Disorder and neurodevelopment impairment amongst Aboriginal children in detention.⁸¹ These impairments cause 'problems with executive function, such as not being able to relate cause and effect or to plan, and problems with memory, cognition, motor skills, attention, social skills and adaptive behaviour'.⁸² These problems, undetected and unsupported, may have led to behaviour that has landed them in prison and are often the start of a preventable cycle of re-offending and institutionalisation.”

The DCLS 2020 submission outlined major issues about lack of diagnosis and the difficulties and the importance of achieving this, with the following example:⁸³

DCLS is currently assisting five clients in Darwin Correctional Centre to access the NDIS. The clients live with complex psycho-social disability but have never undergone assessment, while cycling in and out of the justice system. DCLS is working with the Department of Corrections to arrange medical assessment, however this is difficult given the lack of funding for assessment.

Through sustained advocacy, DCLS has been able to gain access to the NDIS for people in remote communities, which has enabled them to avoid a custodial sentence where the court was satisfied they had sufficient supports.

⁷⁷ Op. cit, 'DCLS 2020 submission' p. 1-2

⁷⁸ Stephane M Shepherd, 'Aboriginal Prisoners with Cognitive Impairment: Is This the Highest Risk Group?' [2017] (536) Trends and Issues in Crime and Criminal Justice 1, 2.

⁷⁹ Productivity Commission, Report on Government Services 2020. Table 8A.6

⁸⁰ Australian Bureau of Statistics, 'Corrective Services, Australia, December Quarter 2019'

<https://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0> ; see also Australian Law Reform Commission, 'Pathways to Justice-An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples' (2018), [Final Report](#).

⁸¹ Bower et al, 'Foetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia' <https://bmjopen.bmj.com/contentU8/2/e019605>

⁸² Ibid.

⁸³ Op. cit., DCLS 2020 submission, p. 2

The DCLS 2020 submission also expressed that:⁸⁴

- “Agencies responsible for child protection, housing, education, and justice operate in silos. The NDIS has created an additional silo: the National Disability Insurance Agency.
- Vulnerable people remain undiagnosed largely as a result of failures to integrate services and communicate across agencies.
- Governments must increase pathways and connections to existing institutions and agencies to create mechanisms for communication and integration of services.
- There should be no 'wrong door' to obtaining disability support: once a person comes into contact with a government service, they should be able to expect that agencies will work in unison to provide the supports that a person needs.
- It should not be incumbent on vulnerable people to navigate separate, complex systems. People with disability should have universal access to assessment and support, no matter what system they find themselves in.”


As noted above, these types of issues have been expressed by many others. Additionally, the NT Government has recently expressed concerns in its submission to the Joint Standing Committee on the NDIS Capability and Culture:⁸⁵

Interface between criminal justice system and the NDIS

Inadequate disability support is linked to cycles of offending and re-incarceration for people with disability.

The identification of people with disability and providing the services and support required by people with disability in custodial settings is imperative to breaking this cycle. Once people with disability leave prison, they continue to face significant barriers in accessing NDIS services, which has implications for their continuing involvement with the criminal justice system.

Appropriate supports need to be established to ensure successful transition from prison/institutions to the community. Gaining access to appropriate disability services before release date is critical to prevent an ongoing cycle of involvement with the justice system.



While the NDIA employs Justice Liaison Officers (JLOs) to ‘ensure that disability needs are being met in prison’, there have been numerous problems with understaffing and positions being unfilled for long periods. There is also limited engagement from JLOs to actively problem solve common barriers for people in prison trying to access disability supports.

⁸⁴ Ibid. p. 3

⁸⁵ Northern Territory Government, Submission to the Joint Standing Committee on the National Disability Insurance Scheme (NDIS) - Capability and Culture of the National Disability Insurance Agency (NDIA). 27 October 2022, submission 89, p. 6, online at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/CapabilityandCulture/Submissions

As the case study below shows, the blockages and barriers prospective NDIS participants in corrections face can have grave consequences for a person. In case H1 this included lack of access to supports, and for H2 it delayed his parole.

Case Study	Client H - 1
Brief outline	Client H 1 was in detention and had chronic documented disabilities including cognitive and behavioural. There were challenging behaviours and complex needs. Despite substantial prior statutory agency involvement, there had been no NDIS access application. The Superintendent had relevant responsibilities, but advocacy and assistance were required towards an NDIS access application.
Analysis	Illustrative of lack of attention to NDIS access prior to offending resulting in incarceration, apparent lack of therapeutic approach during the criminal justice process, and lack of focus on roles and responsibilities regarding the NDIS by detention facility managers (despite their statutory roles).

Case Study	Client H - 2
Brief outline	Client H was in prison at the time he became a DCLS client. He has a disability and was a NDIS participant. H was eligible for Supporting Independent Living funding. H was eligible for parole, but was repeatedly unsuccessful in being granted parole, as he could not provide definite answers about his living situation and supports after leaving prison. This was because the NDIA would not finalise his NDIS plan based on a proposed Roster of Care, as the NDIA argued it could not make a final assessment on H's needs before knowing where he would move to upon release. Neither process provided the flexibility needed to progress H's parole. DCLS submitted a complaint to the NDIA on H's behalf and assisted with the implementation of services when a NDIS plan was completed.
Analysis	<p>Illustrative of interface between NDIA and Corrections where the NDIA's position caused Catch 22 which can have substantial adverse effects, including increasing the length of incarceration.</p> <p>Also illustrative of how NDIA administrative decision making can relate to fundamental human rights where the gravity of the situation and NDIA's statutory purposes are not reflected in the NDIA approach.</p>

Recommendations 12: Review the Justice Liaison Officer positions

NT Justice Liaison Officer position should be reviewed to become more pro-active in identifying people in detention and prisons with disability who need help access the NDIS in a meaningful manner.

Recommendation 13: Solve the chronic / wicked systems collaboration failure

The chronic / wicked systems collaboration failure in the NT around the access of people with disability in detention and prisons to NDIS applications, NDIS plans and supports needs a different approach – which involves engagement at much higher level, development of explicit (e.g. legislated) protocols and fully adequate resources to achieve stability, continuity and functionality. Commonwealth and NT should jointly ensure this problem is solved.

Recommendation 14: Need for increased criminal and civil legal and advocacy support

- Increase resources to reflect needs for criminal and civil justice legal assistance and wrap around case management and specialist advocacy support for people coming into contact with the criminal justice system in the NT.
- This to provide proactive, trauma informed, responsive and positive support including:
 - NDIS access, supports, reviews and appeals
 - Safety from violence, abuse, neglect and exploitation,
 - Civil law legal issues (e.g. tenancy including social and community housing, social security, debts, consumer, employment, child protection, family, discrimination, adult guardianship).
 - Holistic case management support joined up with culturally accessible and culturally safe financial counselling (including financial literacy), social work support.
- Support / service models which deliver in communities and are a preventative and reliable (including long-term), as possible.

4.3 Interface between NDIA and other service systems

The boundaries between NDIS and Territory responsibilities are in many cases still unclear. The Applied Principles and Tables of Supports (APTOS) that provide the guidance on which supports are NDIA responsibilities, and which are not, are not clear enough.

The demarcation of different service areas is shifting, and a shared concern about the potential for overlap, duplication and double-dipping creates gaps in service delivery.

However, the aim should always be to ensure supports are available, rather than fear of overlap. Overlap or duplication of supports may be necessary to ensure access / coverage and is a completely different issue from double-dipping (participants receiving duplicate or double the intended supports). Safeguards against double-dipping can be put in place.

Case Study	Client I
Brief outline	Client I has been a recipient of Territory Insurance Office ('TIO') payments since a car accident in the 1990s. She met access for NDIS several years ago. At I's scheduled plan review in 2021, she was reassessed as not eligible and removed from the

	<p>scheme. The reason given was that TIO were providing all supports. The decision to remove I from the NDIS was not communicated formally, only by phone. Client I relies on her ageing parent to help organise her supports, and as there was no written notification, both Client I and her parent missed the urgency of this notification.</p> <p>As there was no clear communication from the NDIA, I's parent was not able to advise NDIA that Client I was not receiving the supports from TIO that NDIA believed she was. Client I is now in communication with both TIO and NDIS with advocacy assistance to arrange for one or both to fund adequate supports.</p>
Analysis	<p>Where there is overlap between services, vulnerable people with limited communication abilities are in danger of being let down as each service can shift responsibility for providing supports to the other.</p>

The complexity in relation to NT responsibilities and areas of NDIA or federal responsibility, are underlined in the following section of the NT Disability Strategy 2022-2032⁸⁶

“The NT Government funds around half of the cost of the NDIS in the Territory and remains committed to making it work well for Territorians with disability. This includes supporting NDIS participants to use their funding and having more choice of providers.

However, only one fifth of people with disability in the Territory are eligible for the NDIS. The NDIS does not cover the broader range of government services that people with disability are eligible to access along with other Territorians – including education, health, housing, transport, justice, family support and employment services. We know that there is more to do to ensure people with disability across the Territory have full access to all these services, particularly to increase access to services in remote locations and to improve the cultural safety of services for Aboriginal people with disability.”

The current situation is that individual cases face long delays caused by uncertainty, or that an individual disability needs become a battleground for the NDIA and other parties to ascertain who is responsible to provide certain supports.

This is most evident in the AAT, where an NDIS participant spends months to years in limbo, with unfunded supports, as a determination is being made. An example our service comes across often is the interface between the NDIA and the NT Department of Education.

Even with agreements in place, we see many clients who are unsure which agency or department to turn to, to ensure their children with disability receive adequate supports. This creates extensive delays, at a time where intervention for young people should be quick. Some of the key areas of concern are:

- Lack of support for children with disability in mainstream school environments

⁸⁶ At p. 8, online at: https://tfhc.nt.gov.au/__data/assets/pdf_file/0020/1124183/disability-strategy.pdf

- After school and vacation care

4.3.1 Lack of support for children with disability in mainstream school environments

One of the problems currently facing school aged children in the NT is their ability to access appropriate supports that may be required to assist children to become literate and thrive throughout their academic careers.

These gaps in the systems neglect large groups of children which prevent them receiving the education they have a right to.

There are often disputes between the NDIA and the NT Department of Education to identify who is responsible to provide these required additional supports. As a result, both the NDIS and NT Department of Education neglect the educational needs of specific groups of children who are vulnerable to fall through gaps in the systems. Most commonly children with a diagnosis of specific learning disorders are not able to receive interventions to assist them.

Children with specific learning disorders, which affects their ability to learn to read, but that do not have an additional diagnosis are most affected. When children lack other diagnoses, such as intellectual disabilities, NDIA will not fund interventions to target ‘specific learning disorders,’ as the NDIA believe literacy sits in the domain of the Department of Education.

Case Study	Client J
Brief outline	<p>Client J attends a mainstream school, The school provides a teachers aid to assist with Client J’s learning needs. The teacher’s aide allocated to Client J is a teenager who has just finished high school and has no experience working in schools. The aid also has no knowledge of how to build literacy skills and capacity.</p> <p>If NDIS were able to provide the child with Speech Pathology funding, Client J’s phonological awareness and literacy skills would be greatly improved. Additionally, funding of an allied health professional working under the guidance of a speech pathologist would also provide additional advancements in Client J’s literacy.</p> <p>If the NT Department of Education took responsibility of supporting Client J a suitably qualified literacy specialist would need to be engaged.</p>
Analysis	<p>Client J’s developmental prognosis remains poor due to neither the NT Department of Education or NDIA providing adequate supports.</p> <p>The framework of ‘avoiding overlap’, accompanied by assertions that the other is responsible – in this case is a recipe for regulatory and policy failure. This is because the approach lacks strategic alignment between the tactical positioning and the over-riding objective - that J receive supports.</p>

In this situation the framework / metaphor of ‘avoiding duplication’ is the source of the problem – and a metaphor switch to ‘no wrong door’ and a commitment to resolving responsibility (because there is no option other than resolution), would solve the problem.

This inability to effectively teach students to read is also sometimes reflected in mainstream classrooms.

Further adding to the complexities of relying on the education department to upskill children to become effective and efficient readers varies greatly depending on the school the child can attend.

There is a contentious debate about how children read, and the ‘reading wars’ have been enduring.⁸⁷

Currently schools are able to adopt their own approaches to literacy. Schools may choose a systematic phonics-based approach or a whole language-based approach in the classroom.

For children in remote communities in the NT, there is no option to ‘shop around’ schools, and they can only access what is available to them locally.

Case Study	Client K
Brief outline	<p>Client K is a young person in a remote community, unable to access the support he requires to learn to read.</p> <p>Client K was diagnosed with ADHD and Specific Learning Disorder (related to their inability to read) which could not be explained by another diagnosis such as an intellectual disability.</p> <p>NDIA considers that the responsibility for learning support in this case belongs to the NT Department of Education.</p> <p>The school attempted to provide an adequate service however K’s literary skills did not improve. It appears that the school did not have the resources to provide the specialized support needed to meet this child’s needs.</p>
Analysis	<p>Similar to Client J (above), the stand-off between the Commonwealth (NDIA) and NT (Department of Education) is leaving K without supports.</p> <p>This failure could have long term adverse effects for K with potential future support needs which also impact the NDIA and the Commonwealth and the NT Department of Education and the NT.</p>

⁸⁷ Anne Castles, Kathleen Bastle, Kate Nation, ‘Ending the Reading Wars: Reading Acquisition From Novice to Expert’, (2018) 19(1), Psychological Science in the Public Interest, 5. Available at: <https://journals.sagepub.com/doi/full/10.1177/1529100618772271>

4.3.2 Support Aide roles in schools

Another problem in many NT schools is the support staff available to children with a disability. The staff provided for children with additional needs often lack the specialist skills and knowledge to effectively assist these children with their educational development or build literacy capacity.

Support Aides in schools, could be a recent high school graduate. Effectively, children with additional and complex needs are being removed from the classroom, which is led by a teacher and taken out with the least qualified person. This means, the least qualified person, with potentially no background in education, assisting children with the most complex needs.

This is further impacted by the general levels of understaffing that occurs in most NT schools.

Case Study	Client L
Brief outline	<p>Client L is a young person diagnoses with ASD, ADHD, and an intellectual disability. On the first day of school, L physically hurt another child and was suspended. There were several issues with the response of the school following the incident including:</p> <ul style="list-style-type: none">• Only allowing L back to the classroom for limited hours per day despite no further incidents of physical aggression.• Failing to create either a Behavioural Support or Educational Adjustment Plan.• Failing to engage with available professionals such as the treating Behavioural Support Practitioner or the NT Department of Education Social Inclusion Officer.• Repeatedly denying the carer's request to allow L to attend school on a full-time basis, or even half days.• Ignoring offers from the Behaviour Support Practitioner to assist the school staff to re-engage L• Failing to engage effectively or collaborate with the carer
Analysis	<p>NT schools need more assistance to ensure they are providing appropriate supports to children with disability exhibiting behaviours of concern.</p>

Recommendation 15: Qualification for teacher aides in the NT

Review the qualification requirements for teacher aides for children with additional needs in the NT, including increased supervision by staff with degrees in early education and/or a speech pathology background.

4.3.2 After school and vacation care

Many parents and carers of children with disability in the NT are struggling to achieve places in before and after school hours care and vacation programs.

Most mainstream centres will not accept children if they are not able to independently toilet or feed themselves, as they do not employ specialized staff with disability specific training. As such, there is no opportunity for these children to access safe and appropriate before and after school hours, or vacation programs.

It appears that the NT Department of Education is not providing specialized staff with disability specific training to be in these centres despite children with disability often having much higher needs, than typically developing children their age.

The NDIA has been making decisions against funding afterhours programs for school aged children, citing parental responsibility or this being the responsibility of the NT Department of Education.

In our experience the NDIA will provide funding for these programs, but only on appeal. However, the time period involved in appealing NDIA decisions regarding after school and vacation care can puts carer's employment and income at risk.

The information provided by the NDIA on this subject is inconsistent and often contradictory.

Case Study	Client M
Brief outline	<p>For client M, the NDIS is currently refusing to fund after hours care due to an expectation that Outside School Hours Care ('OSHC') and vacation programs have capacity to manage children with disabilities.</p> <p>M is unable to access mainstream after hours programs as his care needs are too high, and the programs do not have adequate staffing to manage his behaviours.</p>
Analysis	<p>Illustrative of NDIS refusal to fund services based on NDIA expectation that other services will meet the needs when other services are often not resourced to be able to fulfil that expectation.</p>

Recommendation 16: Before and after school care and vacation care programs

Agreements between the Department of Education and NDIA should reflect that children with additional needs accessing before/after hours and vacation care programs in the NT, should be in supported environments with correct staffing ratios and disability trained carers.

4.4. Erosion of Territory based non-NDIS disability supports

The introduction of the NDIS has eroded the territory-based supports that existed previously. There are very limited supports available for people with disability who are not eligible for NDIS supports.

Besides the obvious impacts of leaving people without supports, this increases pressure on the NDIS, medical and support services as people are desperate to make NDIS access.

Case Study	Client N
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Brief outline	<p>Client N has been diagnosed with a neurological disorder, that is seriously impacting his functional capacity, including his safety in the home and ability to complete daily tasks relating to personal hygiene, toileting, and meals. N's disability is likely to be permanent, but also likely to improve significantly with appropriate treatment. N is on a waitlist to access rehabilitation supports. This waitlist is likely to be at least 12 months long. Due to this, N does not meet NDIS access criteria.</p> <p>Besides 30 hours of support per calendar year through the Carers Gateway, there are no other supports available for N to receive assistance at home, placing N at risk of falls or other harm.</p>
Analysis	<p>Lack of alternatives to the NDIS for people with support needs and lack of progress in addressing these lacunas, gaps and anomalies which place the safety and wellbeing of people with disability at risk.</p>

Recommendation 17: Map and address gaps where no or insufficient disability support in NT

NT and Commonwealth undertake a joint mapping, led by lived experience to identify lack of alternatives to the NDIS for people with support needs in the NT where this is causing an outright gap in coverage. Also identify how lack of progress in addressing these lacunas, gaps and anomalies, which place the safety and wellbeing of people with disability at risk, have come about.

Develop strategies and programs to address the gaps and learn from the evidence about how these issues arose in the first place, to avoid repetition

5. Housing and people with disability in the NT

Housing, lack of housing, unsafe and unsuitable housing and homelessness are highly prevalent issues for many people with disability in the NT.

5.1 Insufficient housing, homelessness, unaffordability in the NT

In the NT people with disability are at a higher risk of homelessness, housing insecurity, housing dissatisfaction, poorer quality housing, and housing unaffordability.⁸⁸

NT Shelter, the NT's peak housing body, provided the following overview of housing issues in the NT in their 2020-21 Pre-Budget Submission to the NT Government:

- Almost one half (48.4%) of people seeking help in the NT are unable to be assisted. This is twice as high as unmet requests nationally (23%).

⁸⁸ NT Disability Strategy 2022-2032 Discussion Paper (31 December 2021) pp 5-8.

- The per capita rate of demand for services is over three times that of other states and territories and growing (demand in the NT is 390 clients per 10,000 population compared to the national average of 116 per 10,000).
- Services are restricted to a limited number of urban centres, with many remote and very remote communities not having access to any services... There is therefore a substantial level of unknown demand, additional to the already large volume of unmet demand.⁸⁹

In December 2021 NT Shelter's submission in relation to the NT Disability Strategy, highlighted the NT Shelter membership (see screen shot below),⁹⁰ and outlined:

- The importance of the accessibility of existing and future social housing stock and its proximity to service
- The need to address barriers that people with disability face in the private rental market
- The need to address housing for key disability sector workers
- The need to fully recognise the unique experience of Indigenous people with disability and the need to design

NT Shelter members:



⁸⁹ NT Shelter, Pre-Budget Submission to the Federal Government, 4 February 2020, <https://ntshelter.org.au/submissions/> p 2.

⁹⁰ NT Shelter, Submission to the Northern Territory Disability Strategy 2022-2032, available online at <https://ntshelter.org.au/wp-content/uploads/2022/11/NT-Shelter-Submission-to-the-Northern-Territory-Disability-Strategy.pdf>

5.1.2. National Housing and Homelessness Agreement ('NHHA')

DLCS and the North Australian Aboriginal Family Legal Service ('NAAFLS') made a joint submission to the Productivity Commission's National Housing and Homelessness Agreement ('NHHA') Review in March 2022.⁹¹

The submission related to ways the NHHA is falling short in the NT and not meeting its stated objectives of improving access to affordable, safe, and sustainable housing. We highlighted areas of concern including

- Calling for a needs-based funding model for the NT as the key to improving housing availability, suitability, and achieving appreciable improvement against indicators.
- Indicating how this is central to addressing the other concerns raised in the submission, broadly relating to:
 - The social and health impacts of inappropriate and unaffordable housing
 - People with disability accessing affordable and appropriate accommodation
 - People escaping domestic and family violence
 - Access to justice and underservicing of tenant's legal needs
 - Discrimination against tenants
 - Fast tracking the growth of the community housing sector

Without a change to the per-capita funding model, the NHHA will continue to primarily reflect an accord between the Commonwealth and the most populous and influential jurisdictions, while failing to address how this plays out in the NT.

The submission highlighted that the situation is dire across the NT (relevant sections in screen shots below):⁹²

4.1. NT Remote Context

Housing and homelessness inequities are exacerbated in remote areas of the NT. The majority (83%) of the NT's homeless population lives in 'severely overcrowded' dwellings and, of this group, the majority (71%) live in remote or very remote communities, outside of the main urban centres of Darwin and Alice Springs.⁶

The NT Government's modelling indicates that between 8,000 and 12,000 additional dwellings are needed across the NT by 2025 to address existing overcrowding and meet anticipated future demand for housing due to population growth.⁷

However, the NT Government's estimates of overcrowding, at 1.70 people per bedroom,⁸ are likely an underestimation as NAAFLS routinely observes an average of 5 people per bedroom in their visits to remote communities.

Despite the chronic and urgent need for more housing in remote communities, the most recent Auditor-General's report on the National Partnership for Remote Housing found that, as of 30 September 2021 (three years into the five-year agreement), only 19% of capital works (363 bedrooms, equivalent to 121 three-bedroom houses) have been completed.⁹

⁹¹ Submission 89, available at: <https://www.pc.gov.au/inquiries/completed/housing-homelessness/submissions#initial>

⁹² Ibid, p. 4, and 4.2 NT Urban Context, p. 4-5

4.2. NT Urban Context

The most recent Rental Affordability Snapshot conducted by Anglicare NT concluded that the cost of private rent, when compared to the relatively unchanged rate of government income support and increasing cost of living, leaves many with little choice but to seek to live in social or public housing.¹⁰ The Snapshot found that, with the exception of a retired couple receiving the Age Pension, there were no affordable and appropriate homes for those relying on social security payments in the NT.¹¹

However, the alternative of public housing is not a viable option as the shortest waiting period is between 2-4 years and the longest wait times are between 8-10 years, see table below extracted from the NT Government's website with estimated waiting times as of 31 December 2021.¹²

Region	Estimated wait times for public housing (years)					
	General wait times			Priority wait times		
	1 bedroom	2 bedroom	≥3 bedroom	1 bedroom	2 bedroom	≥3 bedroom
Darwin/Casuarina	6-8	2-4	4-6	4-6	2-4	2-4
Palmerston	6-8	2-4	4-6	4-6	2-4	2-4
Katherine	6-8	4-6	6-8	4-6	4-6	2-4
Nhulunbuy	4-6	4-6	4-6	4-6	4-6	4-6
Tennant Creek	8-10	6-8	4-6	4-6	4-6	2-4
Alice Springs	6-8	6-8	6-8	6-8	6-8	6-8

The rates of “rough sleepers” (people living in improvised dwellings, tents or sleeping out) in Darwin and Katherine – at 96 per 10,000 – far exceeds the national average of 3.5 per 10,000.¹³ Compounding these figures is the undersupply of affordable short-term visitor accommodation in urban areas. This is despite the well-recognised fact that Aboriginal people who have travelled into an urban area for medical, family, safety and other reasons make up a significant portion of the homelessness population in urban areas.¹⁴

The Aboriginal Medical Services Alliance Northern Territory (‘AMSANT’) has also observed that overcrowded and under-resourced remote communities are also leading to:

“... increasing urban drift... [which] further contributes to rates of homelessness as well as disconnection from country, family and culture, and increases associated mental and emotional ill-health”.¹⁵

The lack of short-term visitor accommodation options contributes to the high rates of homelessness, resulting in an otherwise avoidable strain on the homelessness service system in urban areas.¹⁶

The undersupply of social and public housing in the NT means that people with disability are often living in inappropriate or overcrowded housing, if housed at all.

The pressure due to undersupply of housing in some remote communities, includes NT Housing permitting occupation of dwellings which do not meet habitability standards, with reduced rent.

Housing shortages in the NT has a disproportionate impact on Aboriginal people who experience higher rates of disability and more complex disability while having greater difficulty in accessing appropriate housing and support services.⁹³ This is an example of multiple, intersecting, and cumulative disadvantage.

Further, the lack of appropriate housing means that people with disability are often forced to live in unsafe and unacceptable conditions.

For example, for people with personal hygiene needs beyond the mainstream, who may have to share utilities or live in a property with chronically over-burdened infrastructure and overcrowding – impacting on themselves and on others sharing. Additionally, emergency shelters, are often not sufficiently equipped for the volume, or specific needs, of people with physical and/or other disability.

Case Study	Client U – disability and homelessness
Brief outline	<p>Client U had a stroke which resulted in persistent right side sensory deficit. The condition has contributed to sensory, physical, neurological, and psychological impairments resulting in substantial reduction in functional capacity.</p> <p>Client U struggled to keep up with rent payments, resulting in homelessness. Client U started camping in a small tent at a caravan park.</p> <p>Not knowing where to seek help, Client U continued to struggle and ultimately Client U’s NDIS support was cancelled due to not having adequate accommodation.</p> <p>Client U was referred to DCLS for support to secure adequate accommodation. The advocate met with Client U and helped collect the support documents.</p> <p>The advocate lodged the forms and a priority housing application with Territory Housing and persistently followed up on weekly basis.</p> <p>Client U was approved and offered a one-bedroom unit 3 months after DCLS advocacy assistance started.</p>
Analysis	<p>A lack of knowledge of available services and resources to navigate the gatekeeping process can and often does result in a client homelessness and economic hardship. Often a lack of housing can be equated to a lack of disability supports.</p>

DCLS strongly supports measures to increase the availability of suitable housing across the NT especially in remote and very remote communities.

⁹³ NT Shelter, Submission dated 31 December 2021, to the Northern Territory Government, NT Disability Strategy 2022-2032, pp 2-3, online at: <https://ntshelter.org.au/wp-content/uploads/2022/11/NT-Shelter-Submission-to-the-Northern-Territory-Disability-Strategy.pdf>

The NPY Women's Council has highlighted how multiple benefits will result: ⁹⁴

Living on country with family is crucial for the mental health and wellbeing of all Anangu. Because of the normalisation of violence and abuse in Anangu society, there is a need for human rights education in communities. This will need to be an ongoing process aimed at raising awareness of and concern about abuse of vulnerable people, including those with disability.

Despite their need to live on the Lands with family and culture, many Anangu with disability are living off the Lands, away from family, culture and country because of the lack of services and support options in remote communities. Children with disabilities lose contact with their families and gradually lose language and culture, while their families grieve for them.

The establishment of staffed and well-resourced, purpose-built accommodation for people with disability on the NPY Lands would prevent the need for most people with a disability to leave the Lands. It would also provide a place where people who have moved off the Lands because of a lack of support could have respite and catch up with family.

Recommendation 18: Housing crisis for people with disability in the NT need vastly increased action

The housing crisis for people with disability in the NT requires a greater sense of urgency, much more momentum and far greater resources to work on the multiplicity of issues.

5.1.2 Social housing eviction of people with disability into homelessness

Below is a media report which is unfortunately indicative of a trend by NT Housing in the Top End of the NT to proceed to evict social housing tenants, including tenants with disability, into homelessness.⁹⁵

As outlined in the DCLS submission to the Productivity Commission in relation to the National Housing and Homelessness Agreement, this is purported to be justified via a problematic 'red card policy' which often builds demerit points from trivial and unsubstantiated allegations. The red card policy has a racial dimension, and complaints often reflect complaints from neighbours with different cultural norms against Aboriginal tenants.⁹⁶

The media report is a case study of how this policy is operating for people with disability. As a result of virtually no affordable housing available in the private rental market, chronically insufficient disability

⁹⁴ NPY Women's Council submission to the Royal Commission 11 September 2020, online at: <https://www.npywc.org.au/wp-content/uploads/NPYWC-submission-Disability-Royal-Commission-Sept-11-2020.pdf>, p.9

⁹⁵ Roxanne Fitzgerald, ABC News, Public Housing eviction leaves mother and son homeless in 'heartless' trend in the NT, 14 May 2022, online at: <https://www.abc.net.au/news/2022-05-14/public-housing-eviction-leaves-mother-and-son-homeless-nt/101054570>

⁹⁶ DCLS and the North Australian Aboriginal Family Legal Service joint submission to the Productivity Commission's National Housing and Homelessness Agreement Review, (submission 89) March 2022, <https://www.pc.gov.au/inquiries/completed/housing-homelessness/submissions#initial>

accessible housing and long public housing waiting lists, eviction of people with disability into homelessness is unconscionable.

At the time of writing Territory Housing has not provided re-housing, the family has been split up by homelessness, disability supports have been disrupted and Territory Housing has displaced social housing obligations onto short term, NGO housing provision.

Public housing eviction leaves mother and son homeless in 'heartless' trend in the NT

ABC Katherine / By Roxanne Fitzgerald

Posted Sat 14 May 2022 at 7:05am



Cherylene Campbell and her son, Taylen, were given two weeks to vacate public housing in Darwin. (ABC Katherine: Roxanne Fitzgerald)

Recommendation 19: No eviction of social housing tenants with disability into homelessness

A national model social housing management policy to ensure the safety, rights and wellbeing of people with disability should be developed to require a housing first approach be continually applied to people with disability to avoid homelessness.

This includes management of existing tenancies, where every effort should be made to sustain tenancies and where this is not possible at a particular location, to provide alternative realistic social housing options.

The Commonwealth should apply leadership in this area, such as by establishing principles and linking compliance via relevant program and funding conditions.

5.1.3 NT proposed Remote Rent Framework: lack of disability policy impact analysis

Due to come into effect on 6 February 2023, the NT Remote Rent Framework⁹⁷ will apply a new rent setting model to NT Housing tenancies in remote communities in the NT. The high majority of housing in remote and very remote communities will come under the Framework.

The rent setting model will be based on a flat amount of \$70/room (to a maximum of \$280) and although Territory Housing has announced there will be a safety net, there is no published information or analysis demonstrating affordability for the tenant cohort. Concerns have been expressed by many stakeholders about the inability of people in remote and very remote communities to afford higher rents, against a backdrop where Territory Housing estimates indicated there would be a significant rent increase in over 60% of cases.⁹⁸

Additionally, despite the Territory Disability Strategy, there is no published information or analysis indicating the impact analysis for people with disability, who are highly vulnerable members of the affected cohort.

Northern Territory remote rent changes delayed after backlash over rising costs

By Oliver Chaseling

Posted Tue 30 Aug 2022 at 4:27pm, updated Tue 30 Aug 2022 at 5:18pm



The government says the five month delay will allow it to better explain the policy to remote communities. (ABC News: Michael Franchi)

Controversial public housing changes that were set to increase the rent of thousands of remote Northern Territory residents have been delayed, after backlash from Aboriginal land councils.

A new pricing scheme for public housing residents in remote areas was meant to start next week, [with tenants to be charged per room instead of based on income](#).

Some experts believe the changes would have increased rent for 80-per-cent of tenants in Central Australia — in areas plagued with overcrowding, a lack of housing and few job opportunities.

Northern Territory Housing Minister, Selena Uibo, said the government has

Key points:

- The rental changes were meant to come effect next week but have now been delayed by five months
- Some tenants were facing rental increases of \$200 per week
- The NT government says it will ensure the changes are properly communicated

⁹⁷ Department of Territory Families, Housing and Communities, Remote Rent Framework: <https://tfhc.nt.gov.au/housing-and-homelessness/rent-reform-framework>

⁹⁸ See for example the ABC News report, by Oliver Chaseling, 30 August 2022, 'Northern Territory remote rent changes delayed after backlash over rising costs', screen shot of the top section of the report below.

In 23 September 2022 Aboriginal Housing NT ('AHNT') released a Joint Statement by 32 organisations opposing the Remote Rent Framework, and expressing in part:

"The proposed remote rent framework will increase the vulnerability of head tenants as they will be legally responsible for a household's entire rent regardless of household occupancy and composition. Many head tenants are already vulnerable based on gender, age, health and disability."⁹⁹



In addition to the current test case before the High Court about tenant's rights and habitability of remote housing in the NT, a class action by 73 NT remote communities was launched on 19 December 2022 which in part seeks redress for tenants paying excessive rents, raising issues of housing quality, race discrimination, safety and health.¹⁰⁰ Giovanni Torre for the National Indigenous Times (screen shot

⁹⁹ AHNT Joint Statement Opposing the Remote Rent Framework, 23 September 2022, on the AHNT web site at: <https://ahnt.com.au/wp-content/uploads/2022/09/Joint-Statement-2pp-A4-latest.pdf>

¹⁰⁰ ABC Alice Springs, Samantha Jonscher, Residents of 73 remote communities launch class action against NT government alleging poor conditions, racism, <https://www.abc.net.au/news/2022-12-19/residents-of-all-73-remote-nt-communities-launch-class-action/101777498>

of initial section of the report below), ¹⁰¹reported that the lead representatives are from Gunbalanya and that Ron Mangiru has asked his landlord to address the lack of air-conditioning because he is caring for his unwell brother at home.

Remote housing residents launch class action against Northern Territory government

Giovanni Torre - December 19, 2022



Photo credit: Central Land Council.

Northern Territory remote community residents have filed a class action against the Northern Territory public housing body.

The case filed by class action law firm Phi Finney McDonald Monday morning alleges Territory authorities have failed to maintain public housing in remote Aboriginal communities and that the housing is "not safe, habitable, or secure, with tenants paying excessive rent for housing that does not meet basic minimum standards".

The case is brought by lead representatives Otto Dann and Eleanor Manakgu from Gunbalanya in West Arnhem Land.

Ron Mangiru, a community leader living in Gunbalanya who cares for his unwell brother, has asked his landlord to address the lack of air conditioning in his home.

"It's really not good enough and is very complicated for us Aboriginal people living in remote communities," he said.

"White people are given houses with air con or people come and fix the air con. But we live in a hot area and have no air conditioning. I am scared about the health impacts the heat has on my brother."

Policy impact analysis – people with disability

Policy impact analysis refers to analysis of the anticipated effects of policies during the development phase (ex ante) and impact after implementation (ex post). Policy impact analysis is based on similar ideas to Social Impact Assessment ¹⁰²and Regulatory Impact Assessment. ¹⁰³

Assuming the key parameters for analysis aim to respect protect and fulfil human rights, there are also similarities with processes to assess or scrutinise policy or legislative compatibility with human rights obligations including the Convention on the Rights of Persons with Disabilities and other international human rights obligations

In New Zealand the Office for Disability Issues Administered by the Ministry of Social Development has developed a Disability Toolkit for Policy (screen shot of the initial section below) focusing on policy development. ¹⁰⁴

¹⁰¹ Online at: <https://nit.com.au/19-12-2022/4545/remote-housing-residents-launch-class-action-against-northern-territory-government>

¹⁰² International Association for Impact Assessment, Social Impact Assessment, Overview and History, online at: <https://www.iaia.org/wiki-details.php?ID=23>

¹⁰³ For example, OECD resources on RIA, online at: <https://www.oecd.org/regreform/regulatory-policy/ria.htm>

¹⁰⁴ Online at: <https://www.odi.govt.nz/disability-toolkit/>

Disability Toolkit for Policy

A disability analysis tool to help you as a policy practitioner to explore the disability implications of your policy as you move through the policy process. This toolkit is designed to help you provide frank and robust advice to decision-makers through the inclusion of a disability lens.

For New Zealand to be a non-disabling society, we need policy and decision-makers to consider how their interventions can create a place where disabled people have an equal opportunity to achieve their goals and aspirations. **This toolkit will show you how.**

This toolkit is a live document and will be updated regularly to reflect social and political context. We recommend you consult this toolkit regularly to keep up to date. This current version was released in February 2022.



In discussion with the AHNT Alliance opposed to the Remote Rent Framework Territory Housing has tangentially referred to the difficulties caused for remote tenant rent collection by having over 1000 rent payment failures for rent via Centrelink each rent cycle — because people changed something that mean the rent payment doesn't go through. In response the NT has advised the Commonwealth that it seeks amendment to the Social Security Act for rent to be deducted compulsory at source (paid from a person's social security entitlement to Territory Housing) — that is deducted off the top.

It is unclear whether Territory Housing have evaluated if rent stress may be contributing to the rent payment failures and if humanitarian effects, especially for the most vulnerable including people with disability, could result from putting rent payments before everything else (by deducting a source from social security entitlements).

The Tangentyere Council has been undertaking work about high rates of prepayment electricity disconnection in remote NT communities, also suggesting major economic strain for many households and negative social impacts. A recently published article relating to this research found:

“For many households, temperature extremes increase both their reliance on those services that energy provides, and the risk of those services being disconnected. Poor quality housing, low incomes, poor health and energy insecurity associated with prepayment all exacerbate the risk of temperature-related harm. Here we use daily smart meter data for 3,300 households and regression analysis to assess the relationship between temperature, electricity use and disconnection in 28 remote communities. We find that nearly all households (91%) experienced a disconnection from electricity during the 2018–2019 financial year. Almost three quarters of households (74%) were disconnected more than ten times. Households with high electricity use located in the central climate zones had a one in three chance of a same-day disconnection on very hot or very cold days. A broad suite of interrelated policy responses is required to reduce

the frequency, duration and negative effects of disconnection from electricity for remote-living Indigenous residents.”¹⁰⁵

Recommendation: 20: Disability policy impact analysis and human rights compatibility

All policy and regulatory measures capable of impacting on the rights or wellbeing of people with disability should be subject to transparent, public scrutiny, fully incorporating lived experience.

The proposed NT Remote Rent Framework is a case in point, where there is no publicly available disability policy impact analysis and serious reasons for concern.

The Commonwealth should provide leadership with the NT and other jurisdictions as relevant, to develop and facilitate implementation of:

- Model Disability Policy Impact Analysis and
- Model Disability Human Rights Compatibility Mechanisms

5.2 Home modifications

The NDIS applies criteria for home modifications, for NDIS participants, relating to:

1. Minor modifications – which don’t change the structural parts of the home or cost more than \$20,000, and
2. Complex modifications – which involve more complex modifications – for example structural changes¹⁰⁶

5.2.1 Home modifications – own home

When the NDIA considers an application for home modifications, the evidence most heavily relied on is an Occupational Therapist Home Assessment, which is written from an Allied Health perspective, not architectural or structural.

Other evidence required includes at least three quotes from possible contractors.

When the participant is a tenant, the NDIA will point toward the landlord to fund modifications, but in the NT this rarely eventuates.

When the NDIA do fund modifications, they invariably choose the cheapest quote.

In a thin market such as in the NT, this allows for the NDIA to choose quotes from contractors whose underquoting should be a red flag, including where this is identified by the participant, who does not want to use them but cannot obtain a substitute third quote.

¹⁰⁵ Thomas Longden, Simon Quilty, Brad Riley, *et al.* Energy insecurity during temperature extremes in remote Australia’, (2022) 7, *Nature Energy*, 43

¹⁰⁶ NDIS Home modifications, information available at: <https://www.ndis.gov.au/participants/home-and-living/home-modifications-explained>

Case Study	Client V 1
Brief outline	<p>Client V met access to the NDIS for her physical disabilities and has several children who also have NDIS plans. The combination of Client V and her children's needs called for a home modification that could fulfill multiple purposes. The NDIA agreed to fund the home modification and approved an amount equal to the cheapest quote which was significantly cheaper than the two more expensive quotes provided by Client V at the time of application. Despite reservations, Client V proceeded to the build with the contractor she did not favour. The contractor's work was so poor that the build was uncertifiable.</p> <p>Client V sought legal assistance to have the contractor remove their materials and refund the amount already paid out of her NDIS funds. The NDIA then reviewed Client V's plan and refused to fund the amount for the modification, and especially not the increased amount quoted by the alternative contractors.</p> <p>The NDIA quoted 'value for money' following assessment of Reasonable and Necessary (R+N) criteria by the Technical Advice Team (TAT).</p> <p>Client V had to seek advocacy support and the endorsement of a local parliamentarian to convince the NDIA that the cost of building was higher in Darwin due to freight, cyclone building codes, and demand for skilled workers.</p> <p>The NDIA finally agreed to increase funding for the build.</p>
Analysis	<p>Decision-making for NDIA in many cases is done by officers who are interstate and have little understanding of Territory or remote issues in relation to the costs associated with transport and limited remote area services.</p> <p>This makes it difficult for clients to gain NDIS approval for suitable services.</p> <p>The assessment of quotes by the NDIA without the NDIA taking responsibility for the consequences of this decision is highly problematic.</p>

Case Study	Client V 2
Brief outline	<p>Client V2 received approval for particular home modifications after providing OT, architects plans, and builders quotes all of which took a lot of time to achieve. The work itself required Client V 2 to be out of the home. Major difficulties arose due to delays and disputes related to duty of care, fitness for purpose and contract compliance.</p> <p>Client V2 was overwhelmed by the issues which involved the potential need to take the contractor to court, NDIA declining funding to remediate or to assist with resolution. Client V2 was repeatedly stuck, unable to move forward in any</p>

	direction.
Analysis	Home modifications gone wrong can result in problem cascades which the person with disability is unable to manage and which remain unresolved for lengthy periods or are not resolved.

Advocacy and legal assistance required where modifications relate to a home which is owned (compared to rented), may involve issues with suppliers, builders, contractors, architects, inspectors / assessors / certifiers, building regulators, insurers etc as well as issues relating to NDIA decision making and processes, such as:

- NDIA decisions, which may need to be reviewed or appealed, and
- Non-transparency, inordinate delay, and other difficulties NDIA processes about payments.

The issues faced by NDIA participants when home modifications go wrong are often overwhelming indicating aspect of the current system are not working as required.

Recommendation 21: Overhaul home modification process, increase advocacy & legal help

A full review from lived experience be undertaken about the operation of NDIA home modification rules and procedures relating to owned homes (compared to rented) to overcome the dysfunctional process design, including misaligned assignment of risks and responsibilities, which can be overwhelming and abusive for NDIA participants.

The review should also assess unmet needs for advocacy and legal help, with a view to both being funded on a needs-basis.

5.2.2 Home modifications - rental properties

In DCLS' experience, people with a disability in the NT face considerable challenges in having their rental property modified. These modifications are either declined by the NDIA:

- because of the poor condition or unsuitability of the property or
- they are considered too costly or not worthwhile implementing in light of the requirement that the property must be returned to its original state at the end of the tenancy.

This is compounded in remote communities where environmental factors mean that temporary modifications may be reversed by climatic factors, such as temporary ramps that get washed away during heavy seasonal rain.

Even where modifications are made, they are often limited to the immediate vicinity of the property, for example, the doorway but not the walkway or driveway. This has resulted in situations where modifications have highlighted other accessibility issues. For instance, installing a ramp which leads to a potholed driveway that is prone to flooding.

Individual needs analysis is rarely undertaken, meaning that most requests for modifications are simplified into ramps and grabrails with other, more specific modifications being relatively uncommon.

The failure to differentiate between typical rental modifications and disability modifications is an ableist approach to tenancy management. It assumes that modifying buildings for greater accessibility does not carry any benefit or utility other than to the existing tenant. On the contrary, universal design and building standards aimed at improving accessibility is of benefit to everyone. Treating essential modifications as an inconvenience, rather than a necessity that must be accommodated, discriminates against people with disability both in the private rental market and public housing.

Recommendation 22: Develop disability modification guidelines for public and private landlords in the NT

Develop disability modification guidelines from lived experience for implementation by public and private landlords in the NT. Increase requirements for landlords of social housing stock and implement funding arrangements in support.

Address unmet needs for advocacy and legal help, with a view to both being funded on a needs-basis.

5.3 SIL and SDA housing in the NT

It is common in the NT for people with disability to fall through the gaps of the NDIS in relation to housing which is due to multiple factors including insufficient places through NDIS Supported Independent Living ('SIL'), and Specialist Disability Accommodation ('SDA').

Of the 5,181 NDIS participants in the NT, only 255 have been identified so far by the NDIA for SDA needs - some of whom which are already receiving funding, or some who are awaiting the funding in their plan.

However, far fewer can use SDA funding due to a lack of available SDA properties.¹⁰⁷ Against the high levels of unmet need, it is notable that the NT did not see an increase in enrolled dwellings for SDA in the most recently reported statistics, which are for the September 2022 quarter.¹⁰⁸

Only 213 participants in the NT are in an SDA dwelling¹⁰⁹. A further 464 participants (8.9%) receive funding for SIL.¹¹⁰

5.3.1 Hospital discharge issues due to SIL/SDA

The structure of government services creates a **siloed system** both amongst and within the services that reduces the ability of relevant stakeholders to work collaboratively to achieve a desired outcome for people with a disability. Often, the consequences of this are increased need for services such as legal or

¹⁰⁷ NDIA, Housing and Living Supports, Specialist Disability Accommodation Data – SDA Demand Data, online at: <https://www.ndis.gov.au/providers/housing-and-living-supports-and-services/specialist-disability-accommodation/sda-demand-data#demand> accessed 22 December 2022.

¹⁰⁸ National Disability Insurance Agency, NDIS Quarterly Report to disability ministers for Q1 of Y10 (Full Report, 30 September 2022) 97 <https://www.ndis.gov.au/about-us/publications/quarterly-reports>

¹⁰⁹ Ibid

¹¹⁰ Ibid, 694

advocacy support, the absorption of costs by an inappropriate party (the person with disability), and significantly increased risk to the person.

Case Study	Client W
Brief outline	Client W was living in a privately owned home when he was hospitalized following a brain injury. He was assisted to gain access to the NDIS by a hospital social worker, which included submitting reports from Allied Health team members who recommended the implementation of SIL and SDA before he could be safely discharged. His first NDIS plan did not incorporate these recommendations. At Client W's first review meeting, the NDIS planner advised him to pay for a private OT using his NDIS funds for the purpose of obtaining new recommendations for SDA and SIL. He stayed in hospital for 11 months and was required to pay a Daily Accommodation Fee while waiting for the Health Department and the NDIA to agree on a discharge plan.
Analysis	Administrative delays and other systemic issues are often costly for clients. Extremely long stays in hospital are a common consequence of having to wait for paperwork to be processed or decisions to be made.

Case Study	Client X
Brief outline	<p>Client X has impaired mobility due to Tetraplegia and her only income is the Disability Support Pension (DSP). Client X was living in Public Housing in Darwin when she moved away to live with a family member. After meeting access to the NDIS, she decided she felt supported enough to move back to Darwin and live independently again. She met with a Local Area Coordinator in her area and discussed the need for extra supports to ensure the transition went smoothly. Client X was told she would not be eligible for SIL or SDA as her needs were not high enough and that she had to be living in the NT to apply for public housing in Darwin. Upon arrival in Darwin, Client X found no accessible rentals were available on the private market. Additionally, there were no rentals she could afford on the DSP. She spent her first few months in Darwin living in a caravan park and putting together her application for the priority waitlist for public housing.</p> <p>Client X was asked to leave the caravan park when tourist season began. She moved into a house with basic accessibility (owned by a NDIA service provider but empty at the time) then was again asked to leave when the landlord received referrals for participants with respite funding in their plans.</p> <p>Client X then moved into another caravan park, where she stayed until she was accepted into a rental with subsidized rent through the National Rental Affordability Scheme (NRAS). She will remain in this rental until a property becomes available through Territory Housing (likely more than two years).</p> <p>So far none of the "accessible" properties that Client X has lived in are truly accessible for her. For example, since moving into the NRAS property, she has</p>

	<p>been hospitalized twice with serious pressure sores from using her shower chair when she is cooking, because the kitchen bench is too tall and not adjustable.</p> <p>She does not want to ask her landlord for modifications because she would have nowhere to stay while they are being completed.</p>
Analysis	<p>Systemic issue where rules as well as how they are applied are not aligned with the outcomes that need to be achieved resulting in hardship and increased risks for people with disabilities. This can be compounded by regional issues such as rental market conditions and availability of suitable housing.</p> <p>This fails to respect, protect and fulfil the rights of people with disability, and it places the health and wellbeing of people with disability at risk.</p> <p>The justification of ‘applying the rules’ or ‘following the rules’ compared to taking responsibility for ensuring required outcomes about ensuring the rights and wellbeing of people with disability - is at the heart of this systemic failure.</p>

The inordinate delays in hospital to SIL/SDA transition in the NT are totally unacceptable as a response to the needs of people with disability, informal carers, the hospital system and the needs of others in the community for hospital services. The financial stress for people with disability caught in this situation, of being unable to be relocated from hospital to SIL/SDA, also represents abusive cost-shifting.

The issue has an interesting compounding characteristic which is that it has become *emblematic* of issues which are intractable and unconscionable for people with disability – perversely achieving some kind of ‘justification’ or ‘legitimation’ of the failure. That is, along the lines that everyone knows this is impossible to solve – and through that claim - creating an addition layer of inertia.

Recommendation 23: Addressing hospital to SIL/SDA delays in the NT

The hospital to SIL/SDA delays in the NT are totally unacceptable as a response to the needs of people with disability, informal carers, the hospital system and the needs of others in the community for hospital services. The financial stress for people with disability caught in this situation, of being unable to be relocated from hospital to SIL/SDA, also represents abusive cost-shifting.

The issues require action by multiple stakeholders including the Commonwealth, NDIA and the NT Government, plus exploration of legal options to address the impasse.

5.3.3 ‘Dead renting’

Part of the reason that accessible housing is not available in the NT is that Service Providers who are registered for Short Term Accommodation (STA or Respite), Medium Term Accommodation (MTA), and SIL supports have bought or leased the housing that is available.

We are aware of a practice of ‘dead renting’ in the NT, where a provider rents accessible properties because the returns are worth it once a participant is found to fill the vacancy.

If someone is approved for SIL in the NT, generally there is a provider that has a room available for them to use. However, this does not mean people in SIL situations are happy with where they live.

Recommendation 24: Review of ‘dead renting’ accessible properties in the NT

That the NDIA and NT undertake a review of ‘dead renting’ whereby a service provider rents but does not immediately achieve occupation / use of a disability accessible property – consequently reducing supply against a backdrop of chronic under supply. The review should identify the impacts of this practice and what if any steps should be taken to increase supply.

5.3.4 Lack of SIL provision in remote communities and NDIA attack on SIL supports

The NPY Women’s Council submission speaks powerfully to the situation in the NPY and in other remote and very remote communities in the NT, in the following which relates to SDA and SIL:

“The establishment of staffed and well-resourced, purpose-built accommodation for people with disability on the NPY Lands would prevent the need for most people with a disability to leave the Lands. It would also provide a place where people who have moved off the Lands because of a lack of support could have respite and catch up with family.

There is a need for consultation with Anangu around changes to the provision of services and support for Anangu with a disability. In the research referred to above, people asked for services such as domestic help, transport to events in nearby communities and families were concerned about providing support for the activities of daily living. Increased and more flexible services, a range of in-community accommodation options, and the development of a well-supported local workforce are all areas where the situation of Anangu with disability could be improved. Maintaining current (Covid-19) levels of Centrelink assistance to all Anangu currently receiving it would be a first step towards reducing the universal poverty in remote communities which is a key factor in the abuse and neglect of Anangu with disability. Building houses and community buildings to accessible standards would eliminate this particular area of discrimination against Anangu with disability. Because communities in the Lands are distant from each other and from regional centres it would also help Anangu with a disability to fulfil some of their lifestyle and therapeutic needs if the public transport systems (twice weekly bus and weekly planes to most communities) were disability friendly.”¹¹¹

There have been multiple referrals to DCLS regarding slashed SIL supports (despite the NDIA’s own guidelines stating that SIL funding will not be changed without reason). This has resulted in social admissions to Royal Darwin Hospital as well as co-living situations that neither housemate approves of.

¹¹¹ NPY Women’s Council submission to the Royal Commission 11 September 2020, online at: <https://www.npywc.org.au/wp-content/uploads/NPYWC-submission-Disability-Royal-Commission-Sept-11-2020.pdf> p. 10.

Further to the issues that the NDIA created in the unjustified attack on SIL supports, which seem to be a nationwide issue, Aboriginal people in the NT are experiencing acute isolation from their communities due to chronic lack of SIL provision in their home communities.

Case Study	Client Y 1
Brief outline	<p>Client Y, an Aboriginal man, was receiving SIL supports in Darwin due to his high physical needs. His country is 700km away from Darwin, where his family all remain.</p> <p>Client Y was planning a return to country trip with his SIL provider, where three support workers would accompany him home for a short stay. Following a scheduled review, the NDIA cut his SIL funding in half and the trip was cancelled. Prior to the review, Client Y's Occupational Therapist and physiotherapist had written recommendations, which were supplied to the agency, that he be funded for two support workers as a base level, and three support workers for some of the time. It took 20 months for Client Y and his support team to convince the NDIA to correct this, during which time he missed Sorry Business for three family members and endured living with five housemates he didn't want.</p>
Analysis	<p>The importance of cultural and family connection is sometimes given a low priority or disregarded when NDIS funding is determined or reviewed. The impact on clients living within a traditional cultural framework can be very significant.</p>

Case Study	Client Y 2
Brief outline	<p>Client Y 2 is a non-Aboriginal person receiving SIL supports and complex needs including major behavioural issues. Client Y 2 has received individual SIL support in a rented home due to the nature of Client Y 2's needs. However, without any change in circumstances, no change in medical, OT or behaviour management assessments, the NDIA cut the SIL funding based on a claim that Client Y 2 could instead share with another SIL participant. As Client Y 2's current home is not large enough for this, this change would require Client Y 2 to relocate. As the vacancy rate for rental properties is extremely low, nothing about the NDIA decision seemed to make sense.</p> <p>The NDIA however persisted, with Internal Review failing to reverse the decision, requiring Client Y 2 to proceed to external review.</p>
Analysis	<p>Illustrates the 'unbelievability' of many NDIA SIL decisions – that is, the decisions are so unreasonable, unsupportable, and unconscionable.</p> <p>NDIA SIL decision making will hopefully be corrected in the reform processes initiated by Minister Shorten and improved mechanisms for guiding the NDIA. However, at this point SIL cuts are still impacting participants and urgent intervention is required.</p>

The situation with SIL support reductions in the NT has also been expressed by the NT Public Guardian who has noted that:

“Scheme implementation and forecasting for the NDIS

Proposed scheme implementation and forecasting is challenged by the Northern Territory’s unique context. Despite many positive outcomes for participants since the inception of the NDIS, concerns regarding the reduction in funding to participant plans and service provision continue to be a key issue for the Office of the Public Guardian. The current pattern emerging is showing that overall funding provided in plans and support services is decreasing, particularly supported independent living, resulting in NDIS services being unable to provide the level of care and support to enable the participant to live successfully.

The reduction in funding further exacerbates issues already faced by Territorians, especially for participants living in remote areas, who continue to be impacted by the lack of services and access to a full range of allied health professionals. This, along with the variability of experience and quality of service provided by Support Coordinators across the Northern Territory and the high staff turnover and inadequate training for new staff, provides a very challenging environment to provide appropriate supports and care.¹¹²

Recommendation 25: NDIA Supported Independent Living (‘SIL’) to include remote and very remote NT communities

SIL support must be available in the locations needed in the NT. There is currently highly inadequate availability in remote and very remote communities, and this must be a priority area for action in accordance with the rights, needs and wellbeing of people with disability.

Recommendation 26: SIL cuts require urgent intervention

NDIA SIL decision making will hopefully be corrected in the reform processes initiated by Minister Shorten and improved mechanisms for guiding the NDIA. However, at this point SIL cuts are still impacting participants and urgent intervention is required.

5.3.5 Specialist Disability Accommodation (‘SDA’) landscape in the NT is dire

The **SDA** landscape in the NT is even more dire. There are currently no vacant SDA properties. It was not until late 2022 that SDA providers (four that DCLS are aware of) started approaching people funded for SDA in Darwin and initiating the process to construct purpose-built homes. One provider has estimated that it will be at least 18 months before any new SDA is ready to be moved into.

¹¹² Northern Territory Office of the Public Guardian Submission to the Joint Standing Committee on the National Disability Insurance Scheme, Inquiry on Scheme Implementation and Forecasting, February 2022 online at: https://publicguardian.nt.gov.au/sites/default/files/2022_-_submission_to_joint_standing_committee_ndis_scheme_implementation_and_forecasting_final_report.pdf p.3

Despite this, the NDIA continues to make decisions to reduce supports – including person to person, therapeutic, and assistive technology – and reason that the person with a disability will no longer need these supports as they have been approved for SDA.

The common thread with DCLS clients who are referred to the DCLS Seniors and Disability Rights Service with a housing issue is that there are multiple other issues that the person is already experiencing or will experience before their housing matter is resolved.

With government funding designed to be used in specific ways by limited services, and any existing incentives ultimately benefiting operators in the private sector and not delivering for people with disability. This especially applies to people living in areas of low population density in the NT (which is most of the NT), Aboriginal people (living in these areas and generally), and anyone who doesn't quite meet the eligibility criteria of any funded service.

Recommendation 27: SDA requires funding overhaul, needs-based funding and accountability in the NT

The availability of Specialist Disability Accommodation is so inadequate in the NT that it plays into the problem to imagine there are solutions within the existing framework. The overhaul requires moving to needs-based funding, which includes addressing SDA in remote and very remote communities. SDA is currently unaccountable to people with disability in the NT and nationally, and realignment on this aspect is likely to help drive needed change.

5.4 Housing and people with disability - barriers to advocacy and legal help in the NT

While Part 7 of this submission 'Advocacy, legal help, reform – people with disability in the NT' refers to the need for increased access to advocacy and legal help by people with disability overall in the NT outlines additional specific areas – it is vital to address these issues here as well in relation to the rights of people with disability in relation to housing in the NT.

The issues in Part 5, above are pervasive, serious, and systemic and they are accompanied by dramatically insufficient access to advocacy support and legal help.

We submit that that lived experience demonstrates and shows why access to advocacy support and legal help must be addressed.

Regardless of how it is reasoned, whether – for example, from a:

- | | |
|--|--|
| ▪ rights-based approach | ▪ health perspective |
| ▪ wellbeing-based approach | ▪ functionality perspective |
| ▪ trauma-informed, client-centred approach | ▪ utility and return on investment perspective |
| ▪ empowerment approach | ▪ systems perspective |
| ▪ self-determination approach | ▪ systemic perspective |

the outcome is the same, that access to advocacy support and legal help must be achieved in the NT.

In relation housing issues, including homelessness and how both increase vulnerability of people with disability to violence, neglect, abuse, and exploitation:

- A NT remote and very remote tenants' access to legal help proposal put forward about 10 years ago by the North Australian Aboriginal Justice Agency, NT Legal Aid Commission and Darwin Community Legal Service – has never been funded and consequently can't be implemented,
- There is no funding model or funding for disability legal help in the NT – for people with disability in relation to housing, homelessness, or any other issues,
- There is no service in the NT specifically focusing on disability and housing advocacy, legal help and systemic advocacy but multiple services can extend to create full and collaborative coverage and areas of specialisation for mutual benefit, subject to the availability of resources
- There are glaring gaps in access to advocacy and legal help for people with disability with housing issues in the NT with all groups and services involved, ware of the problems.

A co-advocacy model (explained below, in Part 7), involving community workers, specialist advocates and legal advocacy – focused on individual and systemic advocacy – is needed to advance the rights and wellbeing of people with disability in relation to a wide range of housing needs in the NT.

DCLS and NAAFLS have proposed new funding be added to the Commonwealth contribution to the NT under the NHHA (see screen shots below)¹¹³ however, there are many options, including adding funding via: the National Legal Assistance Agreement ('NLAP), the National Health Agreement, and / or the Cth/NT Bilateral Agreement relating to the NDIS.

¹¹³ DLCS and the North Australian Aboriginal Family Legal Service joint submission to the Productivity Commission's National Housing and Homelessness Agreement Review, (submission 89) March 2022, <https://www.pc.gov.au/inquiries/completed/housing-homelessness/submissions#initial>

8. Rights and access to legal help should be reflected in the NHHA

The rights of individuals to access legal help should be reflected in commitments in the NHHA and in its implementation to help improve outcomes.

For example, DCLS is currently the only legal service that receives some funding to provide legal assistance to people experiencing tenancy-related issues in the NT. DCLS uses the funding to provide the Tenants' Advice Service ('TAS'), consisting of 4 staff positions and funds for limited travel.

TAS' client numbers increased from 430 clients in 2019 to 685 clients in 2021, reflecting factors such as increased rent stress, landlord practices in the context of chronic undersupply, social housing waiting lists and housing insecurity.

While some other non-profit legal services in the NT provide some assistance with tenancy-related issues, this work is severely limited due to lack of funding for this work.

The underservicing of tenants' legal needs in the NT is substantially exacerbated for:

- people living in remote communities,
- people escaping domestic or family violence,
- families with housing problems at risk of having children taken into care,
- people with a disability and
- older people.

8.1. Impact on remote housing tenancies

The lack of legal assistance for remote tenants exacerbates existing housing inequity and entrenches assumptions about public housing in remote communities.

The underservicing of legal need in remote areas has contributed to the disillusionment and apathy felt by tenants, as well as the disregard demonstrated by the Department, towards issues that would be viewed much more significantly were they to occur in an urban context (such as excessively long wait times for repairs).

It also further disincentivises tenants from proactively reporting repairs or other issues because they know that they won't be responded to. As a result, the original issue is exacerbated and ends up costing more to fix (e.g. further damage or increasing rent arrears).

Research by AHURI has found that the construction costs of dwellings in remote and very remote regions represents only a small amount of the total life-cycle cost of those dwellings over time. The majority (75%) of the life-cycle costs of dwellings in very remote regions are related to operating and maintenance costs, with the cost of emergency maintenance and repairs being 75% higher than planned activities.³⁴

Another issue more commonly experienced in remote communities is the absence of an interpreter when people are signing legally binding documents, such as a tenancy agreement. The experience of NAAFLS indicates that interpreters are infrequently used, even though their clients often do not understand the nature of a tenancy agreement and their obligations under it. This has resulted in clients who have moved out of a property still having rental payments deducted months later because the tenancy hasn't been terminated.

8.2. Types of legal help for tenants

Tenants, especially tenants in remote communities, need to be able to access culturally safe advocacy and legal help – which they can connect with and use routinely as required.

A diversity of help is needed, with multiple providers, offering support and help for the spectrum of needs,



from practical help and tenant capacity building to help sustain tenancies, to understanding and exercising rights and empowering tenants - and groups of tenants - to self-advocate.

The Santa Teresa case, which is an action by about 60 tenants in the remote Central Australian community of Santa Teresa about chronic, ongoing, maintenance failures - is a clear demonstration of how remote social housing tenants in the NT have been denied their basic legal rights and the importance of different kinds of legal help including individual and collective legal help.³⁵

DCLS TAS Community
Lawyer Phil Andrews
working on a tenancy case

³⁴ Tess Lea et al, 'Sustainable Indigenous housing in regional and remote Australia' (Policy Evidence Summary, Australian Housing and Urban Research Institute, November 2021) 2.

³⁵ Australian Associated Press, 'Class action win opens door for remote communities to sue NT for housing neglect' *The Guardian* (Web Page, 28 February 2019) <<https://www.theguardian.com/australia-news/2019/feb/28/class-action-win-opens-door-for-remote-communities-to-sue-nt-for-housing-neglect>>

Recommendation 28: Funding for disability housing and homelessness advocacy and legal help NT wide

Housing issues and homelessness increase vulnerability of people with disability to violence, neglect, abuse, and exploitation. There are major, longstanding gaps in access to advocacy and legal help in relation to both in the NT.

Addressing multiple policy objectives and rationales, funding should be provided for NT wide access, including and especially remote and very remote communities, to community-based advocacy and legal help focusing on individual support and assistance for people with disability and systemic advocacy by, with and for people with disability.

6. Employment and people with disability in the NT

Disability Discrimination Commissioner, Dr Ben Gauntlett

2022 Jobs and Skills Summit

Canberra, Friday 2 September, 2022

"I wish to acknowledge and pay my deep respects to the Traditional Owners of the land – the Ngunnawal people.

Introduction

Ladies and gentleman, distinguished guests.

The participation rate for people with disability is and has remained at 53% for 28 years. The participation rate for people without disability is 83%. The participation rate for people with disability includes people legally employed at or around \$3 per hour.

Dr Gauntlett's speech, above, contains 5 key points,¹¹⁴ which encapsulate what is required to implement the rights of people with disability to work enshrined in Article 27 of the Convention on the Rights of Persons with Disabilities. Article 27 stipulates the right of people with disability to work, on an equal basis with others; including:

"the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities."

States Parties must

"..safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment"

by taking appropriate steps, including through legislation to achieve specific objectives enumerated in Article 27(1), (a) to (k). A DCLS Report Card regarding Article 27 and the NT is below.

6.1 Respect, protect, fulfil CRPD Article 27 (Work and employment) in the NT

As outlined in the report card below, there are numerous areas where the rights of people with disability in the NT under Article 27 are yet to be achieved.

¹¹⁴ Online at: <https://humanrights.gov.au/about/news/speeches/disability-discrimination-commissioners-speech-2022-jobs-and-skills-summit>

Convention on the Rights of Persons with Disability

DCLS NT Article 27 Report Card

Article 27 – Work and employment	Summary analysis	Case study example (outline)
<p>1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:</p>	<p>Article 27 not achieved in the NT (see below)</p>	<p>Client A27-1 wants to work, has been in previous roles previously, needs intensive case management and advocacy due to nature of disability. Client is willing and able except that the required level of support is not available. Client tried again without the required support and wasn't successful. Unsure whether / when will make the next attempt.</p>
<p>a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;</p>	<p>Prohibition is not yet effective in the NT and additional measures are needed.</p> <p>Concerns about people with disability in the NT being subject to:</p> <p>Workforce segmentation (described below re (b)) with people with disability having less access to ongoing employment, and employer investment in training plus career advancement.</p> <p>Forms of employment and workplaces which are not conducive to workplace organising or vulnerable workers receiving their rights</p>	<p>Client A27-2 has a well-managed mental illness, accepts treatment and support, highly motivated to work, excellent worker – has only had labour hire positions in last few years – making re-entry to the workforce – positions have mainly broken down due to abuse by other workers not managed by management, but A27-2 has moved onto the next assignment and has had consistent part-time work to the hours that suit for most of the time. Labour hire has affected A27-2 ability to receive fair treatment in the workplace because issues aren't investigated, rather the assignment is terminated. A27-2 hasn't built up leave entitlements or had access to advancement equivalent to other workers.</p>

	Insufficient access for people with disability to advocacy support and legal help. ¹¹⁵	
b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;	<p>Insufficient access to work for a high proportion of people with disability in the NT.</p> <p>This increases the power imbalance and vulnerability for people with disability who have paid employment.</p> <p>Additionally, concerns and indications that:</p> <ul style="list-style-type: none"> • people with disability are overrepresented in insecure employment and insecure work arrangements in the NT including labour hire, gig economy, sham contracting and casual employment, and • employers are using ‘flexible’ work arrangements such as these to avoid committing to the support needs of people with disability.¹¹⁶ 	Client A27-3 has a medical condition which does not stop them performing work to the standard or better compared to other workers without the condition. The medical condition is sometimes subject to social stigma and discrimination. Client A27-3 was subject to discrimination relating to the condition. Client A27-3 was devastated and has not worked since – contrasting a with previous virtually unbroken, decades long, work history.

¹¹⁵ Darwin Community Legal Service submission dated 24 September 2021 to the Senate Community Affairs References Committee Inquiry into the purpose, intent and adequacy of the Disability Support Pension, submission 127, online at: <https://www.dcls.org.au/wp-content/uploads/2021/11/DCLS-Submission-Disability-Support-Pension-2021.pdf>.

¹¹⁶ Regarding issues with labour hire see Scanlon Williams, Not very far from modern slavery? Labour hire reform in the Northern Territory, completed 25 October 2021, online at: <https://www.dcls.org.au/events-and-publications/papers/>

c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;	Much more required to achieve this, power imbalances are great and the incentive /disincentive structure for workplaces and employers are insufficient	Clients Z1, Z2, A27-2 and A27-3
d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;	Issues about insufficient accommodation of people with disability and insufficient knowledge, skills, expertise and resources.	<p>Client A27-2</p> <p>Client A27-4 is an Aboriginal person in their 20's who has NDIS plan which they do not access as they don't understand it or relate to it. The plan has negative associations with being put down right through school and 'being treated like I'm an idiot'. Client A27-4 enjoyed starting the Community Development Program (CDP) but wanted 'real pay'. Client A27-4 disengaged from the CDP and hasn't yet reengaged. Client A27-4 didn't see the point because it was going nowhere, and it was expensive and difficult at times due to the travel to the program. A27-4 wasn't offered the opportunity to work on a skills development plan and did not have an advancement plan. A27-4 couldn't see how it could lead to anything such as 'real work'.</p>
e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;	Organisations created by and for people with disability sometimes excel but many others don't.	A27-1, A27-2, A27-4

f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;	Needs much more development in the NT context.	Client A27-5 lives with disability, has a NDIS plan which includes support workers about 2 days a week. A27-5 has some capabilities which could be income generating via entrepreneurship – however A25-5 would need an increased carer ratio plus housing modifications. The resources required to potentially try to achieve this are certainly not available at present because Advocacy, carer and community assistance is fully deployed for other current issues A27-5 is battling.
g) Employ persons with disabilities in the public sector;	<p>Appears to have been slowly improving in some areas.</p> <p>Dramatically insufficient in the NT in relation to the NDIA.¹¹⁷</p>	<p>Client A27-6 worked for a public sector agency which claimed to value the lived experience of people with disability and stated that it aimed to be an employer of choice for people with disability.</p> <p>Client A27-6 observed that over an extended period that this was not how things were. Client A27-6 lost faith in the employer. As a person with caring responsibilities in relation to a person with disability ClientA27-6 also experienced unreasonable inflexibility from the employer regarding these caring responsibilities. Client A27-6 was disillusioned and felt unable to continue in this employment.</p> <p>Client A27-7 works full time for a federal agency and has worked their way up from</p>

¹¹⁷ See for example DCLS submission to the Joint Parliamentary Standing Committee on the NDIS reference on NDIS Capability and Culture, are online at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/CapabilityandCulture/Submissions.

		<p>being a trainee in a disability support program. Client 27-7 lives at home with family consisting of one parent as sole parent and a sibling. Client 27-7's parent has helped with all the logistics for work to be possible, throughout. This includes helping with many things to get ready for work each day (some of which involves preparing over the weekend). Each work day there is a morning routine, including preparing packed lunch (morning and afternoon tea plus lunch), helping with dressing and organising, doing the transport to and from (which is also good talking time to help plan the work day), being on call, helping with details and issues which come up with the employment relationship and managing unexpected things including medical issues, appointments etc. This has worked fine with the family member receiving Carer Payment however, Services Australia now say they have ceased to qualify because Client A27-7 does not require the hours of care required for this. Client A27-7 is very worried that this won't work out and all the effort to be employed will crash. Client A27-7 does not earn enough to support the parent and the parent can't imagine being able to get a paid job to work around the logistics of what's required to support A27-7 in their job.</p>
h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may	Situation is patchy with insufficient resources allocated for education and other measures to increase momentum.	<p>Client A27-1; A27-3 and A27-3</p> <p>Client A27-8 was working full time and had always done so. Recently diagnosed with a</p>

include affirmative action programmes, incentives and other measures;	Insufficient incentives to employers regarding affirmative action programs.	cognitive impairment, ClientA27-8 was relieved to have a diagnosis, because it explained quite a lot and ClientA27-8 felt more at ease. It did however create a complication with a work certification requirement which A27-8 was undergoing. On the one hand it would be good to put the diagnosis forward if this would facilitate certification but on the other hand if this could result in problems – this would not be useful, the real dilemma was not being able to trust processes not to discriminate.
i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;	Variable accommodation of people with disabilities in the workplace in the NT.	Client A27 - 9 manages mental illness – mostly extremely well, however this can be the subject of stigma when job seeking for employment. In recent years, Client 27-9 has chosen to apply to employers who appear to be particularly in tune with people with lived experience of this kind. Client 27-9 has been highly valued and effective in the roles undertaken, with appropriate flexibility when required from the employers. Client 27-9 feels empowered by how well things are going and sees a world of difference between employers who are good or bad for people with disability of this kind.
j) Promote the acquisition by persons with disabilities of work experience in the open labour market;	Insufficient availability generally in the NT and higher levels of insufficiency in	Client A27-10 undertook unpaid work experience towards a particular qualification but became unwell with the management of their mental health condition after the work experience began. Client A27-10 had not raised their condition previously and was then

	remote and very remote communities. ¹¹⁸	embarrassed to do so and instead tried to carry on. Client A27-10 had time off for a different issue which also impacted other workers. Ultimately Client A27-10 was too unwell to continue and walked away from the opportunity, still not having raised the issue with the workplace.
k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.	Often: <ul style="list-style-type: none"> • unnecessarily adversarial, and responsive / not sufficiently customised or timed for the needs of the person with disability • induces stress and adversely impacts on the wellbeing of the person with disability • not achieved due to adverse impacts of the process on the person with disability 	Client A27-1 is an example of an insufficiently supported work -re-entry. Client A27-11 was due to return to work after a serious medical emergency which resulted in permanent physical disabilities. However, it appeared that the employer wanted to achieve settlement which included A27-10 resigning. The client was extremely distressed, felt disrespected, rejected – the client wanted to return to work and felt this would be positive and enable them to continue to contribute plus earn an income, but there was a strong overtone of not being wanted and being forced out. Client A27-10 felt demoralised and sought legal and/or advocacy assistance to try to save their job.
2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.	<ul style="list-style-type: none"> • insufficient education about this obligation and insufficient awareness and attention at a policy and program level 	A27-Multiple clients: The Community Development Program (remote area work for the dole), required participation in work, work-like or other

¹¹⁸ Regarding jobs programs and jobs creation in remote and very remote communities in the NT see Aboriginal Peak Organisation NT, Fair Work and Strong Families: Proposal for Remote Development Employment Scheme (2nd edition 2018), online at <https://apont.org.au/publications/>

	<ul style="list-style-type: none"> insufficient safeguards and insufficient access to specialist advocacy and legal help¹¹⁹ 	<p>activities as a requirement to receive a range of social security payments. The hours required were oppressive and discriminatory, the effort was not treated as remunerated employment, this was arguably modern slavery, or at the very least systemic abuse.¹²⁰ Penalties were often applied for 'breaches' adding to the abuse. Due to lack of proper pathways and facilitation for people with disability to move onto the Disability Support Pension – people with disability were caught in the Community Development Program – often being unable to complete requirements and also failing to meet the 'Program of Supports' required to qualify for DSP. A Catch-22.¹²¹</p>
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¹¹⁹ Darwin Community Legal Service submission dated 24 September 2021 to the Senate Community Affairs References Committee Inquiry into the purpose, intent and adequacy of the Disability Support Pension, submission 127, online at: <https://www.dcls.org.au/wp-content/uploads/2021/11/DCLS-Submission-Dsiability-Support-Pension-2021.pdf>.

¹²⁰ Jon Altman, Modern Slavery in Remote Australia? 2017 (10-11) Arena, 15, online at: <https://regnet.anu.edu.au/research/publications/6984/modern-slavery-remote-australia>

¹²¹ Darwin Community Legal Service submission dated 24 September 2021 to the Senate Community Affairs References Committee Inquiry into the purpose, intent and adequacy of the Disability Support Pension, submission 127, online at: <https://www.dcls.org.au/wp-content/uploads/2021/11/DCLS-Submission-Dsiability-Support-Pension-2021.pdf>.

6.1.1 Summary

- i. Prohibition of discrimination on the basis of disability is not yet effective in the NT and additional measures are needed.
- ii. Concerns about people with disability in the NT being subject to:
 - Workforce segmentation (described below with people with disability having less access to ongoing employment, and employer investment in training plus career advancement.
 - Forms of employment and workplaces which are not conducive to workplace organising or vulnerable workers receiving their rights
- iii. Insufficient access for people with disability to advocacy support and legal help. Insufficient access to work for a high proportion of people with disability in the NT. This also increases the power imbalance and vulnerability for people with disability who have paid employment.
- iv. Additionally, concerns and indications that in the NT:
 - People with disability are overrepresented in insecure employment and insecure work arrangements including labour hire, gig economy, sham contracting and casual employment, and
 - Employers are using 'flexible' work arrangements such as these to avoid committing to the support needs of people with disability.
- v. Regarding people with disability exercising their labour and trade union rights - Much more required to achieve this, power imbalances are great and the incentive /disincentive structure for workplaces and employers are insufficient
- vi. Insufficient accommodation of people with disability in the workplace and insufficient knowledge, skills, expertise and resources.
 - Organisations created by and for people with disability sometimes excel but many others don't.
- vii. Promote opportunities for employment and entrepreneurship - needs much more development in the NT context.
- viii. Employing people with disability in the public sector appears to have been slowly improving in some areas. But dramatically insufficient in the NT in relation to the NDIA.
- ix. Promote private sector employment of people with disability – situation is patchy with insufficient resources allocated for education and other measures to increase momentum.
- x. Insufficient incentives to employers regarding affirmative action programs.
- xi. Variable accommodation of people with disabilities in the workplace in the NT.

- xii. Promote acquisition of skills in the labour market - insufficient availability generally in the NT and higher levels of insufficiency in remote and very remote communities.
- xiii. Vocational and professional rehabilitation - often:
 - unnecessarily adversarial, and responsive / not sufficiently customised or timed for the needs of the person with disability
 - induces stress and adversely impacts on the wellbeing of the person with disability
 - not achieved due to adverse impacts of the process on the person with disability
- xiv. Promote acquisition of work experience - insufficient education about this obligation and insufficient awareness and attention at a policy and program level
- xv. Ensure non-abusive work conditions – insufficient education and awareness raising including at a government program level
 - Insufficient safeguards and insufficient access to specialist advocacy and legal help

Recommendation: 29 Multiple measures to support workforce participation in NT

Mechanisms are needed in the NT to map, monitor and propel the rights and wellbeing of people with disability in relation to access to work and in the workforce.

Special facilitation should be given to the Aboriginal Peak Organisation NT to fully develop the Fair Work and Strong Families: Remote Development and Employment Scheme initiative for funding and implementation via a partnership with the Commonwealth.

Substantial injection of resources required for numerous initiatives including ensuring people with disability in the NT have access to specialist advocacy and legal help.

6.3 Supported employment

6.3.1 Chronic insufficiency of supported employment in the NT

There is a chronic insufficiency of supported employment places in the NT, and insufficient planning and resource availability. Supported employment places are needed throughout the NT including in remote and very remote communities.

The insufficiency of places impacts on the wellbeing and inclusion of people with disability who require supported employment to promote inclusion, fulfilment and empowerment.

DCLS is very pleased to be an invited participant in the Aboriginal Peak Organisation NT Fair Work and Strong Communities Alliance and is very supportive of APONT members and Alliance participants exploring whether expanding supported employment may fit with, or be further propelled by, the Fair Work and Strong Communities initiative.

Recommendation 30: Increase supported employment places in the NT

Substantially increase resources to achieve more supported employment places in the NT.

6.3.2 Quality and complaints management in supported employment in the NT

Case Study	Client Z1
Brief outline	<p>Client Z1 enjoyed undertaking supported employment but did not like the sexual innuendo and sexual jokes that supervisors participated in with male participants. Client Z1 felt unsafe and uncomfortable. Something happened relating to this and the police became involved. Client Z felt unsupported, and Client Z1's guardians who were readily available, and positively and actively involved in promoting Client Z1's wellbeing - were appalled about non-notification to them and the ensuing process. Client Z1 ceased participating and remained at home for an extended period. The guardians attempted to work on the issues with the employer, but this was difficult as the responses did not inspire confidence. Client Z1 ultimately returned, hoping things would be better. Client Z1 missed the work opportunity so much.</p>
Brief outline	<p>Client Z2</p> <p>Client Z2 is an adult with a big smile and many successes and achievements. Client Z2 is a NDIS who normally undertakes supported employment. Due to issues experienced, lack of resolution through complaints processes and lack of alternative programs, Z experienced a range of adverse effects which continued for a long time.</p>
Analysis	<p>The power imbalance for participants in supported employment can place these workers with disability in a highly vulnerable position when things are wrong – or go wrong – in the workplace.</p> <p>Arrangements for accreditation, complaints handling, complaints resolution and amends are not providing sufficient support for these workers or providing sufficient support and incentive to supported employment programs to achieve necessary standards.</p>

Recommendation 31: Supported employment - quality improvement regarding complaints

The power imbalance for participants in supported employment can place these workers with disability in a highly vulnerable position when things are wrong – or go wrong – in the workplace.

Arrangements for accreditation, complaints handling, complaints resolution and amends should be reviewed to ensure sufficient support for people with disability participating as workers in supported employment programs.

6.4 Impacts of social security system on access by people with disability to employment

The Australian social security system is underpinned by various policy themes relating to the importance of adults being self-supporting. The most common narrative is that this will be achieved by individuals deriving an income from employment.

Consequently, the social security system interfaces with job search requirements, job readiness and programs aimed at improving skills and targeting to employment opportunities.

However, the social security system often impedes, rather than supports, workforce participation by people with disability.

For example, the criteria for Disability Support Pension are currently manifest eligibility or eligibility under general medical rules, the latter are that the person must have a disability or medical condition ...

“... that meets all of the following:

- will last more than 2 years
- is fully diagnosed, treated and stabilised
- results in an impairment rating of 20 points or more
- will stop them working at least 15 hours a week in the next 2 years.

...

They may also need to complete a Program of Support before they can get DSP.

A Program of Support helps people with disability to prepare for, find and keep a job. It may help your patient with any of the following:

- job preparation and job search
- work experience and training
- management of their medical condition.

This doesn't apply if their conditions have at least 20 points under a single Impairment Table. If they do need to meet this requirement, they must have actively participated in the Program.”¹²²

We illustrated problems with these criteria in our 2021 submission to the and Parliamentary Committee Inquiry into the Disability Support Pension,¹²³ and provided case studies including the following¹²⁴

¹²² Plain English version by Services Australia for medical profession, What the medical rules are? <https://www.servicesaustralia.gov.au/disability-support-pension-eligibility-rules-information-for-health-professionals?context=44231>

¹²³ Darwin Community Legal Service submission dated 24 September 2021 to the Senate Community Affairs References Committee Inquiry into the purpose, intent and adequacy of the Disability Support Pension, submission 127, online at: <https://www.dcls.org.au/wp-content/uploads/2021/11/DCLS-Submission-Disability-Support-Pension-2021.pdf>.

¹²⁴ 'Aaron is a pseudonym, ibid, submission. P. 13

Case study 1

Aaron lives in the NT and has worked all his life in low paying work. He is unable to work due to chronic health conditions. He is receiving JobSeeker with participation requirements suspended due to his health. He is gathering medical evidence to apply for DSP. Advocates estimate the DSP claim process will take between 6 to 12 months. If he is unsuccessful the first time, he would expect to remain on JobSeeker with mutual obligation requirements still suspended while his health deteriorates, and a further application is made for DSP. Aaron has received assistance from emergency relief programs and family members who have given him food and some funds. His partner is applying for Carer Payment, which she is likely to receive even though Aaron is receiving JobSeeker rather than DSP at this stage.

In Aaron's case, he can never meet the participation requirements (job search, training, participation in work) because suspension of these conditions, even due to health, does not count towards meeting the required participation requirements. Consequently, he will never qualify for DSP, while these rules continue and unless and until his disabilities become more severe.

Additionally, if Aaron is subsequently granted DSP he must continue to be unable to work for more than specified hours – or his eligibility will cease. That is, even though he may not be able to undertake sufficiently remunerated work to support himself.

In these ways, DSP is bounded and framed by work, there is insufficient flexibility and tapering.

The section of our submission to the Parliamentary Committee Inquiry outlined issues expressed in relation to the DSP which also apply generally in relation to people with disability and the social security system. These changes involve a paradigm shift.

That is, in relation to people with disability the social security system should be:

- Redesigned using a social model of disability at its core - this means the system should be helping people with disability to receive their rights and maximise wellbeing, participation and inclusion
- Ensure social security constitutes a living income so each person with disability can live their life with as much independence and participation in society as possible (ontological change – that is the whole framework needs to change)
- Provide support for work / employment and avoid the social security system creating disincentives
- Reflect human rights obligations and promote the human rights of all people with disability,

We recommend that redesign of the DSP instead has the social model of disability at its core, where we recognise that it is a person's impairments, which can create functional limitations for a person, as well as barriers to social, political and economic inclusion that make up a person's disability. Approaches to 'disability' have been changing rapidly in Australia over recent years.

1.2 Human rights obligations

As mentioned above the Objects and General Principles in the *National Disability Insurance Scheme Act 2013* ('**NDIS Act**') which provides a commitment to purposeful scheme can be used as a guide for the Social Security Act.³

The **CRPD** speaks to the full and effective participation and inclusion in society for people with disability (Article 3).⁴ This can be achieved by the DSP constituting a living income, so each person receiving DSP can live their life with as much independence and participation in society as possible. It also means that a person should be supported when accessing potential employment or voluntary work and economic participation without facing unnecessary risks that their livelihood could be affected. When it comes to work and employment the CRPD calls on parties to promote employment opportunities [...] and returning to employment (Article 27). The current DSP model disincentives people re-entering employment as the risk of losing payments looms over people who are exploring potentially gaining employment again.

The Declaration on the Rights of Indigenous Peoples ('**DRIP**'), as endorsed by Australia, provides more guidance on ensuring human rights specially for our Aboriginal and Torres Strait Islander Communities.⁵

In summary, the purposes of DSP to be stated in the legislation, should include:

- acknowledgment of Australia's obligations under the Convention on the Rights of Persons with Disabilities ('CRPD') and other international instruments, for which s3-s5 of the NDIS Act is a guide,⁶
- acknowledgement Australia's endorsement of the Declaration on the Rights of Indigenous Peoples ('DRIP'),
- fostering the wellbeing, rights, and inclusion of people with a disability including living a full life and promoting independence and social and economic inclusion, and

³ The Objects and General Principles in the NDIS Act are attached to this submission. See Attachment B.

⁴ The Convention on the Rights of Persons with Disabilities, CRPD

⁵ '**Article 1** Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law. **Article 2** Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.' United Nations Declaration on the Rights of Indigenous Peoples, DRIP.

⁶ The Objects and General Principles in the NDIS Act are attached to this submission. See Attachment B.

- emphasising full inclusion of people living in regional, rural and remote areas.

The addition of a statement of purposes would help orient how DSP is understood and implemented. For example, currently the process of applying for the DSP and the POS requirements are not an inherently dignified experience. A shift in ensuring that the application process is not a barrier to people gaining access to payments they are entitled to is needed. This should include ensuring that people are not demeaned or adversely affected by the application process itself.

We also submitted that:

"Cost-containment via DSP is currently achieved by:

- Warehousing people with permanent disabilities who are unable to work on lower paid social security payments, especially JobSeeker with or without suspension of JobSearch and other requirements,
- Overwhelming other social security payments with people with permanent disabilities who are unable to work but who are also unable to move onto DSP,
- Forcing other services, sectors, programs and systems to use resources to try to fill the gaps created by DSP policy, and
- Requiring individuals, families and communities to absorb and manage the cost.

Real cost-containment and cost-effectiveness could be achieved by:

- Targeting funding to enable entitlements and achieve maximum positive benefits for the intended recipient group/s,
- Introducing key measures of cost effectiveness, which should be:
 - how quickly and directly positive eligibility outcomes are achieved,
 - the ratio of overhead costs to income and related support delivered to the intended recipients, and the extent to which expenditure advances the wellbeing and empowerment of the intended recipients,
- Utilizing social models which place positive outcomes for people in need at the centre of the federal Government approach to economic management regarding DSP.”¹²⁵

Recommendation 32: Social security should support rights, employment and inclusion of people with disability

The social security system should be reformed applying a human rights-based approach and a social model of disability in support of the rights, wellbeing and inclusion of people with disability.

This applies to access to and participation in work and employment and all other dimensions. The social security system should not harm, disrespect and repudiate people with disability, which it all too frequently does at present.

7. Advocacy, legal help, reform – people with disability in the NT

People with disability require access to advocacy and legal help to advance their rights.

Funding constraints on advocacy and legal assistance are severely impacting rights and wellbeing of people with disability in the NT. Some advocacy and legal needs have already been noted above, including in relation to housing needs of people with disability.

This section provides additional background and outlines further issues focusing on the civil law legal needs of people with disability in the NT.

7.1 Advocacy in support of people with disability

Advocacy in support of people with disability is specialist non-legal advocacy, which is a rights-based approach, instrumental in helping people assert their human rights, safe from harm and to promote their wellbeing.

The NT Disability Strategy 2022-32 Outcome 1, ‘People with disability have rights and choices which are protected and respected’, notes that:

“Advocacy is an essential part of promoting, protecting, and supporting a person’s human rights and is a fundamental part of the Strategy that cuts across all areas. A strong disability advocacy

¹²⁵ p. 13

sector is a powerful tool for people with disability to address this inequity and have a voice.¹²⁶ Advocacy extends to those who support people with disability. It is particularly important that people with disability are supported to advocate for their own rights.”¹²⁷

As outlined in DCLS Seniors and Disability Rights Service Guidelines (see 2. Seniors and Disability Rights Service (SDRS)’ below), the SDRS advocacy model is issues based and encompasses individual and systemic advocacy.¹²⁸

Advocacy is often an early intervention and safeguarding mechanism for people with disability, especially where there’s no, or inadequate, oversight in place. However, advocacy can assist at any point and at multiple points in a continuum.

The DCLS Seniors and Disability Rights Services advocacy model is embedded in practice via DCLS Guidelines.

¹²⁶ “Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Issues Paper: Rights and Attitudes, page 3; Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008), see for example arts 4(3), 29(b)(ii) and 33(3). (2020)”

¹²⁷ NT Disability Strategy 2022-32, p.12 https://tfhc.nt.gov.au/data/assets/pdf_file/0020/1124183/disability-strategy.pdf

¹²⁸ Darwin Community Legal Services Eligibility and Priority Guidelines for Legal Assistance and Seniors and Disability Rights Service, 10 August 2021, p 13-14, online at <https://www.dcls.org.au/dcls-eligibility-and-priority-guidelines/>

2. Seniors and Disability Rights Service (SDRS)

The DCLS Seniors and Disability Rights Service (SDRS) provides advocacy through supporting and empowering seniors and people with disabilities to protect/promote their rights/interests including accessing services needed.

What is Advocacy?

Advocacy in all its forms seeks to guarantee that people are able to:

- Have their opinions and concerns heard.
- Have their views and wishes genuinely considered when they are affected by decisions
- Uphold and preserve their rights

Advocacy is a process of supporting and enabling people to:

- Articulate their views and concerns
- Access information and services
- Explore choices, preferences, and opportunities
- Protect and promote their rights and responsibilities

Advocacy does not include providing legal advice or assistance.

Types of Advocacy

Individual – Assisting a person or group to achieve their objectives.

Systemic – Working to bring about social and structural change and mobilise others to be part of that process of change.

Focus of Advocacy

Advocacy is issue-based. Advocates assist clients with a particular matter or problem. Advocates may take on several matters for one client.



However, disability advocacy funding is insufficient throughout the NT because it does not meet the needs in the community.

For example, our disability advocacy team operates on a waitlist that is generally 6-8 weeks long, even with a strong focus on providing information and supporting self-advocacy where possible.

DCLS is a member of Disability Advocacy Network Australia ('DANA') and DCLS contributed to and endorsed the DANA submission about Independent Disability Advocacy to the Royal Commission in December 2022 regarding the roles, importance and need for dramatically increased availability of Independent Disability Advocacy.¹²⁹

The four issues in the DANA submission are

¹²⁹ Available on the DANA web site at: <https://www.dana.org.au/wp-content/uploads/2022/12/Independent-disability-advocacy-DANA-Submission-to-the-Disability-Royal-Commission.pdf>

1. Enhance disability advocacy service capacity
2. Improve and develop sector quality
3. Improve national co-ordination and data
4. Enhance safeguarding mechanisms

DANA noted that:

“In addition to exploring the context, key barriers and challenges for the disability advocacy sector, this submission outlines our recommendations to support fulfilling the obligations inherent in the implementation of the purpose and principles of Australia’s Disability Strategy (2021-2031) and National Disability Advocacy Framework (2022-2025) to achieve desired outcomes for people with disability throughout Australia. In particular, the recommendations seek to eliminate their risks of experiencing violence, abuse, neglect or exploitation”¹³⁰

Recommendation 1 in the submission, which DCLS echoes in relation to Independent Disability Advocacy in the NT, is:

1. **ENHANCE DISABILITY ADVOCACY SERVICE CAPACITY:** Increase disability advocacy funding to support service capacity to provide access to all people with disability who require advocacy support to reduce risks of violence, abuse, neglect and exploitation and enhance quality of life
 - a. Provide an immediate injection of additional funds to address the existing crisis in lack of independent advocacy service availability by enhancing the workforce capacity of disability advocacy organisations to meet current demand and to support clients in a timely and consistent manner.
 - b. Address unmet need for disability advocacy by expanding reach through targeted advocacy to increase access and support for identified high risk population groups and to address specific needs including issues arising from intersectionality that impact people with disability i.e. housing, poverty, mental health, justice, abuse, vulnerability
 - c. Strengthen organisational systems and infrastructure to support enhanced administrative efficiency and quality of disability advocacy service delivery
 - d. Undertake collaborative work between state, territory and federal governments with the disability advocacy sector to develop a robust disability advocacy funding model. The model to guide distribution of funding to address client complexity, meet current and unmet advocacy needs and to support organisational responsiveness and sustainability.

¹³⁰ DANA Digital Newsletter, 20 December 2022.

Recommendation 33: Needs based funding for Independent Disability Advocacy in the NT

Increase disability advocacy funding to support service capacity to provide access to all people with disability in the NT who require advocacy support to reduce risks of violence, abuse, neglect and exploitation and enhance quality of life.

Fully implement the recommendations about Independent Disability Advocacy in the DANA submission, December 2022 to the Royal Commission.

7.2 NDIS Appeals Advocacy

Additionally, to amplify that there are major unmet needs in the NT for NDIS Appeals Advocacy.

This refers to non-legal specialist advocacy assistance with NDIS Appeals.

This advocacy encompasses internal and external review (AAT etc.) and related mechanisms including the new Independent Expert Review ('IER').

Funding currently allocated in the NT for NDIS Appeals specific advocacy is minimal and is not based on a model reflecting the needs for this support or the costs and logistics for people in the NT.

Additionally, the funding model is not reflective of external developments, most recently the substantial changes underway in relation to NDIA management of appeals including the IER which is as part of the effort to quickly overcome the appalling NDIS appeals backlog in the AAT.

7.2.1 NDIS appeals advocacy is an essential service

In February 2022 the NT Legal Aid Commission ceased new grants of aid for NDIS Appeals, due to also experiencing grossly inadequate funding. This occurred at the same time that NDIS plan reviews for NT participants were the highest nationally, and NDIS appeals were skyrocketing in the AAT (Guardian report also highlighted below).¹³¹

The NT Legal Aid funding issue was not resolved in the way Legal Aid sought, perpetuating a tenuous situation which is highly likely to be insufficient. The additional funds provided resulted in the Commission making some new grants of aid in September 2022.

¹³¹ Reference DCLS Capability and Culture submission. Image is a screen shot from The Guardian report, 26 March 2022, online at: <https://www.theguardian.com/australia-news/2022/mar/26/half-of-all-ndis-plans-reviewed-in-the-nt-had-funding-slashed-over-last-six-months>

Inequality reporting
Northern Territory

Half of all NDIS plans reviewed in the NT had funding slashed over last six months

Disability services are warning of a 'general trend of substantial cuts to funding' in the NT with some facing cuts of more than 50%

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About this content

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During the time NT Legal Aid ceased new grants of aid, the only NDIS Appeals legal help in the NT was from Darwin Community Legal Service which continued to provide assistance as far as possible (without resources), due to the humanitarian circumstances in many cases. Additionally, the need for NDIS appeals advocacy continued to escalate due to the NDIA's approach.

In March 2022 DCLS, the Alice Springs based Disability Advocacy Service and the NPY Women's Council, (being the only organisations based in the NT receiving some funding to provide NDIS Appeals Advocacy) issued a joint statement of profound concern (shown in part below).¹³²

¹³² Full statement is on the DCLS web site at: <https://www.dcls.org.au/wp-content/uploads/2022/03/NDIS-Appeals-advocacy-statement-DAS-NPYWC-DCLS-170322.pdf>

16 March 2022



Northern Territory Disability Advocates call for action on NDIS Appeals crisis.

Darwin Community Legal Service (**DCLS**), Disability Advocacy Services (**DAS**) Alice Springs and NPY Women's Council (**NPYWC**) are all NT based organisations that receive funding from the Department of Social Services for NDIS Appeals Advocacy.

NDIS Appeals Advocacy provides specialist support to National Disability Insurance Scheme (**NDIS**) participants and people seeking access to NDIS supports when appealing decisions made by the National Disability Insurance Agency (**NDIA**) to the Administrative Appeals Tribunal (**AAT**).

Rights of people with a disability in the NT

However, the funding our services receive for NDIS Appeals Advocacy is highly inadequate, to the point that none of us now have funding for even one full-time position.

DSS has not correlated funding for NDIS Appeals Advocacy support to NT participant needs, the service areas or the specialist nature of the work.

On top of this DSS has advised that the NDIS Appeals Advocacy funding of \$80,000 pa received by DCLS for NT wide assistance, will be reduced by 30% next financial year.

The NDIS Appeals Advocacy funding each of our organisations receives is unresponsive and tokenistic to the NT context and is dismissive of the rights and needs of people with a disability in the NT especially those in remote and very remote settings.

Compounded by a crisis in NDIS Appeals legal representation in the NT

Further to this, an access to justice crisis for people with a disability is currently unfolding in the NT.

The only organisation receiving specific funding to provide legal representation at the AAT for NDIS Appeals has suspended assistance for new matters for this financial year and stated that the funding allocation on offer to them for 2022 – 23 will still not be enough to meet current demand let alone the increasing



free legal advice and information | general legal service | tenants' advice service
seniors and disability rights service | older person's abuse information line
Darwin Community Legal Service

The concerns in this statement have still not been addressed. Although existing funding was rolled over and small additional allocations were received this did not – and has not – responded to the nature and extent of the issues and needs. Additionally, the recent changes in the NDIA approach, including a noticeable change in instructions in some matters before the AAT, are creating a 'blitz' which is also increasing appeals advocacy workloads.

Recommendation 34: Needs based funding for NT NDIS appeals advocacy.

We repeat the recommendation made in the DCLS submission to the Joint Standing Committee on the NDIS Inquiry into NDIA Capability and Culture, namely that: ¹³³

An NT NDIS appeals advocacy and legal support plan is urgently needed for the NT. The plan should include:

- An immediate injection of funds for direct local access to specialist advocacy and legal support to for people appealing NDIS access, supports or related decisions.
- A funding model which reflects the rights and needs of participants in the NT which the ‘blitz’ of matters currently before the AAT is being worked on.
- A commitment for longer term planning, to develop model for NDIS advocacy and appeals support which reflects needs and the availability of multiple non-profits, including Aboriginal Legal Services and the Women’s Legal Services in the NT to be incorporated ongoing.

7.2.2 Co-advocacy – Advocate and lawyer working together

Additionally, DCLS has a strong commitment to co-advocacy, which consists of an advocate and lawyer working together to pool expertise and assist each other in the joint advocacy effort by, with and for the person with disability.

Engagement with specialist community-based advocacy and legal services identifies co-advocacy as a highly effective model which should be recognised and established as standard practice where ever possible.

In our practice, co-advocacy provides strong and creative collaboration with advocates from our Seniors and Disability Rights Service and community lawyers from our General Legal Service and Tenants’ Advice Service, achieving wrap-around supports between non-legal advocacy and legal services.

The model de-compartmentalises expertise, increases reflexivity and substantially increases effectiveness including:

- collaboration with and accountability to the person with disability
- managing logistics
- increased quality,
- increasing capacity for systemic advocacy, and
- mutual learning and mutual capacity building.

¹³³ Submission number 32, dated 14 October 2022, online at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/CapabilityandCulture/Submissions

Recommendation 35: Role out and funding of NDIS Appeals co-advocacy especially in the NT

That NDIS Appeals Advocacy models for the NT should apply co-advocacy (advocate and lawyer together) and funding for NDIS Appeals Advocacy should reflect this. Recommendations by the Royal Commission should include a call for specific funding for co-advocacy to be delivered by community legal centres and non-profit legal services across Australia.

7.3 NT Adult guardianship advocacy, legal help and legislative and related reform

Adult guardianship in the NT is also an area where people with disability in the NT need increased access to advocacy and legal help.

However, while chronically insufficient resources need to be addressed, including the current lack of any funding provision for access to independent advocacy and legal help in the NT:

- The NT Adult Guardianship regime also needs to be overhauled, and
- Supported decision making should be implemented.

Increased services in support of supported decision making are also required as the limited decision-making support that is available is strongly focused on capacity building, instead of long-term decision-making support. Disability advocacy providers are well placed to provide more decision support with additional resources.

7.3.1 Outdated substituted decision making in adult guardianship in the NT

The adult guardianship regime in the Northern Territory controls the lives of many people who are subject to orders appointing a substituted decision maker for them. In many cases, the guardians appointed are the guardians of last resort: the Public Guardian (**‘OPG’**) and the Public Trustee (**‘OPT’**).

DCLS often assists:

- clients who are subject to an adult guardianship order – who want to be free of them, and
- family members seeking to be appointed as guardian.

We believe that these substituted decision-making arrangements constitute an unnecessary and avoidable denial of essential civil rights.

The appointment of substituted decision makers in the NT law is managed through the application of a legislative “best interests” test. The “best interests” approach is an old, traditional approach of common law systems to determine what decisions should be made on behalf of a person who has been deemed to have lost their legal capacity because of problems with their mental capacity.

The “best interests” test involves a decision maker (a guardian or guardianship tribunal or court) considering several legislative factors to come to a decision which will be imposed on the person and treated by the law as if it were the person’s own decisions, and this imposition can be regardless of the person’s actual wishes.

The “best interests” tests often reflect things that are important to the dominant culture and frequently have the effect of minimizing or devaluing concerns and interests that are important in other cultures.

For example, the question of sharing limited financial resources with family and community members.

The dominant culture in the NT may see this as depriving a vulnerable person of resources that are theirs for their own use, while for example under Yolngu system of gurrutu (kinship), the sharing of the limited resources is prescribed and reciprocal.

In the NT Aboriginal people are disproportionately affected by guardianship orders. Due to family members being deemed to not meet the specific, particular (culturally inappropriate) requirements to qualify as guardians under the Act, Aboriginal people are disproportionately placed under public guardianship via the Office of the Public Guardian ('OPG').

By applying the "best interest" tests, the OPG will usually say that resources ought not to be shared to depletion. However, by preventing that happening they may in fact have the effect of causing the person to be in breach of their obligations and they could face consequences for that, including exclusion from the group.

DCLS advocates for an overhaul of current NT adult guardianship laws, including the best interest test, to align with human rights norms, including:

- maximising autonomy
- applying supported decision making in place of the current substituted decision making
- ensuring cultural safety for the represented person, and
- overcoming the systemic barriers to Aboriginal family guardianship.

Case Study	Client O
Brief outline	The Public Trustee refused to allow Client O to purchase a cell phone because O had a history of losing them- this caused O had a great deal of distress and may have gone beyond the expertise/concern of the Trustee. We assisted family members to apply for guardianship instead, but they faced difficulty satisfying the tribunal that they would look after O's money properly. Family members were deemed not to be suitable guardians; this was in part because they travelled to another remote community for Sorry Business while Client O remained in the home community.
Analysis	Needs of Aboriginal person subject to adult guardianship were not met and family members were disrespected and relegated by culturally unsafe decision making, applying highly misaligned and problematic criteria.

Case Study	Client P
Brief outline	Client P lives in a remote community, and one of P's family members was a private guardian. She was a perfect guardian who had the Office of the Public Trustee ('OPT') and OPG onside. The guardianship came up for a regular review and the tribunal couldn't reach P as P lived in a remote community and the tribunal didn't have updated contact information. As a result, the tribunal removed P as guardian and appointed a OPG in P's place.

	DCLS then assisted P to apply have P re-appointed, this was not contested by the OPG but it was difficult in an administrative and logistical sense. P could not have done this easily without help.
Analysis	As with other case studies this client's situation illustrates the problems caused when institutions display exasperation or hostility for the complexities of remote community living.

The United Nations Convention of the Rights of Persons with Disabilities ('**CRPD**') enshrines the principle of equality before the law at article 12. Article 12(4) of the CPRD stipulates that:

"Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent, and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests."

This should not be taken lightly, when public guardianship imposes a decision, it directly impacts supported decision-making capacity of the person subject to the order and reduces opportunities to fully engage in their own lives. People with disability ought to be able to enjoy their legal rights on the same basis as everyone else. People ought not to be deprived of their legal capacity to make their own decisions because legal capacity is inherent to equality before the law.

People who have problems with their mental capacity ought not to be deemed to have lost their legal capacity. Most people with mental capacity problems will be able to express their will and preference on what they want. These people can be supported to make their own decisions, which would retain their legal capacity rather than depriving them of the fundamental freedom to make decisions about their own lives.

Case Study	Client Q
Brief outline	<p>Client Q is an Aboriginal man from a remote area who has been in and out of mental hospital and in prison. He has a history of attempted suicide, and the Tribunal was concerned about a pattern of behaviour associated with Darwin.</p> <p>Client Q has a history that includes multiple prison sentences. He had agreed to a guardianship order, but it was possible that this was because he was told this might help him. It is also possible that no one had fully explained the consequences to him.</p> <p>After his release from prison Q had organised his life towards independent living, however he was put under guardianship and his situation deteriorated.</p> <p>Q does not want to be under guardianship and would much rather be supported to make his own decisions. He wants to exercise his own legal capacity but has been unable to access an appropriate service to assist him to achieve this.</p>

Analysis	Poor case management appears to have led Client Q to a position where he has lost his rights with little recourse to recover the situation

7.3.2 CPRD compliance and implementing supported decision making in the NT

The NT adult guardianship regime, the centrepiece of which is the NT Guardianship of Adults Act 2016 (NT), should be brought closer to the CRPD and that this should be accompanied by the adequate funding of supported decision-making services.

While the idea of supporting a person to make their own decisions is incorporated into the legislation, the ‘best interest’ test still prevails in practice, meaning that many people, especially Aboriginal people, are required to live by decisions that are made for them, and bind them, but do not reflect their will and preference.

DCLS is also observing a trend where disability service providers are referring people with disability for guardianship orders to be made. While they are ostensibly trying to help, they often don't understand the law enough to know whether it is a good option; sometimes service workers do not understand the severe abrogation of fundamental freedoms that adult guardianship entails.

Accordingly, decision-support resources and services would assist in not just providing an alternative pathway of supports, but also educating service providers.

Case Study	Client R
Brief outline	Client R is non-verbal, DCLS received a referral to assist with an application for a guardianship order. A support worker approached DCLS, made an appointment, and attended the appointment with intention of the support worker instructing the solicitor themselves regarding their client. The DCLS lawyer requested details on brain function impairment. The answer was that nothing was impacting R's cognition. The support worker subsequently complained about DCLS declining to take instructions from the support worker to apply for guardianship.
Analysis	The rights of people with disability must be safeguarded by rules and practices as well as by sector specific, professional and community education.

Recommendation 36: Implement supported decision making in the NT

<p>Law reform in the NT should cease the outdated practice of substituted decision making in adult guardianship and implement supported decision in furtherance of Article 12(4) of the Convention on the Rights of Persons with Disabilities.</p> <p>This should be accompanied by adequate funding of supported decision-making services.</p>

Recommendation 37: Funding of independent advocacy and legal help in adult guardianship

The lack of any funding provision by the NT Government, and any collaboration by the Commonwealth to address this issue must be resolved. The North Australian Aboriginal Legal Service and Darwin Community Legal Service currently undertake the high majority of free legal assistance in in this area – reflective of the fact that the individuals concerned, informal carers do not have capacity to obtain private legal representation. NAAJA, DCLS and other community based non-profit legal services in the NT able to provide adult guardianship legal help should be funded to do so.

7.3.2 Overcoming the under resourcing of the NT Public Guardian and Trustee

The NT Office of the Public Guardian and Public Trustee can be difficult to engage with due factors which include underfunding and understaffing, resulting in case workers in both bodies managing excessive caseloads.

This results in these workers not being able to meaningfully engage with the people whose lives or finances they manage, or their representatives.

This is felt most by those in remote communities, especially where language barriers exist, as face to face engagement is essential.

Case Study	Client S
Brief outline	<p>Client S is an Aboriginal person with a brain injury. S has accessed SIL supports under a NDIS plan and is living in Darwin with a provider.</p> <p>S sought assistance from DCLS access to their money which is controlled, and was being micro-managed, by the NT Office of the Public Trustee ('OPT'). The DCLS lawyer called the OPT with Client S present but the OPT resisted giving any information or answering questions. However, they ultimately agreed to discuss the matter.</p> <p>Client S had thousands of dollars in savings and wanted money to help with one of their children but OPT wanted S to save the money instead. S also wanted money to travel for Sorry Business but needed assistance to fill out the forms to get travel money for that.</p> <p>Although S is very much able to strongly express how things should be decided, S calls DCLS every time S needs to spend money because calling the OPT is so difficult and upsetting for S.</p>
Analysis	<p>Even in relation to small matters or very personal decisions the NT adult OPT often disregards the will and preferences of the represented person.</p> <p>OPT is often very reluctant to speak with the lawyer assisting clients which reduces their understanding – for example of how well the client is using the money they</p>

do have access to – and it reduces the opportunity to collaborate to help make things better for the represented person.

Case Study	Client T
Brief outline	<p>Client T lives in a remote community and speaks very little English. T has a serious acquired injury severely affecting cognitive function and received a lump sum payment. T is otherwise reliant on Disability Support Pension ('DSP'). T wants a family member to be his financial guardian, T is represented by DCLS and the family member also has independent legal representation.</p> <p>The Tribunal appointed the family member financial guardian for the pension but continued the appointment of the NT Office of the Public Trustee ('OPT') to manage the lump sum.</p> <p>Most days T calls the OPT and asks for a car but the OPT is unsure that purchasing a car for T who can't drive and lives in a remote community, is a good idea. T loves fishing and has a boat but can't use it without a car to tow it – if T had a car a family member could drive it for them.</p> <p>After lengthy written and oral submissions, the Tribunal asked the lawyers for the family member to provide a detailed asset management plan for the lump sum money. That plan was done with the help of financial counsellors from a non-profit organisation. The matter has been delayed for many months because of the logistics which involve the family members lawyer being in the community, appear with the family member, with T in the same room to manage access to the interpreter who will be by phone – interpreting for both. The DCLS lawyer will be by phone from Darwin and the Tribunal will convene the phone link with the Tribunal member potentially in different location again.</p> <p>For T, the family member is awaiting final hearing but has been repeatedly relisted. This is because the listing must coincide with the visit of an aboriginal organisation to the remote community, where DCLS's client and the uncle appear together in the same room along with the aboriginal organisation's lawyer, and the interpreter, by phone. We always have trouble obtaining the interpreters. The hearing keeps being put off for that reason, for at least a year already. DCLS has discussed this with the lawyer from the aboriginal organisation and we are considering asking for it to be dealt with on the papers because at least that would allow for the written submissions interpreter so that the clients could understand what we are saying.</p>
Analysis	<p>This matter has been complicated at virtually every turn by being insufficiently adapted to and in tune with the lived experience of the Aboriginal person subject to adult guardianship.</p> <p>The lived experience includes remote community living, good language skills in own language but English is a barrier; under resourcing of multiple relevant systems including OPT, Tribunal, Aboriginal Interpreter Service, non-profit legal</p>

help; cultural divide; inflexible and insufficient decision making with low self-awareness and/or ability to correct; inability in total to provide reasonable and timely responses.

T is a person with disability who is a victim of systems failure impacting on T's rights, dignity, and wellbeing.

Recommendation 38: Funding to increase access and implement supported decision making in the NT

Resources for the NT Office of the Public Guardian and Public Trustee (OPG and PT) should be increased to reflect the workload and the importance of accessibility throughout the NT and effective case management.

The implementation of supported decision making in the NT also should be accompanied by increased resources for the NT OPG and PT to fully implement and ensure good practice for supported decision making.

Increased resources should also be provided for an NT specialist supported decision making service.

7.4. Mental health related civil law legal needs in the NT

Levels of prevalence of mental health conditions in the NT, and associated issues and support needs, are well known and highly apparent to a wide range of agencies and services in the NT including:

- NGO representative bodies
- NGO service and support providers
- Disability support services
- Health services and health system
- Housing and homelessness
- Women and children's safety
- Financial counselling
- Relationship and family support
- Aged care services
- Child protection
- Police
- Courts and Tribunals
- Corrections
- Non-profit legal services
- Federal agencies including
 - Services Australia (especially Centrelink)
 - NDIA
 - AAT
 - Australian Human Rights Commission
 - Fair Work Ombudsman
 - Fair Work Commission
 - Commonwealth Ombudsman
 - Australian Financial Complaints Authority

While NT Legal Aid receives some funding from the NT Government, to provide duty lawyer and related representation for people subject to applications before the NT Mental Health Tribunal, there is no federal or NT funded specialist legal help in the NT targeted to the *general civil law legal needs* of people living with mental health conditions.

DCLS has expertise in disability and senior's rights and has made submissions seeking funding to provide a territory wide specialist community based civil law legal assistance service for people living with mental health conditions.

This takes into account that people in the NT living with mental health conditions are a priority group per se and due to the prevalence of multiple and intersectional factors which often increase disadvantage and vulnerability.

The following are examples (using pseudonyms):

John has schizophrenia and he has a car loan	Paula has an acquired brain injury, and she is a tenant
Howard has intellectual disabilities and he thinks his NDIS plan is incorrect	Molly has borderline personality disorder, she has a social security debt but doesn't know if it is correct
Mac is in his 80's, his family think he might have dementia, he booked a holiday and wants his money back	Lindsay has multiple physical disabilities, chronic pain and ADHD and is wondering about lodging a discrimination complaint
Albert has seizures and a full-time carer, he wants to make a will	Morrie had brain damage at birth, he's now 15 and wants to leave home
John has severe PTSD from his military service, he went guarantor for his daughter who is looking at going bankrupt	Emily has had several involuntary mental health admissions she had a car accident about 3 months ago and now she is being taken to court
Milton has memory loss and impaired speech due to an accident 10 years ago, he lives alone and is in dispute with a builder who failed to fix the leaks in his roof	Catherine has struggled with mental health issues most of her life, she is an advocate who gets things done, she has some legal questions about an issue she is working on
Sam has been refusing medication for 3 weeks, his psychosis is worsening, he has been to the legal service 5 times this week	Melanie is living with depression, she has received Centrelink breaches and is behind with her bills, her former partner has taken her car and she has no transport
Derek has mental health, drug and alcohol issues, he is undertaking rehab for substance abuse and wants to sort out debts, housing, social security, and compensation issues	Verity has an intellectual disability, she has been in and out-of-home care from birth, she has experienced physical and sexual abuse, she is pregnant and wants to keep her baby

Recommendation 39: Funding for NT legal assistance for civil law legal needs of people living with mental health issues.

That DCLS be funded to:

- provide NT wide assistance to help address gaps in civil law legal help for people living with mental health conditions
- help facilitate a NT wide response, and

- help support mutual collaborative learning for NT wide implementation of mental health co-advocacy models
- NAAJA also receive highest priority for funding plus the FVPLS, NT Women’s Legal Services and the NT Legal Aid Commission

7.5 Social security advocacy and legal help in the NT and system overhaul

Social security is a human right, and a right of people with disability.¹³⁴ Article 28 of the Convention on the Rights of Persons with Disabilities relates to ‘Adequate standard of living and social protection’ and stipulates

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.
2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:
 - (a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
 - (b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
 - (c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
 - (d) To ensure access by persons with disabilities to public housing programmes;
 - (e) To ensure equal access by persons with disabilities to retirement benefits and programmes.¹³⁵

¹³⁴ Universal Declaration of Human Rights: Article 22: “Everyone, as a member of society, has the right to social security ...”; Article 25: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control....”; **International Covenant on Economic Social and Cultural Rights** Article 9 recognizes: “the right of everyone to social security, including social insurance”; additionally Article 5(e)(iv) of the Convention on the Elimination of all Forms of Racial Discrimination; Articles 11(1)(e) and 14(2)(c) of the Convention on the Elimination of All Forms of Discrimination Against Women; Article 26 of the Convention on the Rights of the Child; Article 28 of the Convention on the Rights of Persons with Disabilities

¹³⁵ Australian Treaties Library: <http://www.austlii.edu.au/au/other/dfat/treaties/2008/12.html>

7.5.1 Unmet social security legal needs in the NT

In a NT this means that there is a lot to be achieved. One aspect is that as outlined in the DCLS submission to the Senate Committee inquiring into the Cashless Debit card, there is currently no identifiable funding in the NT for social security specialist advocacy or legal help.¹³⁶We gave the following background: ¹³⁷

Background

5. DCLS is the only generalist Community Legal Service in the Northern Territory and like the NT Women's Legal Services combined, has a NT wide service area 4.5 times the size of Victoria for some of our programs, while others are focused on the Top End, Darwin, Palmerston, and surrounds.
6. DCLS is the only community legal service in the NT which has ever received federal funds to provide specialist social security legal help, however this ceased over a decade ago when Commonwealth funding for specialist social security legal help was combined into the 'generalist' funding pool.
7. The only other funding that has ever come to the NT, for specialist social security legal help, was that provided for a period from the early years of the NT Intervention, when a small amount of funding was allocated especially to NAAJA and the Central Australian Aboriginal Legal Aid Service ('CAALAS'), but subsequently ceased.
8. The NT Legal Aid Commission, the Family Violence Prevention Legal Services (North Australian Aboriginal Family Legal Service ('NAAFLS') and the Central Australian Aboriginal Family Legal Unit ('CAAFLU') and the three women's legal services in the NT (Central Australian Women's Legal Service, ('CAWLS'), Katherine Women's Information and Legal Service ('KWILS'), and the Top End Women's Legal Service ('TEWLS')) have never received funding to provide social security legal help.

The unmet social security advocacy and legal needs of people with disability in the NT, including people in remote and very remote NT communities the high majority of whom are Aboriginal people - connects with rights, inclusion and wellbeing – and with all dimensions of increased vulnerability to violence, abuse, neglect and exploitation.

For example, the Royal Commission noted in the Issues Paper on the Criminal Justice System that:¹³⁸

¹³⁶ DCLS submission 14 August 2022 to the Senate Community Affairs Legislation Committee e Inquiry into the Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Bill 2022, <https://www.dcls.org.au/wp-content/uploads/2022/08/DCLS-CDC-Submission.pdf>

¹³⁷ Ibid, p. 3

¹³⁸ Issues Paper, January 2020, p.5, online at: <https://disability.royalcommission.gov.au/system/files/2022-03/Issues%20paper%20-%20Criminal%20justice%20system.pdf>

Many people with disability experience multiple forms of hardship, such as unemployment, poverty, homelessness, health problems and social isolation. The compounding effect of these factors increases the marginalisation of people with disability. They are therefore at risk of discrimination and victimisation and, as a consequence, more likely to be charged with offences and enmeshed within the criminal justice system.¹² Disability experts suggest that the criminal justice system is often used to 'manage' people with disability who experience multiple hardships rather than being supported in the community.¹³

Unmet social security legal needs in the NT are documented in research and in the practice and experience of all non-profit legal services in the NT.¹³⁹

7.5.2 Drivers of social security legal needs in the NT

The posters below highlight some factors driving social security legal needs in the NT all of which can be applied specifically to people with disability.

The poster on the right, includes the word 'POVERTY', meaning that poverty is a factor in driving / causing social security legal needs in the NT.

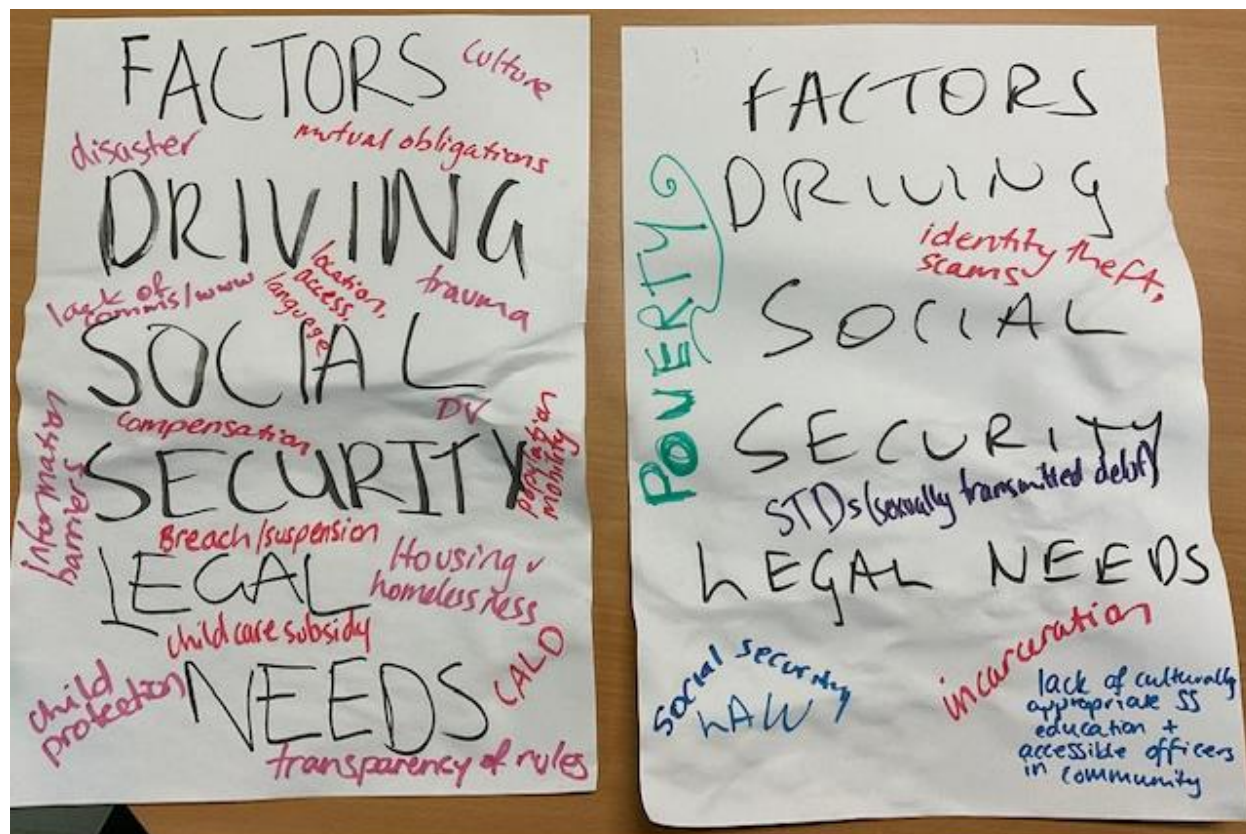
Some additional points, highlighting things the Commonwealth Government and Services Australia should do are:¹⁴⁰

- Government needs to realise the eligibility and application burden being spread across services – major admin burden, which isn't funded, and isn't nearly sufficient for the level of need
- People with chronic/not fully treated impairments are often in a Catch 22 in the NT because they can't achieve treatment, or their condition means they resist treatment
- Need for more personal access to Services Australia – special access points
- Forms – what information is Centrelink looking for – the criteria aren't clear – the Forms need to be clearer
- With Disability Support Pension – people looking to apply, and professionals trying to help, don't understand the criteria – the criteria are too convoluted and too complex – and it causes a shambles.
-

¹³⁹ Cuneen et al 'Access to justice for Aboriginal People in the Northern Territory', Australian Journal of Social Issues (2014) 49(2) 219; Fiona Allison et. al, Indigenous Legal Needs Project: NT Report (Project Report, 2012) 83; Christine Coumarelos et al Legal Australia-Wide Survey – Legal Need in Australia (Final Report, Access to Justice and Legal Needs Volume 7) (2012) xiv; Christine Coumarelos et al Legal Australia-Wide Survey – Legal Need in the Northern Territory (Final Report, Access to Justice and Legal Needs Volume 13) (2012) xv; National Social Security Rights Network, Specialist Social Security Community Legal Services in Australia Impact Report (Impact Report to the National Partnership Agreement Review, October 11, 2018) 2; Shelley Bielefeld, 'Compulsory Income Management and Indigenous Australians: Delivering Social Justice or Furthering Colonial Domination?', (2012) 35(2) UNSW Law Journal 522, 524.

¹⁴⁰ Also from DCLS staff input based on wide ranging experience

Image description: Posters below – reflect some of the factors driving social security legal needs in the NT – as brainstormed by some DCLS staff following a workshop by law intern, Anna Stone-Stacy in December 2022 focusing on why Aboriginal people in remote communities in the NT need access to social security legal help



Case Study	Client SS-1 – Centrelink debt
Brief outline	<p>SS-1 is an Aboriginal person who had a Centrelink debt from a time when SS-1 looked after a child with special needs, but the child returned to the parent. There was a lot going on, and SS-1 thought Centrelink knew of the change and had adjusted because the parent was receiving Centrelink. Overwhelming things happened to SS-1, who was struggling and trying to keep working, to give money to family and to help with grandchildren. SS-1 had stopped some utilities to try to repay, and stopped or gone without other essentials.</p> <p>SS-1 was referred to DCLS after receiving legal advice that she couldn't do anything. SS-1 was successful with DCLS help in the AAT in having the debt reduced to having no more to pay. SS-1 was very happy that she hadn't given in and she achieved something for herself and her family</p>
Analysis	<p>Most people in the NT with Centrelink debts haven't had legal help to check if there is anything they can do. Sometimes the debts haven't been correctly raised or there are special issues that can be raised to reduce or end the debt.</p>

Every time a person can access legal help to check their legal rights, they are doing something for themselves and others who depend on them.

If it turns out that they haven't been treated fairly, and if this is fixed, there can be a range of benefits i.e. sometimes improving one thing can help improve several or many things.

Case Study

Client SS-2 – social security question linked to multiple issues

Brief outline

SS-2 is an Aboriginal woman living in short stay accommodation while visiting a family member with a chronic health condition in Darwin. The family member has been relocated to Darwin because there aren't the facilities in the community. SS-2 is missing her family and she is working out how to get back home. SS-2 is behind in rent where she is staying, and she has been asked to get her rent up to date by the end of the week. SS-2 asked for help to cancel the deductions coming from her Centrelink payment, which is Job Seeker. SS-2 has applied for Disability Support Pension but hasn't heard yet, she thinks she's been waiting to hear for about 6 months.

SS-2 thinks the deductions coming out of her Centrelink are must be wrong because they should have stopped by now, but SS-2 isn't sure what they are. The advocate helped SS-2 check and found there was one deduction coming out through Centrepay, this was to a rent-to-buy which SS-2 then remembered was for a device she had bought a while back to be in contact with family. No target amount had been set and the payments had continued. SS-2 thought this was wrong and it should have finished a long time ago.

By then calling the rent-to-buy, SS-2 and the advocate learned that there had been follow on purchases after the first one, the business emailed through the account statement, indicating another 12 months to go. The advocate helped SS-2 look at this and explained that the interest and fees being charged were extremely high, approximately tripling the cost over the period.

The advocate referred SS-2 to the DCLS General Legal Service for legal help, because it looked like SS-2 had not understood the terms of the contract and had been taken advantage of, plus SS-2 was in financial hardship.

The advocate focused on SS-2's immediate hardship and helped SS-2 stop the Centrepay deduction, referred SS-2 for an emergency food voucher and helped negotiate a plan for rent catch up with the short stay accommodation.

SS-2 asked the advocate to check where her DSP claim was up to and if her NDIA plan had come through yet because she had been waiting for a while.

Also, SS-2 would like to check where she is up to on the housing priority waiting list in Darwin because she thinks she will need to stay. SS-2 would also like to check if

	<p>her crime victim compensation payment will happen soon, she has been waiting 3 years so far. Plus, one of SS-2's adult family members passed away and whether there is anything SS-2 can do to receive the superannuation and the money in the bank account.</p> <p>The advocate finished with signed authorities to make the inquiries and let SS-2 know that some of the additional questions might also need legal help and made a time to meet in a week with an advocate and lawyer together.</p>
Analysis	<p>Social security questions can be linked to multiple issues – and vice versa indicating the need for flexible approaches for holistic / wrap around assistance.</p> <p>By using a 'no wrong door' approach, any issue – can be an entry point for assistance with multiple issues.</p> <p>Additionally, by applying an advocacy model which is alert to systemic issues, patterns emerge which also inform options for the person.</p> <p>For example, the extremely high costs of rent-to-buy (and people living in poverty being subject to predatory practices) would be eased if there was increased access to no-interest loans in the NT, for an increased range of essentials plus more effective regulation, and increased access to advocacy support and civil law legal help.</p>

Case Study	SS-3 - Carer payment
Brief outline	<p>SS-3 is an Aboriginal person who wants to apply to Centrelink for a payment as carer for their partner. Almost 60 years old now, SS-3 was working in their home community until a while back but the employment ceased. SS-3 is currently homeless, SS-3 thinks Centrelink wants something from the old employer but doesn't know what this is. SS-3 doesn't have a Centrelink Reference Number, his partner has one though.</p> <p>SS-3 needs some logistical help, it would be good if there was an advocate to help. SS-3 attends at a homeless program several times a week but doesn't have a phone contact.</p>
Analysis	<p>Centrelink outreach is a very positive thing when it happens, there are a lot of things Centrelink staff can do to help cut through red tape. Face to face assistance where people are located is the best help Centrelink can give in the NT but this doesn't happen most of the time and things get drawn out.</p> <p>People are often confused, and they have multiple things going on – advocacy support can make a world of difference and sometimes legal help is needed.</p>

Case Study	SS4-1, SS4-2, and SS4-3 – Disability Support Pension
<p>Brief outline</p>	<p>SS4-1 is a non-Aboriginal person who was unsuccessful at Tier 2 of the AAT in his application for Disability Support Pension. The application related to two medical conditions, but the AAT was not satisfied that the criteria were met. By the time the AAT decision was received, SS4-1 had had another medical condition of a different kind and SS4-1 was overwhelmed.</p> <p>The criteria for DSP have been problematic for SS4-1, it seemed to SS4-1 and to DCLS to be a clear case where the criteria should be changed so that people in SS4-1's situation would then be eligible.</p> <p>***</p> <p>SS4-2 is an Aboriginal person who was successful in overturning previous decisions by the Internal Review Officer and AAT at Tier 1 that the criteria for Disability Support Pension were not met. While there was no change to SS4-2's medical condition over the lengthy period this took, additional medical reports were obtained. This involved substantial additional work for the treating team, plus required advocacy support and legal help.</p> <p>***</p> <p>SS4-3 is a non-Aboriginal person with cognitive impairment and other permanent health conditions. SS4-3 has been refused Disability Support Pension at AAT Tier 1 which cited that while SS4-3 had received 20 points, this was not achieved on one of the 17 impairment tables, rather it was achieved from adding up scores received on different impairment tables and consequently that the Program of Supports requirement applied – which SS4-3 had not met. The Program of Supports is a participation requirement – and while a person may receive leave of absence for inability to participate – ultimately if it applies the requirements must be met.</p> <p>Like many other DSP applicants in the NT, the Program of Supports blocked SS4-3 from receiving the DSP even though SS4-3 has no way of meeting the Program of Supports.</p>
<p>Analysis</p>	<p>There has been a national groundswell of criticism about the unfair criteria for DSP and DCLS has made submissions about how DSP has and is continuing to fail in the NT.</p> <p>Due to law and directions in place, people can fail to qualify for the DSP – leaving them with no way forward – because their health conditions and disabilities which should result in them qualifying – instead preclude them from meeting the criteria. That is, the Program of Supports creates a Catch22 which operates to deny people who are permanently unable to work – access to DSP.</p>

Additionally, issues with medical reports and evidence often come down to communication – the treating medical team is trying to communicate that yes, the person meets the criteria of fully diagnosed, treated and stabilised –but Services Australia apply what is in effect a technical and adversarial approach and find fault with the medical reports instead of talking to the treating team.

Case Study	Client SS-5 - Centrelink debt
Brief outline	<p>Client SS-5 is an Aboriginal person who lives in a remote community but comes into Darwin sometimes for different things, including medical treatment.</p> <p>Client SS-5 has a Centrelink debt but has fallen behind with payments and wanted assistance to negotiate with Centrelink about a new payment plan. But, Client SS-5 wasn't sure why the debt was raised, and wondered if it was right, she hasn't had anyone to help her. DCLS offered to help to look at this and did a FOI request, receiving back a large quantity of material. It took a while to go through this carefully, this involved preparing a chronology and carefully tracing through the records, sometimes having to backtrack and go over things carefully again. It also involved considering the Social Security Act and doing legal research about this. The Social Security Act is complex. The legal research is aided by special access, via DCLS's membership of Economic Justice Australia, to the leading practice commentary about social security law. This is very detailed and intricate.</p> <p>This work indicated that it appeared the debt had been raised incorrectly, or even if it was correct that there were legal prospects for the debt being waived on hardship grounds.</p> <p>Client SS-5 applied for an internal review, but it's now been many months and there isn't an outcome yet.</p> <p>If the review says that the debt is still payable, DCLS will give legal advice about prospects for an appeal to the AAT, and if there are prospects will offer to represent Client SS-5.</p>
Analysis	<p>Illustrates how people who have Centrelink debts raised, and who question them, often have to wait such a long time to know if Centrelink is correct and if they have to pay. Also illustrates cumulative delay / time taken for the review, FOI and legal help and how much longer it may take if it goes to the AAT. Illustrates why people on Centrelink need access to advocacy and legal help.</p>

Case Study	Client SS-6 – person on DSP with alleged Centrelink debt
Brief outline	<p>Client SS-6 is an Aboriginal person receiving Disability Support Pension. Client SS-6 has a huge Centrelink debt raised due to alleged non-reporting however Client SS-6 is very confused, the details are unclear, and an interpreter is needed to go</p>

	<p>through the details. At the first meeting DCLS recommended doing a FOI request to get the details on Services Australia file.</p> <p>It took months for Services Australia to finish providing the documents. Then, after receiving that, going through the material receive via FOI was painstaking work – it had to be done very carefully.</p> <p>The next step was to meet with the Client SS--6, but repeated attempts to line up an interpreter via the Aboriginal Interpreter Service weren't successful. This is because there sometimes aren't enough Interpreters.</p> <p>DCLS is currently waiting to line up an interpreter.</p>
Analysis	<p>Illustrates common level of confusion about Centrelink requirements, complexity of obtaining and working through Centrelink material, trying to arrange an appropriate interpreter and maintain contact with clients. Client contact is made far more tenuous by insufficient resources, including for co-advocacy and community-based support worker / advocates connected with relevant organisations – which are, or are linked to, non-provide legal services.</p>

Case Study	Client SS-7 – alleged Centrelink debt – steps involved in assisting
Brief outline	<p>Client SS-7 has a Centrelink debt but has fallen behind with payments and wanted assistance to negotiate with Centrelink about a new payment plan. But Client SS-7 wasn't sure why the debt was raised, and wondered if it was right, Client SS-7 hasn't had anyone to help her. DCLS offered to help to look at this and did a FOI request, receiving back a large quantity of material. It took a while to go through this carefully, this involved preparing a chronology and carefully tracing through the records, sometimes having to backtrack and go over things carefully again. It also involved considering the Social Security Act and doing legal research about this. The Social Security Act is complex. The legal research is aided by special access, via DCLS's membership of Economic Justice Australia, to the leading practice commentary about social security law. This is very detailed and intricate.</p> <p>This work indicated that it appeared the debt had been raised incorrectly, or if it was correct that there were legal prospects for the debt being waived on hardship grounds.</p> <p>Client SS-7 applied for an internal review; however, months have passed.</p> <p>If the review said that the debt is still payable, DCLS would give legal advice about prospects for an appeal to the AAT, and if there were prospects would offer to represent Client SS-7.</p>
Analysis	<p>Illustrates how getting to investigate these situations requires access to legal help for people who are not able to do this themselves. Due to the logistics, the quantity of material to be reviewed, the complexity of the criteria and the</p>

precision required – there is an enormous power imbalance between most social security recipients in the NT – especially people with disability – and Services Australia as the decision maker. This places vulnerable social security at substantial risk of incorrect Services Australia decision making with major impacts for themselves, their dependents, and often their families.

Case Study	Client SS-8 and SS-9
Brief outline	<p>Client SS-8 has very limited work capacity due to an injury at work. SS-8 has received a workers compensation payout. Client SS-8 has a child with complex needs who is a NDIS participant. Client SS-8 wants to know if the social security preclusion period, which means preclusion from JobSeeker, would apply eligibility for Carer Payment as the child's primary carer. Additionally, SS-8 wonders about eligibility for Disability Support Pension.</p> <p>***</p> <p>Client SS-9 already has a social security preclusion period but now has an additional compensation preclusion issue as a result of receiving a letter from the NDIA indicating that the NDIA was considering whether the fact that Client SS-9 had received a large compensation payment meant preclusion from receiving NDIA supports for a period. The potential preclusion period was many years.</p>
Analysis	<p>Access to legal advice about social security and / or NDIA can help to answer questions and enable people to make informed decisions. Ideally, this happens before big decisions which can impact on entitlements – like the potential implications of receiving a compensation payment.</p> <p>There are cases where people who have previously received a compensation payment are unable to manage, placing their safety, health, and wellbeing at risk.</p>

7.5.3 Painting the picture about social security legal needs in the NT

Brainstorm of social security legal issues in the NT - and needs for access to independent advocacy support and legal help

- Not on Centrelink – maybe never was, maybe got cut off and stayed that way,
 - Maybe Centrelink is too big a problem because things keep going wrong with Centrelink
 - Social security non-participation which is where people are probably eligible but aren't trying to receive a payment is anecdotally prevalent in remote and very remote communities, as a result of complex factors.
- Can't pay court fines because have been cut off Centrelink, pressure building up
- Waiting periods – really, is this how it is supposed to be, trying to argue back about waiting periods

- Trying to get the children back from Territory Families (child protection), have Centrelink debts, but don't think the debts are correct, something wrong – too hard to work it out though.
- Didn't report to Services Australia, didn't meet participation requirements, didn't meet 'Program of Supports' - can't reason with them and can't get on DSP.
- Kinship care / informal care arrangements families make for children - often results in Centrelink issues – especially debts if Centrelink says they weren't notified when a child ceased to be in a person's care even though Centrelink put the new caregiver on the relevant payment on the basis that the child was now in their care
- Can also happen when children are taken into care by Territory Families – and Centrelink saying they haven't been updated - resulting in a debts - sometimes big ones
- People coming and going in and out of relationships, whether it was a relevant relationship anyway, who are the people looking after different people – a lot to keep up with and a lot to be trying to keep Centrelink updated about
- Got compensation but didn't understand that was going to be precluded for a period from receiving Centrelink - money spent, major hardship, relying on family, everyone on Centrelink - what can be done.
- 'it's hard to translate 'postcode injustice' to a NT – because postcodes are 4 digits and there are only two digits relevant to 'postcode injustice' in the NT which is the '08' i.e. the postcode prefix for the range of postcodes in the NT.
- Risk of predatory lenders
- Social determinants of health - problems with social security cause big stress, big health issues, access to food, having petrol money, everything is joined up

7.5.4 How many people with disability in the NT might social security advocacy and legal help?

The answer is 'a lot' taking into account the number of people with disability, their carers and family members – represented within :

- A continuing and changing number of people currently receiving social security payments in the NT (i.e. some proportion of the statistics below) with problems relating to this – including debts, suspensions, incorrect payments, mix-ups, delays, Services Australia errors
- People trying to establish eligibility for a social security payment or for the relevant social security payment (e.g. Carer Payment, Disability Support Pension), or the relevant rate
- People who were receiving a social security payment but have ceased – and have issues to deal with – such as debts
- People who are not receiving their social security entitlements because they are alienated from the system (have walked away, or have heard bad things about it, or don't have the relevant information)

Payment recipients by payment type by state and territory by Indigenous indicator, September 2022 ¹⁴¹						
Payment type	Northern Territory NT			Australia		
	Indigenous	Not Identified Indigenous	Total	Indigenous	Not Identified Indigenous	Total
ABSTUDY (Living Allowance)	n/a	n/a	401	n/a	n/a	9,722
ABSTUDY (Non-Living Allowance)	n/a	n/a	1,332	n/a	n/a	20,316
Age Pension	2,115	8,357	10,472	25,961	2,533,307	2,559,268
Austudy	<5	n.p.	168	247	34,361	34,608
Carer Allowance	1,279	2,072	3,351	28,524	597,824	626,348
Carer Allowance (Child Health Care Card only)	29	48	77	594	8,505	9,099
Carer Payment	1,039	805	1,844	19,752	282,692	302,444
Commonwealth Rent Assistance	2,272	4,976	7,248	86,878	1,226,326	1,313,204
Commonwealth Seniors Health Card	10	1,152	1,162	902	455,551	456,453
Disability Support Pension	5,561	2,691	8,252	57,991	708,474	766,465
Family Tax Benefit A	9,994	6,822	16,816	105,269	1,239,125	1,344,394
Family Tax Benefit B	8,434	5,284	13,718	93,979	929,641	1,023,620
Health Care Card	19,738	6,173	25,911	138,418	1,167,085	1,305,503
JobSeeker Payment	13,700	4,192	17,892	94,477	678,197	772,674
Low Income Card	111	295	406	5,899	155,360	161,259
Parenting Payment Partnered	1,902	313	2,215	7,080	59,501	66,581
Parenting Payment Single	2,762	1,063	3,825	41,085	186,023	227,108
Pension Concession Card	14,438	14,648	29,086	187,632	4,110,486	4,298,118
Special Benefit	<5	n.p.	34	127	10,067	10,194
Youth Allowance (other)	2,378	239	2,617	18,529	48,218	66,747
Youth Allowance (student and apprentice)	21	329	350	2,355	170,150	172,505
[Totals added]	85,783	59,459	147,177	915,699	14,600,893	15,546,630

¹⁴¹ Department of Social Services Data Sets, September 2022, online at <https://data.gov.au/data/dataset/dss-payment-demographic-data>

7.5.5 Needs based funding to address social security legal need

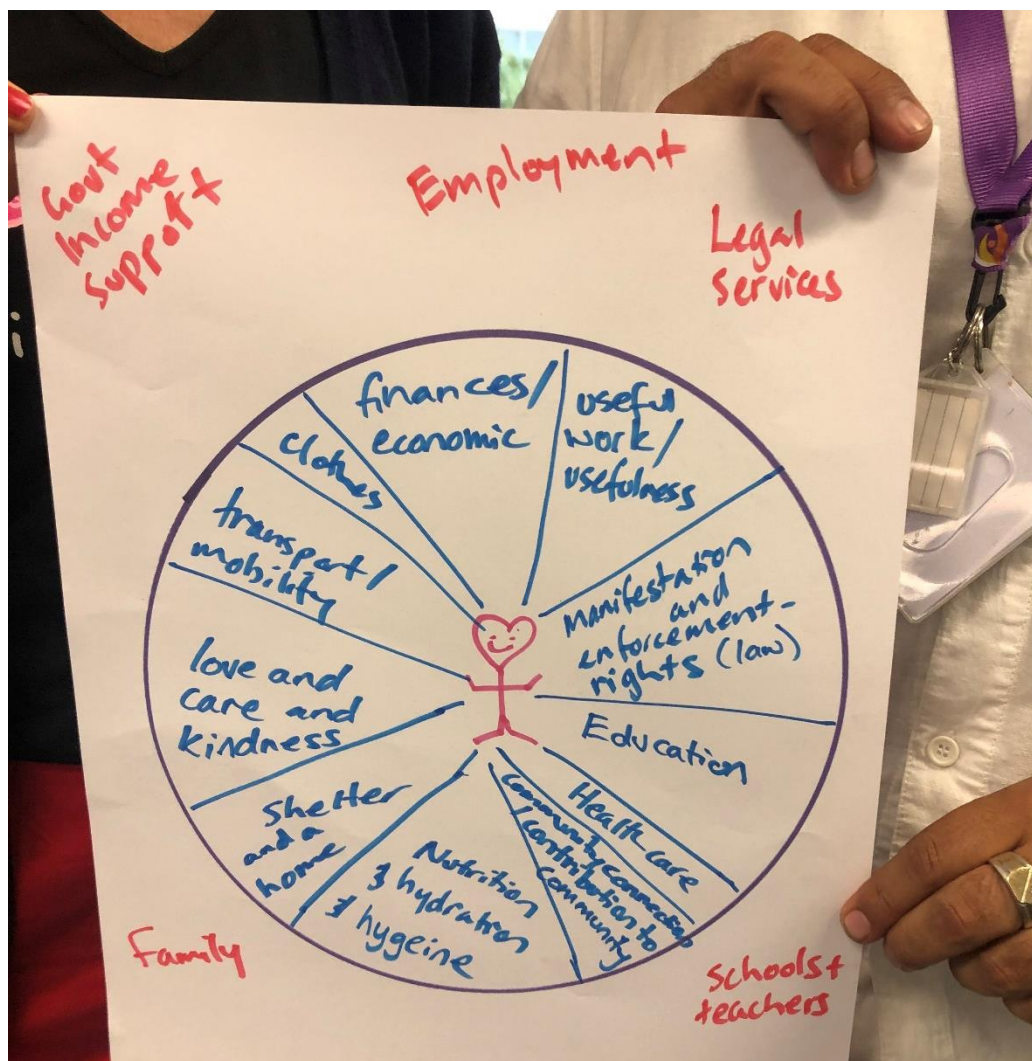


‘Needs-based’ funding is funding based on an initial estimate of need which is then updated or reduced according to experience but with the continuing intention of meeting ‘needs’.

This is a grounded approach to funding, which means it’s flexible and responsive. It is grounded in the reality of a situation. The ‘needs’ to be addressed also take into account the advocacy and legal help models that are needed. In relation to social security legal needs in the NT, including the legal needs of people with disability, carers and family members, the models should be:

- Community based and community owned as far as possible
- Provided through existing trust relationships and organisations as far as possible
- Be trauma informed, culturally safe and client centred
- Fit for purpose that the models must incorporate systemic advocacy to help people with lived experience act proactively – for their own benefit and that of others – to improve things that need to change. The DCLS Seniors and Disability Rights Advocacy Model referred to above, is an example.

The above photo of DCLS Community Lawyers Bridget McDermott (left, DCLS General Legal Service) and Jamie Love (right, DCLS Tenants’ Advice Service) after a staff workshop about social security legal needs in the NT, especially in remote and very remote communities – speaks to the approach that’s required. They are holding a brainstormed diagram that shows where legal services ‘fits in’ and what it helps achieve.



7.5.6 Respecting and supporting Aboriginal people to lead and make decisions

The Northern Territory Aboriginal Justice Agreement 2021-2027¹⁴² provides a central framework for Justice related action in the NT. While not specifically addressed to civil justice issues, the principles are applicable. For example:

“Aboriginal Territorians emphasised during the Aboriginal Justice Agreement consultations, and as outlined in other reports, that many past policies and practices have actively undermined Aboriginal Territorians’ capacity to lead and make decisions.

This has resulted in a breakdown of social structures and kinship systems, loss of languages, restriction to lands, waters and cultures, as well as the gradual erosion of Aboriginal rights and responsibilities.

¹⁴² NT Justice Agreement 2021-27, NT Government, p. 17

https://justice.nt.gov.au/__data/assets/pdf_file/0005/1034546/nt-aboriginal-justice-agreement-2021-2027.pdf

Examples include:

- The ongoing impact of colonisation and a succession of changes reducing autonomy in Aboriginal families and communities.
- The removal of Aboriginal children from families over many generations, commonly known as the Stolen Generations.
- The range of measures that occurred as part of the Northern Territory Emergency Response.
- Replacing community councils with shires
- Introducing the BasicsCard and Income Management policies.
- The continuing experience of discrimination, racism, and unfair treatment.”

Recommendation 40: NT wide plan for needs-based funding of social security legal help

People with disability in the NT are impacted in multiple ways by lack of funding in the NT for social security legal help. There is currently no funding model and no identifiable funding. This applies to the Aboriginal Legal Service, Darwin Community Legal Service and all other non-profit legal services in the NT.

The Commonwealth should provide funding to non-profit legal services in the NT to implement territory wide social security legal help, especially in remote and very remote communities and especially for the most vulnerable. The latter include people with disability who are among the most vulnerable members of the community across the NT.

8. Conclusion

The DCLS submission is indicative of the wide range of issues highlighted by people with lived experience which require action in the NT.

Even though the submission is lengthy it is not comprehensive and many other submissions from the NT help fill out the picture.

We fully support the Royal Commissions efforts and look forward to the Commission’s final stages, including the final report and the wide range of positive actions we hope will follow.