

23 May 2022

Commissioner Catherine de Fontenay, Commissioner Paul Lindwall and Commissioner Martin Stoke  
Study of Aged Care Employment Models  
Productivity Commission  
GPO Box 1428, Canberra City, ACT 2601  
By email only: [agedcareemployment@pc.gov.au](mailto:agedcareemployment@pc.gov.au)

Dear Commissioners,

### Submission to the Productivity Commission's Aged Care Employment Study

Ageing in-place, with dignity, safety and respect are a major social justice issue in the Northern Territory where it is estimated that between 2011 and 2041:

- the number of people in the NT aged 65 and over will increase 242 percent, and
- the number of Aboriginal people in the NT aged 65 and over will increase 340 percent.<sup>1</sup>

Eighteen percent of aged care recipients in the NT are aged under 65, of whom Aboriginal people are the majority.<sup>2</sup>

There are chronic shortages, gaps and quality issues in the aged care sector in the NT,<sup>3</sup> and numerous contributors including inter-linking and interdependent factors.<sup>4</sup>

Darwin Community Legal Service ('DCLS'), which marked its 30<sup>th</sup> year in 2021, provides NT wide and targeted programs, including the NT Seniors and Disability Rights Service.

As the only generalist community legal service in the NT, and as a non-profit legal service which specifically aims to work with and assist older people, DCLS welcomes this opportunity to provide input for the Productivity Commission's study into Aged Care Employment Models.

*We acknowledge the Larrakia people as the Traditional Owners of the Darwin region and pay our respects to Larrakia elders past, present and emerging. We also acknowledge and pay our respects to the Traditional Owners of country throughout the NT and throughout Australia. We recognise their continuing connection to land, waters and culture.*

*DCLS supports Voice – Treaty – Truth.*

<sup>1</sup> Andrew Taylor and Hannah Payer, 'Population Ageing in the Northern Territory: Seniors' Voices on Ageing in Place, (2016), 10 (2) *Journal of Population Ageing*, 181

<sup>2</sup> Industry Skills Advisory Council NT, *Aged Care* (2019) <<https://www.isacnt.org.au/NT-industries/aged-care>>

<sup>3</sup> See for example Northern Territory Council of Social Service, NTCOSS Submission to the Royal Commission into Aged Care Quality and Safety (2019), < <https://ntcoss.org.au/wp-content/uploads/2019/07/NTCOSS-ACRC-Submission-FINAL.pdf>>; Sue Shearer, CEO Council of the Aging NT, Aged care crisis, May-July 2022, NT Seniors Voice, 5, <[https://www.cotant.org.au/wp-content/uploads/2022/05/Seniors-Voice-May-July2022\\_web2.pdf](https://www.cotant.org.au/wp-content/uploads/2022/05/Seniors-Voice-May-July2022_web2.pdf)>

<sup>4</sup> Ibid, NTCOSS; Heather Gibb, 'Addressing neglected contexts of ageing: The situation in remote northern Australia', (2019) 27 *Journal of Depopulation and Rural Development Studies*, online <<http://ruralager.org/espanol-ager-27-2019/>>; Michael Lowe and Pasqualina Coffey, 'Effect of an ageing population on services for the elderly in the Northern Territory', (2019) 43 (1) *Australian Health Review*, 71; Vanessa McConville, Karen Dempsey et.al., *The Health and Wellbeing of Older Territorians*, NT Department of Health, 2013

## Introduction

### 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 NT. DCLS:

- Provides legal help, advocacy, and support services
- Collaborates to understand obstacles to justice and try to achieve reform, and
- Promotes understanding and acceptance of rights, justice, and inclusion

Of relevance to this submission are our:

- **Seniors and Disability Rights Service ('SDRS')** which provides advocacy support to older people. SDRS works to promote understanding, create awareness, and empower our community to support access to services and rights, and to advocate for change that promotes fairness and justice. SDRS also makes regular contributions to the national discourse, including through the Older Peoples Advocacy Network, and advises on trends and developing strategies for areas of interest in the NT.
- **General Legal Service ('GLS')** which provides information, referral legal advice and representation in area of civil law affecting basic rights. This includes employment law, discrimination, social security, credit and debt, NDIS appeal and adult guardianship all of which bring us into contact with issues in aged care, the aged care workforce and impacts on older people, families, carers, individuals, and communities.

In addition, DCLS provides:

- **NT Tenants' Advice Service** – which is a free NT wide information, referral, legal advice and help for tenants, including representation. TAS clients and focus includes older people tenancy, housing and homelessness and TAS clients include older tenants receiving aged care services at home tenants caring for older family members at home.
- **Special projects including Older Person' Safety from Abuse, supporting people in relation to the Disability Royal Commission and specialist advocacy support in relation to NDIS appeals** – this also bring us into contact with a range of workers, people with lived experience and issues relevant to the aged care workforce.
- **Collaborative** community legal education, projects, organizing, and advocacy for rights, justice, and inclusion – including work in aged care and with services relevant to older people. Some relevant projects include:
  - **Participatory community legal education about the rights and wellbeing of older people in the NT** – to increase awareness, supports and empowerment
  - **Research and collaboration with unions and others regarding trends in labour hire in the NT** – highlighting lack of regulation compared to other Australian jurisdiction, impacts on workers, on shortages and on productivity
  - **Access to legal help** – including research and exploring assumptions in non-profit legal service funding models for the NT. There is an absence of articulated models for civil law legal help for Aboriginal and non-Aboriginal people in the NT, including for:
    - civil law legal service and advocacy roles in remote and very remote communities
    - remote and very remote tenants legal and advocacy help
    - civil law legal help for older people including aged care recipients
    - adult guardianship
    - social security legal help
    - credit, debt, and consumer legal help
    - NDIS appeals advocacy and legal help
    - employment law legal help

# Senior & Tenancy Rights Workshop

with the Filipina Senior Citizens Association



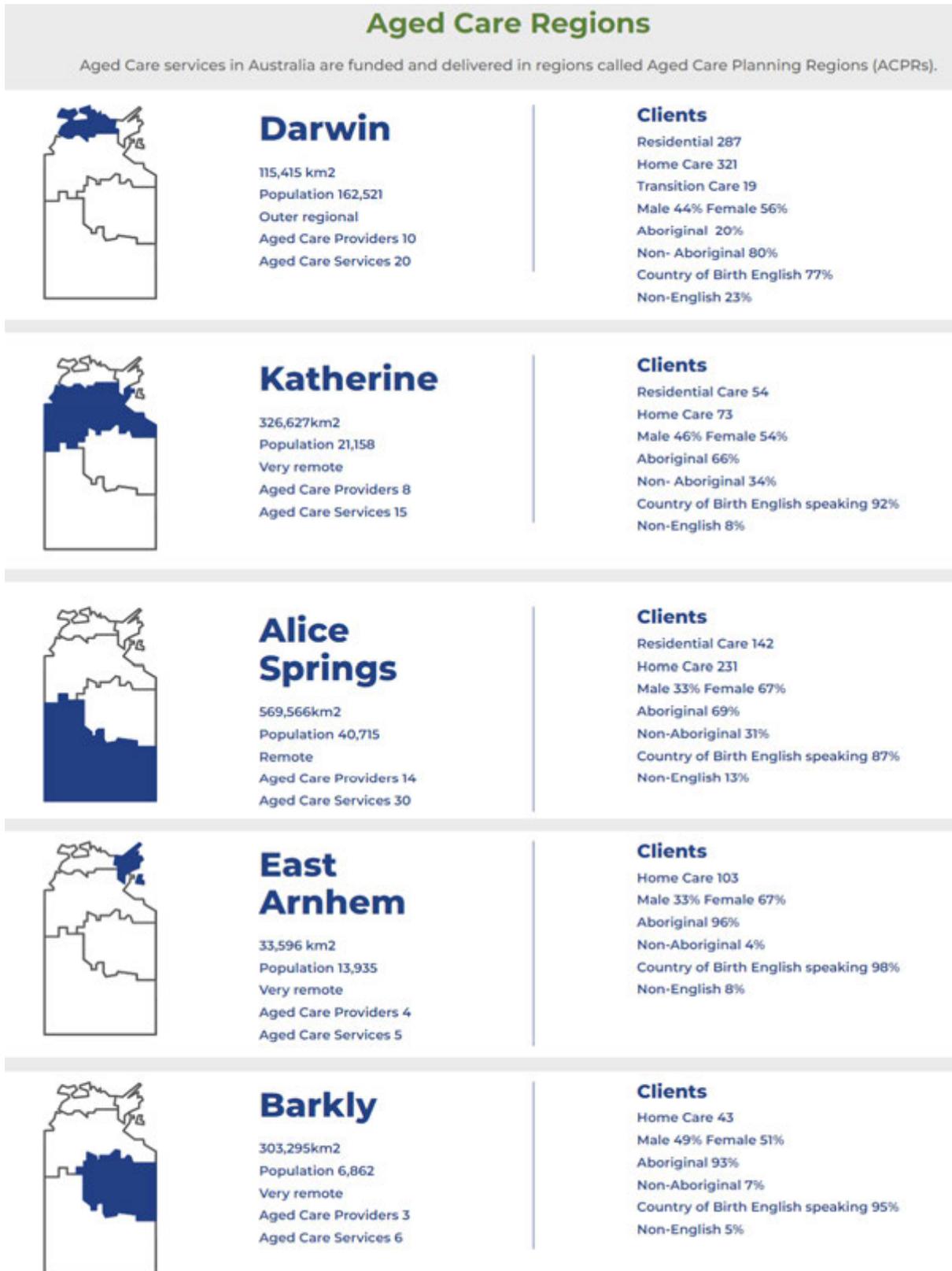
DCLS staff include advocates expert in aged care, health specialisations, disability, and community services and staff who are legally trained.

Additionally, over 60 DCLS volunteers share their knowledge and skills and bring their networks and community involvements.



## Aged Care Regions in the NT

There are five aged care planning regions in the NT (**graphic on the next page**), each with distinctive characteristics and needs.<sup>5</sup>



<sup>5</sup> Industry Skills Advisory Council NT, *Aged Care* (2019) <<https://www.isacnt.org.au/NT-industries/aged-care>>

Factors in the aged care planning regions reflect the needs of individuals, workforce needs, and contextual needs, for example: <sup>6</sup>

Needs of individuals	Workforce needs	Contextual needs / interrelationships
<ul style="list-style-type: none"> <li>• individuals</li> <li>• families</li> <li>• other carers</li> <li>• communities</li> </ul>	<ul style="list-style-type: none"> <li>• access to employment</li> <li>• rights and conditions</li> <li>• safety at work</li> <li>• gender equity</li> <li>• anti-discrimination</li> <li>• local jobs for local people</li> <li>• access to training</li> <li>• job security</li> </ul>	<ul style="list-style-type: none"> <li>• health</li> <li>• housing</li> <li>• economic profile including disadvantage</li> <li>• transport</li> <li>• education</li> <li>• technology</li> <li>• community services including advocacy and legal help</li> </ul>
<p><b>All of which encompass rights including self-determination, cultural security, and wellbeing</b></p>		

The recent Australian Federation of Disability Organisations recent Round Table on Institutional Economic Neglect ('IEN'), to which DCLS Advocates contributed - considered how this concept is relevant to the matters under consideration by the Disability Royal Commission.

The IEN lens draws attention to the how institutions (including governments) may inflict or be complicit in abuse and neglect towards individuals, groups, and communities.<sup>7</sup> This includes lived experience of systems, and what systems do and don't achieve.

As IEN highlights how systemic abuse and neglect can arise from institutional systems, including legislated schemes and government programs, and from failure to resource, manage and/or appropriately regulate - <sup>8</sup> it is also very relatable for aged care. IEN raises questions about how things that are so inadequate can occur, and what is involved in trying to break free from the institutional justifications for failure.

### Background to the Productivity Commission's study – employment models

We note that the Productivity Commission's current Study into Aged Care Employment Models arose from the Final Report of the Royal Commission into Aged Care Quality and Safety ('the Royal Commission'). This report made observations on employment models within aged care, **and specifically recommended preferencing of 'direct employment' as a means of improving care and conditions** for aged care recipients and aged care workers (recommendation 87, see below).

#### Recommendation 87 - regarding direct and indirect employment

We note that there are several employment models in the aged care sector, as detailed below in Figure 1 of the Productivity Commission's Issues Paper.<sup>9</sup>

<sup>6</sup> Ibid, 1, 2, 3 and 4.

<sup>7</sup> Australian Federation of Disability Organisations, *Disability Support Pension: The Impact of Institutional Abuse and Neglect on People with Disability, Submission to the Senate Inquiry on the Purpose, intent and adequacy of the Disability Support Pension*, <<https://www.afdo.org.au/our-work/policy-work/>>

<sup>8</sup> Ibid.

<sup>9</sup> Productivity Commission, 'Indirect employment in aged care' (Issues Paper, March 2022) 10.

### Recommendation 87: Employment status and related labour standards as enforceable standards

1. By 1 January 2022, the Australian Government should require as an ongoing condition of holding an approval to provide aged care services that:

- a. approved providers: have policies and procedures that preference the direct employment of workers engaged to provide personal care and nursing services on their behalf
- b. where personal care or nursing work is contracted to another entity, that entity has policies and procedures that preference direct employment of workers for work performed under that contract.

2. From 1 January 2022, quality reviews conducted by the Quality Regulator must include assessing compliance with those policies and procedures and record the extent of use of independent contractors.

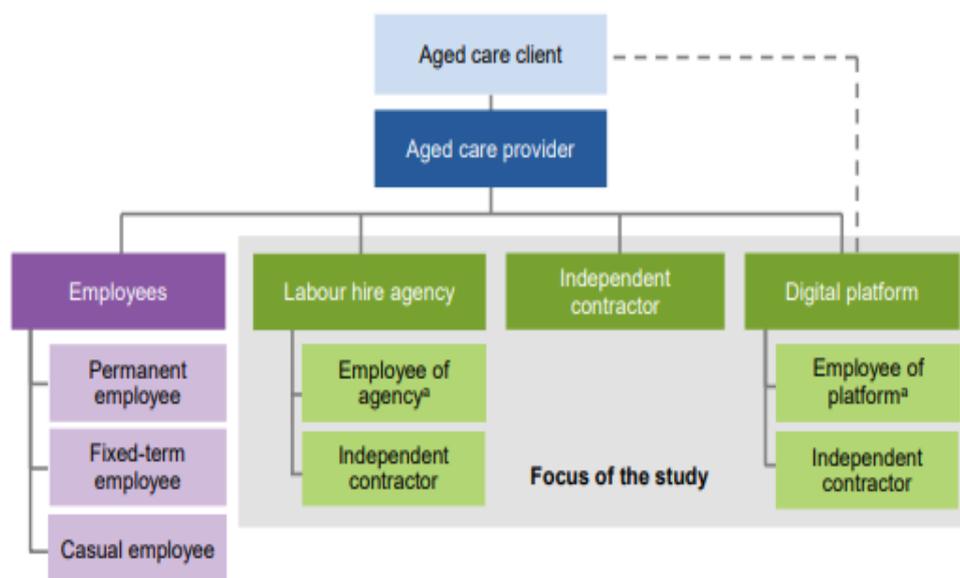
Source: Royal Commission into Aged Care Quality and Safety (2021a, p. 265).

Briefly, there are two kinds of employment arrangements – characterised as direct or indirect employment:

- **Direct employment** - workers directly employed by their employer (pays their wages, salary, and other benefits, withholds tax on their behalf), and
- **Indirect employment** consisting of:
  - Labour Hire Agency – workers directly employed by an agency and outsourced to a host employer for a fixed period or to complete a specific task
  - Independent Contractors (aka subcontractors) – workers provide an agreed service to an employer and do not have an expectation of ongoing work, and
  - Digital Platform Workers (aka gig economy worker) – workers typically engaged as independent contractors but have been found to be employees of the platform.

The Commission’ diagram in the Issues Paper, represents these forms of employment:<sup>10</sup>

**Figure 1 – Employment relationships in the aged care sector**



a. Employees may be permanent, fixed-term or casual employees.

<sup>10</sup> Ibid.

## Productivity Commission's Terms of Reference

In response to these recommendations by the Royal Commission the Australian Government referred the question of employment models in the aged care sector to the Productivity Commission, specifically asking the Commission to examine:

“...employment models in aged care, and the effect that policies and procedures to preference the direct employment of aged care workers would have on the sector.”<sup>11</sup>

We note that for this study, the Productivity Commission is canvassing how different employment arrangements impact upon factors including:

- quality of care
- consumer choice
- job creation and workforce availability
- employment conditions and worker preferences
- flexible and innovative models of care
- accountability of aged care providers
- costs of providing care, and
- the viability of aged care providers.

The Commission will also consider whether any changes to the aged care sector employment arrangements will impact other sectors, namely disability and childcare.<sup>12</sup>

### 1. Outline of this submission

The Royal Commission highlighted existing fault lines within the aged care sector which place both **aged care recipients** and **aged care workers** at risk.

This submission first refers to the urgent need for *effective regulation* of the aged care sector, including workforce practices, in the NT and then refers to:

- the plight of older people who require aged care in the NT, and
- issues relating to aged care workers and the aged care workforce in the NT.

As outlined below the risks to aged care recipients are higher in the NT where access to aged care services is limited and indirect employment in aged care is prevalent.

In the NT, indirect employment is associated with - and contributes to - staff shortages, to staff being undertrained, inadequately supported, overworked, and underpaid. All of which impact on the quality and availability of care.

Proper regulation involves placing the interests of aged care recipients at the centre - from which, principles to support quality services and sustainable care become clear.

Proper standards and protections in relation to worker's rights, based on the right to be treated fairly, with dignity and respect - are also matters of principle.

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<sup>11</sup> Productivity Commission, 'Terms of Reference' *Aged Care Employment* (Web Page)  
<<https://www.pc.gov.au/inquiries/current/aged-care-employment/terms-of-reference>>

<sup>12</sup> Ibid.

Both sets of rights - those in need of aged care and workers' rights – must be a protected, respected and fulfilled.

As noted by the International Labour Organization, workers' rights in the care economy engage United Nations Sustainable Development Goals, including gender equality; decent work and economic growth; reduced inequalities; and good health and wellbeing,<sup>13</sup> to which Goal 16: peace, justice and strong institutions and Goal 17, partnerships for the goal, can be added.



Urgent improved regulatory assistance is needed to promote the rights of aged care recipients and the right of aged care workers in the NT. This includes overcoming the prevalence of indirect employment in aged care in the NT.

The regulatory framework must ensure real accountability and recourse when the interests of aged care recipient are not protected and / or when workers conditions fall below acceptable standards.

In response to the Productivity Commissions question about flow on effects of regulatory work to reduce indirect employment in aged care, we submit that flow on effects in the disability and childcare sectors are both highly desirable for the same reasons.

## 2. Regulatory framework for aged care in the Northern Territory

### 2.1 Overview

The NT has a rapidly ageing population and a regulatory framework that is reactive and inadequate for the required range of objectives, including achieving a whole system approach to address the nature and extent of unmet needs for aged care services.

The regulatory framework must address place-based issues in the NT, including those in the regions. The framework must engage with factors producing staff and skills shortages including very high staff turnover.<sup>14</sup>

<sup>13</sup> ILO, Care Economy, <<https://www.ilo.org/global/topics/care-economy/lang--en/index.htm>>

<sup>14</sup> Industry Skills Advisory Council NT, *Aged Care* (2019) <<https://www.isacnt.org.au/NT-industries/aged-care>>, 10 including the graphic below



Staff turnover a  
**30-40%**  
with some reporting as high as  
**60-70%**

Compared to 'a relatively stable  
Aged Care workforce' nationally.

The factual position regarding the prevalence of indirect employment practices in aged care in the NT should be confirmed through research and by establishing ongoing mechanisms to monitor and report publicly. That research is needed is indicated by:

- Reports from relevant informed sources, and experience, indicating that forms of indirect employment, including labour hire are common in aged care in the NT
- Lack of identified statistical sources via research undertaken with and for DCLS about labour hire in the NT,<sup>15</sup>
- Small group research undertaken by the Industry Skills Council of the NT which doesn't answer the question but points to levels of staff turnover.<sup>16</sup>

For research in the NT, it will be important to be clear about terminology. For example, the Industry Skills Advisory Council of the NT research, used the terms 'direct' and 'indirect' employment in aged care in its research to refer to whether a worker was *directly* involved in providing care or *indirectly* involved, such as in an administrative role.

It appears that indirect employment practices are prevalent in aged care in the NT. Further that, these are a symptom of - and a contributor to - the failure of free market approaches to deliver required aged care capacity and outcomes.

Research in the NT should consider the prevalence of unregulated, indirect employment practices (such as labour hire) and the impacts on service quality, training, and the skills base of the aged care workforce.

**Recommendation 1:** The factual position regarding the prevalence of indirect employment practices in aged care in the NT needs to be established through research which answers the question and establishes ongoing mechanisms to monitor and report publicly.

**Recommendation 2:** Research in the NT should consider the prevalence of unregulated, indirect employment practices (such as labour hire) and the impacts on service quality, training, and the skills base of the aged care workforce.

<sup>15</sup> Scanlon Williams, *Not Very Far From Modern Slavery? Labour-Hire Reform in the Northern Territory*, ANU Law Internship Research Paper, 25 October 2021 undertaken with Darwin Community Legal Service < <https://www.dcls.org.au/events-and-publications/papers/>>

<sup>16</sup> Industry Skills Advisory Council NT, (n14)

The development and implementation of a more attuned and effective regulatory framework must happen quickly given the immediacy of the crisis, the needs, and the effects of the current failures. We are extremely concerned that issues within aged care in the NT will get worse, unless effective regulation is implemented.

Quality regulation is particularly important in thin markets, where there is insufficient supply (availability of aged care) to meet consumer needs. In the thin markets for aged care in the NT there is the potential for service providers to monopolise and inflate prices while being insufficiently accountable for the standard of care.

Thin markets in the NT are characterised by high costs and inability to recruit sufficient staff with skills and experience. While this particularly applies in remote and very remote areas in the NT, it is also present in the major centres, which are also overwhelmed by lacks relating to remote and very remote areas.

Effective regulation in the NT needs to promote and develop the quality of aged care service provision and ensure that service providers are held to account for unfair and/or unsafe practices. The regulatory environment must include effective sanctions and effective oversight.

**Recommendation 3:** The development and implementation of a more attuned and effective regulatory framework for aged care in the NT must happen quickly given the immediacy of the crisis, the needs, and the effects of the current failures.

## 2.2. Lack of meaningful sanctions

A central issue in regulating the aged care sector in the NT is the absence of meaningful sanctions. While some aged care providers in the NT have received sanctions or notices of non-compliance, sanctions are often inadequate and are not enough to effect meaningful changes in practice.

This is compounded in the NT, due to insufficient providers, aged care recipients often do not have the option of switching to a different provider. This results in a choice between substandard care or no care.

Effectively, the absence of impactful sanctions permits aged care providers to circumvent standards.

### *Case study – shambles*

A specialist worker attended an aged care home in the NT, to assess an aged care resident for a particular therapy. During the time this took the worker observed that incorrect medication was dispensed, the meal served was incorrect for the dietary plan, there were insufficient staff rostered to attend to the routine care needs, and rostered staff were clearly insufficiently briefed on care plans

### Reactive, complaints-driven oversight

A common theme running through existing oversight bodies is that their primary focus and the bulk of their workload is responding to complaints. This is a reactive approach which is not overcome by occasional, forewarned, site visits – the practices do not ensure standards are being met.

This can be compared with the model endorsed by the United Nation's Optional Protocol to the Convention Against Torture (**OPCAT**), wherein National Preventive Mechanisms (**NPM**) operate to proactively inspect and report on all places of detention.<sup>17</sup> NPM's are given broad powers to enter facilities, speak to people within them and access information relating to the facility.

<sup>17</sup> Office of the United Nations High Commissioner for Human Rights, Preventing Torture: The Role of National Preventive Mechanisms: A Practical Guide, Professional Training Series No. 21 (HR/P/PT/21 2018).

In DCLS's recent submission to the NT Department of the Attorney-General and Justice's Discussion Paper on amendments to the OPCAT Act to legislate for NT NPMs, we recommended that the definition of a 'place of detention' be amended to explicitly include aged care homes, amongst other facilities.<sup>18</sup> This inclusion would ensure that aged care facilities are inspected on a preventative, rather than reactive, basis.

It should be noted that any regulatory changes to improve the quality of care for aged care recipients will be hampered by the ineffective or 'toothless' framework for the Aged Care Quality and Safety Commission. The Commission's powers must be expanded, and the Commission adequately resourced, to effectively perform their oversight functions. Alternatively, or as an interim measure, a designated NT Aged Care Ombudsman or other independent body could be established to provide more oversight for aged care in the NT.

### Scope of regulatory changes

Meaningful changes to improve the regulatory framework for aged care are likely to have flow-on effects on other sectors.

While this can be acknowledged as a complicating factor in the bid for improved regulation, it should not act as a barrier or limiting factor in pursuing this goal.

Any flow on from reforms that will improve the quality of care for aged care recipients and conditions for aged care workers are likely to be beneficial in other sectors and in turn help achieve norms which reinforce reforms in aged care - ultimately achieving holistic, economy-wide, reforms.

The intersection between the aged care and other service systems was noted by the Aboriginal Medical Services Alliance Northern Territory ('AMSANT') in their preliminary submission to the Royal Commission into Aged Care Quality and Safety:

"NDIS providers face many of the same challenges regarding workforce training, retention and ensuring cultural security for patients that are faced by Aged Care service providers... The current system does not support allied health services to be used effectively across NDIS, aged care and primary health care in order to make them sustainable and efficient. This is causing wastage and inefficiency as well as contributing to a lack of services".<sup>19</sup>

Further, the success or failure of regulatory changes must be measured against criteria which reflect intended benefits and positive impacts for aged care recipients and aged care workers.

**Recommendation 4:** The regulatory framework relating to aged care in the NT, must:

- be enhanced to address place-based issues, including those in the regions.
- address factors producing staff and skills shortages
- ensure meaningful sanctions to proactively identify and address practices which do not meet required standards
- include expanding the powers of the Aged Care Quality and Safety Commission



**Seniors and Disability Rights Service**  
Katherine  
29th - 31st March 2022

We can assist you with:

- NDIS
- Aged care
- ID Cards referrals
- Centrelink problems
- NT concession scheme
- Disability Support Pension (DSP)
- Disability Royal Commission (DRC)
- General information about your rights

our service is **free** and confidential  
freecall 1800 812 953

to make an appointment or drop-in to see us:  
Katherine Library 9am - 12pm Wed 30th  
Seniors Expo at YMCA 10am - 2pm Thurs 31st  
email: [info@dcls.org.au](mailto:info@dcls.org.au) | web: [www.dcls.org.au](http://www.dcls.org.au)



<sup>18</sup> Darwin Community Legal Service, 'Submission on the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Bill 2022' (11 February 2022) <<https://www.dcls.org.au/wp-content/uploads/2022/02/DCLS-Submission-on-OPCAT-Bill-2022.pdf>>

<sup>19</sup> Aboriginal Medical Services Alliance Northern Territory, 'AMSANT Submission to the Royal Commission into Aged Care Quality and Safety' (5 July 2019) 2-4.

- ensure proper conditions for aged care workers, promote retention, professionalism and workforce contributions to aged care availability and quality improvement.

### 3. Issues facing aged care recipients

Reports from aged care service providers in the NT indicate that the current staffing levels cannot sustain the amount of work already required, let alone new aged care recipients. In short, vulnerable older people are being left with nothing and no options.

#### *Case study – waiting times in the NT*

Currently there is between a 6 to 12 month wait in the NT between when an older person is deemed eligible for an aged care package and when they receive services through it. The only alternative supports for older people during this period are those provided through the Commonwealth Home Support Program. However, in the NT service providers are at capacity, meaning that the services and supports ordinarily provided under the Program are not available.

#### 3.1. Availability and accessibility

A major issue facing aged care recipients in the NT is the limited availability of aged care services and the difficulties in navigating and accessing these services. There are not enough places and insufficient measures to address this.

A central issue is the “individualised and market-driven system” underpinning the aged care sector. As AMSANT explains:

“[this] system does not work in the context of the NT where there is little or no market and is also not culturally appropriate and likely to disadvantage Aboriginal people even in urban areas. Elderly clients are often not in a position to advocate on their own behalf, and this is compounded when people do not speak English.”<sup>20</sup>

#### *Worker supply and availability*

Indirect employment arrangements in aged care in the NT, including labour hire, reflect under-regulated market-driven approach which lacks demonstrated positive impacts for increasing:

- the supply / flow of suitable workers, and
- the stability, continuity, and capabilities of the aged care workforce.

While indirect employment in aged care may be attractive to some workers, over reliance is not in the interests of aged care recipients as reflected in Recommendation 87 by the Aged Care Royal Commission (above).

In the NT context, indirect employment is:

- validating and promoting stop gap approaches,
- increasing risks to aged care recipients and workers,
- reducing the accountability of aged care providers, and
- reducing the leverage other stakeholders including the federal and NT governments.

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<sup>20</sup> Ibid 4

Indirect employment also reduces the ability of workers to organise around systemic issues in aged care affecting care recipients and/or issues affecting the workers themselves. It is not conducive to workplaces investing in training or meeting quality standards.

In the NT a pivotal aspect to address issues in aged care is achieving increased resources for Aboriginal community-controlled organisations to provide aged care services. As AMSANT notes:

“community-controlled services are much more likely to provide culturally appropriate services, including in hard to reach locations, and employ and retain local people. High turnover and lack of specialised staff in rural and remote settings compromises continuity of care and the building of therapeutic relationships between carers and elderly patients, which are so vital to Aboriginal people. This could be greatly reduced by a strategy of enhancing local employment”.<sup>21</sup>

The need for culturally safe age care services for Aboriginal people is strongly advanced by:

- The Aged Care Royal Commission which recommended a new Aged Care Act with principles to also guide the administration of the Act, to include that:

“Aboriginal and Torres Strait Islander people are entitled to receive support and care that is culturally safe and recognises the importance of their personal connection to community and Country”<sup>22</sup>

- The new *National Aboriginal and Torres Strait Islander Health Plan 2021–2031*, which emphasises deep collaboration and leadership with Aboriginal Community Controlled Health Organisations, and commits to delivery of health care, which is place based, person centred, and culturally safe and responsive,<sup>23</sup> and
- The *NT Health Aboriginal Health Plan 2021-2031 Plan*<sup>24</sup> and the Industry Skills Advisory Council of the NT.<sup>25</sup>

In summary, the prospects for culturally safe care in the NT are enhanced by direct employment and diminished by indirect employment models.

**Recommendation 5:** Direct employment models should be strongly preferred and encouraged in aged care in the NT due to the needs of aged care recipients, increasing the supply and quality of aged care in the NT.

**Recommendation 6:** Aboriginal Community Controlled Health Organisations should be preferred for aged care service delivery to Aboriginal people, for quality, place-based, culturally safe services in accordance with Commonwealth and Territory commitments.

In the NT there also the systemic failure to ensure access to culturally appropriate aged care services for people from culturally and linguistically diverse (**‘CALD’**) backgrounds.

<sup>21</sup> Ibid 2

<sup>22</sup> Royal Commission into Aged Care Quality and Safety, Final Report, Vol. 1, Recommendation 3 (b) xii, at 207 <<https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-recommendations.pdf>>

<sup>23</sup> Australian Government Department of Health, National Aboriginal and Torres Strait Islander Health Plan 2021–2031 <<https://www.health.gov.au/resources/publications/national-aboriginal-and-torres-strait-islander-health-plan-2021-2031>>

<sup>24</sup> Northern Territory Government. (2021) NT Aboriginal Health Plan 2021-2031, <[https://health.nt.gov.au/\\_\\_data/assets/pdf\\_file/0015/1035501/nt-aboriginal-health-plan-2021-2031.pdf](https://health.nt.gov.au/__data/assets/pdf_file/0015/1035501/nt-aboriginal-health-plan-2021-2031.pdf)>

<sup>25</sup> Industry Skills Advisory Council NT, (n14)

## Guardianship Information - Aboriginal Languages

Warlpiri

▶ 0:00 / 5:46

Eastside Kriol

▶ 0:00 / 4:01

Anindilyakwa

▶ 0:00 / 4:16

Yolngu Matha

▶ 0:00 / 5:17

Further, in DCLS's experience it has been difficult, and at times impossible, to source materials in language for Aboriginal and CALD aged care recipients and for family and community members who contribute to their care. This contributes to older people being unclear about their rights, their entitlements and where to go to make a complaint.

### *Case study – OPG*

Only recently, after sustained advocacy from DCLS has the Office of the Public Guardian provided audio files in Aboriginal languages.<sup>26</sup> However, it was also clear from this experience that many within the aged care sector are resistant towards efforts to increase the inclusivity and accessibility of these systems.

Regarding advocacy, we note that DCLS is one of only two services funded to provide advocacy for older people in the NT and, while both work with Aboriginal and non-Aboriginal people, there is a clear and long-standing need for funding of this kind to be available to relevant Aboriginal organisations in the NT.

DCLS supports AMSANT's recommendation that the Australian Government "re-establish the former Commonwealth Aged Care Advocacy Service, with an Aboriginal-specific aged care advocate funded within AMSANT for the NT."<sup>27</sup>

In summary, in the NT there needs to be a greater focus on, and investment in, culturally appropriate aged care service provision to ensure that the aged care sector is reflective of the older people who rely upon it.

**Recommendation 7:** In the NT there needs to be a greater focus on, and investment in, culturally appropriate aged care service provision to ensure that the aged care sector is reflective of the older people who rely upon it.

### *Accessibility – servicing regional and remote areas*

Remoteness is often cited as a reason for substandard service provision and support for older people in the NT. As noted by the Skills Advisory Council of the NT, the NT is the only Australian jurisdiction where all aged care clients are considered to be regional, remote or very remote.<sup>28</sup> However, a high proportion of aged care recipients in very remote communities are Aboriginal people.

As AMSANT notes, older Aboriginal people are "more likely to experience complex chronic diseases and other markers of disadvantage".<sup>29</sup> This is partially attributable to the failure to improve the social and cultural determinants of health for Aboriginal people, which is particularly prevalent in remote areas of the NT:

<sup>26</sup> Screenshot, at left, of the files on the NT Office of the Public Guardian website at: <<https://publicguardian.nt.gov.au/resources/fact-sheets#accordion-2>>

<sup>27</sup> Ibid 7

<sup>28</sup> Industry Skills Advisory Council NT, (n14)

<sup>29</sup> Ibid 4

“Social and cultural determinants are considered to account for between one third and one half of the gap in health status between Indigenous and non-Indigenous Australians. In particular, frail and elderly Aboriginal people are often living in very substandard overcrowded housing which makes effective service provision very challenging”.<sup>30</sup>

Service provision in remote areas in the NT is typically limited to minimal facilities and older people have no choice or alternatives. Older Aboriginal people with additional health needs are often forced to relocate from their communities and, in some cases, need to be hospitalised.

Once hospitalised, it is very difficult for older Aboriginal people to return home to their family and community due to the lack of services available in the community. Being forced to relocate results in increased distress and depression, it can be accompanied by culture shock, and contribute to intergenerational trauma including reducing cultural life in the remote communities themselves.

Funding and affordability issues are also compounded for older people living in regional and remote areas. In DCLS’s experience, older people have been denied services because their funding does not cover the distance that support workers need to travel to attend the client or are unable to access services because of the fees charged by the service provider. In both cases, the older person was left with little to no support or care, putting their emotional and physical wellbeing at risk.

**Recommendation 8:** Increased emphasis must be placed on services to enable older Aboriginal people to age in their community rather than continuing the forced relocation to large centres, with adverse consequences for the individual, their families and communities.

### 3.2. Standard of care

There is a high incidence in the NT of aged care recipients receiving inadequate care which diminishes their comfort, dignity, and general wellbeing, and presents a significant threat to their health and safety. There are numerous case studies that could be cited to illustrate this, however one which remains pertinent is that of the death of Mrs Barbara Francis, a former aged care resident at Pearl Support Care in Darwin.

#### *Case study – coronial inquest into the death of Mrs Barbara Francis*

A coronial inquest held in 2020 recounted the series of events that led up to Mrs Francis’ death, which was precipitated by a physical altercation with another aged care resident, Mr A.<sup>31</sup> Mr A’s usual NDIS carer had called in sick that day and their replacement, CSW N, had only worked at Pearl on one previous occasion, had not met Mr A before and had not worked in the Dinah wing (specifically designed for residents with severe dementia).

The only handover CSW N received was over the phone from Australian Regional and Remote Community Services and relevant information regarding Mr A’s behaviour or care plan was not provided at this, or any other, time.<sup>32</sup> These factors contributed to the physical altercation which ultimately led to Mrs Francis’ death.

The coroner found inadequate staffing, supervision and handover contributed to her death:

“Had the staffing roster and important directive been complied with, and had the CSW been adequately orientated to the site and the client, the entire incident resulting in Mrs Francis’s fall

<sup>30</sup> Ibid 7

<sup>31</sup> *Inquest into the death of Barbara Iris Francis (nee Cox)* [2020] NTLC 021.

<sup>32</sup> Ibid [14].

could have been avoided. In those circumstances it is likely that Mrs Francis would not have died when she did.”<sup>33</sup>

In DCLS’s experience, the issues recounted in the coroner’s report regarding staffing, supervision and handover all continue today. These issues pose a serious risk to the health and safety of aged care recipients and do not allow older people to live with dignity and in comfort.

Service providers often refer to staff shortages to purportedly excuse substandard care, including neglect.

It is also common for internal policies to be cited to deny older people their basic rights or entitlements.

*Case study – inadequate training*

An aged care worker referenced the provider’s policies to restrict an older person’s movement and deny them a kitchen appliance. When the SDRS advocates requested to see these policies, it became apparent that they did not exist.

This can be attributed to the negative impacts of inadequate training and practices which has permeated through the aged care workforce.

**Recommendation 9:** Aged care providers in the NT must be held accountable for their operations including staffing, staff supervision and operational practice. Coronial findings 2020 underscore serious issues regarding duty of care which require an urgent and effective multifaceted regulatory response.

### 3.3. Advocacy and legal help

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

<p><b>What is Advocacy?</b> Advocacy in all its forms seeks to guarantee that people are able to:</p> <ul style="list-style-type: none"> <li>• Have their opinions and concerns heard.</li> <li>• Have their views and wishes genuinely considered when they are affected by decisions</li> <li>• Uphold and preserve their rights Advocacy is a process of supporting and enabling people to:             <ul style="list-style-type: none"> <li>○ Articulate their views and concerns</li> <li>○ Access information and services</li> <li>○ Explore choices, preferences, and opportunities</li> <li>○ Protect and promote their rights and responsibilities</li> </ul> </li> </ul>	<p><b>Types of Advocacy</b> <i>Individual</i> – Assisting a person or group to achieve their objectives. <i>Systemic</i> – Working to bring about social and structural change and mobilise others to be part of that process of change.</p> <p><b>Focus of Advocacy</b> Advocacy is issue-based. Advocates assist clients with a particular matter or problem. Advocates may take on several matters for one client.</p> <p>Advocacy does not include providing legal advice, but DCLS has other programs which provide legal help. <sup>34</sup></p>
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SDRS provides advocacy services to people who are 65 years or older, or 50 years or older where they identify as Aboriginal and/or Torres Strait Islander, when:

- Their families or representatives live in the Top End of the Northern Territory, and
- The older person is receiving, applying for or considering applying for:

<sup>33</sup> Ibid [66].

<sup>34</sup> DCLS Eligibility and Priority Guidelines for Legal Assistance and Seniors and Disability Rights Service, August 2021, <<https://www.dcls.org.au/dcls-eligibility-and-priority-guidelines/>>

- Australian Government subsidised Residential Aged Care Services,
- Home Care Package,
- Commonwealth Home Support Program, or
- Flexible Care Services.
- SDRS can provide information about the rights and responsibilities of an older person to ensure that they understand and can assert their rights in the following areas:
  - Obtaining information and being consulted and heard.
  - Accessing an interpreter.
  - Deciding where to live.
  - Deciding about care needs.
  - Gaining access to and ensuring quality care and services.
  - Obtaining respect for their culture.
  - Being treated with dignity and respect and maintaining independence.
  - Feeling safe.
  - Making and pursuing a complaint about a residential or home care service.

DCLS often applies a team approach with a SDRS Advocate and DCLS lawyer working together with and for the older person.

*Case study - The value of an advocate is evident in the case study of Mr S*

S is an older person living in a residential aged care facility. Family members lodged an application for an adult guardianship order, claiming that S lacked legal capacity. S did not agree and did not want to lose autonomy and control if an adult guardianship order was made.

Staff from the DCLS's General Legal Service and SDRS teams collaborated with S. The SDRS advocate helped S after S decided to undergo assessment, which included arranging the assessment, transporting S and being the support person and advocate. This resulted in medical confirmation proving cognitive ability. At S's request this was provided to the family members and to the Northern Territory Civil and Administrative Tribunal and resulted in the order for guardianship not being made.

**Barriers to accessing advocacy and legal help**

There are often multiple barriers for older people in the NT when accessing advocacy and/or legal help, including

- the limited availability and location of advocacy and legal help service due to resource
- the limited availability of other services and supports
- insufficient flexibility of services, for example when a person is homeless
- services not accessible due to language and/or cultural issues
- service not located where they are needed
- limited suitability of technology for access and service delivery
- issue relating to capacity, and
- forms of control by others, fear for safety, when an older person is at risk of abuse.

In addition, accessing advocacy services can be stigmatised within the community, and people may not be comfortable disclosing personal information due to fear of retribution.

Building relationships, trust and the capacity of the older person and or their carer and support can be essential first steps.

For the kind of work SDRS and DCLS does with older people there is a chronic lack of resources. The North Australian Aboriginal Justice Agency, North Australian Aboriginal Family Legal Service and the Central Australian

Aboriginal Family Law Unit, have not received resources for this work and neither have other relevant non-profit legal services. The funding models are inadequate and are not based on the level of need.

Further, older people in remote communities have often stated that they are promised solutions and support to the difficulties they are experiencing, however these are often not followed through.

This can result in reluctance of people and communities to engage with services and to continue to advocate about their needs being met.

In the NT, there are not enough advocates to support clients, particularly those in remote communities who can converse in the local language.

**Recommendation 10:** That emphasis be placed on increasing older people’s access to advocacy help and legal assistance with particular emphasis in the NT context on this assistance being:

- available to people throughout the Territory including in regional, rural, remote, and very remote areas,
- culturally safe and accessible especially for Aboriginal people who make up the high majority of the population in remote and very remote areas in the NT.

#### 4. Issues facing aged care workers

DLCS supports initiatives that will ensure the rights of aged care workers.

The NT is the only jurisdiction in Australia where there is no specific statutory regulation of labour hire agencies and no form of regulation touching on labour hire.<sup>35</sup> As noted by Scanlon Williams, in his research about labour hire in the NT:

Given the high degree of nationwide [labour hire agencies] non-compliance with applicable workplace laws,<sup>36</sup> these legislative gaps inadvertently incentivise mistreatment of [labour hire employees] in the NT, which is now the only jurisdiction in Australia ‘without some form of regulation touching upon [labour-hire]’.<sup>37</sup><sup>47</sup>

Labour hire is one of the forms of indirect employment being used in aged care in the NT and we have outlined negative effects above. In addition to other new regulatory measures relating to indirect employment in aged care, labour hire itself should be regulated in the NT.

**Recommendation 11:** That the NT should regulate labour hire agencies operating in the NT and overcome the NT currently being the only Australian jurisdiction which has not done so.

<sup>35</sup> Scanlon Williams, *Not Very Far From Modern Slavery? Labour-Hire Reform in the Northern Territory*, ANU Law Internship Research Paper, 25 October 2021 undertaken with Darwin Community Legal Service < <https://www.dcls.org.au/events-and-publications/papers/>>

<sup>36</sup> Anthony Forsyth, ‘Regulating Australia’s ‘Gangmasters’ Through Labour Hire Licensing’ (2019) 47(3) 469, 471–3; David Weil, ‘Afterword: Learning from a Fissured World – Reflections on International Essays Regarding The Fissured Workplace’ (2015) 37(1) *Comparative Labor Law and Policy Journal* 209, 211; Pauline Thai, ‘Unfair Dismissal Protection for Labour Hire Workers? Implementing the Doctrine of Joint Employment in Australia’ (2012) 25 *Australian Journal of Labour Law* 152, 156–7.

<sup>37</sup> Victorian Inquiry into the Labour Hire Industry (n 14) 229. Victorian Inquiry into the Labour Hire Industry and Insecure Work (Final Report, August 2016) 229; Regulation of the Labour Hire Industry 2016 (Report, 15 December 2016).

## 4.1. Training and investment in staff

There is currently a clear and alarming lack of training and investment in aged care staff in the NT.

A pervasive problem in the NT is that the most unqualified workers in aged care bear the highest workloads which is typically comprised of clients with complex needs.

This is a consistent theme in the NT, where the absence of a sufficient permanent, professional workforce, coupled with a high demand for staff, results in entry level workers being ‘thrown in the deep end’ into positions that they are typically underqualified and unprepared to take on.

This results in a lower quality of care or service for the client and a poor working environment for the worker.

In addition, it appears that many service providers do not relate to the benefits of increased staff training, even when professional development hours are covered by their Enterprise Bargaining Agreement and when there are many free training options.

Inadequate training and high staff turnover also increase the difficulty that service providers experience in responding to sensitive issues, such as older person’s abuse. Proper training and robust policies are required to ensure that aged care workers know how to spot and respond to older person’s abuse.

### *Case study – NAAFLS insights in relation to older person’s abuse*

The North Australian Aboriginal Family Law Service has observed systemic issues relating to inadequate staff training – that staff are unable to sensitively navigate older person abuse concerning Aboriginal people because of lack of cultural competency.<sup>38</sup>

This further reiterates the importance of aged care workers having an awareness and understanding of Aboriginal cultures and how various factors might affect the situation, including if and how the older person may wish to respond to the abuse.

**Recommendation 12:** That the enhanced regulatory framework relating to the aged care workforce in the NT must ensure that employment models:

- Fully support quality and training of the aged care workforce.
- Positively contribute to, and ensure, that aged care workers are properly equipped to work with clients in the NT, including cultural security and safety of older people from forms of abuse and clients with complex needs.

## 4.2. Remuneration for aged care workers

Recruiting and retaining staff to work in the aged care sector in the NT is difficult, particularly given the low remuneration coupled with the high cost of living. Unlike other service industries, where pay increases relative to experience and proficiency which may incentivise workers to remain in the sector – the low wages within the aged care sectors in the NT do not reflect the skills required or the work undertaken.

Because of this, there is very little incentive to continue to work in the sector, particularly when comparable roles in other areas (e.g., nursing, disability, etc) pay a higher rate for the same – and sometimes less – work.

DCLS reiterates AMSANT’s recommendation to increase and sustain investment for the specific purpose of training and support Aboriginal people in the NT:

“Much more investment is needed to support Aboriginal people in remote areas to obtain basic literacy and numeracy so that they can progress from entry level roles. This would assist in developing a workforce

<sup>38</sup> Contribution in April 2022 in relation to the current submission.

across the NDIS, aged care, primary health care and other social services. There then needs to be sustained appropriate support through formal training.”<sup>39</sup>

This is supported by the Priority Reform areas of the Closing the Gap Agreement (2020) which includes building the community-controlled sector to ensure that there is “a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high quality services to meet the needs of Aboriginal and Torres Strait Islander people across the country”.<sup>40</sup>

Recently, multiple service providers in the NT have shared with DCLS that they are unable to attract support workers due to the low wage. This has had a significant impact on the services available to older people living in the NT with home support programs being temporarily closed until enough staff are available. At present, there are limited interim supports available which presents a significant risk to the safety of older people.

The low remuneration for aged care workers in the NT, the prevalence of indirect employment, and high staff turnover, results in a less unified workforce which is more vulnerable to exploitation because of their inability to engaged in collective bargaining. It also results in a workforce that is disproportionately represented by women from culturally and linguistically diverse backgrounds, which further increases the likelihood for worker exploitation.

**Recommendation 13:** That the enhanced regulatory framework relating to the aged care workforce in the NT must ensure that:

- wages for the aged care workforce are increased to fair and reasonable levels given the required responsibilities, demands and contexts (including remoteness),
- strategies fully support and ensure training of the aged care workforce, including direct rather than indirect employment models (reflecting increased emphasis on permanency and progression)
- strategies strongly support development of the local workforce, especially opportunities for Aboriginal people, into direct and continuing employment roles in aged care.

## 5. Recommendations

The Productivity Commission’s study seeks to determine how aged care employment should be regulated, for the benefit of aged care recipients and workers alike. The DCLS recommendations outlined above are:

### Research about indirect employment in the NT

1: The factual position regarding the prevalence of indirect employment practices in aged care in the NT needs to be established through research which answers the question and establishes ongoing mechanisms to monitor and report publicly.

2: Research in the NT should consider the prevalence of unregulated, indirect employment practices (such as labour hire) and the impacts on service quality, training, and the skills base of the aged care workforce.

### Urgent need for effective regulatory framework for aged care in the NT

3: The development and implementation of a more attuned and effective regulatory framework for aged care in the NT must happen quickly given the immediacy of the crisis, the needs, and the effects of the current failures.

<sup>39</sup> AMSANT (n 9) 6

<sup>40</sup> Coalition of Aboriginal and Torres Strait Islander Peak Organisations and Australian Governments, *National Agreement on Closing the Gap* (2020) 18.

4: The regulatory framework relating to aged care in the NT, must:

- be enhanced to address place-based issues, including those in the regions.
- address factors producing staff and skills shortages
- ensure meaningful sanctions to proactively identify and address practices which do not meet required standards
- include expanding the powers of the Aged Care Quality and Safety Commission
- ensure proper conditions for aged care workers, promote retention, professionalism and workforce contributions to aged care availability and quality improvement.

#### **Direct employment models should be preferred**

5: Direct employment models should be strongly preferred and encouraged in aged care in the NT due to the needs of aged care recipients, increasing the supply and quality of aged care in the NT.

#### **ACCHO's should be preferred**

6: Aboriginal Community Controlled Health Organisations should be preferred for aged care service delivery to Aboriginal people, for quality, place-based, culturally safe services in accordance with Commonwealth and Territory commitments.

7: In the NT there needs to be a greater focus on, and investment in, culturally appropriate aged care service provision to ensure that the aged care sector is reflective of the older people who rely upon it.

#### **Ageing in place**

8: Increased emphasis must be placed on services to enable older Aboriginal people to age in their community rather than continuing the forced relocation to large centres, with adverse consequences for the individual, their families, and communities.

#### **Accountability for operational practices**

9: Aged care providers in the NT must be held accountable for their operations including staffing, staff supervision and operational practice. Coronial findings 2020 underscore serious issues regarding duty of care which require an urgent and effective multifaceted regulatory response.

#### **Access to advocacy and legal help**

10: That emphasis be placed on increasing older people's access to advocacy help and legal assistance with particular emphasis in the NT context on this assistance being:

- available to people throughout the Territory including in regional, rural, remote, and very remote areas,
- culturally safe and accessible especially for Aboriginal people who make up the high majority of the population in remote and very remote areas in the NT.

#### **Regulation of labour hire in the NT**

11: That the NT should regulate labour hire agencies operating in the NT and overcome the NT currently being the only Australian jurisdiction which has not done so.

#### **Training in the aged care workforce in the NT**

12: That the enhanced regulatory framework relating to the aged care workforce in the NT must ensure that employment models:

- fully support quality and training of the aged care workforce.
- positively contribute to, and ensure, that aged care workers are properly equipped to work with clients in the NT, including cultural security and safety of older people from forms of abuse and clients with complex needs.

**Wage and conditions and workforce stability for quality care**

13: That the enhanced regulatory framework relating to the aged care workforce in the NT must ensure that:

- wages for the aged care workforce are increased to fair and reasonable levels given the required responsibilities, demands and contexts (including remoteness),
- strategies fully support and ensure training of the aged care workforce, including direct rather than indirect employment models (reflecting increased emphasis on permanency and progression)
- strategies strongly support development of the local workforce, especially opportunities for Aboriginal people, into direct and continuing employment roles in aged care.

In addition, DCLS fully supports the recommendations of AMSANT in their submission to the Aged Care Royal Commission, which has been referenced throughout this submission.



Emma Lupin, *In our hands*, winner of the 2017 Darwin Community Legal Service, Right on Show, Ian Tranthem Justice Award<sup>41</sup>

<sup>41</sup> DCLS Rights on Show, 2017, <<https://www.dcls.org.au/rights-on-show-exhibition-opening-and-award-winners/>>

For any further information or inquiries regarding this submission, please contact Judy Harrison on (08) 8982 1111 or at [info@dcls.org.au](mailto:info@dcls.org.au).

Yours sincerely,

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