

Standing Committee on Social Issues

# **Ageing and Disability Commissioner Bill 2019**

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## Table of contents

	<b>Terms of reference</b>	<b>v</b>
	<b>Committee details</b>	<b>vi</b>
	<b>Chair’s foreword</b>	<b>vii</b>
	<b>Recommendations</b>	<b>viii</b>
	<b>Conduct of inquiry</b>	<b>ix</b>
<b>Chapter 1</b>	<b>Overview</b>	<b>1</b>
	<b>Reference</b>	<b>1</b>
	<b>Background and purpose of the bill</b>	<b>1</b>
	<b>Overview of the provisions of the bill</b>	<b>3</b>
<b>Chapter 2</b>	<b>Key issues</b>	<b>7</b>
	<b>Independence of the Commissioner</b>	<b>7</b>
	Stakeholders' views	7
	Government response	9
	<b>Should the Commissioner's remit include young people with a disability?</b>	<b>9</b>
	Stakeholders' views	9
	Government response	11
	<b>Requirement for consent to investigate</b>	<b>12</b>
	Stakeholders' views	12
	Government response	13
	<b>Public inquiries for systemic issues</b>	<b>14</b>
	Stakeholders' views	15
	Government response	16
	<b>Referral of matters to other agencies including Police</b>	<b>17</b>
	Stakeholders' views	17
	Government response	18
	<b>Information sharing with other agencies</b>	<b>19</b>
	Stakeholders' views	19
	Government response	19
	<b>Funding for advocacy organisations</b>	<b>20</b>
	Stakeholders' views	20
	Government response	21

	<b>The ongoing role of the NSW Ombudsman</b>	<b>21</b>
	Stakeholders' views	22
	Government response	24
	<b>Representation on the Advisory Board</b>	<b>24</b>
	Stakeholders' views	24
	Government response	24
	<b>Other matters</b>	<b>25</b>
	<b>Committee comment</b>	<b>25</b>
<b>Appendix 1</b>	<b>Submissions</b>	<b>27</b>
<b>Appendix 2</b>	<b>Witnesses at hearings</b>	<b>28</b>
<b>Appendix 3</b>	<b>Minutes</b>	<b>30</b>

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## Terms of reference

That:

- (a) the provisions of the Ageing and Disability Commissioner Bill 2019 be referred to the Standing Committee on Social Issues for inquiry and report,
- (b) the bill be referred to the committee upon receipt of the message on the bill from the Legislative Assembly, and
- (c) the committee report by Tuesday 4 June 2019.

The terms of reference were referred to the committee by the Legislative Council on 28 May 2019 on recommendation of the Selection of Bills Committee.<sup>1</sup>

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<sup>1</sup> *Minutes*, NSW Legislative Council, 28 May 2019, p 128.

## Committee details

### Committee members

<b>The Hon Shayne Mallard MLC</b>	<b>Liberal Party</b>	<i>Chair</i>
<b>The Hon Daniel Mookhey MLC</b>	<b>Australian Labor Party</b>	<i>Deputy Chair</i>
<b>Ms Abigail Boyd MLC</b>	<b>The Greens</b>	
<b>The Hon Ben Franklin MLC</b>	<b>The Nationals</b>	
<b>The Hon Rose Jackson MLC</b>	<b>Australian Labor Party</b>	
<b>The Hon Matthew Mason-Cox MLC*</b>	<b>Liberal Party</b>	
<b>The Hon Taylor Martin MLC</b>	<b>Liberal Party</b>	
<b>Revd the Hon Fred Nile MLC</b>	<b>Christian Democratic Party</b>	

\* The Hon Matthew Mason-Cox MLC substituted for the Hon Natalie Ward MLC from 31 May 2019 for the duration of the inquiry.

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## Chair's foreword

The Ageing and Disability Commissioner Bill 2019 is the first bill of the 57<sup>th</sup> Parliament to be referred to a committee for inquiry and report on recommendation from the Legislative Council's Selection of Bills Committee.

This bill establishes the office of Ageing and Disability Commissioner and provides for the Commissioner's functions, which include:

- dealing with allegations of abuse, neglect or exploitation of adults with disability and older adults,
- community education and general advice and assistance to the public,
- inquiring into and reporting on systemic issues, and
- advising and making recommendations to the Minister administering the proposed Act.

During the short inquiry, the committee considered a number of concerns that were raised by stakeholders relating to this significant reform.

The committee acknowledges these concerns and has recommended that the Legislative Council proceed to consider the Ageing and Disability Commissioner Bill 2019 and consider amendments in the committee stage that address stakeholder concerns raised in this inquiry.

On behalf of the committee, I would like to thank all who participated in the inquiry, and who provided submissions and attended the public hearing at such short notice. I would also like to thank the secretariat for their efficient assistance, including Jenelle Moore, Helen Hong, Rebecca Main and Elise Williamson.

The committee was given an extremely short timeframe for this inquiry, as the bill is drafted to commence from 1 July 2019. I acknowledge the inconvenience this timeframe may have caused some inquiry participants, and thank them for their flexibility and willingness to lodge submissions and appear at the public hearing at such short notice. While the timeframe was necessary in these particular circumstances, it would be preferable that future inquiries into bills benefit from a lengthier timeframe where possible.

Finally, I commend the government for its ongoing commitment to protecting and promoting the rights of adults with disability and older adults and to protecting those adults from abuse, neglect and exploitation.

Hon Shayne Mallard MLC  
**Committee Chair**

## Recommendation

### Recommendation 1

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That the Legislative Council proceed to consider the Ageing and Disability Commissioner Bill 2019 and consider amendments in the committee stage that address stakeholder concerns raised in this inquiry.

## **Conduct of inquiry**

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 28 May 2019, on recommendation from the Selection of Bills Committee.

The committee received 17 submissions.

The committee held one public hearing at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions and hearing transcripts.



# Chapter 1 Overview

This chapter provides an overview of the Ageing and Disability Commissioner Bill 2019.

## Reference

- 1.1 The Ageing and Disability Commissioner Bill 2019 was introduced into the Legislative Assembly on 8 May 2019 by the Hon Gareth Ward MP, Minister for Families, Communities and Disability Services.
- 1.2 The Legislative Council Selection of Bills Committee recommended on 28 May 2019 that the provisions of the Ageing and Disability Commissioner Bill 2019 be referred to the Standing Committee on Social Issues for inquiry and that the committee report by 4 June 2019.<sup>2</sup>
- 1.3 On 28 May 2019, the Legislative Council referred the provisions of the bill to the Standing Committee on Social Issues on the motion of the Hon Natasha Maclaren-Jones MLC, Chair of the Selection of Bills Committee.<sup>3</sup>

## Background and purpose of the bill

- 1.4 This bill establishes the office of Ageing and Disability Commissioner and provides for the Commissioner's functions, which include:
  - dealing with allegations of abuse, neglect or exploitation of adults with disability and older adults,
  - community education and general advice and assistance to the public,
  - inquiring into and reporting on systemic issues, and
  - advising and making recommendations to the Minister administering the proposed Act.<sup>4</sup>
- 1.5 The bill also establishes an Ageing and Disability Advisory Board and provides that the Official Community Visitor program, to the extent that it relates to visits to accommodation provided to adults with disability and certain boarding houses, is to be administered by the Commissioner instead of the Ombudsman.<sup>5</sup>
- 1.6 The Minister for Families, Communities and Disability Services noted in his second reading speech to the Legislative Assembly that the bill 'will, for the first time in New South Wales and indeed across Australia, establish the dedicated role of Ageing and Disability Commissioner, with the purpose of protecting adults with disability and older adults from abuse, neglect and exploitation and protecting and promoting their rights.'<sup>6</sup>

<sup>2</sup> Selection of Bills Committee, NSW Legislative Council, *Report No. 18 – 28 May 2019* (2019), p 2.

<sup>3</sup> *Hansard*, NSW Legislative Council, 28 May 2019, p 4.

<sup>4</sup> Ageing and Disability Commissioner Bill 2019, Explanatory note.

<sup>5</sup> Ageing and Disability Commissioner Bill 2019, Explanatory note.

<sup>6</sup> *Hansard*, NSW Legislative Assembly, 8 May 2019, p 55 (The Hon Gareth Ward MP, Minister for Families, Communities and Disability Services).

- 1.7 The Minister stated that the reforms demonstrate the Government's commitment to the care and protection of people with disability and older people and reflect a number of recent reviews and reforms in this area:

The Ageing and Disability Commissioner Bill 2019 exemplifies the Government's commitment to and responsibility for the care and protection of people with disability and older people. We are determined to see a society that is inclusive of people of all ages, with or without disability, so that we can live safely in a society with dignity. Accordingly we are prioritising the improvement of responses to the abuse, neglect and exploitation of some of the most vulnerable people in our communities. The impetus and foundations for this milestone reform have been provided by a number of recent reviews and reports.<sup>7</sup>

- 1.8 The Minister also observed that the decision to establish the role of Ageing and Disability Commissioner was informed by a number of recent reviews and reports published between 2016 and 2018: the NSW Ombudsman's special report to Parliament entitled *Abuse and neglect of vulnerable adults in NSW: The need for action*,<sup>8</sup> the New South Wales Law Reform Commission's *Review of the Guardianship Act 1987*,<sup>9</sup> and the report of Legislative Council Portfolio Committee No. 2 entitled *Elder abuse in New South Wales*.<sup>10</sup>

- 1.9 The need for the legislation to be in place by 1 July 2019 was explained by Ms Katherine McKenzie, Director Disability, NSW Ombudsman, and in the Ombudsman's report to Parliament in November 2018 on this issue. The Ombudsman's standing inquiry into the abuse and neglect of adults with disability in community settings, running since 2016, has provided the only forum for reporting abuse and neglect of this group. The Ombudsman indicated that it would continue the standing inquiry until 30 June 2019, while a longer term option was established.<sup>11</sup> The Ageing and Disability Commissioner Bill 2019 is the longer term option proposed by the NSW Government. Ms McKenzie advised:

In our report to Parliament we made it clear that while our standing inquiry has provided assistance, this role is temporary—it ends on 30 June—and there were gaps that needed

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<sup>7</sup> *Hansard*, NSW Legislative Assembly, 8 May 2019, p 55 (The Hon Gareth Ward MP, Minister for Families, Communities and Disability Services).

<sup>8</sup> NSW Ombudsman, *Abuse and neglect of vulnerable adults in NSW: The need for action – A special report to Parliament under section 31 of the Ombudsman Act 1974*, dated November 2018, [https://www.ombo.nsw.gov.au/data/assets/pdf\\_file/0003/62139/Abuse-and-neglect-of-vulnerable-adults-in-NSW-November-2018.pdf](https://www.ombo.nsw.gov.au/data/assets/pdf_file/0003/62139/Abuse-and-neglect-of-vulnerable-adults-in-NSW-November-2018.pdf).

<sup>9</sup> New South Wales Law Reform Commission, Report No. 145, *Review of the Guardianship Act 1987*, dated May 2018, <https://www.lawreform.justice.nsw.gov.au/Documents/Current-projects/Guardianship/Report/Report%20145.pdf>.

<sup>10</sup> New South Wales Legislative Council Portfolio Committee No. 2, Report No. 44, *Elder abuse in New South Wales*, dated June 2016, <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2387#tab-reportsandgovernmentresponses>.

<sup>11</sup> NSW Ombudsman, *Abuse and neglect of vulnerable adults in NSW: The need for action – A special report to Parliament under section 31 of the Ombudsman Act 1974*, dated November 2018, [https://www.ombo.nsw.gov.au/data/assets/pdf\\_file/0003/62139/Abuse-and-neglect-of-vulnerable-adults-in-NSW-November-2018.pdf](https://www.ombo.nsw.gov.au/data/assets/pdf_file/0003/62139/Abuse-and-neglect-of-vulnerable-adults-in-NSW-November-2018.pdf).

to be addressed. Our recommendations included the need to establish an independent statutory body to investigate and take appropriate action in relation to suspected abuse and neglect of vulnerable adults in New South Wales. In that context we have certainly welcomed the Ageing and Disability Commissioner Bill. Among other things it seeks to address some critical gaps, including establishing a central body to receive and respond to allegations of abuse, neglect and exploitation of both adults with disability and older adults in home and community settings; enabling the commissioner to have direct access to the adult at risk, with a potential to gain access via warrant, if needed; and providing the commissioner with the ability to bring matters before NCAT, if needed.<sup>12</sup>

## Overview of the provisions of the bill

**1.10** The objects of the bill, as set out in the explanatory note, are to protect and promote the rights of adults with disability and older adults and to protect those adults from abuse, neglect and exploitation.<sup>13</sup>

**1.11** Part 1 of the bill provides for the name of the act, the commencement date, which is 1 July 2019 (except as provided by subsection 2) and definitions. Clause 4 of this Part sets out the objects and principles of the proposed Act and states that, when exercising a function under the Act, the Commissioner or any other person must have regard to the objects and principles.<sup>14</sup> Clause 4 is reproduced below:

- (1) The objects of this Act are:
  - (a) to protect and promote the rights of adults with disability and older adults, and
  - (b) to protect adults with disability and older adults from abuse, neglect and exploitation.
  
- (2) When exercising a function under this Act, the Commissioner or any other person must have regard to the objects of the Act and the following principles:
  - (a) adults with disability and older adults have the right to respect for their worth and dignity as individuals and to live free from abuse, neglect and exploitation,
  - (b) adults with disability and older adults have the right to respect for their cultural and linguistic diversity, age, gender, sexual orientation and religious beliefs,
  - (c) adults with disability and older adults have the right to privacy and confidentiality,
  - (d) adults with disability and older adults have the right to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports and services,
  - (e) families, carers and other significant persons have a crucial role in the lives of adults with disability and older adults and it is important to respect and preserve those relationships.
  
- (3) When exercising a function under this Act, the Commissioner or any other person must have regard to the following:

<sup>12</sup> Evidence, Ms Katherine McKenzie, Director Disability, NSW Ombudsman, 31 May 2019, uncorrected transcript, p 12.

<sup>13</sup> Ageing and Disability Commissioner Bill 2019, Explanatory Note.

<sup>14</sup> Ageing and Disability Commissioner Bill 2019, Part 1.

- (a) adults with disability and older adults may face multiple disadvantages and are potentially more vulnerable to abuse, neglect and exploitation,
- (b) a person from any of the following groups who is also an adult with disability or older adult may face additional disadvantages and barriers to accessing supports and services:
  - (i) women,
  - (ii) Aboriginal and Torres Strait Islander adults,
  - (iii) gay, lesbian, bisexual, transgender and intersex communities,
  - (iv) adults from culturally and linguistically diverse backgrounds,
  - (v) adults living in regional and remote areas.
- (4) When exercising a function under this Act with respect to a particular adult with disability or older adult, the Commissioner or any other person must have regard to the wishes of the adult.
- (5) This section is intended to give guidance in the administration of this Act and does not create, or confer on any person, any right or entitlement enforceable at law.<sup>15</sup>

**1.12** Part 2 of the bill deals with the appointment of the Ageing and Disability Commissioner, which is by the Governor for a term not exceeding 5 years.<sup>16</sup>

**1.13** Part 3 sets out the functions of the Commissioner which include:

- (a) to deal with allegations of abuse, neglect and exploitation of adults with disability and older adults, whether on the basis of a report made to the Commissioner or at the Commissioner's own initiative, including by referring matters to appropriate persons or bodies and by conducting investigations,
- (b) to take further action, following an investigation into an allegation of abuse neglect or exploitation of an adult with disability or older adult, that the Commissioner considers necessary to protect the adult from abuse, neglect and exploitation, including by making an application to a court or tribunal in respect of the adult,
- (c) to raise awareness and educate the public about matters relating to the abuse, neglect and exploitation of adults with disability and older adults,
- (d) to provide advice and general assistance to the public about matters relating to the abuse, neglect and exploitation of adults with disability and older adults,
- (e) to inquire into and report on systemic issues regarding matters in relation to which the Commissioner may conduct investigations,
- (f) to consult with the Board on matters relating to the abuse, neglect and exploitation of adults with disability and older adults that the Commissioner considers appropriate,
- (g) to advise, and make recommendations to, the Minister, at the Commissioner's own initiative or at the request of the Minister, on matters relating to the abuse, neglect and exploitation of adults with disability and older adults.<sup>17</sup>

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<sup>15</sup> Ageing and Disability Commissioner Bill 2019, Clause 4.

<sup>16</sup> Ageing and Disability Commissioner Bill 2019, Part 2.

<sup>17</sup> Ageing and Disability Commissioner Bill 2019, Clause 12.

- 1.14** This part also provides for the reporting of abuse, neglect or exploitation of an adult with disability or an older adult and provides for investigations conducted by the Commissioner.<sup>18</sup>
- 1.15** Part 4 outlines the Official Community Visitors scheme, including appointment and function of Visitors. Part 5 provides reporting mechanism for the Commissioner, including reports to Parliament and special reports to Parliament and the Minister.<sup>19</sup>
- 1.16** Part 6 of the bill covers provisions that establish an Ageing and Disability Advisory Board, deals with the unauthorised disclosure of information, proceedings for offences and the making of regulations.<sup>20</sup>

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<sup>18</sup> Ageing and Disability Commissioner Bill 2019, Part 3.

<sup>19</sup> Ageing and Disability Commissioner Bill 2019, Part 5.

<sup>20</sup> Ageing and Disability Commissioner Bill 2019, Part 6.



## Chapter 2 Key issues

Stakeholders advised that they are supportive of the overall objectives of the Ageing and Disability Commissioner Bill 2019 to protect and promote the rights of adults with disability and older adults and to protect those adults from abuse, neglect and exploitation and broadly welcome the establishment of the office.

This chapter outlines the key issues raised by stakeholders in relation to the bill that either seek clarification or enhancement of certain aspects, including clarification around the independence of the Commissioner; broadening the Commissioner's remit to include children and young people with disability; the requirement for consent to investigate a report; the power to hold public inquiries into systemic issues; referral of matters to other agencies including Police and the Director of Public Prosecutions; information sharing with other agencies; funding for advocacy organisations; the ongoing role of the NSW Ombudsman; and representation on the Advisory Board.

### Independence of the Commissioner

**2.1** The bill indicates that the Commissioner is not subject to the control or direction of the Minister in the exercise of the following functions:

- conducting investigations under Part 3,
- advising or making recommendations to the Minister,
- preparing annual reports and special reports under Part 5.<sup>21</sup>

#### Stakeholders' views

**2.2** Family Advocacy stated that independence of the Commissioner is critical to the success of the role and recommended all functions in Clause 12 not be subject to control or direction of the Minister:

The independent functions of the Ageing and Disability Commissioner form one of the most critical foundational pieces to the success of the role in reducing the abuse, neglect and exploitation of people with disability across NSW. This also extends to the role and authority of the Minister over the work conducted with the Ageing and Disability Commission.

To this end we recommend that all functions of the Commissioner, as expressed on page 6, Clause 12 (1) (a) to (g) be independent and not subject to the control or direction of the Minister, not just those expressed in Clause 12 (3) (a) to (c).<sup>22</sup>

**2.3** A similar view was expressed by the Council for Intellectual Disability, which stated that the independence of the Commissioner is qualified within the bill:

The independence of the Commissioner is qualified within the Bill so that the minister of the day could be quite directive of the operation of the office, including some of its

<sup>21</sup> Ageing and Disability Commissioner Bill 2019, Clause 12 (3).

<sup>22</sup> Submission 14, Family Advocacy, p 3.

substantive functions in section 12(1), administrative and budgetary areas. We would like to see a higher level of independence, as suggested in the government's outline of the role of the Commissioner.

We believe the Commissioner's focus on safeguarding vulnerable adults calls for full independence. We believe full independence will promote community confidence in the Commissioner.

#### Recommendations

- Section 12(3) should be amended to provide that the Commissioner is not subject to direction in any of his or her functions.
- The Bill should structure the Commission in a way that allows it to employ its own staff.<sup>23</sup>

**2.4** COTA NSW, the Physical Disability Council of NSW, and the NSW Disability Advocacy Alliance also recommended that all the functions in Clause 12 not be subject to control or direction of the Minister, and in addition, the Commissioner should be given the right to employ their own staff.<sup>24</sup>

**2.5** At the hearing, Ms Megan Lawson, Chief Executive Officer, Council on the Ageing NSW, explained the underlying principle for the Commissioner's independence:

I would say that I think there is an important principle of independence there to have those kinds of statutory roles completely separate from ministerial interference, for want of better terminology. We also believe that there should be clarification around board appointments, terms and removals—all of those things you just raised—to make sure it is truly independent and that people can have the freedom to act and speak freely about the issues being discussed. There is a lot of emphasis on those instances where the abuse is perpetrated by a carer or within the home but I think often there is not intent, there is not enough services. I think there are times when actually it is about how the Government is operating or how services are operating that give rise to instances of abuse. People need to be able to operate freely and say that freely and comment on that freely even if it is against the services that the Minister is authorising and providing.<sup>25</sup>

**2.6** Ms Judith Wright, Deputy Branch Secretary, Australian Services Union, NSW and ACT Branch, also commented on the importance of the independence of the Commissioner: '...it is extremely important that the public, the workers, the people with disability and aged people and their families have confidence in the commission's absolute impartiality and ability, through being properly resourced, to carry out all of its functions properly.'<sup>26</sup>

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<sup>23</sup> Submission 5, Council for Intellectual Disability, p 2.

<sup>24</sup> Submission 11, COTA NSW, p 1; Submission 1, Physical Disability Council of NSW, pp 2-3; and Submission 8, NSW Disability Advocacy Alliance, p 3.

<sup>25</sup> Evidence, Ms Megan Lawson, Chief Executive Officer, Council on the Ageing NSW, 31 May 2019, uncorrected transcript, p 27.

<sup>26</sup> Evidence, Ms Judith Wright, Deputy Branch Secretary, Australian Services Union, NSW and ACT Branch, 31 May 2019, uncorrected transcript, p 34.

## Government response

2.7 In response to this issue, the NSW Government advised in its submission that:

The Commissioner is a statutory office appointed by the Governor for a term of up to 5 years and may be reappointed for one more term, whether or not those terms are consecutive. Like other statutory office holders, the Commissioner does not directly employ staff but persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to assist the Commissioner exercise the functions of the office and the Commissioner may delegate any of these functions to a member of staff.

The Commissioner will not be subject to the control or direction of the Minister in exercising its functions relating to conducting investigations, advising or making recommendations to the Minister, or with its annual or special reports to the Minister or Parliament.

An Ageing and Disability Advisory Board, with relevant expertise and reflecting community diversity, will advise the Commissioner on issues relating to the abuse, neglect or exploitation of adults with disability and older adults.<sup>27</sup>

## Should the Commissioner's remit include young people with a disability?

2.8 The bill provides the scope of the Commissioner's remit to be adults with disability and older adults and does not, as drafted, provide for children and young people with disability.<sup>28</sup>

### Stakeholders' views

2.9 Ms Serena Ovens, Executive Officer, Physical Disability Council of NSW, stated that their organisation is supportive of children being included in the Commissioner's remit:

The Physical Disability Council [PDC] would be supportive of children being included in this bill. We would suggest that many parents who struggle to manage children with disability and all the issues that can sometimes occur will find it additionally confusing to work out where they should be going in terms of what commissioner and other points. We would be supportive of, at the very least, clear acknowledgment of where this should lie. But we would be supportive of children being included in a disability specialist commissioner's oversight.<sup>29</sup>

2.10 Ms Meg Clement-Couzner, Senior Policy Officer, NSW Disability Advocacy Alliance, indicated support for the Commissioner having oversight of children with disability:

Speaking both in my role from the alliance but also from the People with Disability Australia [PWDA], I would say that we would be supportive of the commissioner having oversight of children with disability as well. So we would recommend that the terminology be changed to "persons with disability". I think that a key reason for that

<sup>27</sup> Submission 16, NSW Government, p 2.

<sup>28</sup> Ageing and Disability Commissioner Bill 2019, Clause 4 (1).

<sup>29</sup> Evidence, Ms Serena Ovens, Executive Officer, Physical Disability Council of NSW, 31 May 2019, uncorrected transcript, p 12.

is that, from the perspective of people with disability, I would think that it is somewhat confusing, additionally, for people to have to distinguish between where they may go for complaints and oversight if there is violence, abuse, neglect or exploitation happening. I also think that it is really important that the rights of children with disability are upheld and recognised by the commission. We know that children with disability are very vulnerable to violence, including, sadly, sometimes by their parents.<sup>30</sup>

**2.11** Mr Stephen Kilkeary, Director, Individual and Group Advocacy NSW, People with Disability Australia, was also supportive of the inclusion of children with disability in the Commissioner's remit: 'If the commission had strong powers to investigate and act upon matters involving children that would be a good thing.'<sup>31</sup>

**2.12** In contrast, Ms Elana Katrakis, Chief Executive Officer, Carers NSW, commented that further consultation is needed to establish if children should be included:

After reading the bill and other things, concerns have been raised about age, that it relates to adults only and whether there is the need to include children and young people within the remit of the commission. Carers NSW is probably a little bit on the fence with that at the moment because there are other mechanisms in place. We know there are other mechanisms there, but we know they have not work that well. We want to make sure that vulnerable children and young people are protected. We do not know whether the commission is the right way to do that or whether there are other mechanisms that can be firmed up. However, we suggest that there be further consultation to cover off on that so that it does not result in duplication and confusion for people.<sup>32</sup>

**2.13** In contrast, COTA NSW asserted that the scope of the bill should remain as is:

COTA NSW believes the scope of the bill should remain in its current state. We assert that an expansion of the remit to include children and young people will dilute the focus and impact of the Commissioner. Additionally, we feel that there are existing regulations and reporting mechanisms that address abuse and neglect in this cohort.<sup>33</sup>

**2.14** Mr Steven Kinmond, former Disabilities Commissioner and Chair of the Association of Children's Welfare Agencies, advised that, at this time, it was not necessary to include children with disability:

I would argue that that is not necessary at this time but I would commend Parliament to look at the issue of vulnerable children with disability and the adequacy of the service system and the oversight system to respond to that issue, particularly as the Ombudsman has made it clear that he wants to discharge his community services

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<sup>30</sup> Evidence, Ms Meg Clement-Couzner, Senior Policy Officer, NSW Disability Advocacy Alliance, 31 May 2019, uncorrected transcript, p 13.

<sup>31</sup> Evidence, Mr Stephen Kilkeary, Director, Individual and Group Advocacy NSW, People with Disability Australia, 31 May 2019, uncorrected transcript, p 13.

<sup>32</sup> Evidence, Ms Elana Katrakis, Chief Executive Officer, Carers NSW, 31 May 2019, uncorrected transcript, p 24.

<sup>33</sup> Submission 11, COTA NSW, p 2.

functions and they should go elsewhere. It is a matter that Parliament needs to consider but, once again, I would say it should not prevent this bill moving forward.<sup>34</sup>

### Government response

**2.15** In its submission, the NSW Government indicated that:

The Bill does not give the Commissioner power to receive and investigate reports of abuse and neglect of children with disability. This is because there are already, and quite appropriately, a number of national and State agencies charged with responsibilities to promote and protect the safety, welfare and wellbeing of children and young people, including children with a disability, not least of which is the child protection agency, the Department of Family and Community Services, and the system of mandatory reporting of abuse of children under which it operates.

There are also a number of agencies who have oversight of and responsibility for promoting the best interests of children and young people, including the NSW Ombudsman, the NSW Children's Guardian, the Advocate for Children and Young People and the Kids Helpline. Extending the jurisdiction of the Ageing and Disability Commissioner to children would have the effect of diluting the ability of the Commissioner to focus on the critical gaps in our service system. It would also create confusion over responsibilities for children, duplication of resources and competition for available funds.<sup>35</sup>

**2.16** Ms Tanya Smyth, Director, Inclusion and Early Intervention Strategy, Design and Stewardship, Department of Family and Community Services, advised that the bill aims to address gaps in the oversight of vulnerable people:

Again, it is about the gap that currently exists and it has been raised that, where children with disabilities specifically go through the child protection system, there is an ability to be involved with those children and their family, and once they turn 18 that opportunity is lost. That was what was raised. I think that this bill goes towards those gaps and also the gaps where the Elder Abuse Helpline is able to take those complaints and then there is only so far that it can take those without the powers that it needs. I think this bill does that. I think at this stage to get this up and operating—and whether in the three-year review that is something that is still under consideration and can be considered then—I would be concerned about this commission being overwhelmed if children were included at this point and then that gap would not be addressed at all.<sup>36</sup>

**2.17** In addition, Ms Francesca Di Benedetto, Manager, Legislative Reform Unit, Department of Family and Community Services, reiterated that 'there are a number of national and State bodies

<sup>34</sup> Evidence, Mr Steven Kinmond, former Disabilities Commissioner and Chair of the Association of Children's Welfare Agencies, 31 May 2019, uncorrected transcript, p 10.

<sup>35</sup> Submission 16, NSW Government, p 3.

<sup>36</sup> Evidence, Ms Tanya Smyth, Director Inclusion and Early Intervention Strategy, Design and Stewardship, Department of Family and Community Services, 31 May 2019, uncorrected transcript, p 46.

whose remit is the oversight of all children and young people, including children with disability.<sup>37</sup>

## Requirement for consent to investigate

**2.18** Clause 13 (10) of the bill provides that in order to conduct an investigation into an allegation of abuse, neglect or exploitation of an adult with disability or older adult, the Commissioner must obtain the consent of the adult, unless the Commissioner is of the opinion that:

- the adult is incapable of giving consent, or
- the allegation is so serious that it is not necessary to obtain consent, or
- any other circumstances prescribed by the regulations exist.<sup>38</sup>

### Stakeholders' views

**2.19** Stakeholders were in resolute agreement that consent is a fraught and complicated subject, and more work needs to be done to refine the language around consent in the bill, define how a person is deemed incapable of giving consent and clarify who decides what an exceptional circumstance is.<sup>39</sup>

**2.20** However, while almost all stakeholders were of the view that these definitions should be strengthened and refined, the Combined Pensioners & Superannuants Association took a contrary view, arguing:

In cases where an adult is or seems incapable of giving consent, the presumption should be that the allegation on which an investigation is to be based is automatically so serious that consent is not necessary. This lowers the threshold for a decision to investigate and avoids the possibility of the Commissioner's decision being challenged by third parties on the grounds that the Commissioner's opinion about the lack of mental capacity on the part of the adult is wrong.<sup>40</sup>

**2.21** Mr Stephen Kilkeary, Director, Individual and Group Advocacy NSW, People with Disability Australia provided an example of the challenges advocates encounter in obtaining consent from vulnerable or institutionalised adults:

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<sup>37</sup> Evidence, Ms Francesca Di Benedetto, Manager, Legislative Reform Unit, Department of Family and Community Services, 31 May 2019, uncorrected transcript, p 46.

<sup>38</sup> Ageing and Disability Commissioner Bill 2019, Clause 13 (10).

<sup>39</sup> Evidence, Mr Stephen Kilkeary, Director, Individual and Group Advocacy NSW, People with Disability Australia, 31 May 2019, uncorrected transcript, p 13; Ms Serena Ovens, Executive Officer, Physical Disability Council of NSW (via teleconference), 31 May 2019, uncorrected transcript, p 9; Mr Craig Gear, Chief Executive Officer, Older Persons Advocacy Network, 31 May 2019, uncorrected transcript, p 24; Evidence, Professor Eileen Baldry, Deputy Vice-Chancellor Equity Diversity and Inclusion, University of New South Wales, 31 May 2019, uncorrected transcript, p 17; Submission 2, NSW Nurses and Midwives Association, p 5; Submission 8, NSW Disability Advocacy Alliance, p 4; Submission 14, Family Advocacy, p 2; Submission 11, COTA NSW, p 11.

<sup>40</sup> Submission 3, Combined Pensioners & Superannuants Association, p 3.

I would argue that we now work very often, let us say, with people in assisted boarding houses who have very often been institutionalised for years, if not decades. The process of gaining consent would take time, consideration, building up trust and creating safety ... If you ask someone, for example, in just a one-off session, 'Can I have your consent to proceed with a certain matter?' then it might go nowhere ... You need to have a very sophisticated approach to consent.<sup>41</sup>

- 2.22** Stakeholders acknowledged that many factors may influence or impede an individual's ability to provide consent, including their ability to understand and demonstrate an understanding, the type of marginalisation they have experienced and whether they are from a culturally or linguistically diverse background.<sup>42</sup>
- 2.23** Family Advocacy argued that all efforts should be taken to maximise the involvement of the vulnerable adult to disclose and give evidence and in determining the response to the alleged abuse and neglect – including through the provision of appropriate substitute decision making supports. Family Advocacy went on to recommend that in the event that a person is considered unable to make an informed decision, a substitute decision making model be adopted without exception.<sup>43</sup>
- 2.24** Ms Kathryn Greiner, Chair, Ministerial Advisory Council on Ageing, NSW Retirement Village Ambassador and Chair, Lifestart, also strongly advocated the good work being done in both Australia and elsewhere in the world on supported decision-making,<sup>44</sup> and similar observations and suggestions as to how the Commission might utilise such information – including the availability of existing guidelines – were made by National Disability Services, Older Persons Advocacy Network, the Council on the Ageing NSW, Carers NSW and the Seniors Rights Service.<sup>45</sup>

### Government response

- 2.25** The NSW Government advised that 'in most circumstances the Commissioner will only investigate an allegation of abuse, neglect or exploitation of an older adult or person with disability with the consent of the affected person, unless the Commissioner is of the opinion that:

<sup>41</sup> Evidence, Mr Stephen Kilkeary, Director, Individual and Group Advocacy NSW, People with Disability Australia, 31 May 2019, uncorrected transcript, p 14.

<sup>42</sup> Evidence, Ms Justine O'Neill, Chief Executive Officer, NSW Council for Intellectual Disability, 31 May 2019, uncorrected transcript, p 5; Ms Meg Clement-Couzner, Senior Policy Officer, NSW Disability Advocacy Alliance, 31 May 2019, uncorrected transcript, p 15; Ms Maria Katrivesis, Cultural Responsiveness Trainer/Consultant, Multicultural Disability Advocacy Association NSW, 31 May 2019, uncorrected transcript, p 14.

<sup>43</sup> Submission 14, Family Advocacy, pp 2-3.

<sup>44</sup> Evidence, Ms Kathryn Greiner, Chair, Ministerial Advisory Council on Ageing, NSW Retirement Village Ambassador and Chair, Lifestart, 31 May 2019, uncorrected transcript, p 22.

<sup>45</sup> Evidence, Mr Tony Pooley, Senior Manager – State Operations, National Disability Services, 31 May 2019, uncorrected transcript, p 5; Mr Craig Gear, Chief Executive Officer, Older Persons Advocacy Network, 31 May 2019, uncorrected transcript, p 29; Ms Meagan Lawson, Chief Executive Officer, Council on the Ageing NSW, 31 May 2019, uncorrected transcript, p 29; Ms Elana Katrakis, Chief Executive Officer, Carers NSW, 31 May 2019, uncorrected transcript, p 29; Mr Russell Westacott, Chief Executive Officer, Seniors Rights Service, 31 May 2019, uncorrected transcript, p 29.

- the adult is incapable of giving consent, or
- the allegation is so serious that it is not necessary to obtain consent.<sup>46</sup>

**2.26** The NSW Government further sought to allay concern by emphasising that the threshold for this consideration is intended to be high:

The threshold for this consideration is intended to be high. Adults with disability and older adults have the right to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports and services. The bill also requires the Commissioner to have regard to the wishes of the affected adult. If the Commissioner, after preliminary enquiries, formed the view on reasonable grounds that a vulnerable adult was withholding consent because they were fearful, or because they did not feel able to speak freely, or were afraid of negative repercussions, or were being unduly influenced, and the Commissioner considered their safety and welfare to be at serious risk, the Commissioner is empowered to take action despite the absence of consent.<sup>47</sup>

**2.27** During his reply to the second reading of the bill in the Legislative Assembly, the Minister for Families, Communities and Disability Services also provided some example of the circumstances in which the Commissioner may act without the consent of an adult or older adult or a person with a disability:

... if the commissioner formed the view that a vulnerable adult was withholding consent because of abject fear, because they did not feel able to speak freely, were afraid of negative repercussions or were being unduly influenced or pressured, the commissioner would, at this point, work with the vulnerable adult and, if the risk to their safety, welfare and wellbeing was so serious, then the commission may take action despite the absence of consent.

I make it clear for the members of the House that that will be a high threshold. We do not want to investigate matters without consent unless they are of the utmost seriousness. But I am sure members will agree that there are instances where people feel trapped by their situation and it would be inappropriate not to have this power to act swiftly.<sup>48</sup>

## Public inquiries for systemic issues

**2.28** Clause 12 (1) (e) of the bill sets out a function for the Commissioner to inquire into and report on systemic issues regarding matters in relation to which the Commissioner may conduct investigations.<sup>49</sup> However, the bill, as drafted, does not specifically provide for the Commissioner to conduct public inquiries into systemic issues.

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<sup>46</sup> Submission 16, NSW Government, p 3.

<sup>47</sup> Submission 16, NSW Government, p 3.

<sup>48</sup> *Hansard*, NSW Legislative Assembly, 8 May 2019, p 25 (The Hon Gareth Ward MP, Minister for Families, Communities and Disability Services).

<sup>49</sup> Ageing and Disability Commissioner Bill 2019, Clause 12 (1) (e).

### Stakeholders' views

- 2.29** Ms Kathryn Greiner, Chair, Ministerial Advisory Council on Ageing, NSW Retirement Village Ambassador, and Chair, Lifestart, was supportive of the Commissioner being able to hold public inquiries for systemic issues:

I would put it together in two words: transparency and clarity. I think the commissioner should have the opportunity to have public hearings because we all know that the issue of abuse dissolves when the light of day is shone on it. So transparency and clarity would be very much part of their role. I think the capacity to hold public hearings would be a very important part of role... I would have seen it more in the educative role, which the commissioner will have, and the advocacy role that the commissioner would have.<sup>50</sup>

- 2.30** Similarly, Professor Eileen Baldry, Deputy Vice-Chancellor Equity Diversity and Inclusion, University of New South Wales, stated that public inquiries should be an essential part of the role of the Commissioner:

I would add I think it is essential—in fact, I thought it would be part of the commissioner's role. One of the jobs of the commissioner is inquiring into and reporting on systemic issues. I think it is extremely difficult to do that if you do not have transparency and the capacity to have open hearings. Of course, that though goes together with the protection that is being given to people who report and who may face some kind of backlash. I agree: I think that would be a very, very good way forward.<sup>51</sup>

- 2.31** Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, was also supportive of the need for public inquiries to investigate systemic issues:

I am a fan of public inquiries. I think as part of an educative function, as part of trying to come up with systemic solutions for vulnerable people, whether they be older people or people with disabilities, there is value in public hearings. That is not to suggest that individual incidents that are investigated should be public. Obviously, people have rights to privacy. Those things are important, but it is to be hoped, given the potential scope of the commission, that public inquiries can be of enormous value in looking at systemic issues and inviting submissions from the broader disability and, indeed, aged care community. I think there is value in that.<sup>52</sup>

- 2.32** People with Disability Australia recommended that the Commissioner have the power to conduct public inquiries for systemic issues:

We also recommend that the Ageing and Disability Commissioner have the power of public inquiry as well as investigation, up to the powers of a Royal Commission. This will allow the Commissioner the resources and standing to investigate systemic and structural issues that lead to violence and abuse, as well as individual and group matters. It will also allow the Commissioner to compel evidence where necessary and make

<sup>50</sup> Evidence, Ms Kathryn Greiner, Chair, Ministerial Advisory Council on Ageing, NSW Retirement Village Ambassador, and Chair, Lifestart, 31 May 2019, uncorrected transcript, p 23.

<sup>51</sup> Evidence, Professor Eileen Baldry, Deputy Vice-Chancellor Equity Diversity and Inclusion, University of New South Wales, 31 May 2019, uncorrected transcript, p 23.

<sup>52</sup> Evidence, Mr Tony Pooley, Senior Manager, State Operations, National Disability Services, 31 May 2019, uncorrected transcript, p 3.

recommendations to which the Government must respond. Currently, the Bill does not mention the power of public inquiry, but only that of investigation.<sup>53</sup>

**2.33** COTA NSW similarly proposed: “That if systemic issues are identified through the course of the Commissioner’s investigations that the Commissioner has the power to hold public inquiries into response to this, with the powers of a Royal Commission.”<sup>54</sup>

**2.34** When asked at the hearing to comment on whether public inquiries would be a valuable approach to highlight workforce issues in the ageing and disability sectors, Mr Dennis Ravlich, NSW Nurses and Midwives' Association and the Australian Nursing and Midwifery Federation, commented:

I think we concur with that. Anything that can heighten the level of scrutiny, especially about the systemic issues which, as my colleagues have indicated, cut across government and non-government organisations would be useful. It would be useful for the commissioner to have the capacity to undertake such inquiries in a fearless way.<sup>55</sup>

**2.35** Mr Troy Wright, Assistant General Secretary, Public Services Association of New South Wales, and Branch Assistant Secretary of the Community and Public Sector Union, NSW, was also supportive of public inquiries from an accountability perspective:

Our understanding is that most people's interactions with the NDIS is through a computer screen. So people are already dealing with this invisible bureaucracy at the moment, and being knocked back. So if you could add an element where they actually see people who are accountable and can appear before them that would add an enormous amount of integrity to the system.<sup>56</sup>

### **Government response**

**2.36** The NSW Government advised that:

The Commissioner will have the power to inquire into and report on systemic issues of abuse, neglect and exploitation of adults with disability and older adults. The Minister may also request the Commissioner to undertake an inquiry.

The core role of the Commissioner however will be to support individuals and families and provide them with timely and appropriate assistance to ensure the safety and welfare of the older adult or adult with disability.

The people that the Commissioner will be supporting are some of the most vulnerable people in society and there are often great difficulties within a family unit where abuse, neglect and exploitation are issues and public hearings may not be the best forum to investigate and resolve these matters. However, there is nothing in this Bill that

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<sup>53</sup> Submission 12, People with Disability Australia, p 3.

<sup>54</sup> Submission 11, COTA NSW, p 1.

<sup>55</sup> Evidence, Mr Dennis Ravlich, NSW Nurses and Midwives' Association and the Australian Nursing and Midwifery Federation, 31 May 2019, uncorrected transcript, p 34.

<sup>56</sup> Evidence, Mr Troy Wright, Assistant General Secretary, Public Services Association of New South Wales, and Branch Assistant Secretary of the Community and Public Sector Union, NSW, 31 May 2019, uncorrected transcript, p 34.

prohibits the Commissioner from holding public inquiries which may be appropriate (for example, with respect to matters concerning systemic abuse).<sup>57</sup>

## Referral of matters to other agencies including Police

- 2.37** Under clause 13, in dealing with a report, the Commissioner may conduct an investigation, make a referral to another person or body or may decline to take action. If the Commissioner is of the opinion that a report, or part of a report, constitutes a complaint that may be made to any of the following persons or bodies, the Commissioner must refer the report, or the part of the report, to the person or body:
- the Health Care Complaints Commission,
  - the Commissioner of the Aged Care Quality and Safety Commission,
  - the Commissioner of the NDIS Quality and Safeguards Commission,
  - any other person or body prescribed by the regulations.<sup>58</sup>
- 2.38** Under clause 13 (9), the Commissioner may not conduct an investigation of a report that the Commissioner has referred to another person or body.

### Stakeholders' views

- 2.39** Several stakeholders recommended that the bill explicitly set out the role envisaged for the Commissioner in referring matters to the NSW Police and/or the Director of Public Prosecutions.
- 2.40** While Mr Tony Pooley, Senior Manager – State Operations, National Disability Services suggested that the Commissioner ought to have the statutory authority to make direct referrals to the Director of Public Prosecutions and the NSW Police,<sup>59</sup> the Physical Disability Council of NSW, COTA NSW and the NSW Disability Advocacy Alliance advocated that the Commissioner be required or compelled to refer matters.<sup>60</sup>
- 2.41** The Physical Disability Council of NSW, the NSW Council for Intellectual Disability and the NSW Disability Advocacy Alliance also raised concerns that the wording of clause 13 (8) could leave it open to the Commissioner, or others, to take a limited view of their scope. The Alliance recommended that the commissioner retain matters that could remain in their purview but could be investigated collaboratively with other organisations. The NSW Council for Intellectual

<sup>57</sup> Submission 16, NSW Government, p 5.

<sup>58</sup> Ageing and Disability Commissioner Bill 2019, Clause 13 (5) to (9).

<sup>59</sup> Evidence, Mr Tony Pooley, Senior Manager—State Operations, National Disability Services, 31 May 2019, uncorrected transcript, p 4.

<sup>60</sup> Evidence, Ms Serena Ovens, Executive Officer, Physical Disability Council of NSW (via teleconference), 31 May 2019, uncorrected transcript, p 9; Submission 11, COTA NSW, p 1; Ms Meg Clement-Couzner, Senior Policy Officer, NSW Disability Advocacy Alliance, 31 May 2019, uncorrected transcript, p 15.

Disability stated that this could be achieved by replacing the words 'must refer the report' with the words 'may refer the report'.<sup>61</sup>

### **Government response**

- 2.42** The NSW Government advised in its submission that the Commissioner can already refer a matter to the Police under the current terms of the bill:

The Commissioner has broad powers under clause 13(5) of the Bill to refer matters to 'any other person or body' for action as he or she considers appropriate. This clause is very broad, and it includes referring a matter to the Commissioner of Police. If a person is considered to be in need of a protection order, the Commissioner may refer the matter to Police.

The power is not confined. The Commissioner may also refer matters to other persons or bodies that may have an interest or a role to play in managing a situation. There will be guidelines and policies to assist the Commissioner and its staff about what matters are to be referred to the Police and other persons or bodies, as appropriate, in light of all the circumstances.<sup>62</sup>

- 2.43** The NSW Government also observed that the Commissioner, like all adults, has an obligation under the *Crimes Act 1900* to report a serious indictable offence and protocols will be established to ensure effective collaboration between the Commission and NSW Police:

The Commissioner has an obligation under section 316 of Crimes Act to report serious indictable offences and this will be captured in the operations of the Commissioner. The Commissioner will work collaboratively with NSW Police and in particular, with the 6 new Elder and Disability Abuse Prevention Officers who have been deployed across local area commands. Protocols will be agreed between the Commissioner and the Commissioner of Police about these arrangements to ensure timely and effective collaboration between the agencies.<sup>63</sup>

- 2.44** During the hearing, Ms Tanya Smyth, Director, Inclusion and Early Intervention Strategy, Design and Stewardship, Department of Family and Community Services, explained that the Commission would also play an important support role, assisting with evidence-gathering and supporting victims and witnesses through the process to get to the point of being able to report to police:

The commissioner would be able to do that work and evidence-gathering and support that person through that process to get to the point of being able to report to police. If the person is not a vulnerable adult they can probably do that themselves, and that is

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<sup>61</sup> Evidence, Ms Meg Clement-Couzner, Senior Policy Officer, NSW Disability Advocacy Alliance, 31 May 2019, uncorrected transcript, p 10; Submission 1, Physical Disability Council of NSW, p 3; Submission 5, NSW Council for Intellectual Disability, p 2.

<sup>62</sup> Submission 16, NSW Government, p 4.

<sup>63</sup> Submission 16, NSW Government, p 4.

the point about this. If the person is vulnerable they need that additional support to gather the evidence and to make a statement to police.<sup>64</sup>

## Information sharing with other agencies

- 2.45** Clause 14 provides that the Commissioner may provide certain information about an adult with disability or older adult to a government sector agency, the Civil and Administrative Tribunal, a hospital or other health organisation to assist that agency to provide services to the adult. The Commissioner may also enter into arrangements with those agencies for the purposes of sharing and exchanging information.

### Stakeholders' views

- 2.46** The NSW Ombudsman observed that its special report to Parliament<sup>65</sup> recommended that, as part of the establishment of an independent statutory body, the NSW Government should 'introduce legislative provisions to enable agencies that have responsibilities relating to the safety of vulnerable adults to be able to exchange information that promotes the safety of vulnerable adults'. The NSW Ombudsman went on to question the current drafting of the bill in this regard, under which agencies can only share information where the Commissioner is at the centre of the exchange:

While the bill includes powers for the Ageing and Disability Commissioner to exchange information with relevant agencies, this requires the Commissioner to be at the centre of any information exchange. It is vital that prescribed agencies are able to provide and receive information to promote and improve the safety of the adult at risk without the Commissioner having to facilitate all of the information exchanged.<sup>66</sup>

- 2.47** These comments were supported by National Disability Services, which observed that where one person with disability is supported by multiple services, the exchange of information between providers about a person at potential risk would be of significant value.<sup>67</sup>

### Government response

- 2.48** The NSW Government's submission made the following observations regarding the exchange of information between the Commissioner and relevant agencies:

<sup>64</sup> Evidence, Ms Tanya Smyth, Director Inclusion and Early Intervention Strategy, Design and Stewardship, Department of Family and Community Services, 31 May 2019, uncorrected transcript, p 41.

<sup>65</sup> NSW Ombudsman, Abuse and neglect of vulnerable adults in NSW: The need for action – A special report to Parliament under section 31 of the Ombudsman Act 1974, dated November 2018, [https://www.ombo.nsw.gov.au/\\_data/assets/pdf\\_file/0003/62139/Abuse-and-neglect-of-vulnerable-adults-in-NSW-November-2018.pdf](https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0003/62139/Abuse-and-neglect-of-vulnerable-adults-in-NSW-November-2018.pdf)

<sup>66</sup> NSW Ombudsman, Submission 9, p 2.

<sup>67</sup> Submission 13, National Disability Services, p 2.

The bill enables the exchange of information between the Commissioner and relevant agencies, and provides for the Commissioner to enter into information sharing arrangements with such agencies detailing these arrangements.<sup>68</sup>

- 2.49** The submission went on to explain the types of agencies and organisations that the Commissioner may enter into these information sharing arrangements with.<sup>69</sup> The Government did not comment on whether agencies should be able to share information with one another directly either in its submission or during the hearing.

## Funding for advocacy organisations

- 2.50** Clause 12 of the bill states that the Commissioner's functions includes raising awareness, education, providing advice and general assistance, and inquiring into and reporting on systemic issues. Clause 21 of the bill includes amongst the roles envisaged for an Official Community Visitor the provision of information to persons about advocacy services available to help them with grievances or concerns and, in appropriate cases, to assist a person to obtain those advocacy services.<sup>70</sup>

### Stakeholders' views

- 2.51** A number of advocacy organisations told the committee that, from their reading of the bill, there is a strong role envisaged for them in responding to referrals from Official Community Visitors, and assisting the Commissioner's awareness, education and advice functions. However, the committee heard that following the rollout of the National Disability Insurance Scheme, all NSW Government funding for the disability advocacy sector and representative peak bodies will cease from June 2020.<sup>71</sup>
- 2.52** The NSW Disability Advocacy Alliance explained that if, as expected, advocacy organisations cease to be funded after June 2020, they will not be able to perform the role envisaged for them under the bill:

There are clauses within the bill that see the community visitors and the commissioner draw on the expertise and advice of individual and systemic advocacy. Of course we are deeply supportive of that. However, as many of you would be aware, our organisations face funding cuts by June 2020. We are concerned that the architecture of the bill, which relies heavily on advocacy—as it should—will not be able to be enacted if our organisations do not exist. It is essential for the work of this new office of the commissioner and the commission itself that our organisations are able to provide that advice. With the risk of the representative and advocacy organisations of all people with disability in New South Wales having their funding cut, that may not be possible.<sup>72</sup>

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<sup>68</sup> Submission 16, NSW Government, p 4.

<sup>69</sup> Submission 16, NSW Government, p 5.

<sup>70</sup> Ageing and Disability Commissioner Bill 2019, Clause 12 (c) to (e), and Clause 21 (h).

<sup>71</sup> Evidence, Ms Serena Ovens, Executive Officer, Physical Disability Council of NSW (via teleconference), 31 May 2019, uncorrected transcript, p 9.

<sup>72</sup> Evidence, Ms Meg Clement-Couzner, Senior Policy Officer, NSW Disability Advocacy Alliance, 31 May 2019, uncorrected transcript, p 12.

- 2.53** A number of stakeholders echoed these concerns, arguing that continued funding to community advocacy organisation must be guaranteed post June 2020 in order to ensure that services are available to support both the Commissioner and their operations, and the vulnerable people with disability that the bill seeks to protect.<sup>73</sup>
- 2.54** Ms Serena Ovens, speaking on behalf of both the NSW Disability Advocacy Alliance and the Physical Disability Council of NSW suggested that there is at least a 30 to 40 per cent lack of services in support of advocacy for people with disability. Ms Ovens noted that most organisations are not able to meet current needs and the Council has waiting lists of three to six-months long. She stated that these challenges are magnified in rural and regional areas and for those services that manage vulnerable cohorts or Aboriginal people and argued that the evidence suggests that government needs to increase advocacy support rather than defund it.<sup>74</sup>

### Government response

- 2.55** At the hearing, Ms Tanya Smyth, Director, Inclusion and Early Intervention Strategy, Design and Stewardship, Department of Family and Community Services, acknowledged that ‘advocacy is obviously a component’ of the new Commission:

Advocacy is obviously a component of this. I spoke before about why the commission is required to get somebody from recognising abuse to the point of being able to report it to the police. Even within the commission there is a requirement to provide some of that advocacy support to get that evidence together and get that person in position. Even when we talked about linking the person with disability or older person to services or their carer that is an advocacy function in itself. The staff within the commission will need to perform that regardless of what is external to that.<sup>75</sup>

- 2.56** While Ms Smyth recognised that there would be a role for community advocacy services, she observed that the question of whether such services should be funded by state or federal money was a matter for government.<sup>76</sup>

### The ongoing role of the NSW Ombudsman

- 2.57** Schedule 1.1 [2] and [3] update provisions that require the NSW Ombudsman to monitor and review deaths of persons in residential care and children in care, so that deaths of persons living

<sup>73</sup> Submission 1, Physical Disability Council of NSW, p 4; Submission 12, People with Disability Australia, p 4; Submission 8, NSW Disability Advocacy Alliance, p 4; Submission 11, COTA NSW, p 2; Evidence, Professor Eileen Baldry, Deputy Vice-Chancellor Equity Diversity and Inclusion, University of New South Wales and Deputy Chair of the Disability Council NSW, 31 May 2019, uncorrected transcript, p 20.

<sup>74</sup> Evidence, Ms Serena Ovens, Executive Officer, Physical Disability Council of NSW (via teleconference), 31 May 2019, uncorrected transcript, p 17.

<sup>75</sup> Evidence, Ms Tanya Smyth, Director Inclusion and Early Intervention Strategy, Design and Stewardship, Department of Family and Community Services, 31 May 2019, uncorrected transcript, p 48.

<sup>76</sup> Evidence, Ms Tanya Smyth, Director Inclusion and Early Intervention Strategy, Design and Stewardship, Department of Family and Community Services, 31 May 2019, uncorrected transcript, p 48.

in supported group accommodation are included. Supported group accommodation has the same meaning as it has in the *Disability Inclusion Act 2014* and includes supported group accommodation provided by a registered provider under the National Disability Insurance Scheme [NDIS] of the Commonwealth.<sup>77</sup>

- 2.58** Schedule 1.2 [4] requires the State Coroner to inform the Commissioner of the NDIS Quality and Safeguards Commission of the Commonwealth about a death of a person living in supported group accommodation, in addition to being required to inform the Ombudsman as is currently the case. Schedule 1.2 [3] and [5] are consequential amendments.<sup>78</sup>

### **Stakeholders' views**

- 2.59** Mr Steven Kinmond, former Disabilities Commissioner and Chair of the Association of Children's Welfare Agencies, advocated that certain functions that previously resided with the NSW Ombudsman move to the Commissioner. Mr Kinmond argued that the function relating to the review of death of people with disability living in care, and the residual disability reporting incident function, should be transferred to prevent fragmentation of oversight:

Firstly, the bill does not provide for the transfer of the Ombudsman's function under Part 6 of the Community Services (Complaints, Reviews and Monitoring) Act in connection with reviewing the deaths of people with disability living in care. In my opinion, there is no good reason for that. The expertise in the disability area will be with this commission and that function should be transferred and should be rolled into this bill. Secondly, the bill should provide for the transfer of the Ombudsman's residual disability reportable incident function that the Ombudsman discharges under part 3C of the Ombudsman's Act. Most of this work has gone to the National Disability Insurance Scheme Quality and Safeguards Commission but large Family and Community Services residential centres are not scheduled to close until September 2020 and the part 3C scheme still applies to this group. There is no good reason why the commission should not assume responsibility for this work; it would fragment things.<sup>79</sup>

- 2.60** The NSW Council for Intellectual Disability and Physical Disability Council of NSW supported the call to transfer death review functions from the Ombudsman to the Commissioner, arguing that the move would provide the Commissioner with sufficient data regarding systemic issues; avoid silos; and strengthen critical feedback on contributing factors.<sup>80</sup>

- 2.61** The NSW Council for Intellectual Disability acknowledged that there is a contrary argument which suggests that death review oversight should be independent of organisations such as the Commission, which might have played a role in the person's life, but argued that the NSW Ombudsman managed the risk successfully over many years so would be well placed to recommend a model that would avoid any conflicts.<sup>81</sup>

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<sup>77</sup> Ageing and Disability Commissioner Bill 2019, Schedules 1.1 [2] and [3] and Explanatory Note, p 4.

<sup>78</sup> Ageing and Disability Commissioner Bill 2019, Schedules 1.2 [3] to [5], and Explanatory Note, p 4.

<sup>79</sup> Evidence, Mr Steven Kinmond, former Disabilities Commissioner and Chair of the Association of Children's Welfare Agencies, 31 May 2019, uncorrected transcript, pp 9-10.

<sup>80</sup> Evidence, Ms Justine O'Neill, Chief Executive Officer, NSW Council for Intellectual Disability, 31 May 2019, uncorrected transcript, p 2; Submission 1, Physical Disability Council of NSW, p 3.

<sup>81</sup> Submission 5, NSW Council for Intellectual Disability, p 2.

- 2.62** In contrast, Ms Katherine McKenzie, Director Disability, NSW Ombudsman explained that the position of the Ombudsman is that the death review functions should remain together, in view of the Ombudsman's related functions regarding the reviewable deaths of children and those related to domestic violence.<sup>82</sup>
- 2.63** However, the Ombudsman raised concerns regarding both the drafting of the bill and the lack of clarity regarding the Ombudsman's role alongside the NDIS Commission, which would impede the practical operation of future arrangements.<sup>83</sup>
- 2.64** The NSW Ombudsman explained that since the establishment of the NDIS Commission, the deaths of persons with disability who are NDIS recipients – who previously fell under the purview of the Ombudsman – instead became reportable incidents to the NDIS Commission from 1 July 2018. In reviewing deaths, the Commission is focused on the NDIS providers. An agreement between the relevant Commonwealth and State Ministers provided for the NSW Ombudsman to continue to review deaths of persons with disability in residential care (regardless of who provides that care), but the agreement ends on 1 July 2019.<sup>84</sup>
- 2.65** While the bill intends to continue the Ombudsman's jurisdiction over deaths of people with disability in supported accommodation in New South Wales, the Ombudsman raised certain definitional arrangements which would 'make the intended amendment unworkable':
- Clause 9(1) of the *Disability Inclusion Regulation 2014* prescribes 'supported group accommodation' as premises in which support is provided by NSW Family and Community Services [FACS] or a FACS-funded entity. The Ombudsman asserted that, contrary to the note in the bill, NDIS providers are therefore excluded from the definition.
  - The definition of 'supported group accommodation' in the *Disability Inclusion Act 2014* is premised on shared living arrangements, excluding people who live alone in residential care with staff support (Specialise Disability Accommodation).
  - The definition of 'supported group accommodation' may include nursing homes.<sup>85</sup>
- 2.66** The Ombudsman further observed that, even if these definitional issues are resolved:
- ... there remains a lack of clarity as to the Ombudsman's role vis a vis the NDIS Commission for which deaths of persons with disability who are NDIS recipients are reportable incidents ... The NSW Ombudsman does not have jurisdiction over NDIS providers as they are Commonwealth funded. In that content, reviews of deaths would be limited to consideration of records from state funded services, in particular health services.<sup>86</sup>

<sup>82</sup> Evidence, Ms Katherine McKenzie, Director Disability, NSW Ombudsman, 31 May 2019, uncorrected transcript, p 47.

<sup>83</sup> Submission 9, NSW Ombudsman, pp 2-3.

<sup>84</sup> Submission 9, NSW Ombudsman, pp 3-4.

<sup>85</sup> Submission 9, NSW Ombudsman, p 4.

<sup>86</sup> Submission 9, NSW Ombudsman, p 4.

- 2.67** The Ombudsman suggested that, in view of the pending expiry of the Ministerial agreement, it would be prudent to consider measures in the spirit of that agreement which enable the work of the Ombudsman and the NDIS Commission to continue in a complementary manner.<sup>87</sup>

### **Government response**

- 2.68** The NSW Government was not asked to comment on the transfer of the death review functions from the NSW Ombudsman during the hearing, and the issue was not canvassed in its submission.

## **Representation on the Advisory Board**

- 2.69** Clause 27 establishes the Ageing and Disability Advisory Board, which will advise the Commissioner on matters relating to the abuse, neglect or exploitation of adults with disability and older adults that the Board considers appropriate or that are referred to the Board by the Commissioner.<sup>88</sup> The bill requires that the Board consist of persons who, in the opinion of the Minister, have relevant knowledge of and experience in matters relating to adults with disability and older adults and reflect the diversity of the community, but does not provide any further specifics regarding membership.

### **Stakeholders' views**

- 2.70** The NSW Disability Advocacy Alliance and the Multicultural Disability Advocacy Association NSW called for the bill to provide more detail regarding the composition of the board, in particular that the bill be amended to require that the majority membership of the Board reflect people with disability.<sup>89</sup> The NSW Disability Advocacy Alliance, the Physical Disability Council and Nurses and Midwives also recommended that the Board also include specialist disability advocacy organisations and workforce representatives.<sup>90</sup>

### **Government response**

- 2.71** The NSW Government was not asked to comment on representation of the Advisory Board during the hearing, and the issue was not canvassed in its submission.

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<sup>87</sup> Submission 9, NSW Ombudsman, p 5.

<sup>88</sup> Ageing and Disability Commissioner Bill 2019, Clause 27.

<sup>89</sup> Evidence, Ms Meg Clement-Couzner, Senior Policy Officer, NSW Disability Advocacy Alliance and Ms Maria Katrivesis, Cultural Responsiveness Trainer/Consultant, Multicultural Disability Advocacy Association NSW, 31 May 2019, uncorrected transcript, p 15; Submission 8, NSW Disability Advocacy Alliance, p 4.

<sup>90</sup> Evidence, Ms Meg Clement-Couzner, Senior Policy Officer, NSW Disability Advocacy Alliance, 31 May 2019, uncorrected transcript, p 12; Submission 1, Physical Disability Council of NSW, p 4; Submission 2, NSW Nurses and Midwives' Association, p 5.

## Other matters

- 2.72** Several additional matters were raised by stakeholders, which were not discussed in the NSW Government's submission or during the hearing:
- *Penalties:* The Combined Pensioners and Superannuants Association observed that the financial penalty of \$5,500 incurred for non-compliance with a notice to attend a meeting or produce documents, or for obstruction of an investigation, could be an amount that a person the subject of a direction or an investigation 'could conceivably prefer if they perceive it to be in their financial or other interest to do so'.<sup>91</sup> The Physical Disability Council also called for increased penalties.<sup>92</sup>
  - *Visitation for adults in the criminal justice system:* National Disability Services observed that the provisions of the bill relating to Official Community Visitors program do not capture adults with disability or older people within the New South Wales criminal justice system, leaving a significant cohort of the most vulnerable and disadvantaged people with disability beyond the reach of these new protections.<sup>93</sup>
  - *Obligation to act on reports from Official Community Visitors:* People with Disability Australia recommended that the bill oblige the Commissioner to act on reports from the Official Community Visitors, if those reports indicate a finding, suspicion or risk of violence, abuse, neglect or exploitation.<sup>94</sup>
  - *Increased powers:* The Law Society of New South Wales and Combined Pensioners and Superannuants Association recommended that the Commissioner have sufficient power to require production of documents and information in order to carry out their functions, together with appropriate exemptions such as the right to refuse on grounds of privilege.<sup>95</sup> The NSW Ombudsman called for the Commissioner to have legislative powers to require parties to answer questions.<sup>96</sup>
  - *Participation in legal proceedings:* The Law Society of New South Wales recommended that the Commissioner have standing as an intervener in court and tribunal cases concerning adults with disabilities and older adults that raise issues of abuse, neglect and exploitation.<sup>97</sup>

## Committee comment

- 2.73** The committee notes that stakeholders broadly welcome the establishment of the Ageing and Disability Commissioner and the objects of the bill. However, stakeholders have raised a number of concerns that canvass various aspects of the bill.

<sup>91</sup> Submission 3, Combined Pensioners and Superannuants Association, p 4.

<sup>92</sup> Submission 1, Physical Disability Council of NSW, p 3.

<sup>93</sup> Submission 13, National Disability Services, pp 2-3.

<sup>94</sup> Submission 12, People With Disability Australia, p 3.

<sup>95</sup> Submission 17, Law Society of NSW, p 1; Submission 3, Combined Pensioners and Superannuants Association, p 4.

<sup>96</sup> Submission 9, NSW Ombudsman, p 2.

<sup>97</sup> Submission 17, Law Society of NSW, p 1.

- 2.74** The committee recommends that the Legislative Council proceed to consider the Ageing and Disability Commissioner Bill 2019 and consider amendments in the committee stage that address stakeholder concerns raised in this inquiry.

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**Recommendation 1**

That the Legislative Council proceed to consider the Ageing and Disability Commissioner Bill 2019 and consider amendments in the committee stage that address stakeholder concerns raised in this inquiry.

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## Appendix 1 Submissions

<b>No.</b>	<b>Author</b>
1	Physical Disability Council of NSW
2	NSW Nurses and Midwives' Association
3	Combined Pensioners & Superannuants Association
4	Mr Robert Wade
5	NSW Council for Intellectual Disability
6	Public Service Association of NSW
7	Motor Neurone Disease Association of NSW
8	NSW Disability Advocacy Alliance
9	NSW Ombudsman
10	Australian Services Union NSW & ACT (Services) Branch
11	COTA NSW
12	People with Disability Australia
13	National Disability Services
14	Family Advocacy
15	Carers NSW
16	NSW Government
17	Law Society of NSW

## Appendix 2 Witnesses at hearings

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Friday, 31 May 2019</b> <b>Macquarie Room, Parliament House, Sydney</b>	Ms Justine O'Neill	Chief Executive Officer, NSW Council for Intellectual Disability
	Mr Graham Opie	Chief Executive Officer, Motor Neurone Disease Association of NSW
	Mr Tony Pooley	Senior Manager, State Operations, National Disability Services
	Mr Steven Kinmond	Former Disabilities Commissioner and Chair of the Association of Children's Welfare Agencies
	Mr Stephen Kilkeary	Director Individual and Group Advocacy NSW, People with Disability Australia
	Ms Meg Clement-Couzner	Senior Policy Officer, NSW Disability Advocacy Alliance
	Ms Maria Katrivesis	Cultural Responsiveness Trainor/Consultant, Multicultural Disability Advocacy Association NSW
	Ms Serena Ovens	Executive Officer, Physical Disability Council of NSW (via teleconference)
	Ms Kathryn Greiner	Chair, Ministerial Advisory Council for Ageing
	Professor Eileen Baldry	Deputy Chair, Disability Council NSW
	Ms Meagan Lawson	Chief Executive Officer, Council on the Ageing NSW
	Mr Russell Westacott	Chief Executive Officer, Seniors Rights Services
	Mr Craig Gear	Chief Executive Officer, Older Persons Advocacy Network
	Ms Elena Katrakis	Chief Executive Officer, Carers NSW
Mr Paul Versteegen	Policy Manager, Combined Pensioner and Superannuants Association	
Ms Judith Wright	Deputy Branch Secretary, Australian Services Union	

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Ms Helen Macukewicz	Professional Officer, NSW Nurses and Midwives' Association
	Mr Dennis Ravlich	Manager, Member Industrial Services Team, NSW Nurses and Midwives' Association
	Mr Troy Wright	Assistant General Secretary, Public Service Association of NSW
	Ms Tanya Smyth	Director Strategy, Design and Stewardship, Department of Family and Community Services
	Ms Francesca Di Benedetto	Manager, Legislative Reform, Department of Family and Community Services
	Ms Katherine McKenzie	Director Disability, NSW Ombudsman
	Superintendent Adam Whyte APM	Commander, Liverpool City Police Area Command, NSW Police

## Appendix 3 Minutes

### Minutes No. 1

Tuesday 28 May 2019

Standing Committee on Social Issues

Members' Lounge, Parliament House, Sydney, 7.20 pm

#### 1. Members present

Mr Mallard, *Chair*

Mr Mookhey, *Deputy Chair*

Mr Franklin

Ms Jackson

Revd Mr Nile

Mr Shoebridge (substituting for Ms Boyd)

Mrs Ward

#### 2. Apologies

Mr Martin

#### 3. Tabling of resolution establishing the committee

The Chair tabled the following resolution of the House of 8 May 2019 establishing the committee:

1. Three standing committees are appointed as follows:

(a) Law and Justice Committee,

(b) Social Issues Committee, and

(c) State Development Committee.

.....

#### Social Issues Committee

5. The committee may inquire into and report on:

(a) issues concerned with the social development and wellbeing of the people of New South Wales, including health, education, housing, ageing, disability, children's services and community services, and

(b) matters concerned with citizenship, sport and recreation and gaming and racing.

.....

#### Referral of inquiries

7. A committee:

(a) is to inquire into and report on any matter relevant to the functions of the committee which is referred to the committee by resolution of the House,

(b) may inquire into and report on any matter relevant to the functions of the committee which is referred by a Minister of the Crown, and

(c) may inquire into and report on any annual report or petition relevant to the functions of the committee which has been laid upon the Table of the Legislative Council.

8. Whenever a committee resolves to inquire into a matter, under paragraph 7(b) or 7(c), the terms of reference or the resolution is to be reported to the House on the next sitting day.

#### **Powers**

9. The committee has power to make visits of inspection within New South Wales and, with the approval of the President, elsewhere in Australia and outside Australia.

#### **Membership**

10. Each committee is to consist of eight members, comprising:
- (a) four government members,
  - (b) two opposition members, and
  - (c) two crossbench members.

#### **Chair and Deputy Chair**

11. (a) The Leader of the Government is to nominate in writing to the Clerk of the House the Chair of each committee.
- (b) The Leader of the Opposition is to nominate in writing to the Clerk of the House the Deputy Chair of each committee.

#### **Quorum**

12. The quorum of a committee is three members, of whom two must be government members and one a non-government member.

#### **Sub-committees**

13. A committee has the power to appoint sub-committees.

#### **Conduct of committee proceedings**

14. Unless the committee decides otherwise:
- (a) submissions to inquiries are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration,
  - (b) attachments to submissions are to remain confidential,
  - (c) the Chair's proposed witness list is to be circulated to provide members with an opportunity to amend the list, with the witness list agreed to by email, unless a member requests the Chair to convene a meeting to resolve any disagreement,
  - (d) transcripts of evidence taken at public hearings are to be published,
  - (e) supplementary questions are to be lodged with the Committee Clerk within two days, excluding Saturday and Sunday, following the receipt of the hearing transcript, with witnesses requested to return answers to questions on notice and supplementary questions within 21 calendar days of the date on which questions are forwarded to the witness, and
  - (f) answers to questions on notice and supplementary questions are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration.

#### **4. Committee Chair and Deputy Chair**

The Chair tabled the following extract from the Minutes of the House this day concerning the Chair and Deputy Chair of the committee:

### **Committees—Chairs and Deputy Chairs**

The Deputy President informed the House that the following members had been nominated by the Leader of the Government and the Leader of the Opposition as Chair and Deputy Chair of standing committees:

...

#### **Standing Committee on Social Issues**

Chair: Mr Mallard

Deputy Chair: Mr Mookhey

#### **5. Conduct of committee proceedings – Media**

Resolved, on the motion of Revd Mr Nile: That unless the committee decides otherwise, the following procedures are to apply for the life of the committee:

- the committee authorises the filming, broadcasting, webcasting and still photography of its public proceedings, in accordance with the resolution of the Legislative Council of 18 October 2007
- the committee webcast its public proceedings via the Parliament's website, where technically possible
- committee members must use social media and electronic devices during committee proceedings unobtrusively, to avoid distraction to other committee members and witnesses
- media statements on behalf of the committee may be made only by the Chair.

#### **6. Legacy Report of 56<sup>th</sup> Parliament**

The committee noted the Legacy Report detailing the committee's work in the previous Parliament.

The committee also noted Recommendations 1 and 2 from its report into Gay and Transgender hate crimes between 1970 and 2010:

Recommendation 1: That the NSW Legislative Council re-establish the inquiry into Gay and Transgender hate crimes between 1970 and 2010 in the 57<sup>th</sup> Parliament and the terms of reference for further inquiry and report be subject to a decision of the House.

Recommendation 2: That all evidence received and records produced by the Standing Committee on Social Issues during its inquiry into Gay and Transgender hate crimes between 1970 and 2010 in the 56<sup>th</sup> Parliament, be made available to the Standing Committee on Social Issues for further inquiry and report in the 57<sup>th</sup> Parliament.

Resolved, on the motion of Mr Shoebridge: That the Committee Chair give notice of and move in the House the re-establishment of the inquiry into Gay and Transgender hate crimes between 1970 and 2010, including reference to the committee of the evidence and records of the committee's inquiry into Gay and Transgender hate crimes between 1970 and 2010 in the 56<sup>th</sup> Parliament.

#### **7. Publication of minutes of the first meeting**

Resolved, on motion of Mr Mookhey: That the committee publish the minutes of the first meeting on the committee's webpage, subject to the draft minutes being circulated to members for agreement.

#### **8. Inquiry into the provisions of the Ageing and Disability Commissioner Bill 2019**

##### **8.1 Terms of reference**

The committee note the referral on 28 May 2019 of the following terms of reference: That:

- (a) the provisions of the Ageing and Disability Commissioner Bill 2019 be referred to the Standing Committee on Social Issues for inquiry and report,
- (b) the bill be referred to the committee upon receipt of the message on the bill from the Legislative Assembly, and
- (c) the committee report by 4 June 2019.

## 8.2 Proposed timeline

The committee noted the short timeframe available for the inquiry.

Resolved, on motion of Mr Mookhey: That the committee adopt the following timeline for the administration of the inquiry:

- Friday 31 May 2019 (morning) – Half day public hearing
- Monday 3 June 2019 (late afternoon) – Chair's draft report circulated to committee
- Tuesday 4 June 2019 (9.00 am) – Report deliberative
- Tuesday 4 June 2019 (12.00 noon) – Table report.

## 8.3 Closing date for submissions

Resolved, on motion of Mr Mookhey: That the closing date for submissions be Thursday 30 May 2019.

## 8.4 Stakeholder and witness list

The Chair tabled a proposed stakeholder list.

Ms Jackson tabled an additional list of proposed stakeholders.

Resolved, on motion of Mr Shoebridge: That the following list of stakeholders be invited to make a submission to the inquiry, and that the Committee Chair circulate ahead of the hearing on Friday 31 May 2019 a proposed list of witnesses to be invited to appear and give evidence:

- The Department of Family and Community Services
- NSW Ombudsman
- Aged Rights Advocacy Service
- Combined Pensioners and Superannuants Association
- NSW Council for Intellectual Disability
- NSW Disability Advocacy Alliance
- The Australian Centre for Disability Law
- The Council of the Ageing NSW
- The Intellectual Disability Rights Service
- The Older Women Network
- Unions NSW
- The Health Services Union
- The Australian Services Union
- The Nurses and Midwives Association
- The Public Service Association of New South Wales
- United Voice
- NSW Council of Social Services (NCOSS)
- People with Disability Australia
- Physical Disability Council of NSW
- Multicultural Disability Advocacy Association of NSW
- Motor Neurone Disease Association of NSW
- Council of the Aged (COTA)
- The Public Interest Advocacy Centre (PIAC)
- The Royal Australian College of Physicians
- Carers NSW
- The Law Society
- Legal Aid

### **8.5 Advertising**

The committee noted that the inquiry would be advertised via social media, stakeholder letters and a media release distributed to all media outlets in New South Wales.

### **8.6 Conduct of the inquiry**

Resolved, on motion of Ms Ward: That there be no questions on notice taken at the public hearing to be held on Friday 31 May 2019 or supplementary questions from members.

## **9. Next meeting**

Friday, 31 May 2019 (public hearing).

## **10. Adjournment**

The Committee adjourned at 7.42 pm until Friday, 31 May 2019.

Stephen Frappell

**Clerk to the Committee**

## **Minutes No. 2**

Friday 31 May 2019

Standing Committee on Social Issues

Macquarie Room, Parliament House, Sydney, 8.53 am

### **1. Members present**

Mr Mallard, *Chair*

Mr Mookhey, *Deputy Chair*

Ms Boyd

Mr Franklin

Ms Jackson (from 9:00 am)

Mr Martin

Mr Mason-Cox (substituting for Mrs Ward).

### **2. Apologies**

Revd Mr Nile.

### **3. Draft minutes**

Resolved, on the motion of Mr Franklin: That draft minutes no. 1 be confirmed.

### **4. Correspondence**

The committee noted the following items of correspondence:

#### ***Received:***

- 30 May 2019 – Email from the Office of the Hon. Natasha Maclaren-Jones, to the secretariat, advising that the Hon. Matthew Mason-Cox will be substituting for the Hon. Natalie Ward at the hearing on 31 May 2019.
- 30 May 2019 – Email from Ms Angela Brown, Health Services Union, to secretariat, advising that the Health Services Union will be unable to send a representative to the hearing scheduled for 31 May 2019.
- 30 May 2019 – Email from Ms Gordana Di Francesco, Legal Aid NSW, to secretariat, advising that Legal Aid will be unable to send a representative to the hearing scheduled for 31 May 2019.
- 30 May 2019 – Email from Ms Anna Bacik, National Council of Social Services (NCOSS), to secretariat, advising that NCOSS will be unable to send a representative to the hearing scheduled for 31 May 2019.

## 5. Inquiry into the Ageing and Disability Commissioner Bill 2019

### 5.1 Public submissions

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16.

Resolved, on the motion of Mr Martin: That the committee authorise the publication of submission nos. 1 to 16.

### 5.2 Photography request from NSW Council for Intellectual Disability

Resolved, on the motion of Ms Boyd: That NSW Council for Intellectual Disability be permitted to take photographs through the presentation of their evidence.

### 5.3 Allocation of questioning

Resolved, on the motion of Mr Mason-Cox: That the allocation of questioning be divided into thirds with the opposition, cross bench and government.

### 5.4 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Justine O'Neill, Chief Executive Officer, NSW Council for Intellectual Disability
- Mr Graham Opie, Chief Executive Officer, Motor Neurone Disease Association of NSW
- Mr Tony Pooley, Senior Manager, State Operations, National Disability Services.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Steven Kinmond, Former Disabilities Commissioner and Chair of the Association of Children's Welfare Agencies
- Mr Stephen Kilkeary, Director Individual and Group Advocacy NSW, People with Disability Australia
- Ms Meg Clement-Couzner, Senior Policy Officer, NSW Disability Advocacy Alliance
- Ms Maria Katrivesis, Cultural Responsiveness Trainor/Consultant, Multicultural Disability Advocacy Association NSW
- Ms Serena Ovens, Executive Officer, Physical Disability Council of NSW (via teleconference).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Kathryn Greiner, Chair, Ministerial Advisory Council for Ageing
- Professor Eileen Baldry, Deputy Chair, Disability Council NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Meagan Lawson, Chief Executive Officer, Council on the Ageing NSW
- Mr Russell Westacott, Chief Executive Officer, Seniors Rights Services
- Mr Craig Gear, Chief Executive Officer, Older Persons Advocacy Network
- Ms Elena Katrakis, Chief Executive Officer, Carers NSW
- Mr Paul Versteegen, Policy Manager, Combined Pensioner and Superannuants Association.

Ms Katrakis tendered the following document:

- Opening statement, tendered by Ms Elena Katrakis, Carers NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Judith Wright, Deputy Branch Secretary, Australian Services Union
- Ms Helen Macukewicz, Professional Officer, NSW Nurses and Midwives' Association
- Mr Dennis Ravlich, Manager, Member Industrial Services Team, NSW Nurses and Midwives' Association
- Mr Troy Wright, Assistant General Secretary, Public Service Association of NSW.

Mr Ravlich tendered the following documents:

- Report – 'Solutions from the frontline – practical approaches to reduce the risk of abuse in aged and disability services', tendered by Mr Dennis Ravlich, NSW Nurses and Midwives' Association opening statement
- Opening Statement, tendered by Mr Dennis Ravlich, NSW Nurses and Midwives' Association.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Tanya Smyth, Director Strategy, Design and Stewardship, Department of Family and Community Services
- Ms Francesca Di Benedetto, Manager, Legislative Reform, Department of Family and Community Services
- Ms Katherine McKenzie, Director Disability, NSW Ombudsman
- Supt. Adam Whyte APM, Commander, Liverpool City Police Area Command, NSW Police.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 1:47 pm.

The public and media withdrew.

### **5.5 After the hearing – tendered documents**

Resolved, on the motion of Mr Mookhey: That the committee accept and publish the following documents tendered during the public hearing:

- Opening statement, tendered by Ms Elena Katrakis, Carers NSW
- Report – 'Solutions from the frontline – practical approaches to reduce the risk of abuse in aged and disability services', tendered by Mr Dennis Ravlich, NSW Nurses and Midwives' Association
- Opening Statement, tendered by Mr Dennis Ravlich, NSW Nurses and Midwives' Association.

## **6. Adjournment**

The committee adjourned at 1:50 pm until Tuesday 4 June 2019, Macquarie Room, Parliament House (report deliberative).

Jenelle Moore  
**Committee Clerk**

**Draft Minutes No. 3**

Tuesday 4 June 2019

Standing Committee on Social Issues

Macquarie Room, Parliament House, Sydney, 12.30 pm

**1. Members present**Mr Mallard, *Chair*Mr Mookhey, *Deputy Chair*

Ms Boyd

Mr Franklin

Ms Jackson

Mr Martin

Mr Mason-Cox (substituting for Mrs Ward)

Revd Mr Nile.

**2. Draft minutes**

Resolved, on the motion of Mr Martin: That draft minutes no. 2 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 3 June 2019 – Email from the Hon Natasha Maclaren-Jones, to secretariat, advising that the Hon Natalie Ward will be substituted by the Hon Matthew Mason-Cox for the duration of the inquiry.
- 30 May 2019 – Email from Ms Mel Gatfield, United Voice NSW, to secretariat, advising that the United Voice NSW will be unable to send a representative to the hearing scheduled for 31 May 2019.
- 30 May 2019 – Email from Ms Janene Cootes, Intellectual Disability Rights Service, to secretariat, advising that the Intellectual Disability Rights Service will be unable to send a representative to the hearing scheduled for 31 May 2019.

**4. Inquiry into the Ageing and Disability Commissioner Bill 2019****4.1 Public submissions**

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 17.

**4.2 Transcript corrections**

Resolved, on the motion of Mr Mookhey: That, pending confirmation from Hansard, the transcript corrections provided by the Department of Family and Community Services be incorporated into the corrected transcript for 31 May 2019, or if not confirmed, be appended as a footnote.

**4.3 Consideration of Chair's draft report**

The Chair tabled his draft report, entitled 'Ageing and Disability Commissioner Bill 2019'.

Resolved, on the motion of Revd Nile: That:

- (a) the draft report be the report of the committee and that the committee present the report to the House,
- (b) the transcripts of evidence, submissions, tabled documents, and correspondence relating to the inquiry be tabled in the House with the report,

- (c) upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee,
- (d) the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling,
- (e) the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee,
- (f) dissenting statements be provided to the secretariat by 2.00 pm today, and
- (g) the report be tabled this day, Tuesday 4 June 2019.

**5. Adjournment**

The committee adjourned at 12.42 pm, *sine die*.

Jenelle Moore  
**Committee Clerk**