

7 May 2024

Our ref: ADC24/9

Ms Abigail Boyd MLC
Chair
Portfolio Committee No. 3 – Education
NSW Legislative Council

By email to: portfoliocommittee3@parliament.nsw.gov.au

Dear Ms Boyd

**Inquiry into children and young people with disability in NSW educational settings –
response to questions on notice**

Thank you for the opportunity to provide further information to the Committee in response to the questions for the Ageing and Disability Commission (ADC) during the inquiry hearing on 23 April 2024.

Alternative education models operated by residential out-of-home care providers

During the hearing, further information was sought from the ADC about the alternative education models we referred to in our submission, and whether those models are classified under the homeschooling model.

The ADC submission included an extract from the *Official Community Visitors (OCV) Annual Report 2022-2023*, which identified that some residential out-of-home care (OOHC) providers had advised OCVs of actions they had taken or were working on to support and encourage young people to engage in education, including 'providing an alternative education model within the service'.

The alternative education model provided by an OOHC service that is most frequently noted by OCVs is North Academy, which is operated by Allambi Care Limited. The ADC understands that North Academy is a non-government registered school that provides an alternative education option for young people in Years 9 and 10. The school is registered by the NSW Education Standards Authority (NESA).

The other alternative education options noted in OCV visit reports and/or responses by residential OOHC providers are not operated by OOHC services. These include distance education and flexible learning centres operated by schools, and life and work skills programs with non-government organisations or training providers.

Visiting schemes for schooling

During the hearing, information was sought from the ADC as to whether there is an equivalent regime to the OCV scheme that applies to educational settings, including Schools for Specific Purposes.

To the ADC's knowledge, an equivalent of the OCV scheme does not exist in relation to schools in NSW.

It is important to note that the OCV scheme and equivalent visiting schemes in other jurisdictions are primarily focused on accommodation settings, recognising the higher perceived risks faced by individuals who are living in the care of service providers and highly reliant on paid staff to meet their day-to-day needs. OCVs undertake mainly unannounced visits to visitable services, speak with residents and staff, review relevant records, and raise issues via a visit report to the service provider. A key purpose of the OCV scheme is to promote the rights of residents and to assist in the local and early resolution of matters of concern affecting residents by bringing those matters to the attention of the service providers in the first instance.

In relation to proactive monitoring of schools, NESAs are responsible for registering and accrediting non-government schools and its regulation includes short notice inspections. NESAs also undertake short notice inspections of government schools as part of its role in monitoring the government schooling system. As the ADC currently has very limited exposure to the education sector, we are not in a position to comment on NESAs' oversight of schools, including the adequacy of its inspection program.

Potential extension to the remit of the ADC

During the hearing:

- The Committee asked for the ADC's views on whether we think our role could be extended to include proactive work in relation to children and young people with disability 'to include, for example, looking at particular schools that don't seem to be doing as well as others in relation to accommodating children and why that might be'. By way of clarification, the Committee indicated that in relation to schools where there are particular problems, it is 'looking for a body that might fulfil that role of proactively going in and trying to sort out where those patchy schools are.'
- As part of the later questioning of the ADC about an equivalent visiting scheme to the OCV scheme in relation to schools, the Committee noted that 'It was a very live debate at the time that the ADC bill was debated and when it was brought in as to whether or not it should include children to an extent.' 'It's not currently included, but if we are looking and saying that there's just not enough focus on kids with disability, it's conceivable that we could change the legislation to give that power, if it was resourced.'

Overall, we would support an extension of the ADC's systemic-focused functions under the *Ageing and Disability Commissioner Act 2019* to include children and young people with disability, with appropriate resourcing. That is, the ADC's current functions:

- to inquire into and report on systemic issues relating to the protection and promotion of the rights of adults with disability and older adults or the abuse, neglect or exploitation of adults with disability or older adults (s 12(1)(e))
- 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 (s 12(1)(f))
- 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 (s 12(1)(g)).

We consider that our function to 'monitor, assess and report on the New South Wales implementation of *Australia's Disability Strategy 2021 – 2031*' (s 12(1)(h)) already includes children and young people with disability.

As noted in our previous submission to the Inquiry, we would not support proposals to extend our functions in relation to handling reports about abuse, neglect and exploitation to include children and young people with disability.

In relation to the particular work being canvassed by the Committee in the questions to the ADC, it appears to encompass two key aspects:

- a) proactive identification and early resolution of problems in schools in relation to accommodation of children and young people with disability
- b) systemic/inquiry function to identify and highlight problems to be addressed in relation to children and young people with disability and education.

The ADC notes that there are multiple agencies that have responsibilities in relation to the delivery, monitoring, oversight, complaint handling and/or regulation of educational settings in NSW. In relation to government schools, this includes the Department of Education, NESA, NSW Ombudsman, Office of the Children's Guardian, Anti Discrimination NSW, and the Australian Human Rights Commission. We recognise that the evidence being heard by the Committee identifies gaps in the existing arrangements. However, in our view there is a need to carefully consider the merits of introducing a further agency into the mix, particularly when there is already confusion about where families and carers can go for assistance. We consider that there would be benefit in exploring whether the gaps could be addressed through additions or amendments to the role(s) of the existing agencies.

In addition to Disability Royal Commission (DRC) recommendations¹, there are key proposals for reform in the 2017 report to Parliament on the *NSW Ombudsman Inquiry into behaviour management in schools* that appear to remain relevant for consideration as part of this inquiry. In particular, the proposals relating to the role of the Department and key agencies in relation to complaints and dispute resolution; improving communication and trust with families, carers and children; and proactive identification of matters for independent external resolution.² We note that many of the experiences described in recent evidence to the Committee in relation to children with disability in educational settings echo key sections of the Ombudsman's report.

As the OCV scheme in relation to children and young people is under the *Children's Guardian Act 2019*, questions about potential extension of the OCV role to educational settings should be directed to the Children's Guardian. With regard to people with disability, we note that the scope of community visitor schemes in relation to the NDIS is subject to current consideration as part of the DRC and NDIS Review recommendations. In the ADC's submission to the NDIS Review, we indicated that we do not support a broader scope for the OCV scheme beyond accommodation settings, and raised concerns about the amount of resourcing that would be required to deliver a broader scheme.³

Thank you for the opportunity to respond to the Committee's questions. Please do not hesitate to contact us if you would like further information.

Yours sincerely

Kathryn McKenzie
Acting Ageing and Disability Commissioner

¹ In particular, Disability Royal Commission recommendations 7.10 (complaint management) and 7.11 (stronger oversight and enforcement of school duties).

² See, for example, proposals for reform 27, 29-32, and 34.

³ <https://ageingdisabilitycommission.nsw.gov.au/reports-and-submissions.html>