

**INQUIRY INTO PROVISIONS OF THE AGEING AND  
DISABILITY COMMISSIONER BILL 2019**

**Organisation:** NSW Council for Intellectual Disability

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## **Submission to the inquiry into the provisions of the Ageing and Disability Commissioner Bill 2019**

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### **Who we are**

NSW Council for Intellectual Disability (CID) is a systemic advocacy organisation that works to ensure all people with intellectual disability are valued members of the community. CID has been a leader in disability rights for more than 60 years.

People with intellectual disability are at the front and centre of everything we do – they are decision makers, staff members, board members and spokespeople. We work to build a community which protects rights, includes everyone and supports people well. We focus on issues that people with intellectual disability tell us are important, such as the NDIS, health, jobs, education, transport and safety.

CID promotes human rights. We help people with intellectual disability to be heard, we speak up on the big issues and campaign for change. We advise on how to be more inclusive so that our society is equal and accessible.

We believe people with disability should have the same opportunities as everyone else. Through CID all people with intellectual disability their families and supporters can learn and build skills, and actively participate in the community. We provide information, hold workshops and develop useful resources. We go to community events, share our stories and connect with peers.

### **Ageing and Disability Commissioner Bill**

CID believes the creation of an Ageing and Disability Commissioner is a positive step and is highly supportive of the aim of the Bill. We hope it will address gaps in NSW around support and action for people experiencing abuse and exploitation. Of course it will take some time for the Commission to really take shape.

We want the Commissioner to be as effective as possible. We have concerns that the Bill's drafting will result in some areas of weakness, as discussed below.

## Independence

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 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.

## Oversight of death review team

The Commissioner has an important role in providing advice to government about systemic issues contributing to the incidence of abuse, neglect and exploitation. The Ombudsman currently has oversight of two teams that contribute to a deeper understanding of issues for people with disability. Only the Official Community Visitors program will move to the Ageing and Disability Commission. We believe oversight of death review and its data would better enable the Commissioner to develop a deep understanding of systemic issues that can contribute to deaths of people with disability.

There is a contrary argument that suggests the death review oversight should be independent of organisations such as the Commission, which might have played a role in the person's life. We'd argue the Ombudsman managed this risk successfully over many years and could offer a model for the Commission to avoid any potential conflicts.

Further, as the Ombudsman's role in the disability sector has diminished, CID believes the specialist and disability-informed focus of the work more naturally fits with the Ageing and Disability Commission.

### Recommendation

The Bill should provide for the Ombudsman's role in reviewing deaths in care of people with disability be transferred to the Commission.

## Limits on the scope of work

The drafting of s13(8) could force the Commissioner, or others, to take an unduly limited view of his/her scope. "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".

There will be matters where it is important for the Commissioner to work collaboratively with other agencies in matters where they have shared interests. There will also be matters that could be dealt with by another body but are better dealt with by the Commission.

### Recommendation

Section 13(8) should be amended by replacing the words "must refer the report" with the words "may refer the report".

### **Other important recommendations from the Law Reform Commission**

The creation of the Ageing and Disability Commissioner goes a long way in responding to the NSW Law Reform Commission's recommendation of a public advocate, following its review of the Guardianship Act in 2018. However it does not respond to the full range of functions recommended by the Law Reform Commission, such as mediation of disputes, a significant role in enabling a new assisted decision making framework to replace guardianship, and for the inclusion of the Public Representative, to replace the Public Guardian. The right to greater inclusion in decision making is important to CID members and we look for leadership from government in this area to ensure the Law Reform Commission's important work leads to action.