

**Submission
No 12**

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

Organisation: People with Disability Australia

Date Received: 30 May 2019

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The Hon. Shayne Mallard, MLC
Chair, Standing Committee on Social Issues
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Mallard and Members of the Standing Committee on Social Issues

Re: Ageing and Disability Commissioner Bill 2019

People with Disability Australia (PWDA) welcomes the opportunity to provide a submission to the NSW Legislative Council's Standing Committee on Social Issues Inquiry into The Ageing and Disability Commissioner Bill 2019. We write to the Committee to raise a number of areas where we believe the Bill could be strengthened, including

- Scope and powers of the Commissioner
- Community Visitors Scheme
- Advocacy.

PWDA also fully endorses the submission from the NSW Disability Advocacy Alliance, and all of its recommendations.

About PWDA

People with Disability Australia (PWDA) is the NSW cross-disability peak body for all people with disability. We are also recognised as a Disabled People's Organisation (DPO) because our membership including our governing board is made up entirely of people with disability.

PWDA has been funded by the NSW Government as a cross-disability peak organisation of and for people with disability living in NSW for over 25 years. As a cross-disability, representative organisation, our activities are conducted on behalf of our membership, and the broader disability community in NSW.

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Therefore, our activities represent, and benefit over 1.4 million people with disability living in NSW.

We are currently funded through the NSW Peak Disability Advocacy Program and we also deliver several NSW government-funded projects including:

- Domestic Violence Innovation Fund Building Access for Women with Disability; and the
- PWDA Boarding House Advocacy Project.

As a NSW peak disability representative organisation we continually engage with local, state and federal governments to realise a just and inclusive community for people with disability. Our work includes individual advocacy, systemic advocacy and representation, and we work with and provide advice to the NSW Government and agencies.

Introduction

PWDA supports the establishment of the Ageing and Disability Commissioner to address the over-representation of people with disability and older people who are exposed to violence, abuse, neglect and exploitation.

We support the objectives of the Bill to protect and promote the rights of people with disability and older people from violence, abuse, neglect and exploitation. It is essential that NSW meet its obligations to realise all the human rights of people with disability as articulated in the United Nations Convention on the Rights of Persons with Disabilities (CRPD). These rights are outlined in the National Disability Strategy (NDS) 2010-2020, and agreed by the Council of Australian Governments (COAG). The NDS commits all governments to achieve for people with disability:

- inclusive and accessible communities
- rights protection and justice
- economic security
- personal and community support
- learning and skills, and
- health and wellbeing.¹

While the Commonwealth has taken responsibility for the National Disability Insurance Scheme, which addresses NDS area 4, Personal and Community Support, the NSW Government still retains responsibility and leadership in many areas that impact the lives and rights of people with disability, such as ensuring all people with disability in NSW are able to access mainstream services they require, are able to participate fully in community life, and **receive rights protection and justice**. We hope that this submission provides

¹ Council of Australian Governments, 2011, *National Disability Strategy*, available at: https://www.dss.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf



advice and recommendations that will assist the Committee and NSW Government strengthen the Ageing and Disability Commissioner Bill in order to more fully uphold the rights of people with disability to rights protection and justice.

Key Issues

Increased scope and powers

The nature of crimes against people with disability, including older people with disability, are extremely grave, frequent and widespread. PWDA has extensively documented the nature of the violence, abuse, neglect and exploitation we suffer, as has much other research.² To recognise the seriousness of this epidemic of violence, PWDA calls for the wording of the Bill to cover violence as well as “abuse, neglect and exploitation.” This would bring the Bill into line with the current Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, and would more accurately capture the lived experiences of many people with disability. We also note that many crimes against us are not referred to the police, and in all cases where a crime has taken place the Commissioner or their delegate must be obliged to take this action.

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 recommendations to which the Government must respond. Currently, the Bill does not mention the power of public inquiry, but only that of investigation. The Bill should also specify that the Commissioner has the power to act on outcomes of an investigation, and how they may do so. We recommend that they be able to compel certain actions from subjects for investigation, with penalties for failure to comply.

Change in terminology to person(s) with disability

We believe the Bill would be strengthened by the use of the term “person(s) with disability” instead of “adult(s) with disability” throughout the Bill.

Community Visitors

PWDA welcomes the inclusion of the Community Visitors Scheme and the continued support for the scheme from the NSW Government. We recommend that the Bill specify that the Commissioner is obliged to act on reports from the Official Community Visitors, if those reports indicate a finding, suspicion or risk of violence, abuse, neglect or exploitation.

² Frohmader, C., & Sands, T. (2015) *Australian Cross Disability Alliance (ACDA) Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings*. Australian Cross Disability Alliance (ACDA); Sydney, Australia.



Community visitors and referral to advocacy services

We fully support the provisions in the Bill for the Official Community Visitors to make referrals to advocacy services as outlined in clause 21(h):

(h) provide information to persons using visitable services about advocacy services available to help them with grievances or concerns and, in appropriate cases, to assist a person to obtain those advocacy services

Advocacy services play a key role in enabling people with disability to make complaints and raise grievances or concerns that may relate to their safety and well-being.

This legislation provides a clear example of why the NSW Government must continue to fund independent information, advocacy and representation services by and for people with disability. Independent advocacy and representation represents a key element in the oversight and safeguarding system to enable people with disability to live safely and reduces the risk of exposure to violence, abuse, neglect and exploitation. Our services are also critical to the development of the NSW Disability Inclusion Plan, the Agency Disability Inclusion Action Plans, and the implementation of the actions within those plans.³

We continue to highlight the significance of advocacy, representation and information services to deliver on the rights of people with disability in NSW and that this legislation affirms the need for people with disability to be able to access these services. The NSW Government needs to provide certainty for people with disability by confirming funding into the future.

We also note that the establishment of the Commissioner does not preclude the establishment of the Public Advocate to lead and drive improvements in Guardianship arrangements including the implementation of supported decision-making in accordance with the CRPD, as recommended within the Review of the Guardianship Act.

Summary of Recommendations

PWDA recommends:

1. That to recognise the seriousness of the epidemic of violence against people with disability, the wording of the Bill to cover violence as well as “abuse, neglect and exploitation.”
2. That the Bill be amended to state that in all cases where a crime has taken place the Commissioner or their delegate are obliged to report this to the police.
3. That the Ageing and Disability Commissioner have the power of public inquiry as well as investigation, up to the powers of a Royal Commission.

³ People with Disability Australia, 2018, *Realising the State of Inclusion: The Role of the NSW Government for people with disability, Submission to the NSW Legislative Council Inquiry into the Implementation of the National Disability Insurance Scheme and the provision of disability services in New South Wales* Submission to the NSW Legislative Council Inquiry into the Implementation of the National Disability Insurance Scheme and the provision of disability services in New South Wales, available: <https://pwd.org.au/resources/library/submissions/submission-archive-2015/>



4. That the Bill should specify that the Commissioner has the power to act on outcomes of an investigation, and how they may do so.
5. That the Commissioner be able to compel certain actions from subjects of investigation, with penalties for failure to comply.
6. That the Bill specify that the Commissioner is obliged to act on reports from the Official Community Visitors, if those reports indicate a finding, suspicion or risk of violence, abuse, neglect or exploitation.
7. That the Bill be strengthened by the use of the term “person(s) with disability” instead of “adult(s) with disability” throughout the Bill.

Yours sincerely,

Romola Hollywood
Director Policy and Advocacy