REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON SOCIAL ISSUES

PROVISIONS OF THE AGEING AND DISABILITY COMMISSIONER BILL 2019

CORRECTED

At Macquarie Room, Parliament House, Sydney on Friday, 31 May 2019

The Committee met at 9:00 am

PRESENT

The Hon. Shayne Mallard (Chair)

Ms Abigail Boyd
The Hon. Ben Franklin
The Hon. Rose Jackson
The Hon. Taylor Martin
The Hon. Matthew Mason-Cox
The Hon. Daniel Mookhey (Deputy Chair)

The CHAIR: Good morning and welcome to the Legislative Council enquiry into the Ageing and Disability Commissioner Bill 2019. I am Chair of the Standing Committee on Social Issues, which will be undertaking this quick inquiry. Before we commence, I acknowledge the Gadigal people, who are the traditional custodians of the land on which we meet here at Parliament. I also pay my respects to elders, past and present, of the Eora nation and extend that respect to other Aboriginal and Torres Strait people who either are present or are viewing the proceedings on the internet.

Today's hearing is the only hearing the Committee plans to hold for this inquiry. I note that the time frame that the Committee has been given for this inquiry is extremely short—I emphasise "that the Committee has been given"—owing to the need to finalise consideration of this bill so that it can commence on 1 July. I acknowledge the inconvenience this time frame may have caused some inquiry participants and I thank them for their flexibility and willingness to appear today at such short notice.

Today we will hear from disability representatives: The Chair of the Ministerial Advisory Council for Ageing, the deputy chair of Disability Council NSW, ageing representatives, union representatives, officers from the Department of Family and Community Services, the director of disability for the NSW Ombudsman, and the commander of the Liverpool City Police Area Command of the NSW Police. Before we commence questions, I will make some brief comments about procedures for today's hearing. Today's hearing is open to the public and is being broadcast live by the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available.

In accordance with broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind any media representatives that you must take responsibility for what you publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing. I urge witnesses to be careful about any comments you may make to the media or to others after you complete your evidence as such comments would not be protected by parliamentary privilege if another person decided to take action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

Due to the short time frame for this inquiry no questions will be taken on notice today. Witnesses are advised that any tendered documents should be delivered to Committee members through Committee staff. To aid the audibility of this hearing, I remind both Committee members and witnesses to speak directly into the microphones. In addition, several seats have been reserved near the loudspeakers for persons in the public gallery who have hearing difficulties. I ask everyone to turn their mobile phones to silent for the duration of the hearing. I welcome our first witnesses.

JUSTINE O'NEILL, Chief Executive Officer, NSW Council for Intellectual Disability, affirmed and examined

GRAHAM OPIE, Chief Executive Officer, Motor Neurone Disease Association of New South Wales, affirmed and examined

TONY POOLEY, Senior Manager—State Operations, National Disability Services, affirmed and examined

The CHAIR: Ms O'Neill, would you like to make an opening statement? Let me know if you have made a submission.

Ms O'NEILL: Yes.

The CHAIR: Your submission is No. 5. Would you like to make a brief opening statement?

Ms O'NEILL: Sure. The New South Wales Council for Intellectual Disability [CID] is a systemic advocacy organisation that has been around for about 60 years. We work to make sure that people with intellectual disability are valued members of the community. We are led by people with intellectual disability. They are 50 per cent of our board, they are our staff, our decision-makers and our spokespeople. We focus on issues that people with intellectual disability tell us are important to them and we help people speak up and be heard. We advise other organisations on how to be more inclusive.

Thank you for the opportunity to comment on the Ageing and Disability Commissioner Bill. CID is very supportive of the bill. We think it is a really positive step forward for people with disability who are currently falling through gaps. We want the commission to be as effective as is possible. We think there are some areas of weakness in the bill, which we have outlined in our submission. In summary, we have drawn attention to the limits on the independence of the commissioner. We think full independence is needed to achieve the commission's ambition and to create community confidence in the commission. People with intellectual disability tell us about the critical importance of being able to trust in institutions before making a complaint or asking a question about rights.

In the bill's current form the Minister of the day could be quite directive in the operations of the commission, including actions taken after the initial investigation and the staffing of the commission. We think the current drafting of the bill could force the commissioner or others to take an unduly limited view of the scope of his or her work. We think the bill should provide for the Ombudsman's current role in reviewing deaths in care to be transferred so that people with disability would be transferred to the commissioner. We also note that the scope of the commission's role is not as extensive as that recommended last year by the Law Reform Commission in its inquiry and report on the review of guardianship legislation. We are concerned to ensure that other aspects of law reform, particularly in relation to assisted decision-making, are not left behind. Thank you.

Mr OPIE: The Motor Neurone Disease Association represents people with motor neurone disease, of whom 60 per cent are diagnosed over the age of 65 years and over so they fall under the aged care system. As well as that we work with other neurological disease organisations to represent people with neurological disease. Generally, we agree with the terms of reference around the commissioner. As Ms O'Neill has mentioned, there are a few issues. Our key issue probably falls outside the scope of the commissioner whereby the lack of access to aged care packages and the lack of access to high needs packages, levels three and four, often lead to people dying before they actually get appropriate care. The issue of the State Government and Federal Government divide around aged care and disability is a continuing problem but, as I said, it falls outside the current scope of the commissioner. Generally we are in agreement. I agree with Ms O'Neill's comments. I congratulate the Government on going down this road.

Mr POOLEY: National Disability Services [NDS] represents not-for-profit disability service providers both in New South Wales and nationally. We certainly welcome the creation of an Ageing and Disability Commissioner in New South Wales. I just refer to two points which are in our brief submission—our brief submission which is replete with typos and grammatical errors, which are partly as a result of the fact that it was done in an hour yesterday afternoon. I draw the Committee's attention to our point number one, which is that service providers, as identified in the Ombudsman's report of late last year, are a significant reporter of potential areas of risk for people with disability and vulnerable people.

So in addition to an educative function, which is exceptionally important as part of the commissioner's role, there also needs to be support for people with disability seeking to make a complaint, whether that support comes through providers or, ideally, through independent advocates to support people with disabilities. At point six we just make the point that there is a wealth of evidence to suggest vulnerable people, including people with disability, are at greater risk in institutional settings—whether that be large residential centres, group homes—but also within the criminal justice system, that is, jails. It appears that the commissioner's purview does not extend to being able to review issues of potential abuse and neglect within the criminal justice system and we think that is a gap.

The CHAIR: We have divided the time for questioning into a third for Opposition, crossbench and then Government, but I recognise that we can be a bit more flexible if we need to be. I will open up the questioning with the Opposition.

The Hon. DANIEL MOOKHEY: I thank all three representatives of the three organisations for not just appearing today but also for turning around submissions in a relatively quick order. I will start with accepting the fact that all three organisations are welcoming of the concept of a commissioner and the bill and just go to the detail of the bill and the type of changes that you would like to see given the limited scope of our inquiry and the time that we have to turn around and provide recommendations to the Parliament. Can I just start with you, Ms O'Neill? You say there are issues to do with the independence of the commissioner, particularly to do with the power of ministerial direction as well as staffing. Do you have a view as to how you would like to have that changed?

Ms O'NEILL: I think we have made some recommendations in the submission that the commissioner is not subject to direction in any of his or her actions. Just thinking of an example to describe what the potential, and hopefully unlikely, problem would be, the commissioner can choose the investigations but there is not a lot of content about what happens afterwards. There appears to be scope for the Minister to direct what actions the commissioner could take as a result of that investigation. Also, in giving systemic advice there could be some influence on the types of recommendations that the commissioner could make. We have also suggested that the bill should structure the commission in a way that allows it to employ its own staff—I guess a bit more along the lines of the Ombudsman.

The Hon. DANIEL MOOKHEY: When you speak about in the absence of legislative clarity what the commissioner can do after an investigation, can I ask two questions arising from that? First, do you think the commissioner should be able to undertake public inquiries?

Ms O'NEILL: I probably have not given that a lot of thought. It would be unlikely that we would object to that, but I do not know what the large scope of that would be. We want the commissioner to be able to look into the detail. The purpose is to identify the gaps and solve existing problems. So if the commissioner needs to have as much power to really properly investigate those issues and find out from others about where the gaps are and what is leading to these problems, then we would want them to have the real scope to look at systemic problems as well as individual problems.

The Hon. DANIEL MOOKHEY: So you would like them to have the ability to inquire into systemic issues?

Ms O'NEILL: Yes. I think one of the stated roles is to give advice about systemic matters.

The Hon. DANIEL MOOKHEY: Mr Opie and Mr Pooley, can I put the same two questions to you? Do you think the commissioner ought to have the ability to undertake public inquiries, and that would include the ability to inquire into systemic issues?

Mr OPIE: I think yes, probably. But I also wonder, given the National Disability Insurance Scheme [NDIS] Quality and Safeguards Commission, that the amount of people over 65 on the NDIS will obviously increase what the relationship between the commissioner and the NDIS Quality and Safeguards Commission will be and how they interact as well. But I agree with Ms O'Neill about the inquiries.

The Hon. DANIEL MOOKHEY: Mr Pooley?

Mr POOLEY: 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.

The Hon. DANIEL MOOKHEY: Just before I finish my line of questioning and hand to my colleague from the Opposition, in addition to that, just to close off that point about what is to occur when an investigation is complete and whether the Minister's powers are relative to the commissioner, do you think the commissioner ought to have the statutory authority to make direct referrals to the DPP and NSW Police in respect to their investigations, if they feel it is necessary?

Mr POOLEY: Yes.

The Hon. MATTHEW MASON-COX: Was that a leading question?

Ms O'NEILL: Yes. Sure.

Mr OPIE: I would assume, yes; I am not an expert.

The Hon. ROSE JACKSON: I echo my colleague's comments regarding how much we appreciate you coming along at short notice and making submissions in a short timeframe. Ms O'Neill, you raised issues of independence and spoke about Ministerial direction and staff. One of the things you did not mention was the advisory board. Under the bill as drafted, particularly clauses 27, 3 and 9, the Minister appoints the advisory board and may remove appointed members of the board at any time. Can you comment on the potential for that provision to impugn the independence of the advisory board?

Ms O'NEILL: Yes, you imagine that the advisory group would be better managed by the commissioner.

The Hon. ROSE JACKSON: The other question I have relates to your comments about the scope of the commissioner being more limited than some of the recommendations coming out of the Law Reform Commission and other organisations. I would like you to elaborate as to why you think it is important there is more scope. One of the things people sometimes suggest is that other organisations deal with other areas of complaint and we do not want duplication. Can you elaborate on why you thought it was significant that this commissioner did have a broad scope even if that touched upon some areas that other organisations or statutory authorities might already deal with?

Ms O'NEILL: The Law Reform Commission has suggested some other functions for a public advocate which would incorporate the role of the commissioner or vice versa. Mr Pooley talked about the importance of community education. That was a focus of law reforms and recommendations but within the scope of an assisted decision-making approach. Having a broader role for community education it seemed very important to make these functions actually work and for people to understand their rights. They talked about a role in mediation which seemed like another important aspect of the role. We are thinking that there would be some cases—for example, a nurse in a boarding house—where there might be allegations of over-medication. That would be dealt with through professional regulation authorities. It would also raise a systemic issue. We do not think that it is a problem for two bodies to be looking at the same issue if they are looking at them from different perspectives. We would rather see that the commissioner is looking at the big picture of disability or abuse in a broad scope rather than lots of different players doing bits around the edges.

The Hon. ROSE JACKSON: Siloing. I have one follow-up question about the scope issue and Mr Pooley may wish to comment. Currently the bill expressly precludes investigation relating to children; it is only adults. It is suggested the reason for this is that children have a child protection system, so it is not necessary for the commissioner to have any scope to investigate complaints relating to children with a disability. For the reasons you have just outlined, I wondered if Mr Pooley or yourself have any comments about whether the commissioner should have some scope to address children, even if there are other authorities that can investigate these matters?

Ms O'NEILL: CID works primarily with adults. I think you will have other people coming through today that will give you more informed advice on that question.

Mr POOLEY: I make the assumption that the Ombudsman will continue to have oversight of the child protection system. It raises the obvious issue of the need for cooperation between this commission and the Ombudsman. People at 18 leave a system in which they have oversight from the Ombudsman and some of those have been in the Minister's care for a significant part of their life. At the age of 18 they then swap over to the jurisdiction of this commission and that plainly requires some detailed protocols for the exchange of information. That is an ongoing thing. They need to share information. People are children only for a period of time. People often remain vulnerable and have a disability for their life. The integration of this commission and the Ombudsman's office and its oversight of the child protection system is very important.

Ms ABIGAIL BOYD: Thank you so much for attending and giving your submissions in such a short timeframe. It has been incredibly useful to read through the submissions and hear from you. I have a few questions about things you have not touched on. The first is in relation to consent. We have a couple of provisions in the bill that are talking about the obligation to obtain consent except in particular circumstances. In at least one of those circumstances it is as prescribed by regulation which always makes me concerned about what might be in the regulations. Do you think these consent provisions are satisfactory given that they are quite different to what we have seen in some jurisdictions but similar to others? Do you see any need to make a distinction between people with disability or people with a different type of disability and those older people in giving guidance to the commissioner in what constitutes consent?

Ms O'NEILL: I have not looked at enough of that part of the draft bill to have thought about that in great detail. I would say in general on the issue of consent that consent is consent and it does not matter the type of disability or the personal circumstances. It is more about assisting a person to understand what the question is, what the decision is and helping them to make a decision as far as possible. Some people may not be able to make a decision and give consent even with support. I am not familiar enough with what is in the bill about where a person cannot consent and what the ramifications of that would be. From the CID's perspective we want to see people with intellectual disability supported to be involved as much as possible in their own decision-making. We do not want people excluded but we acknowledge that some people will have greater difficulty than others in understanding or expressing a view on a question. There needs to be some protections for a person so that if they are unable to consent, it is acknowledged. I get a bit nervous about trying to distinguish between people's types. You can give consent, you can give consent with support or you are unable to give consent. It is to do with your ability to understand and demonstrate an understanding rather than precisely what the cause of the cognitive issue might be.

Ms ABIGAIL BOYD: That comes back to the need to have people there to support.

Ms O'NEILL: Absolutely. An important part of the commission is having independent people to assist the person to understand their rights within this context and their right to complain and assisting people with disability who might observe incidents of abuse. They always need to be encouraged to become complainants. They are not just victims, they are also people who might be able to blow the whistle.

Ms ABIGAIL BOYD: Mr Opie and Mr Pooley do you have any comment on the issue of consent in the bill?

Mr OPIE: No, I do not.

Mr POOLEY: I echo Ms O'Neill's comments. Supported and substitute decision-making is an exceptionally complex field but there is no shortage of work that has been done by a whole range of people in this area. One would expect that the commission would be able to access that information particularly through the advisory committee to the commissioner. Apart from organisations like CID and People with Disability [PWD], there is the Law Reform Commission and the Guardianship Division of the NSW Civil and Administrative Tribunal [NCAT]. There is a significant volume of information and guidelines around supported and substitute decision-making. There needs to be circumstances in which consent is made by a substitute party in order to ensure that an investigation or an inquiry can be made. I think the commissioner will be able to access who can provide advice in this area. It is a complex field.

Ms ABIGAIL BOYD: Community visitors are referred to in the bill as those who enter visitable services. We know that the scope of the bill is people with disability and those over the age of 50 or 65. Is there scope for those visitable services also to include vulnerable people who fall outside that definition of people with a disability and those over 50 and 65? Do you know?

Mr POOLEY: Community visitors regularly visit boarding houses. There is an issue about demarcation. There are potentially 152,000 people in New South Wales who will be part of the National Disability Insurance Scheme [NDIS], which will in turn have the Quality and Safeguards Commission [QSC] of the NDIS. We are hoping that this commission picks up that larger pool of people. The QSC has an oversight role of NDIS-funded services, which the community visitors will be able to continue to visit and presumably to make reports to the QSC on them. There is a broader group of people, including, for instance, those people in boarding houses who may not qualify for the NDIS. We certainly hope that the community visitors will continue to visit those services. I repeat the point I made initially that community visitors are unable to visit people with disability in jails, and we think that is a gap.

Ms ABIGAIL BOYD: The answer I was trying to get was whether there would be a situation where a community visitor went into a visitable service but was unable to make a report under this bill because there was an individual there who was suffering abuse who was not within that fine definition of disability. Is there that scope in practice for people who are not disabled for the purposes of the bill or who are over 50 or 65? Would it be better for the bill to refer to anyone within those visitable services rather than to draw that distinction?

Mr POOLEY: That is a good question, but I cannot answer it. However, I understand that Steve Kinmond is coming in later. He is part of the Ombudsman's office and has managed the community visitors. I think he might have the answer.

Ms ABIGAIL BOYD: I have personally heard from providers working under the NDIA saying that under the NDIS they find themselves very limited in the amount of funding they have to respond to things outside the NDIS; for example, compliance and when they need to respond to an audit. They have no additional funding for those sorts of things because they are funded only for services under the NDIS. Do you think there would be additional financial pressures put on providers under the NDIS as a result of this bill and would that be problematic?

Mr POOLEY: You are opening up a very significant area about funding arrangements under the NDIS that I could take up far too much of the committee's time addressing. Nobody suggests for a moment that any service provider should not provide a safe and secure environment for every person for whom they provide a service. Are there financial pressures in providing services to people both within the NDIS and outside it; that is, in the provision of those safe services and in the training of staff? The answer to that question is yes. Does this bill particularly amplify those concerns? I would not necessarily say so. In some ways the jurisdiction of the commission is taking over areas that were previously the responsibility of the Ombudsman in some ways. So the imperative for service providers to provide a safe and secure service in any environment is an ongoing issue. I do not see why this makes it particularly worse.

The Hon. BEN FRANKLIN: One of the commissioner's functions under the bill is community education. I would be very interested in your perspectives on the educational role of the commissioner, particularly when educating the public about potential abuse, neglect and exploitation of people with disabilities. That seems to me to be a very important role. I would like all of you to comment on that and how you think the commissioner can best fulfil that role most effectively. I am also interested in whether you have any specific logistical recommendations in this framework.

Ms O'NEILL: About the drafting of the bill?

The Hon. BEN FRANKLIN: What they should be doing about the role.

Ms O'NEILL: We have had a little bit of consultation with Family and Community Services about that. In fact, we had some consultation with people with intellectual disability yesterday on that, including how people find out about it and how they feel empowered to engage. It really comes down to the resourcing of the organisation and how much they are able to commit to community education and how accessible it is. People with intellectual disability tell us that they prefer face-to-face contact and learning. That will be a very important part of the commissioner's ability to engage with people. It will be about making people familiar with the purpose of the office, how they make contact, how they use it and its remit.

We also think that the commission has a role in exploring community education from a positive modelling perspective. Not everyone who is being abusive intends to be. Sometimes it is because of a lack of knowledge or a lack of support. It is never okay to use those issues as excuses for hurting someone else and abuse is never okay. The commission will have a role not only in explaining what is abuse and how to respond to it but also what is good support and what it should look like. How does a carer, financial manager or someone with a power of attorney get support and how do they use those powers appropriately? There needs to be both the investigation side of things but also a positive approach to educating people in supporting those with disability.

Mr OPIE: I also think it is the role of managers of organisations to work with the commission to educate their members about abuse and neglect, avenues for lodging complaints and how to blow the whistle on organisations. As a member-driven organisation, we advocate on behalf of people but we also educate them. There is a strong reasoning that not-for-profits and small organisations like ours as well as large representative organisations work very closely with the commissioner to get that message out and to educate people. Education is probably one of the key roles of our organisation. The more knowledge someone has the better off they are to work within the system and to make it work for them.

Mr POOLEY: I do not have significantly more to add, other than being in agreement with my two colleagues here. To state the obvious, we are about to go down the path of a national royal commission looking at abuse, violence and neglect. That will not only have, I hope, a series of tragic stories but also is looking at innovative models of support for people with disability, which was one of its terms of reference. So plainly there is an obvious role for the commission in engaging with the royal commission and engaging with the findings that come with that. There will be significant attention brought to this issue over the next couple of years; hence the creation of the commission in New South Wales is a timely one. I make that obvious point. There is an obligation, plainly, on the commission to engage with the results of the royal commission in part of that educative process.

The Hon. BEN FRANKLIN: Would you agree, therefore, that after the royal commission—which will inevitably raise issues in the minds of the broader public and, of course, those who have been personally affected—

it will be critically important for the community to understand and know that there is a role such as the commissioner on an ongoing basis?

Ms O'NEILL: Yes.

Mr OPIE: Yes.

Mr POOLEY: Yes.

The CHAIR: Ms O'Neill, in your submission you have recommended—and it is recommended in a number of submissions throughout the day—that the Ombudsman's role in reviewing deaths in care of people with disability be transferred to the commission. It has been left with the Ombudsman. Can you explain why you think that should happen and address the issue in my mind, which is that a death in care is a catastrophic failure of the system and the Ombudsman would be best positioned to independently review that and not the commissioner, who, in fact, has a role in trying to prevent that from happening? Do you see what I am saying?

Ms O'NEILL: Sure.

The CHAIR: Could you explain why you think it should be transferred across?

Ms O'NEILL: We think it should be transferred across to give the commissioner the greatest data and understanding of the more systemic issues that are going on and, I guess, to again avoid the issue of silos. The Ombudsman has had a role in dealing with complaints and also managing the death review team for many years. So we think that it is possible to set up arrangements in the commission to make sure that that work is managed carefully. But we think it will give the commissioner better data about what is going on for people and a broader understanding of the various factors that can lead to the most adverse of outcomes, and also just make sure that those issues of disability abuse are being brought together in an organisation rather than separated off where there is a risk that it will just become sort of niche work or just a little less supported by the overall responsibilities of the agency. We feel like there is a more natural fit in the commissioner.

The CHAIR: You do not accept that it is appropriate to have an independent oversight of the deaths. You have the commissioner involved in preventing the deaths and abuse; if they occur, the Ombudsman comes in and does the review. You would expect them to have a strong data-sharing and information-sharing role—and we will address that with the Ombudsman later today. Do you think it could be addressed through a stronger relationship of data sharing and information sharing between the two?

Ms O'NEILL: Sure. We would definitely want to see that if there is not a connection. We feel that those things could be managed within the commission. The independence would be set up there. The commission is not a provider of support; there is not a conflict of interest in that sense. I would imagine that many of the deaths would not necessarily have been subject to complaints beforehand. So again it would be providing the commissioner that broader understanding of when things go wrong and the more systemic understanding of the issues.

The Hon. MATTHEW MASON-COX: I want to follow up on that particular issue in another related area, and that is children. We have had some submissions—and certainly it is the strong view, I think, of some members opposite—that the commissioner take on the role of oversighting disabled children, for example. We have a very comprehensive child protection system. I want to understand your personal experiences, through your organisations, of looking after children with disability. Have you come across problems in relation to the existing child protection system which might point to a need to expand the role of the commissioner in this area?

Ms O'NEILL: The Council for Intellectual Disability [CID] does work primarily with adults. Our members are primarily adults with intellectual disability. We certainly get involved in some child-related issues but I do not feel that would be the best, most informed source for that question.

Mr OPIE: Same with motor neurone disease [MND]: it is mainly adults with MND.

Mr POOLEY: I am not sure that I am qualified to answer that question. I make the general point that, plainly, vulnerable children need not only the support of the comprehensive child protection system but that system itself needs detailed oversight. Whether that oversight should transfer to this commission I have some doubt. There is plainly an enormous amount of expertise in the Ombudsman's office in the oversight of the child protection system, as indeed there is in reviewable deaths in care and of people with disabilities and the functions under the Community Services (Complaints, Reviews and Monitoring) Act that they assume from the Community Services Commission. I am just not sure I am qualified to say whether that should transfer. I just make the obvious point that oversight of the child protection system, given the nature of the vulnerable clients of that system, is vital.

The CHAIR: Thank you for your evidence. We have run out of time. We could probably have you talking to us all day, frankly. Thank you for your submissions. You cannot take questions on notice so therefore you cannot get them back to us. We appreciate your coming and we appreciate the shortness of the period to be notified about this inquiry. Due to the nature of the bill, I am sure you would want to see it implemented as quickly as possible. Thank you for coming in and spending your time with us this morning.

(The witnesses withdrew)

SERENA OVENS, Executive Officer, Physical Disability Council of NSW, before the Committee via teleconference, affirmed and examined

STEPHEN KILKEARY, Director, Individual and Group Advocacy NSW, People with Disability Australia, affirmed and examined

MARIA KATRIVESIS, Cultural Responsiveness Trainer/Consultant, Multicultural Disability Advocacy Association NSW, affirmed and examined

MEG CLEMENT-COUZNER, Senior Policy Officer, NSW Disability Advocacy Alliance, affirmed and examined

STEVEN KINMOND, former Disabilities Commissioner and Chair of the Association of Children's Welfare Agencies, sworn and examined

The CHAIR: Good morning and welcome to the hearing into the Ageing and Disability Commissioner Bill 2019. Ms Ovens, would you like to make a brief opening statement, recognising that we have less than 45 minutes to conduct this hearing?

Ms OVENS: I thank the Committee for inviting the Physical Disability Council of NSW [PDCN] to provide evidence to this inquiry. The Physical Disability Council is the peak body for people with physical disability, providing systemic advocacy, expertise and advice to our members and stakeholders, and taking their collective issues and concerns to government to continue to improve their human rights and inclusion in all parts of New South Wales society. Unfortunately, even today many of our members face abuse, discrimination and exploitation in their homes and when out in community. Because of this, PDCN are very supportive of the establishment of an Ageing and Disability Commissioner in New South Wales, and overall also find the draft bill to be reasonable—though we would call for the commissioner to have further increased powers and independence than the current bill provides.

Importantly, the commissioner should be able to not only refer to another body but also work in conjunction with them where both bodies have shared interests. In addition, it should be clearly stated within the bill the requirement to refer to the police or public prosecutions evidence of any criminal offence. We would also wish to see increased powers for the conduct of investigations, stronger penalties where needed, and greater oversight of the administration of any recommendations of an investigation—ensuring changes truly occur within the settings where abuse, discrimination or exploitation may be taking place.

PDCN believes that increased requirements to collect good data on the work the commissioner may undertake, from the number of reports received, to those referred and those actioned, and the nature of reports, would also greatly support another part of the commissioner's role—that of identifying and addressing systemic issues in this arena. Finally, I would note that throughout the draft bill the importance of advocacy is described, from community visitors using independent advocacy services or referring people with disability to these organisations, to the commissioner working with the sector to educate the community of systemic issues and opportunities for improvement. Additionally, it is more often than not our own advocacy organisations that bring to light issues that are referred to the commissioner for address.

As I am sure many of the members who sit on this Committee are aware, all New South Wales Government funding for the disability advocacy sector and representative peaks will cease in 12 months time, leaving the commissioner, community visitors and people with disability themselves seeking our expertise, services and advice with nowhere left to turn. As this is a significant part of this bill's infrastructure, I would caution against this. Thank you.

Mr KINMOND: At the outset, I thank members of Parliament for their keen interest in this bill. Several years ago, before an audience of about 500 people I promised to put the spotlight on the issue of the abuse of vulnerable adults in community settings. The bill and today's hearing represents government and Parliament responding to this issue, so I again thank you. The report that we tabled last year at the Ombudsman's office speaks for itself. Despite many wonderful families providing wonderful support to adult family members, we cannot ignore the fact that there are some vulnerable adults who are abused and ill treated within their own home and community settings. The bill, which needs to go forward, seeks to address this issue. However, against the background of my strong support for the bill I believe that there are a couple of areas that warrant attention, and I will take you through them.

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. So it would be a time-limited operation but it should be transferred across.

In this regard, the Ombudsman in his 2 November 2018 report on this issue talked about fragmentation of oversight both in terms of vulnerable adults and in terms of the community services functions more generally. Therefore, to keep disability, death and reportable incident work within the Ombudsman's office would perpetuate fragmentation of the type that the Ombudsman spoke against. On this issue of fragmentation, I would also request that the Parliament closely scrutinise the Ombudsman's observations about the need for Parliament to consider the broader community services oversight landscape. His views are outlined on pages 34 to 35 of his report. This, I believe, is a matter that Parliament should careful considerer. Having said that, there is nothing in my opinion in the Ombudsman's report that would prevent this bill moving forward. I think that is important to bear in mind.

Can I also say that Associate Professor Sally Robinson is doing some excellent work at the moment reviewing family referral services in the context of the adequacy of family referral services to support and respond appropriately to matters containing risks involving children with disability. Once again, I commend Parliament to have a look at that issue because I think it will shed light on the related issue that has arisen as to whether this commission should look at the issue of 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 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. I would also commend consideration of provisions in this bill that envisage that, with the next National Disability Strategy, this Ageing and Disability Commission have responsibility for monitoring and assessing the New South Wales implementation of that strategy.

In that regard I refer you to part 3B of the Ombudsman Act, whereby the Aboriginal Deputy Ombudsman has responsibility for monitoring, assessing and reporting on the rollout of OCHRE. Given that the advancement of the rights of people with disability is a critical issue, I would argue that if you are going to have an Ageing and Disability Commission give them a brief with the next National Disability Strategy to monitor and review the implementation of that strategy as an independent entity and to report to Parliament. Thank you for indulging me.

The CHAIR: Thank you for that detailed opening statement.

Mr KILKEARY: I thank the Committee for the opportunity to appear before you today. I will read from this statement about People with Disability Australia [PWDA]. As you may be aware, People with Disability [PWD] is governed, led and made up of people with all kinds of disability. We are funded in New South Wales to act as a peak representative organisation. In this role we provide advice to the New South Wales Government and other key stakeholders in relation to a wide range of policy areas affecting 1.4 million people with disability living in New South Wales.

We work across many policy and portfolio areas to realise the rights of people with disability, including access to justice, violence prevention, health, mental health, housing, employment, education and transport. We provide individual advocacy support across New South Wales and have two specific advocacy programs funded by the New South Wales Government: one for people with disability living in assisted boarding houses and, more recently, one for people living in specialist disability accommodation. We have direct and firsthand knowledge and understanding of the experiences of people with disability in New South Wales. The key priority for us is the over-representation of people with disability who are at risk of and/or experiencing violence, abuse, neglect and exploitation.

Our position on this bill is that of course 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 New South Wales meets 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] for 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.

While the Commonwealth has taken responsibility for the National Disability Insurance Scheme, which addresses NDS area 4, personal and community support, the New South Wales 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 New South Wales are able to access mainstream services they require, are able to participate fully in community life and, of course, receive rights, protection and justice. We have articulated our list of recommendations in our written submission. In addition to that, I would like to raise one other matter and that is PWD hopes that the commission is properly resourced to be able to do outreach to rural, regional and remote communities. That includes having a physical presence—that would be an office or something to that effect—in these areas because there are quite specific issues in rural, regional and remote communities that we hope the commission will be able to identify and respond to. Thank you.

The CHAIR: We are running tight on time so keep opening statements concise if possible.

Ms KATRIVESIS: Mine will be short and sweet. I just want to introduce our organisation as well. The Multicultural Disability Advocacy Association [MDAA] has more than 20 years' experience working with people with disability with a focus on people from culturally and linguistically diverse [CALD] backgrounds or people from non-English speaking backgrounds with disability, their families and carers. MDAA supports the active participation of its members and consumers in all aspects of its work. MDAA welcomes the opportunity to contribute and continue to provide feedback on the Ageing and Disability Commissioner Bill.

At a time when disability services are increasingly reflective of the culture of the rights set out by the United Nations Convention on the Rights of Persons with Disabilities and the empowerment of individuals, MDAA is pleased to see the shift in the language and practice reflected in the bill. We continue to push, however, for the legislation to be culturally responsive and with information which is easily accessible regardless of language or disability. Furthermore we seek to emphasise the fact that any changes should work together with and not eliminate any existing community and mainstream supports currently available. MDAA would like to acknowledge and support the express need of the Act to have regard for adults with disability and older adults and have respect for their cultural and linguistic diversity, age, gender, sexual orientation and religious beliefs.

We also acknowledge and support the general functions of the commissioner to include raising awareness and educating the public about matters relating to abuse, neglect and exploitation of adults with disability and older adults. But we also need to emphasise the active work that the commissioner should consider in relation to CALD communities in this area and to provide advice and general assistance to the public about matters relating to abuse, neglect and exploitation of adults with disability and older adults. However, as seen by the rollout of the National Disability Insurance Scheme [NDIS], we must ensure all information is culturally responsive and accessible to CALD communities. Further, while we support the utilisation of official community visitors, there needs to be greater detail about the way in which we will expand the resources in this service to ensure that they are able to adequately investigate these cases. The feedback we are currently receiving is that they are already at full capacity. Thank you.

The CHAIR: Thank you. Can you provide that submission in writing for us?

Ms KATRIVESIS: Yes.

The CHAIR: That would be helpful.

Ms CLEMENT-COUZNER: I will be brief. We the NSW Disability Advocacy Alliance are a coalition of 22 advocacy, information and peak representative bodies in New South Wales representing 1.4 million people with disability, of whom roughly only 10 per cent will receive support packages under the NDIS. I note that MDAA, PWDA and PDCN are members of the alliance and their work on justice and protection of rights for people with disability is emblematic of our concerns as an alliance. We have overall given our support for this bill and are glad to see the focus on the rights and protection of people with disability. However, we have a number of recommendations that we believe would strengthen the bill. They relate to the independence, power and scope of the commissioner and the commission, and the relationship of the commission and the commissioner to advocacy.

Firstly, we would recommend that all functions of the commissioner be independent and not subject to the control or direction of the Minister, not just those expressed in the clauses in the bill. Secondly, we would recommend that there be increased powers of the commissioner in the conduct of investigations and clarification of the commissioner's powers to uphold or act on the outcomes of any investigations. We also note that some wording on page 7, clause 13 (8), obliging the commissioner to "refer on" could be read as somewhat confusing in that we would recommend that the commissioner retain matters that could remain in their purview but could be investigated collaboratively with other organisations. We think the wording there is somewhat confusing. We also recommend that the advisory board appointed by the Minister in consultation with the commissioner has representation from our specialist disability advocacy organisations so that the commissioner has access to the deep expertise and coalface knowledge of the organisations of people with disability.

I will move on to our recommendations with regard to the relationship to advocacy. 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. Thank you.

The CHAIR: Thank you. The Committee has before it the submissions you have all made. Thank you for making those on such short notice. We will open with questions from the Opposition.

The Hon. DANIEL MOOKHEY: Thank you to all of the organisations who were able to give us their opinions. Picking up the discussion where we ended it with the previous panel, should the commissioner and the commission have jurisdiction over young people?

Ms OVENS: May I speak?

The CHAIR: Of course.

Ms OVENS: I am having trouble hearing some people but others are quite clear. 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.

Mr KINMOND: The Ombudsman, in his report, has indicated that there needs to be proper consideration given to the oversight arrangements in so far as they relate to vulnerable people. The Ombudsman would have a residual function in this regard in terms of looking, for example, at the adequacy of responses to child protection reports, because he or she will have an going community services function in so far as children are concerned, and he would have the ability to conduct inquiries under section 11. But the Ombudsman has put on the table that he thinks that the whole oversight arrangements need to be considered.

I understand from interesting work that Associate Professor Sally Robinson is doing that she would be able to provide insights, when she tables her report, into what would be the best arrangements to put in place in terms of making sure that children with disability, as children, are appropriately supported. On the one hand, I share concerns about the need to put the spotlight on how well we are supporting children with disability. What I would be keen to see is a commitment from Government that this issue gets looked at and that a solution is found for ensuring that there is a strong focus on the rights of children with disability who are exposed to risk to have a service system that is responsive. My suggestion would be that it is an area of concern. It needs to be looked at but it does not need to be looked at in this bill because the problem is that that would suggest that the issue of vulnerable kids more generally has been addressed, and the Ombudsman has said that it has not been addressed. It needs to be examined.

The Hon. MATTHEW MASON-COX: That is clearly the case. Can the information-sharing provisions of this bill deal with this on an interim basis while the wider issue of perhaps child protection, particularly for disabled children, are dealt with?

Mr KINMOND: In theory the Ombudsman can conduct a standing inquiry examining the issue of children with disability and the adequacy of the child protection system and early intervention system to support them. In theory you could do that. But the Ombudsman has put on the table that he believes that with the transfer of the Reportable Conduct Scheme, for example—the proposed transfer to the guardian—the transfer of his disability functions under the community services model—which the sector only supported with it being a strong community services division within the Ombudsman's office—it is already fragmented. He has already said that it is broken. He has already said that it needs to be examined as a collective so that this State continues to have one of the best safeguarding systems in the country. I would say that that needs to be looked at more broadly.

The Hon. DANIEL MOOKHEY: Can I get the views of the other panellists on that question?

Ms CLEMENT-COUZNER: 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 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.

The Hon. DANIEL MOOKHEY: Do the other panellists have views?

Ms KATRIVESIS: I am in agreeance with what has already been said.

The Hon. DANIEL MOOKHEY: Thank you. Mr Kilkeary?

Mr KILKEARY: Just to take up on what Meg said, I manage a practice of individual advocacy, so we see these sorts of things in practice. A lot of very vulnerable children with disability are in very bad situations of violence. It is quite often very difficult to get positive outcomes for some of those things. If the commission had strong powers to investigate and act upon matters involving children that would be a good thing.

The Hon. DANIEL MOOKHEY: I would like to finish this line of questioning before I hand on to my colleague. There are functions that the disability commissioner has in respect of adults that are not provided for children in the children protection system. Advocacy and community education are just some of the positive benefits that we do not allocate responsibility for to the child protection system because the child protection system is built to do something completely separate. Is there any reason why those functions should not be available to children? What is the positive case to exclude children from the jurisdiction of this bill?

Ms CLEMENT-COUZNER: I cannot think of one, personally. I think that the rights of children are often overshadowed by the rights of parents. This is a particular vulnerability for children with disability because historically parents and families have often spoken on behalf of people with disability—both children and adults. I think it would be excellent to have an oversight body that has a focus on the rights of children with disability because we know that at times, whilst parents can play a wonderful and important advocacy role in the lives of children with disability, sometimes the rights of parents and the rights of children with disability come into conflict. So adding an additional oversight and way of representing those rights, I can only see a positive from that.

The Hon. DANIEL MOOKHEY: One of the people on the previous panel said that the responsibility of commissioner will be to do things like negotiating to improve packages and services and being able to aggregate power and drive service delivery. Why should that not be a function that is available to the benefit of children as much as it is to the benefit of adults?

Mr KINMOND: Can I say that the Ombudsman currently has jurisdiction in that area. Having conducted hundreds of investigations into matters of a child protection nature, and many of those involving kids with disability—including, for example, *The death of Ebony* report, which triggered the Special Commission of Inquiry into Child Protection Services in NSW—the system that was in place included a very strong focus on children with disability. The one thing that I will not argue—I do not want to be misrepresented on this—is that we need to make sure that children are adequately protected. There are certain protections, for example, that are available in terms of the brief that the Children's Guardian will have. It is proposed that the Children's Guardian will have a child safe regulatory function. I am simply saying let us just avoid a fragmented, patchwork approach. Let us look at the issue from a system's point of view.

Nothing that I am saying, nothing whatsoever—I am happy to stand by my reputation on this—goes to any suggestion that I think children should be afforded any less rights than adults. Let me make the point as to why we tabled this report. Once someone turns 18 there is no Risk of Significant Harm [ROSH] reporting system. As the then commissioner, I knew that the criminal justice system alone was not going to deal with this issue. Essentially I wanted to ensure that Risk of Significant Harm reports about vulnerable adults could be made to an independent body.

The Hon. ROSE JACKSON: I wanted to ask about the issue of obtaining consent for investigation. The way that the bill is currently drafted requires consent from the person involved before an investigation commences, except when the person is incapable of giving consent or the allegation is "so serious" that consent is not necessary. What "so serious" means is obviously a little bit unclear. In his second reading speech the

Minister suggested that it would be a "high threshold". I wondered what you thought about this issue of gaining consent for investigations and whether there should be changed language, so that it is easier to commence investigations even when it is difficult to obtain consent from the person affected, or, in fact, whether you thought that it was significant to continue with this "high threshold" so that it was important to gain consent before investigations continued and to gain that balance that we are trying to strike in the legislation. It is a general question.

Ms CLEMENT-COUZNER: Stephen, do you have a view?

Ms ABIGAIL BOYD: It is a general question.

Mr KILKEARY: I would look at that from a practice point of view. 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. All those things need to be factored in to make sure that consent works. 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 will have a situation where a whole lot of honourable people will continue to be subject to all sorts of abuse. You need to have a very sophisticated approach to consent.

It is not just that. If you get, for example, a family dynamic where there is abuse occurring in a family home, again, how do you get consent in those sorts of situations? Then there are other contexts where people might have quite profound disability or limited capacity in terms of being able to put forward their views. How do you gain consent in those situations? They are challenging things that we need to look at to make sure that the most vulnerable people, who might be subject to the worst type of abuse over an extended period of time, are actually able to get the just outcomes that any other citizen would be afforded.

The Hon. MATTHEW MASON-COX: Do you think the bill strikes the right balance?

Mr KILKEARY: I think more work needs to go into it in terms of some of the language around consent. That would be my view.

The CHAIR: Do you expect the commissioner would probably work on that in the context—

Mr KILKEARY: In a procedural way and policy way.

The CHAIR: —and in the regulation.

Mr KILKEARY: Yes, I would say so.

The CHAIR: Consent is quite an evolving process, too.

Mr KILKEARY: Yes.

Ms KATRIVESIS: Can I add to that? In relation to consent, if the commissioner was to take that on board, needing to actively think about what consent means for the diversity of people with disability and people from culturally and linguistically diverse backgrounds.

The CHAIR: Absolutely, that is a good point.

Ms ABIGAIL BOYD: That is a good segue into what I was going to ask. I start by saying thank you very much for coming and giving your input and for the incredibly valuable work that you do in the advocacy sector. It is vital. In relation to consent, I note we have had a few submissions on this and I will come to you, Ms Ovens, in a moment on the phone. I note that there are a couple of places where consent is raised in the bill. One is when we have in 13 (10) under part 3 where investigations can be conducted without consent in certain circumstances. Also, in 17 (3) under part 3 there is a reference to consent being overridden in certain circumstances where an adult is to be examined.

When I read this I had concerns around the circumstances. On the one hand, there are people who may want to give consent but cannot give consent because they are feeling under duress or because they are unable to express their consent. There could be circumstances where someone would not want to give their consent but have it given for them because of, in many cases, a lack of understanding of what that person wanted. We have to weigh up and, as we say, get that balance right. I want to ask you whether the balance was right and whether you think there is a case for being more specific in relation to the commissioner needing to consider different types of disability when making decisions on consent? Can I go to you first, Ms Ovens?

Ms OVENS: That was Abigail, was it?

Ms ABIGAIL BOYD: Yes, sorry.

Ms OVENS: Sometimes I am having trouble. I think I agree, Abigail, that there is quite a difficulty when we are talking about consent. It was one that we—and when I say "we", I must say I also work with the New South Wales alliance—called out directly. Again, there is an issue that we were concerned about what is so serious, in terms of what exactly needs to be addressed in the matter of something being so serious that consent was not necessary, because we believe wherever possible we should try to gain consent. However, I also refer to PWDA's comment that it is very difficult. Very vulnerable people may not be able to give that consent or feel they do not have the right to give that consent. It is probably one of the most difficult areas to clarify that we certainly would be looking for and as to what the clarification of an allegation was so serious that it would override any need for consent.

Ms CLEMENT-COUZNER: Could I make a comment on your mention of types of disability? I would, from the perspective of People With Disability Australia, caution against listing types of disability in a bill. I think that can be quite limiting and that it can lead to problems where certain types of disability are not mentioned. I suppose what I think would be more useful—I do take your broader point and think it could be a good suggestion if types of communications needs and types of marginalisation were discussed—but, as Stephen was mentioning, the institutionalisation of people with disability in itself can form a type of marginalisation and has a disabling effect. That is one example I would give where discussing the type of marginalisation for people who have lived most of their lives in closed environments would be more useful than talking about a type of disability that they might have.

Ms ABIGAIL BOYD: I apologise for the loose words. I was not intending—

Ms CLEMENT-COUZNER: No offence taken; it was just a clarification.

Ms ABIGAIL BOYD: —or suggesting a list; I was specifically thinking of people with an intellectual disability as potentially requiring a different consideration in that context, but perhaps not.

Ms CLEMENT-COUZNER: Yes, I appreciate the thought. I think, again, the type of communication need and the type of marginalisation might be a more useful categorisation.

Ms ABIGAIL BOYD: Yes, thank you. The other point—

Ms CLEMENT-COUZNER: May I also note on a related matter? I think that one thing that PWDA wanted to raise as a concern is that nowhere in the bill does it mention that where a crime has been committed it must be reported to the police. This relates more to Ms Jackson's comments on consent earlier but I just wanted to make sure that that was noted as a concern. We have put it as a recommendation in our submission. However, it has not been raised in discussion. It is a concern we have. Crimes against people with disability are not considered with the same seriousness that crimes against people in the rest of the community would be looked at. It is really important that these crimes are considered as crimes and reported to the police, and that the commissioner has an obligation to do so.

Ms OVENS: We were expecting that—we did write in our thoughts officially—that that should be directly discussed and put into the bill: the ability for them and we need to then refer to either the commissioner or the police.

Ms ABIGAIL BOYD: I viewed the suggestion that the advocacy board include a representative from the disability advocacy sector as a favourable one. I thought that was very good. Noting the funding restrictions and issues around funding in the long term, were there any other suggestions or recommendations that anyone had in relation to the composition of that board?

Ms CLEMENT-COUZNER: It needs to include people with disability.

Ms KATRIVESIS: Minor detail.

Ms ABIGAIL BOYD: Did anyone else have a comment on that? That was a very good one.

Ms KATRIVESIS: We also note that the composition does not really identify the participation of people with disability on that board. I think that diversity of people with disability is important—meaning as a consequence of cultural and linguistic diversity, gender, sexual orientation et cetera—and that it is clearly represented.

Ms OVENS: If we are talking about everybody and taking the point—Mr Kinmond's words—I guess having representatives on that body that work across those children and adults, this would obviously enable oversight across the system to ensure that things were being picked up and delivered across the system if they were coming up in one or the other.

Ms ABIGAIL BOYD: There is no minimum number of people to be appointed to the advisory board. There is a reference to members of the board, I think broadly representing the population. What I am hearing from you is you would support more specifics around the composition of the board to include people with disability.

Ms CLEMENT-COUZNER: That is correct. If I could be more specific, our view would be that at a minimum it should include a majority of people with disability, regardless of the number of advisers on the board.

Mr KILKEARY: Yes.

The Hon. BEN FRANKLIN: I have one issue to raise and that was Mr Kilkeary's comment about there being significantly different issues to be addressed in rural and regional areas. You talked about the need for physical presence, noting the tyranny of distance, I assume.

Mr KILKEARY: Yes.

The Hon. BEN FRANKLIN: Can you comment on the other specific issues that you think are interesting or different or worthy of noting and addressing in rural and regional areas? The other panel members may wish to comment as well.

Mr KILKEARY: One of the critical issues that people are probably aware of is just the lack of services in rural, regional and remote communities.

Ms OVENS: I cannot hear Mr Kilkeary at all.

Mr KILKEARY: One of the issues is the lack of services in rural, regional and remote communities. Also that means in many instances things are very tightly knit. For example, there is one service provider and if they are responsible for abusing someone in a particular context, who then takes up that issue? It is a lot easier, in some ways, being in a metropolitan region because there is a wider expanse of services and there is greater access to government agencies, et cetera. We would hope if the commission was able to have a presence in rural, regional and remote areas, then they would be on the ground and they would be aware of the local community, the local service system, some of the dynamics, some of the politics and then be able to investigate accordingly.

That sort of presence, as well as an outreach function, would be really important. Otherwise what happens is these things can go on—in many cases for many years, if not longer—and not be addressed because there is just no-one to blow the whistle on what is happening and there is that small town phenomenon. There are also discrete local community issues as well around particular groups of people that would need to be addressed. We see, for example, some of the bigger institutions that are further away from town. Those things can be very difficult to deal with when abuse matters are raised and take a long time to address.

Ms CLEMENT-COUZNER: May I also comment that the lack of services in rural and remote communities—the jargonistic term now is thin markets—can itself become a driver of neglect. Given that neglect is part of the purview of the commissioner and the commission, I think that is a really important issue for the commission. It goes to your question about what would be important or interesting about having an office in a regional or remote area.

The Hon. BEN FRANKLIN: Does anyone have any other suggestions about what can practically be done other than the establishment of a physical office?

Mr KINMOND: Having spent the last couple of days in Bourke—I was 20 years working with rural communities, Aboriginal communities and so on—my view would be, first of all, yes, we do talk about thin markets, but there are services out there and it would be neglectful if we did not ensure that service providers were well versed in this legislation and their responsibilities relating to this legislation. If you think of the genesis of the evidence in relation to this matter, we introduced the Reportable Incidents Scheme in New South Wales. Service providers then woke up to the issue of abuse and neglect and the need to report it. They started reporting to my office matters relating to the abuse and neglect of people in community settings because they knew it needed to be dealt with. What we can ill afford to do with the rollout of this proposal is to have a situation where we have disability service providers and health service providers and other service providers – if you look at Bourke, it has got a lot of service providers; it might be a different challenge at Weilmoringle – you will have to have very strong networks with Aboriginal communities and key community leaders, and this is going to have to be embedded in their thinking. They are going to have to see this as everyone's responsibility and they are going to have to know who to report it to.

The other issue is a very important one that Mr Kilkeary has raised—the question of physical presence. There are two ways of dealing with that. You either have full-time staff across the whole State, and that is never going to happen; alternatively, you are street smart and you engage a number of panelled people who have got the right skills and they have got a brief then. They are not working necessarily full-time but they are well-credentialed people who have a passion for serving their community. You have got the good skills, right commitment and they are to some extent the representatives of the commission out and about. You build on social capital as well as existing skill base. That needs to be done systematically by the commission. You will lower your costs and, more importantly, you will get traction at the community level. That has to be systematically planned and delivered.

Ms OVENS: If I could continue from Mr Kinmond's point, it would also be good for you to use the local community advocacy sector. That is the independent advocacy sector that generally works with these people in the first place and are on the ground already. They are able to do quite a lot of that, not specifically as part of the commission but obviously very much the infrastructure that is in place and can be used to assist.

The CHAIR: There are a lot of submissions supporting the expansion of the commission's remit to include children, and there was an amendment to the bill presented in the lower House. You submit that it is not the right time to do it. You obviously support the focus on children as well but it is not the right time to do it in the bill. The Children and Young Persons (Care and Protection) Act covers children. You mentioned the Children's Guardian and of course there is the Department of Family and Community Services.

Mr KINMOND: The Ombudsman also has responsibility under the Community Services (Complaints, Reviews and Monitoring) Act for reviewing the delivery of community services. The Ombudsman will still retain oversight responsibility, including children with disability. Let me say again that what I am not doing today is coming to this Committee and saying it will be fine for kids with disability. I am not saying that at all. What I am saying is this issue needs to be looked at, but first of all these young kids with disability are children. They are children first and they deserve the same rights and protections as other children and we need to strengthen the system in that regard.

Coming from my experience—I do not think I will get any objections from the department—we need to strengthen the system in terms of protecting children. For example, we think the commission is going to address that issue; I do not think it will. We need to look at strengthening that system. Let me put my Association of Children's Welfare Agencies hat on. My non-government member agencies need to play a roll in that regard. Let me refer to the wonderful advocacy sector. We need to be held to account by the advocacy sector, both my sector and also government agencies, to improve the services to kids with disabilities. My worry is if we think that if we camp this significant responsibility in the new commission, then we will potentially delude ourselves—problem fixed. It will not be fixed. It is a big issue.

The Hon. MATTHEW MASON-COX: I agree with you strongly. I think you are absolutely on the money. The issue of child protection is a wider issue, which needs a lot more analysis and work to ensure the system is much more effective. Returning to advocacy, you have pointed out the importance of advocacy in the context of the bill, as have a number of witnesses. It is embedded in some of the clauses of the bill in terms of the interrelationship between advocacy support services and the commissioner, particularly in relation to training, getting the message out, reports and things of that nature. The reality is we have an advocacy system in New South Wales that is not consistent or available across the State. I would like your comments on where the shortfalls are, what the adequacy of the current funding pocket is and where you see areas that we can improve in that regard?

Ms CLEMENT-COUZNER: I am wondering whether Serena might have any comments on this? I am conscious there is a danger of forgetting that she is on the teleconference and she does convene the alliance.

Ms OVENS: Mr Mason-Cox, thank you. Our work for the alliance and also as the Physical Disability Council would suggest that you are right at this point in time. We feel that there is probably at least a 30 per cent to 40 per cent lack of services in support. Certainly for most of our organisation, and even part of the alliance more broadly than that, we are not able to meet current needs. We have waiting lists of three- to six-months long. Others can tell you what that looks like. Of course, like anything, in rural and regional areas there is always a very limited amount of advocacy support. Although, having said that, Disability Advocacy NSW has quite a broad remit across the State, but when you are talking one advocate who might work from Broken Hill all the way through a major electorate that can extend to a six-hour drive in any direction, and trying to manage what could be very vulnerable cohorts and mixed issues, when it comes to people of Indigenous backgrounds as well, we certainly can do better. In actual fact as we have been talking to government all the way along it would suggest that they would need to increase their advocacy support as opposed to defund.

The CHAIR: Thank you for appearing before the Committee today. The Committee appreciates the submissions that have been made and the evidence that has been given. We also appreciate the advocacy work you all do in the community sector. No questions were taken on notice. I note the short notice you were given about this inquiry. It was a decision made by the House, not this Committee, in order to get the legislation in the Chamber enacted before 1 July 2019.

(The witnesses withdrew)

KATHRYN GREINER, Chair, Ministerial Advisory Council on Ageing, NSW Retirement Village Ambassador, and Chair, Lifestart, sworn and examined

EILEEN BALDRY, Deputy Vice-Chancellor Equity Diversity and Inclusion, University of New South Wales, affirmed and examined

The CHAIR: Welcome. Would one or both of you like to make an opening statement?

Ms GREINER: As the Chair of the Ministerial Advisory Council on Ageing [MACA], as well as the NSW Retirement Village Ambassador, my focus is to make sure that the Government is kept aware of the changing needs of older members in our community—whether it be for those who age in place, in their own home, or those who choose to age in a retirement village, a community environment. As Chair of Lifestart, a disability service provider, I am also aware of the responsibilities we have as a society to our disabled. To be clear, Lifestart does not operate in the accommodation area; rather we are about facilitation of disabled children into mainstream structures in our community. We would hope that we prepare the children and families to see a future of integration, with as much assimilation as possible. The likelihood is that the children we see today will be the residents of group homes in the future. The provision of safety and security for both elderly people and disabled in their home is critical. We already have evidence from the elder abuse inquiry which brought to light issues of care and protection of the most vulnerable who are sexually, socially and financially at risk, even in their own homes and, often times, from within their own family.

Be very clear about this: Abuse is most likely to happen within the family by somebody who is known to the victim or very close to the victim. As a society we talk a lot about rights but we abrogate our responsibilities to the most vulnerable when we do not accept our responsibilities to protect them. There are safeguarded organisations in the community—the NDIS Quality and Safeguards Commission, the Ombudsman and the Health Care Complaints Commission. But they deal in areas outside of the home and it is in the home where most of the abuse occurs. Those other agencies have no powers to stop familial abuse. The position of the Ageing and Disability Commissioner provides that protection. It is groundbreaking legislation and the New South Wales Government is to be highly commended for this action.

Professor BALDRY: I echo Kathryn's views. One of the key things the Disability Advisory Council has in its sights is the 90 percent of people with disability in New South Wales who will not receive or are not going to receive an NDIS package. We are aware that this legislation is extremely welcome at this point because that group of people will go through mainstream services. It is both mainstream services and in the home that we are particularly concerned about the group of people who are the most vulnerable to abuse, neglect and violence—those who have cognitive impairment and those who have serious mobility problems. In the end that is the majority of adults who have disability. As the Deputy Chair of the Disability Advisory Council and out of my research as a social science researcher looking at disability, like Kathryn, I commend the position of Commissioner. I commend the Government for putting this up and that it goes through Parliament. But there are a number of things that I hope we will be able to clarify as we go through this hearing that I would like to comment on.

The Hon. DANIEL MOOKHEY: Professor, what would you like to comment on?

Professor BALDRY: It is not absolutely clear to me in the bill that the remit is anywhere and I think this carries on from what Kathryn has just said. It is implied that the Commissioner has the remit to investigate and address abuse and/or neglect of people with disability and people who are ageing anywhere and then to send it on if it is not in the particular remit of the Commissioner. Firstly, I would like to know whether there is something that should be added to make it absolutely clear that the remit is absolutely across the whole of community. Secondly, I would like to pick up from a little earlier when Steve Kinmond was talking and to clarify where the Ombudsman now sits in relation to this. Thirdly, the very last sentence in clause 13 states:

> The Commissioner must obtain the consent of an adult with disability or older adult in order to conduct an investigation into an allegation of abuse, neglect or exploitation of the adult, except in certain circumstances.

I would like to know who makes the decision about what an exceptional circumstance is? I am quite aware of what that could well be.

The Hon. MATTHEW MASON-COX: Are you referring to clause 13 (10)?

Professor BALDRY: On my page 3 of the bill, the very last paragraph just above clause 14, "… except in certain circumstances".

The Hon. BEN FRANKLIN: Page 7 of the bill outlines those circumstances.

Professor BALDRY: I am sorry I did not have that in my package.

The Hon. BEN FRANKLIN: Clause 13 (10) states:

(a) the adult is incapable of giving consent, or

(b) the allegation is so serious that it is not necessary to obtain consent, or

(c) any other circumstances prescribed by the regulations exist.

Professor BALDRY: It is in the opinion of the commissioner but in what way does the commissioner get that knowledge? Anyway, I just raise that as a question. Then I have a further question about advocacy. It is excellent to see that the bill allows or gives the commissioner an advocacy role and to hear advocacy, but I would point out that in the case of disability the major local New South Wales advocacy organisations may not be funded past 2020 because of the shift of money to the NDIS. Those are questions that I would like to raise.

The Hon. DANIEL MOOKHEY: Ms Greiner, you are NSW Retirement Village Ambassador?

Ms GREINER: That is correct.

The Hon. DANIEL MOOKHEY: That is a New South Wales Government appointment?

Ms GREINER: Yes.

The Hon. DANIEL MOOKHEY: I understand that you were appointed in the aftermath of some public controversy to do with some aspects of retirement homes. To what extent do you think this commissioner will be of assistance in helping to remediate and rectify some of the issues that have emerged?

Ms GREINER: My position came about following the inquiry that I led in 2017 into the retirement villages. That resulted in 500 submissions being received and 643 retirement village residents being at community consultations up and down the State. As a result of my recommendations to the Government they created the role, which I did not create. I did not create the role of the ambassador but in improving the Retirement Villages Act, which is not an issue for discussion today, that was how this issue came about—and you are absolutely right, the whole thing fell out from adverse media.

As I understand the role, the Ageing and Disability Commissioner has the power of entry into the private home. So if you are in a retirement village then it means you have the entry into their private home, whether it is the private home of orientation or whether it is the retirement village. If you can imagine that as an ageing member of the community, people live in the family of orientation so they live in the broader community, they live in a retirement village or they live in aged care. We do not get any connection into the aged care; that is dealt with by the Commonwealth and the Commonwealth laws. So this commissioner, as I understand the role, is the only one who will have the power of entry into the private home.

The Hon. DANIEL MOOKHEY: Does this commissioner have the power to compel production of documents by retirement homes and the power to effectively vary retirement contracts? Should the commissioner have either of those two powers?

Ms GREINER: No. The commissioner's role, as I would see it, would not necessarily be engaged in the legal contractual relationship between the retirement village operator and the resident.

The Hon. DANIEL MOOKHEY: So to the extent to which a resident of a retirement home is able to receive redress, be it apropos of circumstance that it did attract great public controversy, they would still have to pursue that redress either by a direct amendment through the operator or through the court system. Is that correct?

Ms GREINER: Yes. We have actually addressed that in the inquiry and the recommendations and the changes that we have made. It is not a contractual relationship; it is not the Government's role to intervene in the contract between the individual resident and the operator but what we have implemented, for example, is an annual contract check-up so that the resident and the operator can go through the contract together.

The Hon. DANIEL MOOKHEY: But what you are describing is akin to a consumer law approach?

Ms GREINER: That is exactly right and it sits in the Office of Fair Trading. It is about consumer protection and it is about ensuring transparency and clarity; they are the two key drivers that we are trying to get into the industry.

The CHAIR: So in the elder abuse inquiry in which I participated I was surprised that the major area of abuse turned out to be financial?

Ms GREINER: Yes.

Professor BALDRY: Yes.

The CHAIR: I am not putting words into Mr Mookhey's mouth but I think he is getting at the financial abuse that could be occurring in the institutions as opposed to the family members?

Ms GREINER: I do not believe that is the commissioner's role. The commissioner's role, as I understood it in the legislation before the House, is the only time that you actually have somebody who has power of entry into the individual's home to completely investigate allegations of abuse. That is a quite different role.

The Hon. DANIEL MOOKHEY: What I am asking is whether or not the commissioner ought to have additional powers to be able to undertake the additional work because of course it is uncontested that the bill does provide the commissioner with the powers of entry. I am asking whether or not really, given the magnitude of public reporting that we have heard about this particular issue, that is adequate for the task of what we are trying to do here, which is prevent people in retirement homes from being abused, financially as well as physically.

Ms GREINER: My response to your question is that the abuse occurs in the original signing of the contract and it is in the Retirement Villages Act to be amended—which is work in progress—so that the contractual relationship changes. So coming back to your question, the answer is, to my view, no, I do not think the commissioner should get engaged in the contractual relationship between the retirement village operator and the individual, which is where you start to see areas of, not so much abuse—what the commissioner is actually looking at is the son or the daughter coming in, and mum or dad is slightly demented and they get them to sign on the dotted line and sign the family home over to them. That is the financial abuse that we are trying to stop here with this bill, I would have imagined, and that is certainly what we hear through the MACA at other times. I have not heard any of that in the retirement village, but that has not been an area of my inquiry, not surprisingly. The abuse that we are trying to stop by having the clarity of the role to actually go into the home, pursuing the appropriate processes, is to try and stop the financial abuse of individuals.

The CHAIR: Ms Jackson, do you have a quick question?

The Hon. ROSE JACKSON: No, thank you.

Ms ABIGAIL BOYD: Thank you both for your detailed and considered submissions. I have a question first for Ms Greiner. The Government can correct me if I am wrong but in this bill the Community Visitors Scheme only applies to those with a disability. Can it be extended to older people as well and. if not, is that because it is governed by Commonwealth provisions?

Ms GREINER: No, I do not think so. I do not see any reason why it could not be. The answer to your question is I am not sure whether that does not already exist elsewhere for the community visitor to be in the home of the elderly person. My thinking along this way is: How would this play out? It plays out because perhaps a carer or a visiting nurse or the chiropodist who comes into the home is worried that there is abuse going on and would lay a complaint with the commissioner, who then would investigate. The Community Visitors Scheme, I think, would work very well with the disabled because they will be in their own home—the home of the family orientation—or in a committee group home or indeed living on their own, depending on their disability and their needs. There is no reason why it could not be extended to the older person but it may just put an increasing impost on the cost of the program.

Ms ABIGAIL BOYD: I think that is interesting because obviously there is going to be some overlap between older people and people with disability, and I worry about the gap there. If it is possible to put the Community Visitors Scheme subsuming whatever is currently in place, to me that would seem to make sense. Professor Baldry, you raised the issue of consent and it is something that I have also been concerned about. I know there are different models for this in different legislation around Australia and the rest of the world. I am concerned by what could be prescribed in the regulations but also the definition of what is so serious.

Were you also concerned about clause 17 (3), where a person executing warrant, if they are accompanied by a health practitioner, then the health practitioner may examine the adult without the consent of the adult concerned. When I read that I was concerned in two ways: that at times consent might not be given because of duress. Perhaps staff are in the area but also you can imagine a circumstance where someone does not give consent because they are unable to communicate that they do not want to do it in front of a certain person or whatever. Do you have an opinion on that provision?

The CHAIR: Can I just clarify that? The way I read that it says "with the consent of the adult concerned" not "without"—the last sentence of subclause (3)

Ms ABIGAIL BOYD: Have I got the wrong section?

Ms GREINER: With the consent of the adult, examine the adult, yes.

The CHAIR: With the consent?

Ms GREINER: Yes.

The CHAIR: It goes on about what consent means, of course?

Ms GREINER: Yes.

Ms ABIGAIL BOYD: Sorry, I may have the wrong provision.

Professor BALDRY: Can I just make the comment, though, in general about consent and persons with disability that we are, to some extent, at the beginning of some really, really good work in Australia and elsewhere in the world on supported decision-making. One of the reasons I raised the issue about consent is certainly there are circumstances in which an adult with a disability cannot make an informed consent for various reasons but we should do everything in our power to ensure that someone has the capacity to consent or not. I would just commend to the Standing Committee on Social Issues and to the new commissioner to have someone look really carefully at that new work because it is having great success, and I am particularly aware of this in the criminal justice area where people with cognitive disability are assisted via supported decision-making and there are ways to do this.

The CHAIR: That has been mentioned in evidence given earlier today as well.

Professor BALDRY: Right.

The CHAIR: Regulation (c) says "… and any other circumstances prescribed by the regulations", which refers to consent. I expect the commissioner would be very involved in contemporary up-to-date consent methodology and that would be embedded in the regulation. Of course, the House can review and disallow regulations at any time.

Professor BALDRY: Yes.

The CHAIR: Please continue.

Ms ABIGAIL BOYD: To clarify: You are correct. That is the section I was looking at but I have misremembered my comment on it, which was that there is no ability to get that consent without it being given. If there is a situation where a person is being asked for their consent but, for example, that person is under duress from someone else in the room, it will not be possible to get that consent.

Professor BALDRY: It will not be possible to give consent, yes. I am sure that this will be part of the development of the commission's role—to develop these capacities—but I think it is really important to highlight those things.

The CHAIR: Cohesion, yes.

The Hon. TAYLOR MARTIN: Ms Greiner, I wish to ask one quick question. You raised the instance of financial abuse, which can happen not infrequently. In your experience, how do you find it is currently dealt with in instances such as the example you gave?

Ms GREINER: There are some examples where banks raise the question because they can see inappropriate transfers of money. In other cases, other family members start to question. You know, they might see the transfer of funds to another family member and see the evidence of that. But in a lot of cases it does not get discovered until either the will is read after the person dies or the person has gone into aged care, a further central point of care. There has been no mechanism whereby anybody can reach the victim earlier in the process.

Professor BALDRY: This can happen also with people with disability who are younger than aged and entering into the aged sector. It is a very fraught area. People can be stood over. People who have acquired brain injury at some point—in their forties or whatever—can be stood over. They may not be under the NDIS; therefore there is no equality. I think this is a really important area.

Ms GREINER: You have to understand that the NDIS is a middle-class construct. The NDIS works when you know what the disability is and what your child or the young adult may need. It fails the families if they are new to the disability area, and fails them dismally. But the issue that I just want to pick up on, and that Professor Baldry just raised, is that in the disability space where we have seen that direct evidence is more in the Indigenous space.

I do know there was one particular bank at Uluru that now insists that all of the aunties come in to withdraw $300. An auntie has no idea what $300 really looks like but she has got the nephew or the son in tow.

Now the banks have taken action to stop that and they have auntie sit quietly and say, "Explain what is it that you need to do with this money before we give it to you?" No family members are allowed to come in. There are organisations in the financial services industry that are becoming aware of the issues. It is this kind of position that will have an educative role as well by educating more people in the financial services sector to be aware of what is going on.

The Hon. Matthew MASON-COX: Ms Greiner, I wish to address the "middle-class construct". I am interested in that type of terminology, particularly in the context of your statement that the NDIS is failing people who are new to disability. Maybe you can expand on that, particularly the role that advocates play in introducing somebody who has entered the world of disability, how they navigate that system and how that relates to the role of the Ageing and Disability Commissioner.

Ms GREINER: I think we are getting into the NDIS plan management program, which is to one side. Where the role of the commissioner will become very important is where the individual is in care outside of their own family home—for example, a group home. The commissioner will become, if you like, engaged with the young adult. The NDIS local area plan manager, as we are seeing at the moment, may or may not accept the disability or the requirement of the child with disability to have a particularly expensive wheelchair and will not put that into the plan. If you expand that up to the adult who is there on their own in a group home, you need the commissioner to have capacity to not only be part of the advocacy program—and the advocacy will come from other areas as well—but also hold the power to be able to enter into the home and ensure that the individual is receiving the care that they need.

What the NDIS does not do is fund family support services that assists families for whom English is not the first language or for whom the disability is very new, or who are slightly dysfunctional in their own right. We know that there are those families in our broader community. In days gone by, before the State Government abrogated its entire responsibility to disability services, there were family support services and we do not have that in the NDIS program. There are lots of gaps. Your colleague expressed concern about people not falling through the gaps. It would be the same, I think, with disability services. We have to make sure that those who do not have other adults around them to care and protect them do not fall through the cracks.

The CHAIR: Only one minute remains for taking your evidence, but I will ask for quick feedback on the recommendation by a number of submitters that the commissioner have the ability to conduct public hearings with powers that are almost similar to royal commission powers. How do you feel about that proposal?

Ms GREINER: 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.

The CHAIR: Would you say it would be institution-based abuse as opposed to a private home unless there was a broad epidemic involving private homes?

Ms GREINER: I would have seen it more in the educative role, which the commissioner will have, and the advocacy role that the commissioner would have.

Professor BALDRY: 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.

The CHAIR: Your evidence has been helpful input. Unfortunately, our time for this session has expired. We are running a little late. There is a lot of information to unpack. Thank you for coming in today. There are no questions on notice because this is a quick one-day inquiry. The Committee appreciates you making time in your busy schedule to share your knowledge and experience and work with us. Thank you very much.

Professor BALDRY: Thank you.

Ms GREINER: Thank you.

(The witnesses withdrew)

ELENA KATRAKIS, Chief Executive Officer, Carers NSW, sworn and examined

MEAGAN LAWSON, Chief Executive Officer, Council on the Ageing NSW, affirmed and examined

RUSSELL WESTACOTT, Chief Executive Officer, Seniors Rights Service, affirmed and examined

CRAIG GEAR, Chief Executive Officer, Older Persons Advocacy Network, affirmed and examined

PAUL VERSTEEGE, Policy Manager, Combined Pensioner and Superannuants Association, affirmed and examined

The CHAIR: I invite our next panel of witnesses to come to the table. The Deputy Chair, the Hon. Daniel Mookhey, will take over for a short time as Acting Chair.

The ACTING CHAIR: The power will go to my head! I welcome our witnesses and thank them for joining us today, particularly at such short notice. I invite our witnesses to make opening statements. I am reminded by the secretariat that, unlike our rather slothful Chair, I am to hold everybody to a two-minute limit for opening statements. If you would be kind enough to try to limit your comments to two minutes, it would make for a fine hearing—and Mr Mallard would learn from the discipline! I invite Ms Katrakis to begin.

Ms KATRAKIS: I speak on behalf of Carers NSW. Just to clarify, Carers NSW is the peak non-government organisation for carers in New South Wales. A carer is any individual who provides care and support to a family member or friend who may have a disability, mental illness, drug and/or alcohol dependency, a chronic condition, a terminal illness, or frailty. Sometimes the term "carer" can be misused and can be referred to when we are talking about paid care workers. We are not talking about paid care workers here. In Australia there are 2.6 million informal family carers and just over 900,000 informal family carers in New South Wales.

Carers NSW welcomes the establishment of the commission. We acknowledge the important gap it is addressing but there are a couple of issues that we would like to raise from the carer perspective. Given the short time frame that we have had for this, we have not been able to consult with carers directly, so what I am saying is based on—

The ACTING CHAIR: Your expertise.

Ms KATRAKIS: Yes, and our expertise and some of the engagement we have had. The key issues we want to raise are the scope of the bill with regard to age and diagnosis, the importance of carer inclusion and support and the need for a robust education and communication strategy. On the issue of definition, the bill defines disability with reference to the New South Wales Disability Inclusion Act 2014, which includes long-term psychiatric impairments but which may unintentionally exclude people living with shorter-term or episodic mental illness who do not qualify as having a psychiatric disability. We believe that all people living with mental illness and their carers should have access to the commissioner because they may not be adequately covered by mechanisms within the New South Wales Mental Health Act.

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 worked 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.

The important thing I want to say is that in some of the discourse around elder abuse and disability safeguards the term "carer" has often been associated with and interchanged with the term "abuser". There are many family carers who do a fantastic job. I think there is a very fine line between what is happening and the abuse, neglect and exploitation of people. I would hate all carers to be put in that basket. In saying that, often carers could be the perpetrators of abuse and neglect. The important thing is to think about the supports that families need and to make sure they are getting those supports and that the referral pathways to and from the commissioner are clear. Carers NSW would be happy to work with the commission with regard to carer support and getting that messaging and communication strategy right.

The ACTING CHAIR: If you wish to table your opening statement, you are welcome to do so.

Ms KATRAKIS: I have written on it and I did not bring another copy.

Ms LAWSON: The Council on the Ageing [COTA] NSW is a not-for-profit consumer-based organisation. We have been working with older people since 1956. We spend a lot of time speaking to all kinds of older people around New South Wales. We talk to them about their needs and concerns. Elder abuse is an issue that we have been speaking about for some time. We thank the Committee for the opportunity to speak today, even with the very short notice. The introduction of the bill and this commissioner are welcome steps. We support the establishment of the commissioner and the measures being introduced to reduce the abuse or neglect of older people in New South Wales. The establishment of the commissioner answers recommendation 11 of the 2015 inquiry into elder abuse and brings New South Wales in line with other jurisdictions in providing investigative powers to an independent statutory officer.

However, COTA has concerns about the combined role of the commissioner. The conflation of issues of older people and adults with a disability is rarely helpful to either group. There is established evidence of the complex support needs of both groups and there is concern amongst many that the needs of older people will be lost in this arrangement. We support the calls of other organisations in separating the role into two separate roles, providing the opportunity for a single focus on each group of people. However, this is a role that has been missing in New South Wales and it demonstrates that this issue is now being taken more seriously across government.

COTA also appreciates the efforts to coordinate across jurisdictions and the work being done between the State Government and the Federal Government to ensure a smooth and seamless process for older people. We have some recommendations and clarifications that we feel will assist in tightening the powers of the commissioner, including ensuring the independence of the commissioner and that the commissioner has the power to hold public inquiries to address systemic issues that impact or give opportunity for the abuse of older people. It is also imperative to ensure that the agency of older people to make decisions about their own circumstances is respected in this process. Determining the competency and capacity of people is complex and priority needs to be given to the older person to make their own decisions.

Mr WESTACOTT: Given the short notice, I did not have much time to put something together formally. I will give some background for the Seniors Rights Services so that people around the room understand who we are and what we do. Seniors Rights Services has been around for about 30 years. We are probably the country's leading rights-based organisation. Although that said, we are a New South Wales-focused organisation. I say we are one of the leading rights-based organisations in the country because in one year we provide 3,000 legal services to older people across the State. We also provide 3,500 aged care advocacy services to recipients of Commonwealth-funded age care services who reside in New South Wales. We also travel the State and do awareness raising events on the rights of older people and conduct more than 800 of those events every year. We have about 28,000 to 30,000 people coming to those events. We are a busy organisation of just 30 staff. The organisation is regarded as an organisation for people who are trying to understand what their rights are. Within our legal service we also have a retirement village legal service that specifically offers advice on residents of retirement villages and what their rights are.

Our main office is in Sydney. We have regional offices across the State—Port Macquarie, Nowra, Wagga Wagga, Dubbo and Lismore—and they have only just come online over the last couple of years. So the organisation is in a period of growth, which adds a whole lot of complexities for us in terms of service delivery. As the organisation gets better known, more people are coming to our organisation for services, and those people who are coming to us are presenting with much more complex cases and we do not necessarily have the resources to assist those people with very complex cases. If they are going to our legal team, for example, the solicitors can help them with their legal need, but they do not have the capacity to help them with other social issues that are going on in their lives.

Just as a matter of fact for this group, I am also co-chair of an organisation called Elder Abuse Action Australia. It is a relatively new organisation and is funded through the Commonwealth Attorney General's department. That organisation has only really been in existence for less than a year. It will be taking hold and there will be more members joining that organisation in the year ahead. I also want to make a point that Seniors Rights Service hosted the 5th National Elder Abuse Conference here in Sydney in 2018. That was a very successful conference—we got 570 delegates from around Australia—and it was also a very good opportunity for us to lobby both State and Federal counterparts around elder abuse and how to better respond to elder abuse.

At that conference the Commonwealth Attorney General, Christian Porter, announced that there would be a national plan addressing the rights of older people and elder abuse, and that plan was released several months ago. We have some concerns about that plan, that is, it is a bit light on. But, nonetheless, we hope that the evaluation mechanism that is built into that document makes that plan useful into the future. To that point, with the setting up of the new commission here in New South Wales, from the Seniors Rights Service perspective, it is great to have a meeting like this and to hear some of the issues and concerns that key stakeholders have. But one of the things that I personally think is essential to any commission that is being set up is that there are mechanisms for review and evaluation so that the commission can fine-tune itself in the course of its lifetime.

The final point that I would like to make is on part 3, Functions of Commissioner, and clause (d), which says, "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". I will not speak too much about that right now; I would like to come back to that point a little later on. But what I would say is that with the royal commission into aged care what we do know is that older people very much shy away from going to government-run services or to a government statutory arm such as the commission. They very much prefer to go to a community-based organisation. I have concerns that the commission seems to be offering what might be some sort of service delivery and I personally do not think that is the role of the commission. But we can come back to that later.

The CHAIR: Mr Gear?

Mr GEAR: I am the CEO of the Older Persons Advocacy Network [OPAN]. We are the peak organisation for the nine members in different States and Territories, which provide aged care advocacy under the Aged Care Act. We receive a grant from the Commonwealth Government to provide those services. Aged care advocacy is the person that walks alongside an older person and takes direction from the older person as to what they want in relation to issues, and also in prevention of elder abuse. The Older Persons Advocacy Network funds members such as the Seniors Rights Service to have aged care advocates undertake that important role in relation to aged care but also in relation to the prevention of elder abuse in the community. OPAN has developed a national elder abuse prevention and support framework which influences our work and is based on best practice models in South Australia and Western Australia.

The concerns we have in relation to the bill, first of all we would state that we want to promote the rights of older people for choice, control, respect and dignity and that any act or any commissioner or commission needs to be able to respect those rights and promote those rights. We are also very much in support of preventing elder abuse in all its forms. The lack of a definition of abuse, neglect and exploitation explicitly in the definitions is of concern because through our work over a number of years clarity around those definitions and what could be perceived as abuse, neglect and exploitation varies. So we were suggesting, similar to the South Australian safeguarding bill, that there is a definition contained within this, helping with those parameters. We have concerns, as COTA NSW mentioned, around capacity and consent issues, that they need to be very much clarified and we would like to see them explicitly defined as part of what the regulations are.

Also existing is the Aged Care Quality and Safety Commission at the Commonwealth level, which needs to interface with this legislation. While the National Disability Insurance Scheme Act is mentioned, the commission and commissioner bill in relation to the Aged Care Quality and Safety Commission is not explicitly mentioned here. We support that all people who would be in contact with this commission do need access to independent aged care advocates to be able to support them in their interactions with the commission and that the interfaces with the commission should be at the direction and consent of the older person. Thank you.

The CHAIR: Mr Versteege?

Mr VERSTEEGE: The Combined Pensioners and Superannuants Association [CPSA] is a systemic advocacy organisation; we do not provide individual advocacy. We support the establishment of the office of an Ageing and Disability Commissioner, particularly in light of the fact that ageing policy and disability policy has moved to the Federal jurisdiction, and this has created a lot of potential gaps and actual gaps in service delivery. Being a systemic advocacy organisation we do not get a lot of people ringing up with stuff that we can help them with; we usually refer them on to places like Seniors Rights and other places. But we do receive from time to time calls from people who clearly are themselves the victims of elder abuse or know of somebody who is the victim of elder abuse and are concerned enough to ring us. To date there has been no place for us to refer them to, particularly if this person just simply lives in the community. Obviously the plight of the person who is ringing up is a lot more serious than the plight of a person in CPSA who does not know what to say to these people. But the creation of the office of the commissioner is a great initiative.

I would like to highlight what may appear detail; it is in one of the schedules. The bill proposes to exempt the office of the Ageing and Disability Commissioner from the Government Information (Public Access) Act. We cannot stress enough how bad an idea this is. The FOI Act has sufficient and strong exemptions available to government departments and agencies and it does not require a blanket exemption from the information it holds.

The Hon. ROSE JACKSON: I wanted to ask about a point Ms Lawson raised about the conflation of issues to do with older Australians and those with a disability. Obviously this does lump ageing and disability into the one commission. There are concerns raised about those circumstances. There are clearly different issues that those two different groups experience. There is some overlap. When we proceed in this way often it is the issues of older people that can be sidelined because of the pressing and serious and substantial issues that people with a disability face and the broad range. Does anyone have a view on that?

Mr WESTACOTT: I am happy to make comment. I agree with Ms Lawson's words on that issue. From our perspective, Seniors Rights Service, we think the two items should be separated because ultimately one of those items will get more focus to the detriment of the other. It may well be, as you put forward, the disability component. I want to give some anecdotes on this particular issue. When I have talked to a lot of my counterparts in every State and Territory, which I do on a regular basis and I have been talking about the new New South Wales commission, the number one thing I get back from high-level and influential people from other States and Territories is, "Why have they bundled the two things together?"

The Hon. ROSE JACKSON: Did anyone else want to add anything on that point?

Ms LAWSON: Under the elder abuse inquiry there was a very clear recommendation to have these kinds of powers established specifically for older people. I do think it could go either way. I just do not think it serves the needs of either group to lump them together. I think there are quite distinct needs. There is certainly overlap but they are quite distinct needs and should be addressed separately.

Mr GEAR: We agree.

Mr VERSTEEGE: We agree with that. There should be no competition between disability complaints and ageing complaints. At the same time, in Australia we have a very diffuse care system: disability care, aged care, general health care, dental care. There are four different systems that are not well integrated. Even though I recognise that you do not want a competition between ageing and disability it would be good—perhaps the commission is not a starting point—to look at how these various health systems can be integrated because the vast majority of people that would come to the attention of the commissioner would in some way be dependent on one or more of those systems.

The Hon. ROSE JACKSON: The next question I had relates to the independence of the Commissioner. It is relatively ambiguous in the legislation the extent to which the commissioner is under Ministerial direction or has capacity to appoint their own staff. It is quite clear that the advisory board is appointed by the Minister and can be relatively easily dismissed by the Minister. I think a number of you may have mentioned it and it is in a couple of submissions, but does anyone want to indicate to the inquiry why you think it is important that there is independence in the commissioner, staff and advisory board from the Minister? Do you want to bring to our attention any reasons why you thought that was important?

Mr WESTACOTT: The independence is critical because it allows people to make complaints or perhaps even provide positive feedback and those things not getting lost in community-based organisations who might be providing services or lost through the Minister's office. It is independent of both of those things. That is the only point I would make.

Ms LAWSON: 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.

The Hon. ROSE JACKSON: My last question relates to something that Mr Westacott raised which was about the provision of the commissioner's services more broadly in regional and rural New South Wales. This is not necessarily something that we could capture in the drafting stage of the legislation. As you are here and it was mentioned earlier I thought it might be useful to get some feedback on the particular challenges in the provision of the commissioner's services and some of the experiences that the people you have worked with have had that are specific to regional and rural New South Wales. Do you have any views about how the commission might ensure that those people are able to access the level of support that people in the metropolitan areas are able to access?

Ms KATRAKIS: We have delivered services statewide and have regional offices as well. The dearth of services in regional areas is astounding. To make sure there is access, that people are able to report and access the commissioner is vitally important. How you do that I am not sure. I do not know whether you could have investigators co-located in different regional areas. That then comes back to the communication strategy and whatever goes with the rollout of the commission and the commissioner's office to ensure that rural, regional and remote communities are able to access, know where to refer and know the access point. There are so many different complaint mechanisms within the State and country. Wherever people go there needs to be a "no wrong door" approach. Whether they are in Wagga Wagga or Broken Hill, or wherever they are, if there are issues of abuse, neglect and exploitation they need to be able to refer them and they need to know where to go. I am not sure how to do that but it is critical.

Mr WESTACOTT: To elaborate on the point I made earlier. Seniors Rights Services serves tens of thousands of people right across the State, from Broken Hill to Byron Bay, Bega to Bourke. It literally crisscrosses the State. We see 650 cases of elder abuse presenting to our aged care advocacy service and our legal service every year. Our aged care advocacy service has a social worker who is attached to that service and that social worker has been taking on a lot of the complexities of elder abuse cases from the aged care advocates. When my legal team provide legal advice, they are trained solicitors and they are trained to just give legal advice. When the person who is on the phone says that they are about to become homeless, the solicitor does not have the skills to respond to that.

Our organisation has been lobbying for quite some time—and lobbying both Federal and State governments—so that we can have the position that is called the Elder Abuse Support and Referral Coordinator. When I was recently lobbying for funding for that role from a New South Wales department, I was told that community-based organisations would not be getting funding for roles like that and that the commission would be taking roles like that. My concern with that is when we are dealing with people in crisis, if we cannot hand the phone to somebody who is there in our office ready to take the call and ready to give them advice as soon as possible, they will not phone the 1800 number that we give them for extra support. Like I said, our service is statewide. I have not got the breakdown in front of me, but a lot of our callers are from regional New South Wales. It is a clear gap in our service provision but it seems that funders are not wanting to fund it because they want to put the money into the commission.

Ms LAWSON: I think there is a really important role about Comms there. We have been talking to Family and Community Services [FACS]; they have done consultations around this. We know in every circumstance when we talk to people outside of metropolitan Sydney that their access to everything is far reduced compared to people in metropolitan Sydney. While people in the metropolitan area may or may not know about a service, it is much easier for them to find that information. I think the increased isolation that comes from being part of small communities that are distant from services exacerbates the need for this. I think it is really important to get that right. I am with Carers here. I do not know all of those mechanisms. I think part of it is about having really good community structures, but it is also about making sure that communications are not just on the internet because the internet does not work very well for lots of people in rural and regional areas and that is not a particularly helpful thing. So we have to make sure that Comms are multilayered and available in lots of different places and that one-door approach is really important.

Ms ABIGAIL BOYD: Thank you for coming at short notice and giving your considered submissions. I asked this of the previous panel as well. I note that the Official Community Visitors part of the Ageing and Disability Commissioner Bill only applies to those with a disability. Do you think that is something that should be extended to older adults as well? If not, why not?

Mr GEAR: There is a Community Visitors Scheme around aged care, but it is more a volunteers program rather than an official community visitors. We have spoken about this at the Royal Commission into Aged Care Quality and Safety. We think it is important that there is a similar system with appointments and powers for there to be a peer-based role for visitors who have a role in detection. We are actually trying to work and trial some of those models and support models with community visitors—the volunteers. We would see it as important that there is a similar process to that for people with mental illness, prisoners, that it should be extended to older people as well.

Mr VERSTEEGE: Yes, we support that. I would say that the current community visitors scheme, which is federally run, is really a companionship program. You need to be very careful that if you are going to extend the visitors scheme that is going to be incorporated in this Act that you are not going to combine two functions which can actually detract from each other. Somebody who is a companion is not necessarily the most suitable person to detect abuse. We have argued for separate schemes.

Ms ABIGAIL BOYD: Thank you. Did anyone else want to comment on that?

Ms LAWSON: It is covered.

Ms ABIGAIL BOYD: We have had a number of submissions today in relation to the consent provisions. People have expressed concern; there have been various different aspects to that concern, and different suggestions. Do you have a view on how those provisions could be better drafted? Or is there a better way of ensuring that consent is dealt with appropriately?

Mr GEAR: We would support that we have those concerns as well with the current legislation and further work would either need to be done by the commissioner or the commission as we go forward. Capacity needs to be assumed in that and there needs to be then an assessment of capacity. We have done work around supported decision-making in older people and older people at risk of elder abuse. So we would support that there is a process where capacity is assumed and then consent is taken—rather than the reverse negative of assuming that someone cannot give consent—and that supported decision-making approach, as the previous speakers highlighted, be embedded within the processes and regulations of the commission.

Ms ABIGAIL BOYD: Thank you. Did anyone else want to comment on that?

Ms LAWSON: We would support that.

Ms KATRAKIS: We would support that, yes.

Mr WESTACOTT: Yes.

The Hon. BEN FRANKLIN: In relation to the educational part of the function of the commissioner, particularly educating the public about potential abuse against older people, what should be done in order to maximise that part of the commission's role? Do any of you have thoughts on how that can work most effectively?

Mr GEAR: I will give a quick example of work that we are doing at the moment in conjunction with the Commonwealth Department of Health, as well as the aged care quality and safety commission, where we are implementing a grassroots approach to the communications and marketing of the single charter of aged care rights. I think these educative roles need to be done in collaboration with community organisations because that is the most—

The Hon. BEN FRANKLIN: Pre-existing community organisations?

Mr GEAR: Pre-existing community organisations that have the knowledge and aspects and networks into local communities, particularly such as Seniors Rights Service and Carers, where they can maximise and leverage their networks to get the message out there. There cannot be that top-down approach; it has to be a partnership up.

Mr WESTACOTT: Can I make a comment on that? I agree with what Mr Gear is saying. A lot of those things are practical things that are occurring in terms of the shifting nature of some of the policies and new services that are being brought into place. However, I have a background in social marketing when I used to work in a different sector. I believe very strongly—and I have taken this to Commonwealth departments—that the thing that is really needed to reduce elder abuse in society is a well-funded campaign on ageism. So if you peel the layers of the onion apart, at the core of it—the reason why there is elder abuse, the reason why older people are neglected, the reason why older people are sitting in nursing homes and not getting visitors—basically, when you strip it all back, it is all about ageism. A campaign like that with the same sort of resourcing as the quit smoking campaign, for example, would be something that would be fantastic and it would also be something that the State could lead across New South Wales and, dare I say, the State could lead across other Western countries.

Ms KATRAKIS: Any education approach needs to be multi-pronged and not just relying on digital. It needs to have components for face-to-face and particularly culturally appropriate delivery, whether that is to Aboriginal communities or culturally and linguistically diverse members of the community. So it needs face-to-face workshops—face-to-face through the local communities and local services that are in existence—to get people there. I think there are two elements: it is about the education around abuse and neglect and explaining what that means and it is also around the role of the commission and what those access and referral points are to the commission.

Ms LAWSON: I agree with all of that but I would also say that it is multifaceted across different parts of the community as well. I think the stuff around financial institutions, solicitors and that kind of education is also really important.

The Hon. BEN FRANKLIN: We have actually taken evidence today that some financial institutions are now stepping up.

Ms LAWSON: They are, and it is because awareness has increased. But I think with staff change it needs to be an ongoing campaign, but it is definitely multifaceted.

The Hon. BEN FRANKLIN: Absolutely.

The Hon. MATTHEW MASON-COX: Mr Westacott, if someone raises with you a complaint of elder abuse is it your policy, or your organisation's policy, to report that as of right rather than "must" or "may"?

Mr WESTACOTT: It depends on the nature of the abuse.

The Hon. MATTHEW MASON-COX: Do you think there should be a requirement that your organisation report to the commissioner an elder abuse issue that is raised with you?

Mr WESTACOTT: For mandatory reporting? Yes, I am smiling because it is a challenging issue. Obviously mandatory reporting with child abuse is an answer that we can come to more easily because the child does not have the capacity to make a decision about "yes" or "no" whether the abuse should be reported. An older person, even though they might be vulnerable—let us say an 85-year-old woman who has been abused by her son—she may not want to see her son go to jail or action taken against him. She may have full capacity and she may actually not want the abuse to be reported beyond getting assistance from an organisation like ours or a similar sort of organisation. If there is mandatory reporting for all older people who hold capacity and they report abuse then we run the risk of—

The Hon. BEN FRANKLIN: Under-reporting.

Mr WESTACOTT: But also the individual loses their autonomy as an older person.

The Hon. MATTHEW MASON-COX: There are significant privacy issues. I just wanted to point that out to you. What about disabled people? Do you have a view on that or is that something outside your area of expertise?

Mr WESTACOTT: It is outside my remit.

The CHAIR: Do you have a view around the issue of redefining the role of the commissioner to include children?

Ms KATRAKIS: I know you were out of the room during my opening statement—

The CHAIR: I apologise for that.

Ms KATRAKIS: I did say we were on the fence in that we think there are mechanisms that are there. We do not think that they are strong enough. We do not want children to slip through the gap so we think there needs to be a bit more consultation around that.

The CHAIR: Before you amend the bill?

Ms KATRAKIS: Yes.

The CHAIR: That is all I wanted to get on the record. I note your attendance today at this one-day hearing, which was at very short notice because of the legislation timetable. I appreciate your submissions and the time you made available to attend today.

(**The witnesses withdrew**)

JUDITH WRIGHT, Deputy Branch Secretary, Australian Services Union, NSW and ACT (Services) Branch, affirmed and examined

DENNIS RAVLICH, NSW Nurses and Midwives' Association and the Australian Nursing and Midwifery Federation, NSW Branch and the Manager of the Member Industrial Services Team, sworn and examined

HELEN MACUKEWICZ, Professional Officer, NSW Nurses and Midwives' Association, NSW Branch, sworn and examined

TROY WRIGHT, Assistant General Secretary, Public Services Association of New South Wales, and Branch Assistant Secretary of the Community and Public Sector Union, NSW, affirmed and examined

The CHAIR: The Committee has received submissions. Do you want to make a brief opening statement?

Ms JUDITH WRIGHT: I thank you for the opportunity to provide a submission on behalf of the Australian Services Union, NSW and ACT (Services) Branch members. We represent workers throughout the not-for-profit and community services sector. We have members throughout New South Wales and the Australian Capital Territory. Our members work throughout the disability sector and in the provision of community-based services for ageing members of our community. We represent workers who are employed in local community services, regional and statewide organisations, community partnerships and hubs, all major charitable organisations and trusts, all of the social and community sector peak organisations, campaigning advocacy organisations and all the major faith-based organisations.

The Australian Services Union [ASU] is therefore in the unique position of representing workers in almost every non-government and not-for-profit organisation in New South Wales that provides any level of service to people with a disability and in many private-for-profit and faith-based organisations, as well as not-for-profit organisations that provide services for ageing members of our communities. The union welcomes with great optimism the proposed establishment of a New South Wales commission with the objective to protect and promote the rights of adults with disability and older adults, and to protect those adults from abuse, neglect and exploitation. The inquiry therefore provides an invaluable opportunity to address issues that we believe are critical to the success of the proposed commission.

Our submission is underpinned by three particular concerns in relation to the bill. Firstly, while the bill proposes the establishment of an office of the Ageing and Disability Commissioner these are very different communities with very different needs and, therefore, are best served by two separate commissioners within the one office—one dealing with ageing and one dealing with disabilities. This reflects the current Commonwealth arrangement in which there are two separate quality and safeguard commissioners for aged people and people living with disability, as there are also in the Commonwealth Human Rights Commission.

The bill establishes functions of the commission dealing with four very significant areas. We hope that each of these areas will receive equal priority and resources. Without diminishing issues of individual abuse, neglect and exploitation, we hope that commissioners will be proactive advocating for whole-of-government strategic policy and reform. We strongly support the role of the commissioners as advocates for members of our ageing communities and their families, and those living with disabilities and their families. In our view, New South Wales people need a strong advocate at the level of a Federal Minister with the Quality and Safeguards Commission for ageing and disabilities and also in dealing with systemic issues and community engagement in New South Wales itself.

Thirdly, the bill specifically sets out at subclause (c) in its overview that the proposed office of the commission will inquire into and report on systemic issues. While it is not specifically referred to here or elsewhere, we believe that this will include inquiring into and providing advice to the Minister in relation to workforce issues. While there have been recent and major changes to the Commonwealth and State legislation and policy, including the establishment of the NDIS and Commonwealth aged-care reforms, these have not been supported by strategic investment or reform to support the workforce in either area. I must tell you that we are now at critical mass and without urgent attention there are likely to be very serious consequences for our ageing populations, people living with disabilities, their families and communities.

We thank the Committee for conducting this very important inquiry and for providing an opportunity for the ASU to speak to our submission, which we hope will make a positive and constructive contribution to your thinking and your work.

The CHAIR: Thank you very much.

Mr RAVLICH: On behalf of the Australian Nursing and Midwifery Federation, along with the New South Wales branch of the federation, we welcome the opportunity to provide evidence to the Committee today. By way of background, in New South Wales our membership includes over 10,000 nurses, enrolled nurses and assistants in nursing working in either the government or non-government aged or disability sector, State or Federal. As noted in our submission, the primary—or, perhaps more correctly put, final—impetus, if one was needed, to establish an Ageing and Disability Commissioner was the report tabled by the Legislative Council Portfolio Committee No. 2 in the latter part of last year, which reviewed the implementation of the National Disability Insurance Scheme and the provision of disability services in New South Wales.

As a result of the evidence it received, it reiterated the need to establish a public advocate with powers to investigate cases of potential abuse, neglect and exploitation of people with disabilities. The association strongly believes that protection and promotion of the rights of adults with disability and older adults from abuse, neglect and exploitation is essential. Accordingly, we share the view strongly expressed in the above committee's final report. However, the association believes that by confining this office to adults with disability and older adults it is potentially a missed opportunity that leaves many vulnerable adults without adequate protection. This is a view shared by, and noted in, other reports and the approach adopted in other jurisdictions.

For example, the Australian Law Reform Commission report set out that any model seeking to protect an at-risk adult should be approached as follows: that the definition of an "at-risk adult" would be someone over 18 years of age who has care or support needs, is being abused or neglected or is at risk of abuse or neglect, or is unable to protect themselves from abuse or neglect because of their care and support needs. It is our understanding that in South Australia the relevant legislative architecture was recently amended so that a "vulnerable adult" is an adult person who by reason of age, ill health, disability, social isolation, dependence on others or other disadvantage is vulnerable to abuse. That included physical, sexual, emotional, psychological and financial abuse of a vulnerable adult. It also included denial without reasonable excuse of the basic rights of the vulnerable adult.

The association shares the view that many adults are vulnerable due to a variety of reasons, including homelessness, social disadvantage and control by another person. In part, that is reflected in the bill at new section 4 (3) (b), where it establishes other reasons for social disadvantage and oppression. Whilst the establishment of the office of Ageing and Disability Commissioner is a very good start, it still leaves perhaps much work to do. As noted in our submission, it would be the ideal to have a commissioner who is able to ensure and promote the protection of any adult of any age who is considered vulnerable.

The issue of consent is also a difficult one. Whilst ensuring that consent is sought where possible, there will be and are situations in which obtaining informed consent will not be possible. Many adults, particularly those being abused by caregivers or relatives, are reluctant to take action. The circumstances under which abuse should be acted upon without consent should be examined in relation to the degree of risk if no action is otherwise taken. Whilst we have had insufficient time to consult with members on the actual bill itself, in 2016 we undertook a large survey amongst members working in the aged and disability workforce.

This highlighted that many frontline workers lack guidance and education on how to recognise and respond to abuse and the scope of their responsibility when supporting people who lack capacity with decisions that might place them at risk of being abused. In addition, it highlighted that risk of abuse is heightened when there are insufficient staff to provide care. We believe both of these matters will need to be given attention by the commissioner and its office. We will accordingly seek leave to table a copy of this report for the benefit of the Committee and its consideration and are also able to provide an electronic copy to the Committee secretariat following today's hearing if permission was granted. It was probably remiss of us not to include it with our submission yesterday, but haste may have overtaken efficiency on that occasion. We seek leave to table that.

The ACTING CHAIR: Is leave granted?

Leave granted.

Report tabled.

Mr RAVLICH: For those reasons, we believe it is essential to ensure workforce representatives and community and advocacy organisations are included on the Ageing and Disability Advisory Board. We note what our colleagues have already put on the table about the structuring of the commission. We think there is a great degree of utility in having a degree of speciality for disability and aged care as they are quite discrete and have separate issues.

In closing, the association welcomes the initiative; it is long overdue—albeit the success or otherwise of the commission will be largely dependent on it being sufficiently resourced and having available to it sufficient recurrent funding to adequately undertake its function and to be suitably responsive to the concerns and complaints raised. We also note in closing that much will turn on the regulation which will set out how the reporting regime and investigation process will be undertaken. So we think it is essential that consultation occurs on those regulations. We would welcome the opportunity to contribute to the formulation of those regulations to ensure that they are as practical and as effective as possible. Thank you.

The ACTING CHAIR: Thank you, Mr Ravlich. Would you like to table your opening statement?

Mr RAVLICH: I am happy to do so.

Document tabled.

The ACTING CHAIR: Thank you. Ms Macukewicz, would you like to supplement Mr Ravlich's statement?

Ms MACUKEWICZ: No.

The ACTING CHAIR: Mr Wright, do you have an opening statement.

Mr TROY WRIGHT: Good afternoon, Committee members. Thank you again for the opportunity to present to you today, albeit with a short time frame. We greatly appreciate the opportunity to be consulted. The Community and Public Sector Union, NSW Branch [CPSU NSW] represents more than 2,500 workers in the sector. They are generally workers who were employed by what was formerly the Ageing, Disability and Home Care [ADHC] department who were subject to the NDIS enabling bill in 2014, I believe, and have subsequently been transferred in their employment to a range of non-government organisations [NGOs] across the State, including some increasingly unstable consortiums in some areas. They work in approximately 800 formerly government-run group homes across the State and a variety of other services which were all under the auspices of ADHC.

In a number of inquiries regarding the disabilities sector our position has consistently been that the removal of ADHC means the removal of a public sector safety net. There will be concerns that without ADHC, without a public sector safety net to pick up people, people will fall through the cracks. Through our members we see that that is already occurring. There are already gaps in the sector. If we get an opportunity I would be happy to elaborate on and draw to the Committee's attention a specific case study which exactly addresses our concern with the commissioner's role. There are gaps there already and we are already witnessing them.

What was agreed in the enabling Act was that there will be a two-year guarantee of services from the NGO in the form that ADHC provided them. The first of those agencies are coming up to the expiry of their two-year guarantee and are withdrawing from the market, so there are already gaps at the start where people did not fit modelling. Previously they were picked up by ADHC. ADHC was a wraparound service and did everything. They are not necessarily fitting correctly into the model now. But what we are seeing is a withdrawal of services in some regional and remote areas in New South Wales already from these providers as soon as that two-year guarantee is up. It is a commercial decision. They are making a commercial decision that the money is not there.

We are very concerned that neither of those scenarios will be addressed by the proposed Ageing and Disability Commissioner. We have provided a very brief written submission that indicates we must question why the powers of the Ageing and Disability Commissioner are restricted to concerns surrounding allegations of abuse, neglect and exploitation. We think that term does not adequately address what we know is happening, which is systemic failures, where people are being shunted between funding models and spreadsheets as to what their needs are. It also does not adequately address malfeasance by some NGOs, poor corporate governance by NGOs, service gaps, delivery models and all of those sorts of things. As we said in our submission, this is a rare opportunity, and we applaud the Government for the creation of this commission. We acknowledge the vital role, but we need to get it right as far as its functions and powers go. To narrowly define them in the way the Act does we think will be a really lost opportunity. Thank you for the opportunity.

The ACTING CHAIR: Thank you, Mr Wright. We will go to the Opposition for questions first.

The Hon. ROSE JACKSON: I thank all of you for coming along at relatively short notice and also for making submissions at relatively short notice. We really do appreciate the work that has gone into providing us with your views. The first issue that I wanted to raise is in relation to the independence of the commissioner from government. I think a number of you raised concerns in your comments about systemic issues or funding issues that might come up in the course of the commissioner's work when they are looking at the neglect, exploitation or abuse of elderly people or people with disabilities.

I suppose my question is: Do you think that the independence of the commissioner from government—from the Minister—and the independence of the advisory board from appointment or dismissal arbitrarily by the

Minister is particularly important to ensure that when those systemic issues, funding issues or systems failures come up they can properly be investigated and brought to the attention of the Government? Is that something you think is a particularly important piece of the puzzle?

Ms JUDITH WRIGHT: Yes, 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.

Mr RAVLICH: I think we echo those concerns. Clearly, anything that maintains and gives not only the impression but the actuality of being independent is important. We note that the bill assumes that the commissioner will be able to delegate reporting or concerns to relevant agencies and the like. So they ought to be able to do that as well as undertake any investigations it thinks are necessary, basically on those matters that it thinks are in the best interests of those with disabilities or are persons who are aged.

Mr TROY WRIGHT: I completely agree with my colleagues and counterparts here. The disability sector, particularly in New South Wales, and the way the NDIS has been implemented is a highly political issue. It is going to be a highly political issue. There are service gaps already emerging, as we indicated. Therefore, the independence of the commissioner looking into that is absolutely essential; otherwise those issues will not be examined. I understand that this is taking or replacing some of the functions of the Ombudsman, who does enjoy that level of independence, and this commissioner should as well.

The Hon. ROSE JACKSON: The second question that I had was: Given the issues that you have raised in relation to workforce training, workforce support and system-wide workforce issues addressing gaps et cetera, do you think that making clear and explicit that the commission has the power to hold public inquiries would be a useful way to ensure that those broader issues are properly canvassed, and that organisations such as yourselves and others had the opportunity to feed into those inquiries? Do you think that that would be a useful part of the function?

Ms JUDITH WRIGHT: Yes. The function that you described is probably implicit in the powers that have been provided to the commission in the bill, but I agree with you that the workforce development aspect of supporting ageing people and people with disability is just so crucial. I really think it is vital that that function be spelt out quite explicitly.

Mr RAVLICH: 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.

Mr TROY WRIGHT: 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.

The Hon. DANIEL MOOKHEY: Mr Wright, you made reference to some case studies that you wished to draw the Committee's attention to. Would you like to explain what you meant?

Mr TROY WRIGHT: Thank you. Yes, I would. We appeared before the Committee late last year in its inquiry into the implementation of the NDIS in New South Wales. With us was a lady who was brought to our attention through one of our workers. I can use her name; she was happy to be identified in the submission. Her name is Kym Flowers; she was in her early thirties. She has cerebral palsy and was restricted to a wheelchair, and she has a mild intellectual disability. She lived in a non-government group home. The accusation is probably not fair, but her diet was not the greatest and she therefore developed quite serious diabetes that required, I think, three, four or five injections a day. She was not able to do these injections herself. The group home did not employ any nurses so it was not able to have any staff do it.

The NDIS said, "Hang on, to have your diabetes treated is not an NDIS issue." The NDIA refused to fund that: "It is nothing to do with your disability; it is a health issue." The Department of Health was saying, "Hang on, your diabetes is attached to your intellectual disability and your incapacity to do it yourself, so surely this should be funded by the NDIA." She was effectively shunted between the two bureaucracies. Her placement in the NGO home that she was in broke down. They were not able to accommodate her any more because they could not provide the insulin treatment. She ended up living, as a 32- or 33-year-old woman, in a public hospital for six months, notwithstanding she was not sick. She was not sick and she had to live in a hospital! This was a service gap.

Eventually the case got solved through intervention by the Government directly, and by the Minister at the time and through political pressure, but this would be a case that would not fall within the Ageing and Disability Commissioner's powers to investigate. It is not abuse, it is not neglect and it is not exploitation. That is why were are concerned about why the power is so narrow. Why do we have to have that terminology at all? There are people falling through the cracks who we believe deserve a commissioner, a strong public sector advocate, who can look into their issues and find a pathway forward. Let's admit it: The NDIS is enormous. It is a life-changing system and it has wonderful features but at the same time it is a very difficult bureaucracy to navigate and we have people such as Ms Flowers who are having their lives split into spreadsheets, essentially. We need a better, effective role to help someone navigate that.

The Hon. DANIEL MOOKHEY: Ms Wright, you were making particular mention about the ability of the commissioner to undertake work around workforce planning.

Ms JUDITH WRIGHT: Yes.

The Hon. DANIEL MOOKHEY: What work would you like to see the commissioner do in that respect?

Ms JUDITH WRIGHT: In particular, ensuring that the workforce is properly resourced. By that we mean that there are sufficient numbers of staff to support aged people and people with disability who require that support and that staff are properly trained. I think that is particularly important because often our members who support people with disability and aged people are really in a unique position to be able to prevent, identify and deal with instances of neglect and abuse. It is incredibly important that those workers are properly trained and supported in those functions. It is also incredibly important that issues around conditions and pay are looked into and supported in terms of attracting a qualified, trained and committed workforce—a sustainable workforce.

The Hon. DANIEL MOOKHEY: To the extent to which the commissioner's functions are limited effectively to abuse, neglect and exploitation of adults with a disability and older adults, would you agree that perhaps under this bill their ability to undertake those investigations is somewhat limited?

Ms JUDITH WRIGHT: Potentially. The bill does refer to systemic issues, and we would say that systemic issues could include issues—

The Hon. DANIEL MOOKHEY: Are they the "systemic issues regarding matters in relation to which the Commissioner may conduct investigations"?

Ms JUDITH WRIGHT: Yes.

The Hon. DANIEL MOOKHEY: The commissioner can only conduct investigations into abuse, neglect and exploitation. So once you read the two clauses together—the old lawyer in me suggests that you read them down—you see that the ability to undertake that sort of proactive planning will be somewhat limited, to the extent to which the commissioner is able to demonstrate that workforce issues create or cause abuse, neglect and exploitation, which, to be fair, they probably do. With respect to the ability to actually get the proactive change agenda that you are describing, are you worried that the commissioner may not necessarily have that function?

Ms JUDITH WRIGHT: Yes, it should be explicitly spelled out in order to address our concerns on behalf of our members.

The Hon. DANIEL MOOKHEY: This question is for all three unions. To the extent in which there is a requirement for workers who would be subject to the commissioner's investigations to have some rights and how this will interact with their existing employment rights, including their right to a fair hearing, do you have a view as to whether or not that is properly addressed in this bill? I am reading this bill and thinking what a worker would ordinarily have, should they subject themselves to an investigation or be dismissed? How do the two interact? Do you have a sense of how that might work or whether any improvements can be made to clarify?

Ms JUDITH WRIGHT: There is definitely room to make improvements. Indeed, the Quality and Safeguards Commission that exists at a Federal level, there has been an enormous amount of consultation with unions about those sorts of safeguards and policies in relation to ensuring that people who have been investigated receive as much fairness as they possibly can under the process. I think it will be very important to have similar safeguards at a State level.

The Hon. DANIEL MOOKHEY: Can you repeat that? Which legislation should we look to for a model for those what protections might look like?

Ms JUDITH WRIGHT: It is legislation that was established in relation to the Quality and Safeguards Commission for people with disability. My recollection is that it is not spelled out in legislation but in policy, which informs the conduct of the inquiries by the Quality and Safeguards Commission. I might have to look into that and—

The Hon. DANIEL MOOKHEY: I appreciate that. This bill says that one of the things that the commissioner can do when they complete the investigation is refer it to that agency, which runs the risk of a worker being investigated twice, I would think.

Ms JUDITH WRIGHT: My reading of this legislation or this bill was that anything that is caught by the Quality and Safeguards Commission has to be referred to that commission.

Ms ABIGAIL BOYD: Thank you very much for giving your contributions. It is becoming even clearer as we go through the submissions that it is unfortunate that there is such a short period of time in which we are able to delve into these provisions. The points just raised then are really useful. I am looking again at section 13 in relation to reports and you are right: There is no capacity to make, as far as I can tell, a preventative and systemic report, where you can identify circumstances that you believe are going to lead to abuse, neglect or exploitation, which could include falling through the gaps between services.

That would seem to be a very useful addition to that section. It would then allow the protections to those given reports to be captured by that as well. You can imagine a circumstance where an investigation has been launched and you might have a worker, for instance, identifying issues that they believe have led to the neglect of a person. It would be useful for that to be covered by that protection in relation to making reports to that worker. I thank you for that; I think that is a really useful addition we can make. I also want to touch on this protection for workers and ensure that these investigations can identify the real source of the abuse and neglect. In addition to the safeguards, what support exists for individual workers to respond to an investigation under this bill in a way that they are free to indicate that perhaps their employer is more responsible than them? I do not know how else to put that in a diplomatic way.

The Hon. DANIEL MOOKHEY: Sort of whistleblower protections?

Ms ABIGAIL BOYD: Sort of whistleblower protections. Do you think there is a need to extend protections under this bill to explicitly refer to workers perhaps divulging information about their employers?

Ms JUDITH WRIGHT: My understanding is that there is a provision under the Ombudsman's legislation that currently does give the sorts of protections to workers that you are referring to. If the intention of this proposed legislation is to divert the functions that are currently served by the Ombudsman to the newly established commission, it would be necessary to have similar whistleblower protection provisions, as you have suggested, given that they currently exist in the Ombudsman's legislation.

Ms ABIGAIL BOYD: Great, thank you. I am trying to pick up some of those other issues that you were talking about. When there are systemic issues related to lack of funding or lack of staff, it would again be useful to allow a worker or a union to make a report under section 13 to have that investigated.

Mr TROY WRIGHT: If I may, I absolutely support the capacity to do that. I have great fears that the wording of the bill and the restriction of the function means that we could—and you are in the business of knowing that words matter—we will be stuck in linguistic debates with the commissioner as to whether or not this is something that falls within their ambit of powers. You can see it happening right now: Whether something is a case of understaffing, underfunding, service gaps is something that they need to address or not. I have got grave concerns that this commissioner will not be able to deal with a majority of the issues.

May I just go to your earlier point? I do not want to drop my colleague from the nursing federation in it. That two-tiered disciplinary process is not unique. Nurses and many other medical professionals are subject to the Australian Health Practitioner Regulation Agency. I think what you foreshadow is that, I would hope, whilst an employer may do an investigation into an incident and end up sacking the person under employment law—I think you are completely correct—the commissioner's role would be coming in and looking at the incident at a different angle and looking whether it was a structural deficit in the organisation in some way.

From the disability sector, this sort of stuff is really important, about the number of staff that are on a group home in any period of time and those sorts of issues. That is where the commissioner's role—I do not see it as an overlapping role; I see it as a bit of a dual role—stops employers sacking people. As you said, leaving the responsibility with the employees, it is looking at the broader issues about how many staff are appropriate, why would you have that sort of practice, were they trained. We are seeing a little bit of a race to the bottom in the sector at the moment because of the funding pressures are so tight.

I think the commissioner's powers in that respect are really important. People who work in disability group homes work alone a lot of the time with a person. They are the only people that know what happens there.

Their clients—as in the aged sector, which we do not cover—do not have a voice a lot of the time, literally. They are the people who you are going to rely on and the commissioner is going to rely on to be able to come forward to let you know what is happening or let him or her know what is happening. Whatever can be done to encourage them to do so we would support.

Ms MACUKEWICZ: Can I add to that? I think there definitely has to be an anticipatory and a preventative function here, otherwise what is the point? What we do not want is another royal commission examining issues once they have already occurred. What we would like to see is that this has a preventative role. We see that very much as the role of the commission. That education and consumer advocacy, all those functions are essential and, really, should be more essential than the investigative functions. Otherwise, there is no point in having that office.

Ms JUDITH WRIGHT: There is just one other practical example that I want to mention, which is the mental health community-based funding through the Personal Helpers and Mentors program, the Partners in Recovery, is coming to an end at the end of June. In terms of the issue around prevention, workers covered by those funding programs have really been vital in addressing potential issues of abuse or neglect by people suffering from mental health conditions. You can really foresee a situation where a person who may be living in a boarding house who may be subjected to some sort of abuse or neglect from fellow residents or people working in that boarding house because of that community-based program will be further vulnerable. So in terms of preventative function, it is particularly vital, given that very practical example of funding coming to an end at the end of June.

Ms ABIGAIL BOYD: Thank you. In relation to the advisory board, would you be supportive of having a union representative as one of the members of that board? Is that something that you—

The Hon. BEN FRANKLIN: I am sure they will say no!

Ms MACUKEWICZ: Absolutely. I think as Ms Wright has mentioned earlier on, it is the workforce that are picking up these issues. They are the people in the homes. There are other people delivering care. They are the confidants of the community. And, absolutely, one of the problems is that they do not have a voice. It is absolutely essential that workforce representatives have a seat at the table.

The Hon. BEN FRANKLIN: I will direct my questions to Mr Wright. You state in your submission that the association is gravely concerned that the proposed powers of the commissioner do not go far enough and you discuss a range of potential matters that the commissioner could look at. Could you speak more specifically about where you think the powers of the commissioner are limited?

Mr TROY WRIGHT: Where they are limited is, as I have said, if they have only the ambit of allegations of abuse, neglect and exploitation a public sector agency is going to stick to that very rigidly. The example of Kym Flowers is one of several—it is not an isolated case—where someone is shunted between the systems and requires someone to look objectively at the system and not the person. I will give the service gap example though because I understand your interest.

The Hon. BEN FRANKLIN: To contextualise the question, it is difficult to codify. When you say that there are problems with the system, how can that be codified? That is what I am trying to get to the heart of.

Mr TROY WRIGHT: I feared this question. I have not had time to go over this sort of thinking myself. I am not sure how you would codify it but I think it does need to be built. The recommendations coming out of the standing committee last year need to be looked at for this commissioner to work out if those powers can be incorporated into this commissioner. I think those recommendations were very far reaching and the committee's work was excellent on that. I would really encourage this Committee to have a look at that work because that is the report for me that identified that there were issues with service gap, service delivery across the State, particularly in regional and remote New South Wales.

I give another example. The first things to be privatised from Ageing, Disability and Home Care [ADHC] were the clinical support teams. They were teams based in the community with speech pathologists, health professionals and occupational therapists [OT] and others. That was picked up by an organisation, the Benevolent Society. Their two-year employment and service guarantee ends on 1 August. They have already indicated to us as the union involved that they are cutting services in 12 regional centres, such as Parkes, Narrabri and Wagga Wagga, because it is not commercially viable. There will be a huge service gap emerge there. Those people will not have access to what they have always had. I think they are things that are relevant for the commissioner to consider going forward. It is shifting sands, the whole NDIS in New South Wales. We have not let it land yet. We do not know what it is going to look like. There are a lot of implementation issues to look at to make sure that people are still getting the services they require, particularly outside Sydney.

The Hon. BEN FRANKLIN: You say it is arguable that the commissioner's powers to critically examine the sector are even more limited than the Ombudsman if it was to succeed. Can you tell the Committee where that is specifically the case? What powers does the commissioner have that are less or more limited than the Ombudsman?

Mr TROY WRIGHT: Sorry, that is probably in haste that I compiled that. I meant powers as in the function, as in this again going back to my critical single point really, that by only looking at allegations of abuse and neglect—the Ombudsman has a free-ranging beat to patrol, as I understand. It can look into all sorts of inquiries and make inquiries broader than individual matters. That was what I meant by that comment.

The Hon. BEN FRANKLIN: Do you think there is a risk that by substantially broadening the powers of the commissioner that potentially could lead to a lessening of self-reporting or voluntary reporting? People feel that it could either blow back on them or they could feel overwhelmed.

Mr TROY WRIGHT: I could not answer that for sure. What our members report is a lot of people are very frustrated and looking for help—looking for someone to go to. As I indicated earlier, the NDIS for most people is a portal on a computer. That is the only interaction. They are not getting that face-to-face interaction. They do not know where to go with complaints. There are a lot of bodies being set up with overlapping jurisdictions. It is very confusing for the individual consumer in the NDIS.

The Hon. BEN FRANKLIN: The Committee has heard that evidence from others.

Mr TROY WRIGHT: Good.

The Hon. BEN FRANKLIN: To broaden that out to the whole panel, to pick up on your point of rural and regional New South Wales—which Ms Jackson is obviously interested in as well—what can be done specifically with regard to this role to make services more available to rural and regional people and for them to have a stronger voice in this area, where we all know with the tyranny of distance there is a big problem?

Ms JUDITH WRIGHT: I guess that is why the workplace development issue is so crucial because in regional and remote areas, where there might be declining industries or levels of employment in particular areas, there will always be people with disability and always be aged people who require care and support. It is really essential that there is proper training that can be provided to people who, whether by choice or because they are forced to, are looking at some sort of career change. I think workforce development and the role that the commission could play in advocating, particularly around better resourcing, the support sector for both aged people and people with disability would be incredibly important functions.

The Hon. BEN FRANKLIN: I was hoping it was not just going to come back to dollars, but inevitably it does.

Mr TROY WRIGHT: I would add that in the disability sector in New South Wales we have a Minister but we do not have a department any more. I do not know whose advice that Minister will receive because ADHC has been dismantled. You can argue for or against that. The Minister will not be receiving objective advice. There will not be anyone reporting to them if there is a serious, broader concern beyond individual cases. I think that is where this commissioner could definitely fill that function. It is an advisory role making recommendations to government saying there is a problem, the market has not been able to keep up with demand, the market has not been able to service regions.

The Hon. BEN FRANKLIN: The systemic issues that we have been discussing.

Mr TROY WRIGHT: Whether the Minister or this Government does something with that or you take it to the Federal Government, it is up to that decision-making thereafter. I think someone needs to be watching the broader patterns that are emerging, the broader service gaps.

The CHAIR: That will conclude this session of the hearing. Thank you for your contribution, noting the short time frame you had to make a submission. There is only one day of hearing because of the time line on the legislation. The Government would like to have implementation by 1 July, which is why it is a very short hearing. We appreciate your time today.

(The witnesses withdrew)

ADAM WHYTE, Superintendent Commander, Liverpool City Police Area Command, NSW Police Force, sworn and examined

KATHRYN McKENZIE, Director Disability, NSW Ombudsman, affirmed and examined

TANYA SMYTH, Director Inclusion and Early Intervention Strategy, Design and Stewardship, Department of Family and Community Services, affirmed and examined

FRANCESCA Di BENEDETTO, Manager, Legislative Reform Unit, Department of Family and Community Services, affirmed and examined

The CHAIR: I welcome our last panel of witnesses to this inquiry. Would one or all of you like to make an opening statement?

Ms SMYTH: I will make a statement on behalf of the Department of Family and Community Services. Thank you for the opportunity to appear before the inquiry. The policy intent for the establishment of the Ageing and Disability Commissioner has arisen from a number of recent reviews and inquiries that have highlighted opportunities for the New South Wales Government to do more to address this issue. These include the report on the recent parliamentary inquiry into the implementation of the National Disability Insurance Scheme and provision of disability services, the Ombudsman's recent report titled "Abuse and neglect of vulnerable adults in NSW—the need for action", the Law Reform Commission's review of the Guardianship Act 1987 and the parliamentary inquiry into elder abuse.

The establishment of the commissioner is aimed at addressing the concerns raised in these reports to develop a strong, independent commissioner able to investigate and respond to abuse, neglect and exploitation of adults with disability and older people in both home and community settings. The provisions of the bill give the commissioner strong powers to ensure they are able to properly investigate matters, including the power to initiate investigations on their own motion or following a referral or complaint; the power to apply for and execute a search warrant and seize evidence as part of an investigation; and extensive information gathering and sharing powers. In developing this bill the department consulted broadly with the community and other government stakeholders.

This bill is a product of collaboration with the Department of Premier and Cabinet, Department of Justice, NSW Health, NSW Ombudsman, NSW Police Force, NSW Civil and Administrative Tribunal [NCAT], NSW Trustee and Guardian, Children's Guardian, Public Guardian and the Information and Privacy Commissioner. Several forums have been held across New South Wales with Ageing and Disability peak organisations and other key stakeholders. Five community stakeholder forums were held this month at Liverpool, Blacktown, Kempsey, Newcastle and Wagga Wagga. The purpose of these forums was to seek the views of the community regarding how best to raise awareness of the Commissioner, particularly in multicultural and Aboriginal communities. We are happy to endeavour to answer any questions the Committee may have.

Ms McKENZIE: I thank the Committee for the invitation to speak this afternoon. As Ms Smyth mentioned, in November last year the NSW Ombudsman tabled a report to Parliament on our standing inquiry into allegations of abuse and neglect of adults with disability in community settings such as the family home. We began the inquiry because we were repeatedly and increasingly contacted about serious matters of alleged abuse and neglect of adults with disability, and because there was no other agency that was equipped to perform this role. In particular, there was no other agency with the powers to investigate allegations that do not reach a criminal threshold and that could play a role to marshal a coordinated interagency response to address the critical issues. The hundreds of matters that we have handled in connection with the standing inquiry have included reports of highly vulnerable adults living in atrocious circumstances, experiencing ongoing abuse and neglect, hidden from society and prevented from accessing the supports they need.

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 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. In our view there are a couple of additional provisions that warrant inclusion in the bill relating to information sharing between agencies that have responsibilities relating to the safety of vulnerable adults and the ability of the commissioner to require parties to answer questions.

Mr WHYTE: My discussion point is to apologise on behalf of Assistant Commissioner Mitchell, who is unable to be here today because of the time frames and to indicate that in support of the bill Commissioner Fuller's implementation of the new, aged crime prevention officers commences on 1 July—a similar timing to the bill. The first six will kick off on that date and be on the ground. That rollout is commencing.

The CHAIR: That is a very good initiative. We will come back later to explain their role and so forth.

The Hon. ROSE JACKSON: One of the things I wanted to ask is whether you feel as though the child protection system in New South Wales is doing an adequate job in protecting children with disability from exploitation, abuse and neglect?

Ms SMYTH: In regards to all children, obviously the system can improve. My concern about pulling it out of the child protection system into this system is that they are children with disability, not disabled children, and first and foremost they should be included in the child protection system if they are at risk of harm. I do not think that we would want to pull them out of that as a different set of children and put them into this commission. There is also the issue of duplication. If two systems are operating there is a risk of who is taking responsibility for that child. The existing system currently includes children with disability. This bill is around the gaps that currently exist: As a child with disability turns 18 the oversight that is available through the child protection system is lost. That is the gap that this is trying to cover.

The Hon. ROSE JACKSON: It is obviously commendable that an effort is being made to fill gaps but it would seem like it is a missed opportunity if, as you say, there are always areas we can improve. The example I seek feedback on is that we have seen ongoing issues in relation to school children, particularly children on the autism-Asperger spectrum, and the growing number of school children reporting with mental health issues. If the inclusion of children into the purview of this commissioner would provide a platform where some of those broader and systemic issues could be investigated, aired and system-wide responses implemented, would you not agree that this presents a great opportunity to look at those things and it is therefore a bit of a shame that children are not within the purview of the commissioner?

Ms SMYTH: As to the example that you raised about education, the bill and commissioner are about informal supports for a person with disability, so it would be about the family that is caring for that child. As to education, even if children were included, those issues would not be picked up.

The Hon. ROSE JACKSON: It is my understanding that there is the purview within the legislation for the commissioner to look at systemic issues that come up and not just individual cases?

Ms SMYTH: But it is about home and community so it would be how families and informal carers are providing support to children with disability if we were talking about children.

The Hon. DANIEL MOOKHEY: Perhaps it is a nice way to segue to what are the policy reasons to limit the functions of the commissioner to purely abuse, neglect and exploitation?

Ms SMYTH: To stick purely to abuse, neglect and—

The Hon. DANIEL MOOKHEY: Yes, what are the policy reasons to limit the scope of the commissioner's powers?

Ms SMYTH: The outcomes of the three key reports that led to the decision to establish a commissioner. The NSW Ombudsman's report that we mentioned recently was around people living in the community who were being abused, neglected or exploited. It is those gaps that have come up, those key considerations and those serious situations that need to be addressed and that is why that is the focus. It is through those recommendations.

The Hon. DANIEL MOOKHEY: Because I have limited time we might just take that through to some aspects of the legislative drafting. In so far as the commissioner has powers to investigate, do you agree that the way the bill is currently drafted it is limited to the abuse, neglect and exploitation function?

Ms SMYTH: What other functions are you referring to?

The Hon. DANIEL MOOKHEY: To be fair, it is not really me who is referring to them; it is the other stakeholders who were here earlier in the day who made multiple references to a variety of issues, including service delivery, for example, which they have a view would be excluded from this.

Ms SMYTH: Okay, yes.

The Hon. DANIEL MOOKHEY: Before you go beyond the policy point, the specific question I am asking you is: Do you agree that the way the bill is drafted is that the powers of the commissioner are in fact limited to abuse, neglect and exploitation?

Ms SMYTH: Yes, because it is about filling that gap and there are already bodies that are responsible for looking into a support worker funded through the National Disability Insurance Scheme [NDIS], through the aged care system or through the New South Wales health system. There are complaint bodies that exist already that would look at that. This is not about duplication. This is about where the gap is and that gap currently is with informal carers.

The Hon. DANIEL MOOKHEY: To some extent that is correct because the way in which the bill is drafted is that after the commissioner completes their investigation they can refer on to those bodies to undertake the action and remediation aspect?

Ms SMYTH: If the complaint came to the commissioner and it was about, for example, a disability support worker funded through the NDIS, the commissioner must refer that to the NDIS Quality and Safeguards Commission. They would not complete an investigation.

The Hon. DANIEL MOOKHEY: So when you say in your submission that "abuse of older adults or adults with a disability is underreported and an overly punitive model for the commissioner was not seen as conducive to promote reporting and raising awareness", what do you mean?

Ms SMYTH: When we talk to our stakeholders in the community throughout the sector, a lot of examples were brought up where a person's health and wellbeing is not as it should be. There are many examples when a carer is doing the best job they possibly can. They need some additional support so that they can meet the needs of the person they are caring for. If it is seen as punitive, the concern is that people will not report. For example, if your neighbour is caring for a person with a disability or an older person and you can see they are doing it tough, they are doing a good job but you can also see that the person is not getting what they need; if you think that somebody is going to kick the door down and it is going to launch into a prosecution of that person, that may prevent you from reporting that. I suppose the communication around the commissioner needs to be one about a strength-based approach and about support. The ultimate goal is that the abuse, neglect or exploitation is alleviated rather than it being just about the investigation.

The Hon. DANIEL MOOKHEY: Accepting the second part of what you just said that the purpose is for it to be alleviated, the model that is currently being proposed would have the commissioner undertake an investigation, including the ability to enter a premise, issue search warrants, engage in what otherwise could be displayed as punitive behaviour of the type which you may have just described as likely to deter a report—

Ms SMYTH: Yes.

The Hon. DANIEL MOOKHEY: —but then at the end of it the only thing they can do is refer it to another body. How is that sensible for the purpose of obtaining the alleviation that you just described because the way the bill is written, it looks like in order to obtain that relief you have to go through two bodies?

Ms SMYTH: At the moment we have the New South Wales Elder Helpline & Resource Unit, which does a fantastic job. They do not have the powers to do any of that investigation or to enter a person's home. What they currently try to do is make a referral to appropriate services and often that is the New South Wales 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 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.

The Hon. DANIEL MOOKHEY: Two specific points arise and I take you to clause 16 (3). What are the policy reasons for providing the department with an exemption from the Government Information (Public Access) Act [GIPA] from the request of the commissioner and why is the bill exempting the activities of all official community visits from the GIPA Act? The way this is written, the commissioner is capable of asking anyone to produce a document except perhaps a government agency. I am looking at this having heard evidence from a bunch of people before you who said, particularly with the now outsourced model, that a lot of service providers that are on government contracts—the way this is written the commissioner can ask Family and Community Services [FACS] for any reports or complaints that have been received about service providers that may or may not be related to the abuse or neglect but FACS is open to override that through the GIPA Act. Why is that sensible? What are the policy reasons for that?

Ms Di BENEDETTO: I can answer that. Clause 16 (3) was about protecting certain information that is not able to be disclosed under GIPA—things like section 29 of the Children and Young Persons (Care and Protection) Act—

The Hon. DANIEL MOOKHEY: Yes, but the GIPA Act—

The CHAIR: Order!

The Hon. DANIEL MOOKHEY: I have limited time. The GIPA Act also says that you can withhold information if it is deemed commercial-in-confidence, if there is a private objection. The GIPA Act has quite detailed procedures by which non-government organisations can refrain from handing over details. I accept your point about the GIPA Act having a set of other protections but it is a very broad Act and I know this because the Information and Privacy Commissioner tells us every year.

The CHAIR: Do you have a question, Mr Mookhey?

The Hon. DANIEL MOOKHEY: My question is: Why has that been constructed so broadly and why is every single official visitor appointed under this Act not subject to GIPA?

The CHAIR: You will allow the witnesses to answer the question.

Ms Di BENEDETTO: There is, as you said, a power of the commissioner to compel information under this Act and the agency, if it were a public sector agency which was to receive a request or—

The Hon. DANIEL MOOKHEY: Notice to produce.

Ms Di BENEDETTO: —a notice to produce, that is right, would not be required under that provision to provide any document that was unable or excluded under GIPA. However, they are not precluded by the provision in clause 18 from providing the information.

The Hon. DANIEL MOOKHEY: They have the discretion?

Ms Di BENEDETTO: Yes.

The Hon. DANIEL MOOKHEY: Under the GIPA Act?

Ms Di BENEDETTO: That is right.

The Hon. DANIEL MOOKHEY: I am asking you: What are the policy reasons for them having that discretion?

Ms SMYTH: It is the consistency with other similar bodies—the Health Care Complaints Commission, the Ombudsman and child protection.

The Hon. DANIEL MOOKHEY: No, to be fair, those specific Acts contain the specific clauses of the GIPA Act that have to be followed. This is written so anyone in FACS could apply the GIPA Act as it is and override it.

The CHAIR: I think you have made your point, Mr Mookhey. We have to move on. The Opposition's time has expired.

Ms ABIGAIL BOYD: Thank you very much for coming and making time to answer questions. We heard in a couple of submissions today questions as to why there are not two separate commissioners. Can you speak to the rationale for why there is not a disability commissioner and an ageing commissioner?

Ms SMYTH: There is not a specific reason why that has not occurred. It was basically the cumulation of all those reports that led to the fact there was this specific gap and that there could be a commissioner that covered that gap. There is confusion around having various bodies that provide a similar service.

Ms ABIGAIL BOYD: So it was not considered and rejected; it just was not considered?

Ms SMYTH: To my knowledge, it was not.

Ms McKENZIE: I think from our perspective, having done our standing inquiry and also having quite a bit of contact with the Elder Abuse Helpline that covered the other part of what this body will cover, there are absolutely some key differences in the nature of the matters that are reported, depending on whether it is an older person or an adult with disability. But there are also enormous areas of commonality between them. In terms of, I suppose, having efficiency of organisations—and obviously we have got older adults with disability—to prevent potential overlap that is the other kind of critical part of this organisation, not to duplicate the work that other agencies are doing.

Ms ABIGAIL BOYD: Sure, but I think the basis of the concern was more that one would get lost when put with the other and that you might get a focus on one area of education or advocacy over the other. Of course there are overlaps, but there are also overlaps between disability and mental health. There are all sorts of overlaps in other areas as well that can be managed. I guess the proposed model would be two separate commissioners, but with an overlap covered in some other way in terms of referrals. The other gap that was identified is the fact that the Community Visitors Scheme is applicable only to people with disability and not to older adults. What was the rationale for that?

Ms McKENZIE: Just to be clear, currently we coordinate and oversight the New South Wales Community Visitors Scheme. The part of the Community Visitors Scheme that is slated to go across to the Ageing and Disability Commissioner is not just about adults with disability. It is actually focused on the accommodation environments. It is disability supported accommodation environments that primarily have adults with disability in them, but it is also assisted boarding houses. There are some adults with disability in assisted boarding houses, but assisted boarding houses cover more than just adults with disability. To be an assisted boarding house requires two or more people with additional needs. Those additional needs can be disability but they can also be mental health concerns. They can be age-related frailty. It is a much broader scope. Not everyone in an assisted boarding house has a disability.

Ms ABIGAIL BOYD: The way that it is drafted at the moment is very much only in relation to people with disability, despite the definition of visible premises.

Ms McKENZIE: Yes.

Ms ABIGAIL BOYD: If the idea was to focus on the premises and not necessarily the people in those premises, I do not think that has been captured in the drafting. Maybe we will have to have a look at that. What was the reasoning behind the drafting of reporting being restricted only to reports of incidents of abuse and neglect, et cetera, instead of allowing also a preventative or systemic report to be made? For example, if a worker in a particular setting wanted to make a confidential report that they were worried that some of the practices within their workplace would lead to abuse or neglect, that is not currently permitted in this bill. Was that considered?

Ms SMYTH: Are you talking about support workers funded through either the aged-care system or the National Disability Insurance Scheme?

Ms ABIGAIL BOYD: People working in those settings, yes.

Ms SMYTH: Again, the bill is primarily around the community and informal carers. Is that what we are talking about, or are you talking about the community visitor?

Ms ABIGAIL BOYD: No. I am referring to clause 13, "Reports may be made to Commissioner". At the moment a person may make a report only if they have grounds to believe that an adult is "subject to or at risk of abuse, neglect or exploitation".

Ms SMYTH: Yes.

Ms ABIGAIL BOYD: Could we make it a little bit more specific—that that could also refer to systemic issues; for example, lack of funding or understaffing rather than a risk for a particular adult or a particular person with a disability?

Ms McKENZIE: In a particular scenario the issue that they are actually raising is about the operation of the service provider, which already comes under, if it is an NDIS provider, the remit of the NDIS Quality and Safeguards Commission. If it is an aged-care provider, it comes under the remit of the Aged Care Quality and Safety Commission. Absolutely the commission could receive that information, and we do already. I know that the Ombudsman's office and the elder abuse hotline receive, in the context of reports to them, issues across a range of areas.

For example, a service provider will contact us to raise concerns about the actions of family members in relation to a particular adult with disability, but in that context they will also potentially raise issues about there being no guidance within their organisation for what they need to do to report this or, you know, I have raised it and management has not done anything in response to that. For us, it is about identifying the parts that relate to the actions or conduct of family or informal support workers, as Ms Smyth says, and what are the parts that actually relate to the service provider. This bill is actually not about the actions of staff or service providers, other than the preventative side.

Ms ABIGAIL BOYD: Yes. It recognises the systemic impacts.

Ms McKENZIE: Yes.

The Hon. BEN FRANKLIN: And has the capacity to inquire into and report on systemic issues.

The Hon. DANIEL MOOKHEY: To deal with abuse and neglect.

Ms ABIGAIL BOYD: Yes, but what about the person making the report?

The Hon. BEN FRANKLIN: I understand your point.

Ms ABIGAIL BOYD: They are not currently covered.

The Hon. BEN FRANKLIN: But a lot of it is already there, or has the potential to be there, in clause 12 (1) (e).

Ms ABIGAIL BOYD: But also there are the 90 per cent of people with disability who are not covered by NDIS.

Ms SMYTH: The bill is about where abuse, neglect and exploitation are at the hands of an informal carer, not a paid person. In the majority of cases we are talking about family, neighbours or friends.

Ms McKENZIE: A spouse.

Ms SMYTH: That is right.

Ms ABIGAIL BOYD: So there is that, and then there are the NDIS providers.

Ms SMYTH: Correct.

Ms ABIGAIL BOYD: What about the other providers that are non-NDIS covered?

Ms McKENZIE: It depends what type. In the main, the other providers are generally in contact with the people who are the focus of this legislation, who are generally NDIS protected. If it is adults with disability, it is generally NDIS providers.

Ms ABIGAIL BOYD: Should be.

Ms McKENZIE: You are right. There is a handful of other agencies that have made reports to us raising concerns about adults. There are health providers who have raised concerns with us. But in the main the people that are witnessing, as the previous witnesses identified, are staff. A lot of the reports are coming in from staff who are going into the family home or who are seeing the person when they are on a day program or other kind of contact.

Ms ABIGAIL BOYD: If you are concerned about somebody falling through the gaps and not actually getting any service from anybody and you wanted to make a report about that—maybe I am being too specific—and you were a government employee—

Ms McKENZIE: We currently receive those reports, yes.

Ms ABIGAIL BOYD: —you would not be protected under this.

Ms SMYTH: Anybody who makes a report in good faith will be protected.

Ms ABIGAIL BOYD: Even though it is about a systemic issue rather than it being about a particular incident?

Ms SMYTH: If a person in the community or a worker was making a report, they could make a report about systemic issues that they have noticed through multiple interactions with informal carers, for example.

Ms ABIGAIL BOYD: I think that needs to be broadened.

The Hon. ROSE JACKSON: Earlier you used an example where a neighbour sees that someone who is caring for a family member is doing their best but, perhaps because they are regionally located, they literally cannot access the services that they need, or just with a little bit more support or access to other services or referrals or funding they may be able to provide better services. That is not necessarily neglect. That is not necessarily abuse. That is not necessarily exploitation. But it is really important. Under the narrow definition of exploitation, abuse and neglect, those types of issues cannot necessarily be looked at by the commissioner.

Ms SMYTH: We would have viewed that as neglect. If there is a person who is not getting the medical treatment they need, they are not getting food to a nutritional standard that they require, we would see that as neglect and we would have an expectation the commissioner would take that course. So that would be something they would investigate.

The Hon. BEN FRANKLIN: They can be both intentional and unintentional neglect, right?

Ms SMYTH: That is right.

The Hon. BEN FRANKLIN: But they are still both neglect.

Ms SMYTH: Yes. Then the systemic issues would come out of that: Are there places to refer this person to? Are there services available in that location?

The Hon. DANIEL MOOKHEY: Is there a definition of abuse or neglect in the bill?

Ms Di BENEDETTO: No.

The Hon. DANIEL MOOKHEY: When you say that that is your view, how is that to be transmitted or translated into the legislation? Is there a power for someone to make a regulation to define it?

Ms SMYTH: Or is that through the communication to the community around what—

The Hon. ROSE JACKSON: Particularly because you have raised a point in relation to how people are often hesitant about reporting. "Neglect" is quite a loaded word. If they do not necessarily feel that their neighbour or family member or friend is being neglectful but they think that more support should be provided, I am not necessarily sure that they would report that as neglect under the way that this is drafted.

Ms SMYTH: And that is where the comms would come in. We would not expect that people would be making a report based on what is in the bill; we would expect that the communication that goes out about the commissioner encouraging people to use the service is where we would have words about "Does this person look like their clothes are not clean?" "Does this person look like they are malnourished?" That is the language that—

The Hon. DANIEL MOOKHEY: When you get to the point of investigation the first thing a lawyer of a person who is being investigated will say is that you are acting outside your power because what we are investigating is not abuse or neglect. What precisely is the form of legislative protection that will be available to the commissioner to be able to deal with something like that?

Ms McKENZIE: I suppose a useful other example is we currently operate the Disability Reportable Incidents Scheme in New South Wales and have done since 3 December 2014. Within that there are particular allegations that are required to be reported to our office that include allegations of neglect, ill treatment. They are not defined within our legislation; they are not defined within the Ombudsman Act. We have issued guidance to services about what we consider meets those—

The Hon. DANIEL MOOKHEY: Ms McKenzie, with all due respect, the powers of an Ombudsman are not so tied to the definition of this, which the commissioner is. The Ombudsman Act is written—

The Hon. BEN FRANKLIN: Point of order: We have let Mr Mookhey go for a number of minutes but this is our time.

The CHAIR: I uphold the point of order. Now is the Government's time for questions. I will open the questions. Ms Smyth, you said that there had been extensive consultation with stakeholders, which we expect, in the development of this bill. The stakeholders who came in today obviously had detailed knowledge of the bill and not just what they have seen in recent days. The issues that have come up fairly regularly and in the submissions, if you have seen those, did they come up in the consultation and were they addressed in that process? There are four that seem to come up a lot: extend it to children; a more independent commissioner; public inquiries; and moving the death review team from the Ombudsman to the commissioner.

Ms SMYTH: I think we should separate too there was some consultation done specifically about the bill with a smaller group of people. The extensive consultation done with the community is about the operations of the commission and what to expect, and through those consultations none of those issues were at the forefront. So the things that people were talking to us about were: how to communicate with community; how you would communicate the functions of the commission to Aboriginal communities and to culturally diverse communities; how would you encourage people to call; what, as we talked about, would you see as punitive; how would you support carers? It is a very different focus from the people that we talk to in the community.

The CHAIR: The people who presented their evidence today, generally speaking, are part of that consultation with the community?

Ms SMYTH: Yes. But it was much broader than that. We went out regionally and there were people on the ground who work with people with disability, who work with older people, and their concerns were making sure that this service was seen as a support to those families and that they did see that the majority of the

905,000 carers in New South Wales were doing the best job they possibly could and they wanted those supports to be there for them to continue to do that caring.

The CHAIR: It is interesting to note that they were not at the forefront of the consultation. The next question is to Superintendent Whyte. Thank you for coming in from Liverpool—it is a great city. I love Liverpool. You talked about the elder abuse officers; I think you said there are five. What is the story behind that and what is going to be the protocol to interact them with the new commissioner?

Mr WHYTE: Every police area command or police district across the State will receive one of these officers over the next four years. The initial six rollout are going to Port Macquarie in northern region; Liverpool in south-west; Monaro, which is Queanbeyan, in southern; North Shore in north-west region; Orana, which is Dubbo, in western; and the new South Sydney command, which is Botany-Redfern. These particular officers, as I said, are called the aged-crime prevention officers, or ACPOs—we love an acronym in the police. The idea of them is—and I preface this with this particular job description in the dying days of sign-off—this is pretty much how they will be described: Their primary responsibility is the prevention, disruption and response to the exploitation, abuse and neglect of vulnerable people in the ageing, disability and homeless sectors, or what we refer to under our protocols as "vulnerable communities".

The idea of them is they will be committed to that particular role; they will identify in the areas, meet their stakeholders, form the members on the committees and form part of what we call our crime management unit, which is our domestic violence liaison officers [DVLOs], Aboriginal community liaison officers [ACLOs], multicultural liaison, crime prevention, youth liaison—all of those particular O's, as we call them; liaison officers that actually take the lead. One of the things they will be doing is reviewing every interaction both on Computer Aided Dispatch [CAD], which is our job response system, and on Computerised Operational Policing System [COPS], which is our operational events system for all incidents that we attend, and they review it. The idea of that is if a particular boarding house or a particular individual victim, witness or offender is identified we will put strategies into place and then raise those with our partner agencies in respect of case-managing them.

The CHAIR: So officers on the front line who investigate something would contact that particular specialist officer and get them involved if they are aware of an abuse situation.

Mr WHYTE: Correct. They will be an officer that is still a frontline officer but specifically tasked. Their frontline duties will be undertaking this particular role.

The CHAIR: I could talk for hours on it. It is a great initiative, in my view.

The Hon. TAYLOR MARTIN: Just a quick question for the Family and Community Services representatives here. We have heard from people who want to see children included in this bill and in the remit of the commissioner. What would you have to say to people who are asking for that inclusion?

Ms SMYTH: Again, it is about the gap that currently exists and it has been raised that, where children with disability 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.

The Hon. TAYLOR MARTIN: Do anyone have anything further to add?

Ms SMYTH: And there are already bodies that are looking after children.

Ms Di BENEDETTO: There are a number of national and State bodies whose remit is the oversight of all children and young people, including children with disability.

The Hon. MATTHEW MASON-COX: You have no doubt had a chance to reflect upon the Ombudsman's submission. I would like to get your response to that, particularly in relation to the issues raised therein. Perhaps, Ms McKenzie, you might reflect on that too, so far as the death review team is concerned for disabled people and how we deal with that in a way that perhaps we can find a consensus here while we have got you both at the table.

Ms McKENZIE: The issues that we raised in our submissions in relation to our reviewable deaths functions in relation to people with disability in residential care in New South Wales were more about the need to ensure that the amendments to the Community Services (Complaints Reviews and Monitoring) Act enable us to continue our functions the way that we are currently doing them.

We review the deaths of all people with disability living in residential care. We do full reviews for those living in the care of FACS and assisted boarding houses. For those living in the care of NDIS providers, we have a joint approach with the NDIS commission where the commission looks at the actions or inactions of the NDIS providers and we look at the involvement of the New South Wales service systems with the person, primarily the health system, but it could be justice or other systems. Our submission relating to the reviewable disability deaths area and the existing issues with the drafting of it is about ensuring that we continue to have the same jurisdiction that we currently have.

The Hon. MATTHEW MASON-COX: I want to clarify that you are happy with the current arrangements? You do not want them to go to the new commissioner?

Ms McKENZIE: The position of the Ombudsman is that death review functions should remain together. We obviously have broader reviewable deaths functions that include children. The Coroner's office has a domestic violence death review function. The position of the Ombudsman is that the death review functions should come together.

The Hon. MATTHEW MASON-COX: Because of the expertise you have developed?

Ms McKENZIE: Because of the death review work. But he points to, and it is at the end of our report to Parliament, the need to look at oversight and safeguards in relation to community services more broadly. The establishment of this commission is focused on ageing and disability but there is a need to—I think the former deputy ombudsman and community and disability services commissioner, Steve Kinmond, referred to it earlier this morning—bring together the oversight and regulation bodies that relate to community services, whether it is this commission or any number of other bodies.

The Hon. MATTHEW MASON-COX: It is something that might evolve over time?

Ms McKENZIE: Yes. The death review function would also be combined.

The Hon. BEN FRANKLIN: If the Government were to do that and examine that broader issue what would your personal view be about the appropriateness of taking that responsibility over to the new commissioner?

Ms McKENZIE: If it is done as a combined death review function?

The Hon. BEN FRANKLIN: Yes.

Ms McKENZIE: I think the people that are currently doing the disability death review work—myself and others— already have the expertise so moving it across to the ageing and disability commission as part of that broader regulatory body, there would not be anything lost in doing that.

The Hon. MATTHEW MASON-COX: There has been a number of submissions in relation to advocacy. The reality that has permeated through is—I wanted to get a departmental view on this particularly—that the advocacy services provided will be integral to the complaints flow that will come to the new commissioner and integral in terms of education of aged or disabled people in terms of understanding what their rights are and there is a real issue of funding. We know the issue. We have funding until 2020 at the moment. I am particularly concerned that in regional and rural areas we are sending a message that those services may not be funded beyond 2020. That sends uncertainty. Suddenly people deicide to move on because that funding envelope is not clear. Given the importance of advocacy services to the role of the commissioner what is the view of the department in relation to this particular issue and what happens beyond 2020?

Ms SMYTH: It is definitely not my area of expertise. But I think consideration needs to be given to what is available through the National Disability Insurance Scheme [NDIS] and through the information linkages and capacity [ILC] component.

The CHAIR: Which is linked to the NDIS system.

Ms SMYTH: Correct. You do not need to be an NDIS participant to receive services through the ILC. The National Disability Advocacy Program is funded in addition to what is funded currently in New South Wales to get through the transitional period. The hope is that is where the funding has gone to from the State and that is where the people should be able to access that funding.

The Hon. MATTHEW MASON-COX: That hope to me seems somewhat forlorn.

Ms SMYTH: I cannot comment on what the Government will do if that is not there for people.

The Hon. MATTHEW MASON-COX: I know. Can you comment on the importance of advocacy services in the future in both disability and aged care to the functioning and effectiveness of the role of the commissioner?

Ms SMYTH: 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.

The Hon. MATTHEW MASON-COX: You would agree with the point that the advocacy services in the community will be important to raise awareness and to refer complaints to the commissioner in the first instance regardless of what resources might be within the commissioner's office to facilitate that from that point on?

Ms SMYTH: Yes, absolutely, and who will fund them and whether it will be national or State is a different question.

The Hon. MATTHEW MASON-COX: Can I ask you about the funding envelope that you envisage for the actual commissioner and his or her office?

Ms SMYTH: I do not have access to that information at this point.

The Hon. MATTHEW MASON-COX: You must have a picture of your intent.

Ms SMYTH: We have talked to people about hoping that the commission will have a stream that does that investigative work because that is what is required to build the evidence base if a prosecution is needed. There will need to be a stream of people who will do case coordination work because we know that in a lot of cases that is what it will be about. It will be about linking people to services and supporting carers in a better way. We will need those two components within the commission.

The Hon. MATTHEW MASON-COX: What is your contemplation in terms of the number of staff and the budget, in a ball park figure, for the commissioner's office?

Ms SMYTH: I cannot comment on that.

The Hon. MATTHEW MASON-COX: As a department you do not have a view on that is what you are putting to me?

Ms SMYTH: That is a decision for the Government.

The CHAIR: Ms McKenzie, I may have this wrong but earlier on I thought you referred to temporary powers you have that expire on 30 June hence why this bill needs to be enacted by 1 July. What temporary powers have you got?

Ms McKENZIE: It is less powers and more that the standing inquiry that we are operating. We agreed to extend that by a year. We were intending to finish it at the end of June last year when a lot of our disability related functions went across to the NDIS commission. The Ombudsman agreed to extend the standing inquiry by a year to enable time for another ongoing option to be established.

The CHAIR: That is funded to 30 June.

Ms McKENZIE: Exactly.

The CHAIR: And you have provided that service out of your funds?

Ms McKENZIE: Out of our existing funds, yes.

The Hon. DANIEL MOOKHEY: And those powers are the Ombudsman's powers?

Ms McKENZIE: Yes, exactly right.

The CHAIR: We were not clear why the rush was on for 1 July; thank you for clarifying that. We want to get this implemented as soon as possible of course to help the people that need help. Thank you for coming in today. We appreciate the time you have taken to make submissions.

(The witnesses withdrew)

The Committee adjourned at 13:48.