

# Independent Review of the Ageing and Disability Commissioner Act 2019

Discussion Paper

November 2022

[dcj.nsw.gov.au](http://dcj.nsw.gov.au)

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# 1. Introduction

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- 1.1 The Ageing and Disability Commissioner Act 2019 (the Act) commenced on 1 July 2019, establishing an independent agency of the NSW Government to promote the rights of adults with disability and older people, and protect them from abuse, neglect and exploitation.
- 1.2 Section 36 of the Act requires the Minister to commission an independent review of the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. The review is to be conducted after two years of commencement of the Act and a report on the outcome of the review is to be tabled in each House of Parliament before 1 July 2022.
- 1.3 Alan Cameron AO has been commissioned by the Minister for Disability Services, the Hon. Natasha Maclaren-Jones MLC, and the Minister for Seniors, the Hon. Mark Coure, MP to conduct the independent review of the Act. Both Ministers are jointly responsible for the Act. Alan Cameron AO is supported by a small team of officers from the Department of Communities and Justice.

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## About this Discussion Paper

- 1.4 This discussion paper is the first part of the review process. It provides information about what the Act does and some key issues raised by stakeholders about how the Act is working.
- 1.5 A number of questions have been included to invite comment on how the Act is working. You can also ask any other questions or make comments about the Act if you wish.
- 1.6 There are lots of different ways that older adults and adults with disability can get involved in this review. This discussion paper is specifically asking about the operation of the Act, namely:
  - whether the purposes of the Act are still valid, or should be changed,
  - how the Act has been working to achieve these purposes,
  - how the Ageing and Disability Commissioner can best protect and promote the rights of older adults and people with disability in NSW,
  - whether any of the provisions of the Act need to be changed to help the Ageing and Disability Commissioner do their job; and
  - how the Official Community Visitors (OCV) scheme is working.

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## How you can have your say

- 1.7 We want to hear from you.
- 1.8 It is important that we hear from all different people to make sure the Act reflects what is needed to support adults with disability and older adults in NSW. We encourage everyone to have their say. You can tell us what you think by:
  - responding to this online survey [www.nsw.gov.au/have-your-say/adc-act-independent-review](http://www.nsw.gov.au/have-your-say/adc-act-independent-review), or

- sending feedback through a written submission. You do not need to answer every question, and you can also raise any other questions or comments you would like. Please email or post to Department of Communities and Justice Seniors Team, Locked Bag 5000, Parramatta NSW 2124.

- 1.9 **The closing date for all survey responses and written submissions is 5pm 16 December 2022.**
- 1.10 Your feedback will be considered and will inform a report on the review. The report will be tabled in the NSW Parliament.
- 1.11 We will publish any written feedback you give on a public website unless you ask us not to. You can let us know if you do not want your personal details or any part of your submission published. The feedback and submissions will be published at [www.dcj.nsw.gov.au/about-us/engage-with-us.html](http://www.dcj.nsw.gov.au/about-us/engage-with-us.html).
- 1.12 For more information about the review and how you can participate, please email [seniors@fac.s.nsw.gov.au](mailto:seniors@fac.s.nsw.gov.au).

## 2. Background

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- 2.1 The establishment of the Ageing and Disability Commission (ADC) responded to recommendations made by a number of reviews and inquiries, most notably: the Ombudsman's *Special Report on Abuse of Vulnerable Adults* (November 2018); the NSW Law Reform Commission's *Review of the Guardianship Act 1987* (2018); and the NSW Parliament Legislative Council General Purpose Standing Committee No. 2 Inquiry into Elder Abuse (2016).
- 2.2 The ADC filled a critical gap in dealing with allegations of abuse, neglect and exploitation of people with disability and the elderly in home and community settings that was not previously addressed by other complaint and investigative bodies in NSW. For example, people with disability could only have recourse to the protections offered by the NDIS Quality and Safeguards Commission (NDIS Commission) if they were accessing services funded by the NDIS, which many people with a disability were not. These NDIS complaints were also limited to service providers, not members of family. The Health Care Complaints Commission can only investigate complaints against health practitioners.
- 2.3 The Act bridged these gaps by giving the Commissioner power to deal with allegations about the abuse, neglect or exploitation of adults with disability and older adults who are vulnerable to mistreatment. Additionally the Elder Abuse Helpline and Resource Unit (EAHRU) became part of the ADC, and is now called the Ageing and Disability Abuse Helpline.
- 2.4 The ADC works closely with other government and non-government organisations to support information sharing and referral pathways, in order to ensure any vulnerable older person or adult with disability is protected from abuse, neglect and exploitation.
- 2.5 There are currently three other jurisdictions that have agencies with responsibilities for receiving and responding to (including investigating) allegations of abuse of vulnerable adults in home and community settings – ACT, Queensland, and South Australia. The cohorts covered by the legislation differ slightly across the jurisdictions. Agencies in NSW and South Australia are the most similar, with functions including handling reports about abuse, neglect and exploitation of vulnerable adults; raising awareness and educating the public and reporting on systemic issues.

### 3. The Ageing and Disability Commissioner Act 2019

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#### 3.1 Objects and Principles of the Act

- 3.1 Section 4 of the Act sets out what it aims to achieve. The objects are to:
- a) to protect and promote the rights of adults with disability and older adults, and
  - b) to protect adults with disability and older adults from abuse, neglect and exploitation.
- 3.2 The Commissioner and any other person exercising a function under the Act must have regard to the objects outlined above as well as the following principles:
- a) adults with disability and older adults have the right to respect for their worth and dignity as individuals and to live free from abuse, neglect and exploitation,
  - b) adults with disability and older adults have the right to respect for their cultural and linguistic diversity, age, gender, sexual orientation and religious beliefs,
  - c) adults with disability and older adults have the right to privacy and confidentiality,
  - d) adults with disability and older adults have the right to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports and services, and
  - e) families, carers and other significant persons have a crucial role in the lives of adults with disability and older adults and it is important to respect and preserve those relationships.
- 3.3 This section also recognises that adults with disability and older adults may face multiple disadvantages and are potentially more vulnerable to abuse, neglect and exploitation. It sets out particular groups of people who can face additional disadvantages as well as barriers to accessing supports and services, such as women, Aboriginal and Torres Strait Islander adults, gay, lesbian, bisexual, transgender and intersex communities, adults from culturally and linguistically diverse backgrounds and adults living in regional and remote areas.
- 3.4 When exercising a function under the Act, the Commissioner or anyone else must have regard to the wishes of the adult.

#### Question 1

Are the objects outlined in section 4 of the Act still valid? What changes, if any, should be made?

#### Question 2

What do you think about the principles? Are they appropriate for older adults and adults with disability?

#### 3.2 Appointment of the Commissioner

- 3.5 Part 2 of the Act deals with how the Commissioner is appointed. The Commissioner is a statutory office holder appointed by the Governor for a term of up to 5 years and may be reappointed for one more term, whether or not those terms are consecutive.
- 3.6 The Commissioner is employed under a contract of employment between the Commissioner and the Minister under section 6. This section also provides for employment and remuneration

of the Commissioner as a statutory officer, not an employee under the Government Sector Employment Act 2013.

- 3.7 Section 7 sets out when the office of Commissioner becomes vacant (for example on death, completion of term, resignation, and removal from office). Section 8 enables the Governor to remove the Commissioner from office, but only for incompetence, incapacity or misbehaviour.
- 3.8 In case of illness or absence of the Commissioner or during a vacancy in the office of Commissioner, the Minister can appoint a person to act as the Commissioner under section 9. An acting Commissioner is entitled to remuneration determined by the Minister.
- 3.9 Like other statutory office holders, the Commissioner does not directly employ staff but persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to assist the Commissioner to exercise the functions of the office and the Commissioner may delegate any of these functions to a member of staff (sections 10 and 11).

### Question 3

Are there any changes required to the appointment process or the status of the Commissioner?

## 3.3 Functions of the Commissioner

### Division 1 General Functions

- 3.10 Part 3 of the Act is divided into 2 Divisions: one on the general functions of the Commissioner and the other on investigations and public inquiries.
- 3.11 Section 12 in Division 1 sets out the Commissioner's key functions:
  - a) to deal with allegations of abuse, neglect and exploitation of adults with disability and older adults, whether on the basis of a report made to the Commissioner or at the Commissioner's own initiative, including by referring matters to appropriate persons or bodies and by conducting investigations,
  - b) to take further action, following an investigation into an allegation of abuse, neglect or exploitation of an adult with disability or older adult, that the Commissioner considers necessary to protect the adult from abuse, neglect and exploitation, including by making an application to a court or tribunal in respect of the adult,
  - c) to raise awareness and educate the public about matters relating to the abuse, neglect and exploitation of adults with disability and older adults,
  - d) to provide advice and general assistance to the public about matters relating to the abuse, neglect and exploitation of adults with disability and older adults, including referrals to independent advocacy services, where appropriate,
  - e) to inquire into and report on systemic issues relating to the protection and promotion of the rights of adults with disability and older adults or the abuse, neglect or exploitation of adults with disability or older adults,
  - f) to consult with the Ageing and Disability Advisory Board on matters relating to the abuse, neglect and exploitation of adults with disability and older adults that the Commissioner considers appropriate,

- g) to advise, and make recommendations to, the Minister, at the Commissioner's own initiative or at the request of the Minister, on matters relating to the abuse, neglect and exploitation of adults with disability and older adults, and
  - h) to monitor, assess and report on the New South Wales implementation of the National Disability Strategy (NDS).
- 3.12 The Commissioner is not subject to the control or direction of the Minister in exercising its functions.

#### **Question 4**

Are the functions of the Commissioner suitable and appropriate to achieve the objectives of the Act?

#### ***Reports to the ADC***

- 3.13 Section 13 allows anyone to make a report to the Commissioner about an adult with disability or older adult if the person has reasonable grounds to believe the adult is subject to, or at risk of, abuse, neglect or exploitation. This includes persons who are themselves adults with disability or older adults.
- 3.14 Persons making reports are protected from any civil, criminal or disciplinary action as a result of making the report provided the report is made in good faith.
- 3.15 Once a report is made, the Commissioner can do one or more of the following:
- a) conduct an investigation,
  - b) make a referral to another person or body, and
  - c) decline to take action on the report.
- 3.16 In order to determine the most appropriate response, the Commissioner can make preliminary inquiries and can ask the person making the report for further information.
- 3.17 The Commissioner can also, at his own initiative, decide to deal with a matter as a report if the matter relates to an adult with disability or older adult that the Commissioner has reasonable grounds to believe is subject to, or at risk of, abuse, neglect or exploitation.

#### ***Referral of reports to other bodies***

- 3.18 Under section 13(8) the Commissioner must refer reports that could also be complaints made to the Health Care Complaints Commissioner, the Aged Care Quality and Safety Commission and the NDIS Commission or the Children's Guardian, to the relevant body.
- 3.19 The Commissioner can still investigate reports referred to these bodies if they are of the opinion that conducting an investigation may be necessary to protect an adult with disability or older adult from abuse, neglect or exploitation.
- 3.20 Section 13(9) requires the Commissioner to refer reports that could also be evidence of commission of a criminal offence to the Commissioner of Police or the Director of Public

Prosecutions. There is also a general obligation under section 316 of the *Crimes Act 1900* to report serious indictable offences to appropriate law enforcement agencies.

- 3.21 The mandatory nature of referrals under sections 13(8) and (9) may limit the ADC's ability to receive truly confidential reports. The ADC has suggested that these obligations appear to be at odds with objects of the Act, which state that adults with disability and older adults have the right to privacy and confidentiality and require any party exercising a function under the Act with respect to a particular adult with disability or older person to have regard to the wishes of the adult<sup>1</sup>. The ADC suggests that consideration be given to amending the references to 'must' in sections 13(8) and 13(9) to 'may', to allow the Commissioner discretion about whether to refer relevant reports to other bodies. This amendment would support the objective of protecting the privacy and wishes of the adult who is the subject of a report wherever possible.

### Question 5

Should the Commissioner have discretion in deciding which reports to refer to the bodies in sections 13(8) and 13(9) of the Act?

#### *Investigations – consent required*

- 3.22 Under section 13(11), in order to investigate an allegation, the Commissioner must obtain the consent of the adult alleged to be, or at risk of being, abused, neglected or exploited unless the Commissioner is of the opinion that:
- a) the adult is incapable of giving consent despite having been provided with the appropriate support for the purposes of making such a decision, or
  - b) it is not necessary to obtain consent due to the seriousness of the allegation or the risk to the personal safety of the adult or
  - c) any other circumstances prescribed by the regulations exist.
- 3.23 The bar for the Commissioner to investigate a matter without the consent of an adult was intentionally made high, to protect the autonomy of adults who are the subject of investigations.
- 3.24 Currently there are no relevant circumstances prescribed in the regulations. The regulation-making power was included in case it became apparent over time, as reports are received, that there are certain situations in which the requirement to obtain consent is having an unacceptable impact on the best interests of some vulnerable adults and is leaving them unprotected and unsupported<sup>2</sup>.
- 3.25 The ADC has reported that the requirement that the adult must consent to the investigation can be an issue where the adult cannot be contacted, typically because the alleged perpetrator is always with the adult and/or is blocking access. Reports that primarily involve allegations of financial abuse (or some psychological abuse) do not always meet the threshold of seriousness or risk to personal safety under section 13(11)(b) to dispense with the requirement of consent.

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<sup>1</sup> *Ageing and Disability Commissioner Act 2019*, section 4(2)(c) and (4).

<sup>2</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 8 May 2019 (Gareth Ward, Minister for Families, Communities and Disability Services)

- 3.26 South Australian legislation includes a provision to allow an investigation to commence or the Adult Safeguarding Unit to take action without first obtaining consent “if the Adult Safeguarding Unit has not, after reasonable inquiries, been able to contact the vulnerable adult”<sup>3</sup>. “Reasonable inquiries” is not defined in the legislation.

#### Question 6

In what circumstances should the Commissioner be able to investigate an allegation without the consent of the relevant adult?

#### Question 7

Should an exemption from the requirement to obtain consent, similar to the one in South Australian legislation, be included in the Act?

### *Information sharing*

- 3.27 Section 14 of the Act enables the Commissioner to exchange information with other government entities (including public hospitals and the NSW Civil and Administrative Tribunal) and private health facilities and enter into information sharing agreements. This exchange of information is limited to information about:
- a) a report under this Act,
  - b) the safety, welfare or well-being of an adult with disability or older adult,
  - c) the abuse, neglect or exploitation of an adult with disability or older adult, and
  - d) any other matter prescribed by the regulations.
- 3.28 The ADC has suggested that it may be desirable to broaden information sharing under section 14 with a range of organisations and individuals. The ADC suggests that consideration be given to including parties that are either engaged with or are able to provide supports to adults with disability or older people, who hold relevant information that could assist the ADC in handling reports. These would include:
- a) NGO disability and aged care providers,
  - b) private health practitioners such as general practitioners and other allied health practitioners, and
  - c) providers of financial and legal services.
- 3.29 Responding effectively to abuse of adults with disability and older adults typically requires a range of services. It is important that all relevant service providers are able to work together to help adults with disability or older adults. Information sharing is intended to assist in coordinating responses to abuse or potential abuse, and minimise the burden on the victim. Broadening the list of service providers in section 14 would facilitate these objectives.
- 3.30 It is important to note that entities are not compelled under section 14 to provide information to the Commissioner or enter into information sharing arrangements. This is consistent with the objects of the Act which provide that adults with disability and older adults have the right

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<sup>3</sup> Ageing and Adult Safeguarding Act 1995 (SA), section 24(4)(iv).

to privacy and confidentiality and the Commissioner must have regard to the wishes of the adult when exercising a function under the Act.

- 3.31 Sections 15 and 15A provide protections to persons who make reports and employees and contractors who assist the Commissioner in relation to a report. The identity of persons who make reports in good faith must not be disclosed by any person or body except for law enforcement purposes or with the consent of the person who made the report. An employer must not take or threaten to take detrimental action against an employee or contractor because the employee or contractor assists, or proposes to assist, the Commissioner with any function in relation to a report about the abuse, neglect or exploitation of an adult with disability or an older adult.

#### Question 8

Are the Commissioner's information sharing powers appropriate and sufficient to achieve the objectives of the Act?

#### Question 9

Should the Act enable the Commissioner to share information with the organisations and individuals listed in paragraph 3.28? Are there any others?

### Division 2 Investigations and public inquiries

- 3.32 In order to investigate a report, the Commissioner can compel attendance at meetings and the production of documents and other things. A person will commit an offence if they:
- a) refuse or fail, without reasonable excuse, to comply with a notice to attend a meeting or produce something,
  - b) make a false or misleading statement in response to the notice, or
  - c) alter, suppress or destroy something they are required to produce.
- 3.33 The maximum penalty for non-compliance is a \$5,500 fine (being 50 penalty units). The only documents that cannot be compelled are root cause analysis reports for incidents in private health facilities prepared under Part 4 of the *Private Health Facilities Act 2007*.
- 3.34 Section 17 of the Act enables the Commissioner to apply for search warrants authorising the Commissioner or its staff to enter premises, and collect evidence including examining, copying or removing documents and other things and questioning occupants.
- 3.35 Any medical practitioner or prescribed health practitioner accompanying a person executing a warrant can inspect the premises and observe and speak with the adult with disability or older adult, and can examine that adult with his or her consent. A relevant health practitioner could include a registered nurse or a speech pathologist<sup>4</sup>.
- 3.36 Section 18 provides that provisions of any other Act or law that prohibit or restrict the disclosure of information do not operate to prohibit disclosure of information to the Commissioner:
- a) in response to a notice issued (s16),
  - b) when produced in the course of an execution of a search warrant (s17), or
  - c) when produced at a public inquiry (s19).

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<sup>4</sup> Ageing and Disability Commissioner Regulation 2019, clause 5A.

- 3.37 This provision impacts other statutory or government entities that usually have secrecy provisions in their empowering legislation that prohibits disclosure of information except in certain circumstances. Restrictions in privacy legislation also do not apply to prevent the disclosure of personal information for these purposes.
- 3.38 Section 19 of the Act provides the Commissioner with Royal Commission-like powers of conducting a public inquiry. The subject of such an inquiry is limited to the purpose of investigating a report under the Act.
- 3.39 In conducting a public inquiry the Commissioner must take into account the privacy and wishes of the individual who is the subject of the report, as well as the seriousness of the allegations in deciding whether a public inquiry is appropriate.
- 3.40 To date, the Commissioner has not conducted a public inquiry.

### Question 10

Are the Commissioner's investigation and public inquiry powers appropriate and sufficient to achieve the objectives of the Act?

## 3.4 Official Community Visitors

- 3.41 Under Part 4 of the Act the Commissioner has responsibility for coordinating the Official Community Visitor (OCV) scheme in relation to certain services providing accommodation to adults with disability and older adults. This was a function transferred to the Commissioner from the Ombudsman under the *Community Services (Complaints, Review and Monitoring) Act 1993* (CRAMA), but only in so far as the program relates to adults.
- 3.42 The Children's Guardian has responsibility for coordinating the OCV scheme in relation to OCVs who visit accommodation services for children in residential out-of-home care, including children living with disability<sup>5</sup>. The ADC coordinates the scheme on behalf of both agencies. The Office of the Children's Guardian is currently reviewing its OCV scheme as part of the statutory review of the *Children's Guardian Act 2019*.
- 3.43 OCVs are appointed by the Minister on the Commissioner's recommendation with functions relating to people who reside in "visitable services". A visitable service is an accommodation service where adults live in the full-time care of a service provider (typically NDIS providers), an assisted boarding house or any other service prescribed by the regulations. There are no other visitable services prescribed.
- 3.44 OCVs may be appointed for a term of up to three years (and re-appointed for one further term), if the Minister is satisfied that:
- the OCV has appropriate knowledge and expertise in matters relating to adults with disability or older adults,
  - has a commitment to the objects of the Act and other legislation listed in section 21(1)(b) of the Act,
  - has skills in the solving of problems about access to, and the use of, services by adults with disability or older adults, and
  - is not employed within the Department of Communities and Justice.

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<sup>5</sup> *Children's Guardian Act 2019*, section 128.

- 3.45 In addition to giving the Minister appointment powers, section 21 allows the Minister to remove an OCV from office, on the recommendation of the Commissioner, but only for “incompetence, incapacity or misbehaviour”.
- 3.46 Although the Commissioner may recommend removal of an OCV and may “take other action, as may be necessary for the exercise of the Commissioner’s functions”<sup>6</sup>, the Act is silent on the actions, or authority, the Commissioner has with respect to supervision and management of OCVs, including management of OCVs who may be underperforming. Particularly, where the issues relate to poor quality visiting practice (such as consistently undertaking very short visits; failing to identify issues; raising only minor issues; or submitting poorly written visit reports), it is not clear how directive the Commissioner can be; or what is encompassed in the scope of ‘incompetence’ to enable an OCV’s potential removal. These provisions are identical to the ones relating to the OCV scheme under the *Children’s Guardian Act 2019* and similar issues regarding the Children’s Guardian’s authority to manage OCVs have been identified by the Office of the Children’s Guardian in its review of that Act.

### Question 11

Should the Act clarify the scope of the Commissioner’s authority to manage the performance of OCVs and the grounds of removal for OCVs?

- 3.47 Section 22 empowers OCVs to exercise various functions in relation to places where a visitable service is provided including:
- entering and inspecting the place,
  - conferring alone with residents or employees,
  - inspecting relevant documents held there, and
  - providing the Minister and the Commissioner with advice or information relating to the conduct of the place. OCVs can also inform the Minister and Commissioner on matters affecting the residents’ welfare, interests and conditions.
- 3.48 OCVs can encourage the promotion of legal and human rights of residents, including the right to privacy, confidentiality, adequate information and consultation, and the right to complain. OCVs can consider matters raised by the adults themselves, by staff or by other people who have a genuine concern for the welfare, interests and conditions of relevant adults. They can provide information about, and assist those adults, to obtain advocacy services that can help them with grievances or concerns. OCVs can refer grievances or concerns affecting residents, if reasonable and practicable to do so, to visitable service providers or other appropriate bodies to facilitate resolution of the issues.
- 3.49 Currently there is no legislative authority for OCVs to share broader information such as information about providers of concern or concerning trends/patterns about providers with regulatory bodies such as the NDIS Commission and the Department of Communities and Justice. Permitting exchange of information on the conduct of premises, or other matters affecting the welfare, interests and conditions of persons using visitable services with these regulatory bodies could improve regulation of the disability services sector and assisted boarding houses.

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<sup>6</sup> Ageing and Disability Commissioner Act 2019, section 23.

- 3.50 The Commissioner has a general oversight and coordination role in relation to OCVs and can determine priorities for the services to be provided by OCVs. Anyone who makes, or proposes to make, a complaint to an OCV is protected from retribution for doing so.
- 3.51 The OCV scheme has grown significantly since it began in 1995 under the predecessor to CRAMA, the *Community Services (Complaints, Appeals and Monitoring) Act 1993*. In October 1995, OCVs (then called Community Visitors) began visiting 663 government and non-government services across NSW where children, young people and people with disability lived in full-time care. By 2019, after the introduction of the NDIS which created an entirely different landscape, there were over 2,000 visitable service locations. Since then a large volume of new services have become registered providers of supported independent living (SIL) services under the NDIS. At the moment, the OCV scheme does not have a mechanism to obtain regular information about new providers (or new premises) that may be visitable services. As a result, the OCV scheme does not accurately capture all potential visitable services, and undue time is spent seeking updated information from providers about service locations.
- 3.52 Introducing a requirement for disability service providers to notify the ADC of any new or changes to visitable services they operate could improve the operation and efficacy of the OCV scheme. In Queensland, relevant registered NDIS providers are required to give the Public Guardian ‘required information’ comprising the provider’s name, contact details and address of each visitable site<sup>7</sup>.

#### Question 12

Should OCVs be permitted to provide advice and information to the NDIS Commission and Department of Communities and Justice to improve regulation of the disability services sector and assisted boarding houses?

#### Question 13

Should disability service providers be required to give information about new or changes to existing visitable services they operate to the ADC? If so, what information should the providers be required to give?

- 3.53 On 21 October 2022, the Disability Reform Ministers’ Council (DRMC) discussed outreach and visitation in the NDIS as a means to protect people with disability at risk of harm. The status of state-based Community Visitor Schemes (CVS) was explored, including improvements since the 2018 Westwood Spice Review of Community Visitor Schemes<sup>8</sup>.
- 3.54 The Westwood Spice Review (and subsequent update) found that there is no single CVS model in operation; the powers of Visitors, scope of coverage, scale, design, and administration of CVS programs across states varies widely. For example, while NSW, Queensland, ACT and the Northern Territory have paid visitors, Victoria and South Australia have volunteer visitors. In some states there is no CVS in operation.
- 3.55 The existing disparate CVS arrangements may suggest that there is a need for stronger coordination across systems; and continued strengthening of information sharing arrangements between the NDIS Quality and Safeguards Commission (NDIS Commission) and existing schemes.
- 3.56 The Westwood Spice Review recommended that the Commonwealth and states and territories should work towards national consistency around key aspects of CVS. This view has been

<sup>7</sup> *Public Guardian Act 2014* (QLD), section 49A.

<sup>8</sup> *Community Visitor Schemes Review*, Department of Social Services for the Disability Reform Council, Council of Australian Governments December 2018.

reflected in other reviews including Responses to the Disability Royal Commission Issues Paper – Safeguards and quality<sup>9</sup> and the independent review into the death of Ms Ann-Marie Smith conducted by Alan Robertson SC<sup>10</sup>.

- 3.57 At the 21 October 2022 DRMC, Ministers agreed participant safety and possible improvements on regulatory and outreach arrangements would be a standing item for the DRMC moving forward and for work to be progressed as part of the NDIS Review, with areas for examination that could include consideration of a national visitation scheme and the future role of state-based CVS in the NDIS.

#### Question 14

Should the ADC Act be amended to provide flexibility for alignment of the NSW OCVs with a nationally consistent CVS which may be subsequently agreed by the Disability Reform Ministers' Council, including the potential for volunteer visitors as per some other state schemes?

### 3.5 Annual reports and special reports

- 3.58 The Commissioner must prepare and provide to the Presiding Officer of each House of Parliament, annual reports that include a report on the Commissioner's activities and the activities of OCVs during the relevant year.
- 3.59 An annual report must include the following information:
- any recommendations for administrative action or changes in the laws of the State that the Commissioner considers necessary,
  - the number of reports referred to other bodies and the outcome of each referral,
  - the number of investigations where consent was not given, and
  - if a member of the Ageing and Disability Board was removed during the reporting period, the reasons for removing the member.
- 3.60 The requirement to report on the outcome of each referral to other bodies has resulted in the ADC implementing individual arrangements with agencies to obtain information on a regular basis. The ADC has advised that this has placed a large administrative burden on the ADC and these agencies, and that there has not been any discernible benefit associated with this reporting requirement.
- 3.61 The Commissioner can prepare special reports on any matter relating to the functions of the Commissioner and provide it to the Minister and Parliament. If the Minister requests a special report, it must also be provided to Parliament.

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<sup>9</sup> [Overview of responses to the Safeguards and quality Issues paper, The Royal Commission into Violence against, and Abuse, Neglect and Exploitation of People with Disability, September 2021.](#)

<sup>10</sup> [Independent review of the adequacy of the regulation of the supports and services provided to Ms Ann-Marie Smith, an NDIS participant, who died on 6 April 2020, Report to the Commissioner of the NDIS Quality and Safeguards Commission, Alan Robertson SC, 31 August 2020.](#)

### Question 15

Are the matters the Commissioner is required to include in their annual reports appropriate?

### Question 16

Should the Commissioner be required to continue reporting on the outcome of each referral to other agencies?

## 3.6 Miscellaneous

3.62 Part 6 of the Act sets up an Ageing and Disability Board to advise the Commissioner on any matter related to adults with disability and older adults that it considers appropriate or that the Commissioner refers to it. The Board comprises the Commissioner and persons appointed by the Minister who have, in the Minister's opinion, relevant knowledge of and experience in matters relating to adults with disability and older adults. The Board elects a chairperson and deputy chairperson from its appointed members. Its composition must also reflect the diversity of the community.

### Question 17

Is the role and membership of the Ageing and Disability Board appropriate and sufficient to achieve the objectives of the Act?

3.63 There are a number of additional provisions about the general operation of the Act, including provisions that:

- a) protect people from personal liability for any matter or thing done in good faith in executing the Act,
- b) create an offence for wrongful disclosure of information,
- c) create an offence for obstruction of the Commissioner or other person in the exercise of a function under this Act,
- d) deal with proceedings for offences under the Act,
- e) allow the Governor to make regulations under the Act, and
- f) require the Minister to commission an independent review of the Act.

### Question 18

Do you have any other comments about the Act that you would like to raise?

## 4. Consolidated list of questions

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1. Are the objects outlined in section 4 of the Act still valid? What changes, if any, should be made?
2. What do you think about the principles? Are they appropriate for older adults and adults with disability?

3. Are there any changes required to the appointment process or the status of the Commissioner?
4. Are the functions of the Commissioner suitable and appropriate to achieve the objectives of the Act?
5. Should the Commissioner have discretion in deciding which reports to refer to the bodies in sections 13(8) and 13(9) of the Act?
6. In what circumstances should the Commissioner be able to investigate an allegation without the consent of the relevant adult?
7. Should an exemption from the requirement to obtain consent, similar to the one in South Australian legislation, be included in the Act?
8. Are the Commissioner's information sharing powers appropriate and sufficient to achieve the objectives of the Act?
9. Should the Act enable the Commissioner to share information with the organisations and individuals listed in paragraph 3.28? Are there any others?
10. Are the Commissioner's investigation and public inquiry powers appropriate and sufficient to achieve the objectives of the Act?
11. Should the Act clarify the scope of the Commissioner's authority to manage the performance of OCVs and the grounds of removal for OCVs?
12. Should OCVs be permitted to provide advice and information to the NDIS Commission and Department of Communities and Justice, to improve regulation of the disability services sector and assisted boarding houses?
13. Should disability service providers be required to give information about new or changes to existing visitable services they operate to the ADC? If so, what information should the providers be required to give?
14. Should the ADC Act be amended to provide flexibility for alignment of the NSW OCVs with a nationally consistent CVS which may be subsequently agreed by the Disability Reform Ministers' Council, including the potential for volunteer visitors as per some other state schemes?
15. Are the matters the Commissioner is required to include in their annual reports appropriate?
16. Should the Commissioner be required to continue reporting on the outcome of each referral to other agencies?
17. Is the role and membership of the Ageing and Disability Board appropriate and sufficient to achieve the objectives of the Act?
18. Do you have any other comments about the Act that you would like to raise?