

## NSW Official Community Visitors

### Submission to the Independent Review of NSW Ageing and Disability Commissioner Act (2019)

#### Introduction

NSW Official Community Visitors (OCVs) welcome the opportunity to contribute to the Independent Review of NSW Ageing and Disability Commissioner Act (2019). All OCVs have been consulted in the development of this submission.

Outlined below are our responses to the questions in the Review Discussion Paper. Please note that we make 'no comment' in some instances where we don't believe we have an informed view to share. Some OCVs have also responded to the online Survey.

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

We agree that the objects outlines in section 4 of the Act are still valid.

We believe that the principles could be strengthened with the addition of a specific principle related to the right of adults with a disability and older adults to make their own decisions to the full extent of their capability. In our OCV work we often see individuals who are capable of making their own decisions, being influenced and sometimes coerced in their decision-making by guardians, family members and staff in their accommodation service provider.

The language in section 4 of the Act could also be updated slightly to be more specific, referencing the will and preferences of the individual, rather than the more vague term, 'wishes'.

**Question 3      Are there any changes required to the appointment process or the status of the Commissioner?**

We do not believe any changes should be made to the process of appointing the Commissioner.

**Question 4      Are the functions of the Commissioner suitable and appropriate to achieve the objectives of the Act?**

OCVs do not believe any changes should be made to Part 3 Division 1 of the Act. OCVs fully support the independence of the Commissioner.

**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?**

OCVs do not have an agreed view. We see the value of amending ‘must’ to ‘may’ in circumstances where an individual’s will and right to privacy is at odds with Commissioner’s requirement to report. If the wording change is made, the circumstances in which the Commissioner can exercise discretionary powers should be clarified in this section of the Act.

**Questions 6 and 7**      **In what circumstances should the Commissioner be able to investigate an allegation without the consent of the relevant adult? Should an exemption from the requirement to obtain consent, similar to the one in South Australian legislation, be included in the Act?**

OCVs sometimes see situations where an alleged perpetrator of abuse is blocking access to the adult or does not allow an OCV to be alone with the adult. Sometimes OCVs discover that threats have been made to the adult or other kinds of suspected coercive control are in play.

We therefore agree that Section 13(11) of the Act should be amended to include an exemption for the Commissioner to investigate in circumstances where the adult cannot be contacted to give consent.

**Question 8 and 9**      **Are the Commissioner’s information sharing powers appropriate and sufficient to achieve the objectives of the Act? Should the Act enable the Commissioner to share information with the organisations and individuals listed in paragraph 3.28? Are there any others?**

OCVs agree that the Commissioner’s information-sharing powers should be expanded to include those organisations and individuals listed in item 3.28 of the Discussion Paper. We believe this will likely improve the Commissioner’s capacity to safeguard individuals from abuse.

**Question 10**      **Are the Commissioner’s investigation and public enquiry powers appropriate and sufficient to achieve the objectives of the Act?**

No comment

**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?**

OCVs believe that the Commissioner already has the authority under Part 4 section 21(5) to manage the performance of OCVs, including the power to recommend to the Minister that an OCV should be removed for ‘incompetence, incapacity or misbehaviour’.

We agree that the criteria for OCVs’ performance should be clarified. However, we believe this is an internal ADC management matter, rather than a matter requiring changes to or definitions in the Act.

Some way towards defining performance criteria was made in a recent job evaluation exercise, where the functions of an OCV and level of judgment and expertise required for the role were defined and benchmarked against NSW public service grades. It would be a reasonably simple human resource management task to develop a capability framework and performance criteria for the OCV role. This would allow for the performance of OCVs to be managed in accordance with specific, defined performance criteria, and of course subject to procedural fairness.

On the matter of ‘incapacity’, we assume this is related to an inability to perform the role due to health issues. Perhaps the meaning of this could be clarified at least to OCVs, if not in the legislation.

The term ‘misbehaviour’ is unusual to include in legislation. We think the wording in this section of the Act should be amended to replace the word ‘misbehaviour’ with the word ‘misconduct’. Misconduct criteria are defined by the Code of Conduct.

The OCV Scheme has ongoing recruitment and retention issues which are costly, particularly in terms of the cost of rounds of recruitment. We believe that these issues are partly related to poor remuneration of OCVs, and also to the limited tenure of the appointment. The legislation prescribes that OCVs may not be appointed for more than two consecutive 3-year terms. We believe this requirement is short-sighted in terms of retaining OCVs who are experienced and performing well in the role.

Though the induction training and mentoring provided by the ADC is excellent, we estimate that in general, it may take the first term of appointment (i.e., 3 years) for an OCV to develop the skillset, knowledge, experience and level of judgement required to be truly effective in the role. A more strategic approach to retaining high-performing OCVs would be to provide extended tenure of appointment. We believe that for OCVs who have a proven track record of fulfilling the requirements of the role, consideration could be given to an ongoing appointment, or at least the option of a third and perhaps a fourth term. This of course should be subject to the implementation of formal performance reviews before the end of each 3-year term, in line with the performance and conduct criteria as described above.

**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?**

OCVs visit many services. We are well-placed to identify systemic issues that impact residents’ quality of life or infringe on their human rights, e.g., unauthorised restricted practices, unskilled staff, residents not engaged in planning and decision-making their own lives, poor practice etc.

OCVs visit people at all times of the day and see first-hand what is happening in a person’s life at a given moment in time. OCVs observe the way staff engage with residents, they ask questions about what they see (in real time), they review or request to review documentation related to a person’s physical and mental health, community participation activities, their finances, behaviours of concern and the use of restricted practices. OCVs consistently identify issues that may have a negative impact on a person’s life and report these to providers and to the relevant regulatory bodies when necessary to do.

We believe OCVs are well-informed and should be permitted to provide advice to the NDIS Commission and DCJ to improve regulation of the disability 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?**

OCVs currently identify and seek to address issues of compatibility in SIL homes. OCVs ask questions about how residents are chosen to live with each other and if the residents are involved in the decision about who should live in their home when a vacancy becomes available.

OCVs and the ADC are aware that compatibility is a concern in SIL homes. Too often, we see individuals moved around within SIL providers' homes, without adequate attention given to the differing needs of individuals and their compatibility. We also see instances where SIL providers keep residents together in homes for years when one or more of the residents is absolutely incompatible with others in the home. Sometimes this occurs to the extent that the behaviours of one resident causes distress and actual harm to others in the home, sometimes for years, and still the SIL provider does nothing to address the incompatibility situation. The complement of residents in some households seems sometimes to be based on the commercial imperatives of SIL providers to fill spaces, rather than the compatibility needs of residents.

We believe the Act should be amended to give the Commissioner specific powers to call SIL providers to account for their sometimes random movement of residents and their failure to act in assisting residents to find alternative accommodation when they are causing harm to their housemates.

The legislation should be amended to require SIL providers to notify the ADC about new visitable services, changes to existing visitable services and relocations of residents we visit. They should also be required to provide evidence that compatibility assessments and consultation with current residents has occurred, prior to movements of residents.

An amendment to the Act to include such reporting requirements to the ADC would make a real difference in addressing this systemic issue.

**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?**

OCVs agree that the Act could be amended to provide for dialogue with other states regarding national alignment of OCV Schemes in terms of their purpose, structural frameworks, scope of operations and standards of practice. This is particularly important in terms of optimising OCV Schemes' operations in alignment with the NDIS. We would also very much like to know that OCV Schemes are on the agenda of the Disability Reform Ministers' Council, and possibly a subject to be examined in terms of increased Commonwealth resourcing in partnership with the states.

However, we firmly believe that any move to incorporate volunteers as OCVs into the NSW OCV Scheme would be a retrograde step in terms of safeguarding the human rights of the people we visit. The current OCV team are highly skilled with many years' experience in the disability, child protection and assisted boarding house sectors. OCVs must be familiar with, and understand current legislation across each sector, have a working knowledge of the NDIS Quality and Safeguards Commission (NDIS Commission), the Children's Guardian (DCJ) and other regulatory bodies that protect the rights of people with disability, children and young people. OCVs currently provide a level of oversight and safeguarding that is unique. We have the skills and ability to see homes we visit from the perspective of practice standards. This is critical to providing useful feedback to services and improving service provision to the people we visit.

The OCV role in NSW is highly regarded by many service providers. OCVs are seen as dedicated to ensuring that the human and legal rights of the people in their care are upheld. Our reports are often used by services to initiate changes in practice within services and sometimes used in legal proceedings and advocacy efforts for the people we visit. OCVs play a significant role in the lives of the people we

visit, some of whom are our most vulnerable citizens. We know that our advice is valued and makes a contribution in changing lives.

We believe the role is a professional role, not a volunteer role. We do not believe volunteers would have the relevant skillset, knowledge, expertise, judgement and perspective required to effectively perform in the role. We cannot see what possible role volunteers could play within the current OCV Scheme.

We also question what evidence exists about the comparative effectiveness of OCV schemes, including those that utilise volunteers. We are not aware of any research or evaluation of the various OCV scheme models operating in all states in Australia. However, some of us have lived experience of OCV schemes in other states that leads us to believe that the current NSW OCV Scheme, compared to other states, sets the highest bar for quality of service and improving the quality of life of the individuals we visit.

Our view is that a proposal should be put to the Disability Reform Ministers Council to recommend that consideration should be given to conducting a national evaluation of OCV Schemes. This would allow for a robust analysis of the various models in operation across Australia (including those that engage volunteers). Such an evaluation could examine the effectiveness, efficiency, prudence and appropriateness of those models in improving service provision and producing tangible outcomes for the adults and young people with disabilities we visit. Analysis of select international best practice models could also be incorporated into such an evaluation.

We suggest that this evaluation should preferably be conducted (and funded) at national level prior to any changes being made to the current NSW OCV Scheme. Such an evaluation could then be used to inform any improvements to the NSW OCV Scheme, including any considerations of incorporating volunteers into the Scheme.

**Questions 15 and 16 Are the matters the Commissioner is required to include in their annual reports appropriate? Should the Commissioner be required to continue reporting on the outcome of each referral to other agencies?**

We agree that the matters the Commissioner is required to include in annual reports are appropriate. We understand that there is an administrative burden involved in reporting on the outcome of referrals, particularly when many matters are ongoing or not resolved for several years. However, we think referring matters to other appropriate agencies and following up on outcomes of those referrals is an important strand of the ADC's core business. We therefore think the data on outcomes should be reported in the Annual Report so it is in the public domain.

**Question 17 Is the role and membership of the Ageing and Disability Commission appropriate and sufficient to achieve the objectives of the Act?**

No comment.

**Question 18 Do you have any other comments about the Act that you would like to raise?**

In years gone by, OCVs had direct access to the Minister, with regular delegations and opportunities to meet directly at least on an annual basis. We have experienced a succession of Ministers over the past years since the NDIS was introduced. Those Ministers seem to have shown varying degrees of interest in the OCV Scheme, mostly as we experience it, a distinct lack of interest. In recent years, the Commissioner has met with the Minister and on one occasion managed to facilitate an online meeting of a delegation of OCVs with the Minister of the day.

We believe that the lack of direct line of communication from the ADC to a bipartisan parliamentary forum is a gap that needs to be addressed. In the current situation, progress, change and examination of systemic issues and critical human rights, abuse and neglect matters seems to be highly dependent on the interest of the minister of the day.

We believe that a Joint Parliamentary Standing Committee should be established for the ADC with similar functions as those operating for similar integrity organisations (e.g. Standing Committee on Health Care Complaints Commission) and organisations representing vulnerable groups (e.g. Standing Committee on Children and Young People). We believe the legislation should be amended to include such a parliamentary standing committee, with the Commissioner reporting to and engaging with this committee on systemic issues in the disability sector and other matters that fit within the purview of the Commissioner's functions as defined in the Act. Such a committee would give the ADC a higher public profile and allow for the emergence of a bipartisan group of well-informed champions and advocates for adults and young people with a disability at parliamentary level.