

NSW AGEING AND DISABILITY COMMISSION

**SUBMISSION TO THE NSW LEGISLATIVE COUNCIL
INQUIRY INTO CHILDREN AND YOUNG PEOPLE WITH
DISABILITY IN NSW EDUCATIONAL SETTINGS**

FEBRUARY 2024

Background

The NSW Ageing and Disability Commission (ADC) was established on 1 July 2019, with the objectives of protecting adults with disability and older people from abuse, neglect and exploitation, and protecting and promoting their rights. Our role includes:

- responding to allegations of abuse, neglect and exploitation of adults with disability (18 years and over) and older people (65 years and over or, if Aboriginal and/or Torres Strait Islander, 50 years and over), including by providing advice, making referrals and conducting investigations
- following an investigation, taking further action that is necessary to protect the adult from abuse, neglect and exploitation
- raising awareness and educating the public about matters relating to the abuse, neglect and exploitation of adults with disability and older people
- inquiring into and reporting on systemic issues relating to the protection and promotion of the rights, or the abuse, neglect and exploitation, of adults with disability and older people
- meeting other obligations as outlined in the *Ageing and Disability Commissioner Act 2019* (ADC Act).

The ADC has a general oversight and coordination role in relation to the Official Community Visitor (OCV) scheme in NSW. OCVs are independent Ministerial appointees who visit accommodation services where an adult with disability, older person, or child in care is in the full-time care of the service provider, and assisted boarding houses.

Our submission is focused on two key areas:

1. issues identified by OCVs in relation to access to education for children and young people in residential out-of-home care (OOHC), and
2. responding to item (n) in the terms of reference on the remit of the ADC.

Access to education for children and young people in residential OOHC

The OCV scheme operates under both the ADC Act and the *Children's Guardian Act 2019*. The ADC manages the full scheme on behalf of both agencies, under an MOU with the Children's Guardian.

OCVs conduct (primarily unannounced) visits to visitable services, engage directly with residents and staff, and review records relating to residents. Their main functions are to consider matters of concern affecting residents, and to help to resolve these concerns as early and quickly as possible by referring those matters to the providers or other appropriate bodies. OCVs also promote the rights of residents, and provide advice and information to the Minister, the ADC, and the Children's Guardian about the conduct of visitable services and matters affecting residents.

As at the end of January 2024, there were 408 residential out-of-home care (OOHC) visitable services (accommodation locations) recorded in the scheme's database, OCV Online. Many of the children and young people in the residential OOHC services visited by OCVs have a disability or additional need, including learning difficulties.

Access to education for children and young people in residential OOHC is a common issue raised by OCVs. However, concerns about children and young people in residential care not accessing education are not new. In 2017, the NSW Ombudsman tabled a special

report to Parliament on its inquiry into behaviour management in schools.¹ The inquiry included examination of data relating to 295 school age children and young people who had been in residential OOHC for three months or more in 2016. The data identified that 128 (43%) of those children had missed 20 or more school days in 2016 for reasons other than illness. On average, the 128 children had missed 88 school days, equating to 44% of the school year. The data identified that:

- more than half of those 128 children (70) had a disability, and 15% had multiple disabilities
- nearly three-quarters (91) had additional support needs at school
- half of the children (67) attended schools for specific purposes or support classes
- almost 60% (76) had been suspended in 2016, losing an average of 29 school days to suspensions
- 13% (16%) had been expelled, losing an average of 44 school days to expulsions
- the school enrolment had been delayed for almost one-third of the 128 children (37), with the children losing an average of 42 school days to delayed enrolment.²

OCVs have been identifying and raising issues about access to education in relation to children and young people in residential OOHC for many years. The issues that are currently being raised by OCVs suggest that the situation has not substantially improved in the period since the Ombudsman's report, notwithstanding changes in the OOHC sector, including a shift towards intensive therapeutic care. In 2022-23, OCVs raised 115 issues with residential OOHC providers about young people not being supported or encouraged to participate in appropriate educational or vocational activities. This was the second most commonly raised issue by OCVs in relation to residential OOHC last year, representing 7% of all issues raised with OOHC providers.

In 2022-23, OCVs also conducted a 'systemic issues project' to highlight and gain improvements on longstanding systemic issues affecting people living in residential care in NSW. The project is intended to provide a better understanding of what Visitors are seeing in relation to selected systemic issues and the impact on residents, and to highlight positive practice and areas for improvement. Throughout the year, OCV visits included a focus on three key systemic issues, including involvement in meaningful activities (including skills development).³

Of the 202 issues raised by OCVs about the involvement of young people in residential OOHC in meaningful activities, 43 (21%) related to young people not attending school. In relation to this issue, the OCV Annual Report 2022-23 included the below summary of what had been identified by OCVs:

Access to education is a significant issue

A significant area identified by OCVs was young people not attending school. The identified reasons for non-attendance varied, but primarily related to:

- the young person having social anxiety and/or complex health or mental health concerns
- problems experienced by the young person at school, including bullying, being

¹ NSW Ombudsman (Aug 2017) *Inquiry into behaviour management in schools*, special report to Parliament, p46; https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0019/138151/NSW-Ombudsman-Inquiry-into-behaviour-management-in-schools.pdf.

² Ibid.

³ The other selected issues were compatibility and leaving care planning. See *Official Community Visitors Annual Report 2022-2023*, pp35-39, https://ageingdisabilitycommission.nsw.gov.au/documents/submissions/Official_Community_Visitor_2022_2023_Annual_Report.pdf

reluctant or embarrassed to seek support for literacy issues, being suspended, or being expelled

- the young person staying up late and being unable to function to attend school
- the young person refusing to attend school.

In some cases, the young person identified a preference to look for a trade as an alternative to education. OCVs noted a range of cases where this had been pursued and the young person was attending TAFE; however, this follow-up action did not always occur.

OCVs noted that some young people were attending school, and they also received advice from some providers about a range of actions they had taken or were working on to support and encourage young people to engage in education. Strategies included providing an alternative education model within the service; preventing access to wi-fi during school hours; providing structured morning routines; and implementing incentive programs. However, it was evident across OCVs that:

- many of the young people were not attending school or an alternative education option
- young people refusing to engage was a significant factor
- staff practice in this area did not always align to the guidance and expectations of service providers, resulting in an inconsistent approach.

Source: *Official Community Visitors Annual Report 2022-2023*, p39.

In March 2024, the ADC is meeting with the Department of Communities and Justice (DCJ), the Ombudsman's office and the Children's Guardian to discuss the key concerns arising from the OCV systemic issues project, including access to education for children and young people in residential OOHC.

In light of the longstanding concerns, OCVs have also selected 'education and vocational training' as one of the three systemic issues they are focusing on in their visits in 2023-24. From the early information examined as part of the project (covering issues raised in July to December 2023), OCVs have identified significant impacts on young people in residential OOHC not accessing education, including young people who:

- are unable to read or write
- have not been accepted at their preferred school due to missing so much school time
- have difficulties socialising with peers
- have health issues (including weight gain) due to a lack of activities
- are reported to be engaging in criminal behaviour.

The full results of the project will be reported in the OCV Annual Report 2023-24 later this year.

Children and young people with disability and the remit of the ADC

Item (n) in the inquiry terms of reference is 'whether children and young people with disability should be included under the remit of the Ageing and Disability Commissioner'.

We support the ADC having a remit that includes children and young people with disability, with appropriate resourcing, and consider that this is already within the scope of one of our existing functions. However, we do not support the remit of the ADC extending to child protection reports.

ADC remit and demand

The ADC was established in July 2019 against the backdrop of multiple reports and inquiries that highlighted the need to fill critical safeguarding gaps in NSW in relation to the response to allegations of abuse, neglect and exploitation of adults with disability and older people by family members, spouses, informal carers, and members of the community. In particular, at that time there was no agency with the powers to investigate allegations that did not initially reach a criminal threshold, or that could play a lead role to marshal a coordinated interagency response to address the issues.

Demand for the ADC's services has grown year on year, including:

- calls to the Ageing and Disability Abuse Helpline have increased by 34% between 2019-20 (10,443) and 2022-23 (14,025)
- the number of statutory reports about adults with disability and older people subject to, or at risk of, abuse, neglect and exploitation has increased by 85% between 2019-20 (2,302) and 2022-23 (4,258).

The demand is expected to continue to increase, driven by external factors that include the growing ageing population. Three-quarters of the reports received by the ADC relate to abuse, neglect and exploitation of older people. While people aged 65 and over comprised 17% of the NSW population in 2022, they are projected to comprise 27% of the NSW population in 2041.⁴ As the ageing population increases, reports of abuse will increase, noting that the National Elder Abuse Prevalence Study estimated the prevalence of elder abuse among people living at home aged 65+ in Australia (not including those with cognitive impairment) at 15%.

Continuing growth in demand already presents significant challenges for the ADC. We are currently seeking additional funding to address the baseline budget of the ADC and OCV scheme and to meet increasing demand. Any consideration of extending the remit of the ADC to include children and young people with disability needs to take into account the pressures faced by the ADC in fulfilling its existing remit in the context of strong and increasing demand.

ADC functions in relation to children and young people with disability

The ADC Act already includes a function that encompasses children and young people with disability. The function of the ADC to 'monitor, assess and report on the NSW implementation of the National Disability Strategy' under section 12(1)(h) of the ADC Act is not limited to adults. We note that 'Education and Learning' is one of the Outcome Areas of Australia's Disability Strategy, and that the Strategy pertains to people with disability at large. The ADC has not yet commenced this function due to capacity issues but is currently exploring options to carry out this function in a way that is resource efficient and adds value to existing State and Commonwealth monitoring and reporting activities for the Strategy.

The ADC has also previously been proposed to have additional functions that include children and young people with disability. The draft Persons with Disability (Regulation of Restrictive Practices) Bill 2022 provided for the regulation of the authorisation of restrictive practices by NDIS providers in NSW (including in relation to children and young people), with oversight by the ADC. The draft Bill proposed functions that included the ADC monitoring, assessing and reporting on the use of restrictive practices by NDIS providers and relevant government sector agencies. To date, the Bill has not been introduced to Parliament; we recognise that recommendations of the Disability Royal

⁴ NSW Department of Planning, housing and Infrastructure, NSW Planning Portal, [2022 NSW Common Planning Assumption Projections](#), accessed 20 February 2024.

Commission in relation to restrictive practices will need to be considered by government.

Reports about abuse, neglect and exploitation of children and young people with disability

In relation to reports about abuse, neglect and exploitation, the remit of the ADC is limited to adults with disability and older people. In general, we would not support proposals to extend these functions to include children and young people with disability. NSW has a child protection system that applies to all children; the ADC would not support the creation of a duplicative or separate child protection reporting arrangement for children and young people with disability in NSW.