

Submission to the Royal Commission into Violence, Abuse Neglect and Exploitation of People with Disability

Issues paper: The Criminal Justice System

March 2020

1. Background

The NSW Ageing and Disability Commission (ADC) commenced on 1 July 2019. The ADC is an independent statutory body, which is focused on protecting adults with disability and older adults from abuse, neglect and exploitation, and protecting and promoting their rights. Our roles include:

- responding to allegations of abuse, neglect and exploitation of adults with disability (18 years and over) and older adults (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 adults
- 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 adults
- meeting other obligations as outlined in the *Ageing and Disability Commissioner Act 2019* (the ADC Act).

The ADC includes the Ageing and Disability Abuse Helpline (formerly the Elder Abuse Helpline and Resource Unit).

The ADC also 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 adult or child in care is in the full-time care of the service provider, and assisted boarding houses.

The NSW Ombudsman's standing inquiry and the ADC

Between July 2016 and July 2019, the NSW Ombudsman held a standing inquiry into allegations of abuse and neglect of adults with disability in home and community settings. At the time of the standing inquiry, there was no other agency to investigate allegations that did not meet a criminal threshold or that otherwise required a coordinated interagency response.

On 2 November 2018, the Ombudsman tabled a special report to NSW Parliament on its standing inquiry: *Abuse and neglect of vulnerable adults in NSW – the need for action*. The report supported the recommendations of the NSW Law Reform Commission's review of the *Guardianship Act 1987*, which called for the establishment of an independent statutory body to investigate and take appropriate action in relation to the suspected abuse and neglect of vulnerable adults in NSW. In December 2018, the NSW Government announced that it would establish the ADC to meet this need. On 1 July 2019, any open matters under the Ombudsman's standing inquiry became reports to the ADC. Certain staff involved in the Ombudsman's standing inquiry also transferred to the ADC.

The information and issues in this submission are highly consistent with the information in the Ombudsman's report to Parliament, noting that it focuses on largely the same cohort,

allegations, and agencies.

2. Initial data

The ADC is undertaking significant work to ensure that it is capturing key data relating to enquiries and reports it receives about alleged abuse, neglect and exploitation involving adults with disability and older people. We are keen to ensure that we capture and regularly publicly report on data relating to these matters, to support our work and to inform preventive and responsive actions by governments, agencies and communities.

The following is initial data on matters relating to adults with disability from the first eight months of operation of the ADC – 1 July 2019 to 29 February 2020.

2.1 Matters received

Between 1 July 2019 and 29 February 2020, the ADC received 506 matters relating to adults with disability, comprising:

- 399 reports under s13 of the ADC Act
- 107 abuse-related enquiries.¹

2.2 Reporters

Paid workers are the main source of reports to the ADC about adults with disability; primarily staff of disability support services. Paid workers were the reporters in almost half (43.9%) of all reports and abuse enquiries received by the ADC about adults with disability between 1 July and 29 February.

Table 1: Relationship of reporter to the adult with disability (reports and abuse enquiries), 1 July 2019 – 29 February 2020

Reporter	Number of cases	Percentage of all cases
Paid worker	222	43.9%
Other	76	15.1%
Adult with disability themselves	57	11.3%
Child	32	6.3%
Other relative	24	4.7%
Friend	23	4.5%
Neighbour	19	3.8%
Parent	16	3.2%
Sibling	13	2.6%
Advocate	6	1.2%

¹ Abuse enquiries include where the reporter does not provide sufficient detail for the ADC to take further action. At times, individuals contact the ADC to obtain advice about concerns pertaining to abuse, neglect or exploitation of an adult with disability or older person, but do not want to provide any identifying information. This can include, for example, where the reporter wants to obtain information to then discuss with the adult before making a report; wants to know what their options are before committing to making a report; or wants advice but does not want us to act.

Spouse/partner	1	0.2%
Grandchild	1	0.2%
Unknown/ not disclosed	16	3.2%
Total	506	100%

2.3 Subjects of allegations

In over one-quarter (25.5%) of reports and abuse enquiries to the ADC about adults with disability in the eight-month period, the allegations pertained to the adult's parent(s). Noting that some of the adults with disability are also older people, in 15.4% of the reports and abuse enquiries the alleged perpetrator was one (or more) of their offspring. In 14% of matters, the adult's spouse or partner was the subject of the allegations.

Table 2: Relationship of the subject of allegation to the adult with disability (reports and abuse enquiries), 1 July 2019 – 29 February 2020

Subject of allegation	Number of cases	Percentage of all cases
Parent	129	25.5%
Child	78	15.4%
Spouse/partner	71	14%
Other	40	7.9%
Sibling	36	7.1%
Paid staff	26	5.1%
Friend	25	4.9%
Other relative	23	4.5%
Neighbour	15	3%
Other community member	7	1.4%
Grandchild	3	0.6%
Ex-foster carer	2	0.4%
Grandparent	1	0.2%
Former paid staff	1	0.2%
Unknown/ not disclosed	49	9.6%
Total	506	100%

2.4 Type of alleged abuse

It is common for a report or abuse enquiry to the ADC to involve more than one type of abuse. The most commonly reported types of alleged abuse in relation to adults with disability have been psychological abuse, financial abuse, and neglect.

Table 3: Type of alleged abuse against the adult with disability (reports and abuse enquiries), 1 July 2019 – 29 February 2020²

Type of alleged abuse	Number of cases	Percentage of all allegations
Psychological abuse	217	25.9%

² The data captures all matters in which that type of abuse has been reported; in the majority of matters, more than one type of abuse is reported. For this reason, the total does not equal 100%.

Financial abuse	183	21.8%
Neglect	175	20.9%
Physical abuse	157	18.7%
Sexual abuse	39	4.6%
Other	49	5.8%
Unknown/ not disclosed	19	2.3%

2.5 Age of the adult with disability

Table 4 identifies the ages of the adults with disability who were the subject of reports to the ADC in the eight-month period. The highest proportion of adults were under 30 years of age, including 15.5% aged 18-24, and 9.5% aged 25-29.

Table 4: Age of the adult with disability (reports only), 1 July 2019 – 29 February 2020

Age range (years)	Number of cases	Percentage of all cases
18-24	62	15.5%
25-29	38	9.5%
30-34	12	3.0%
35-39	18	4.5%
40-44	20	5.0%
45-49	25	6.3%
50-54	29	7.3%
55-59	25	6.3%
60-64	31	7.8%
65-69	19	4.8%
70-74	14	3.5%
75-79	18	4.5%
80-84	7	1.8%
85-89	8	2.0%
90-94	5	1.3%
95-99	1	0.3%
Unknown/ not disclosed	67	16.8%
Total	399	100%

3. Key issues

The work of the ADC has highlighted a range of issues that affect the ability of people with disability to gain effective access to justice. These include difficulties and barriers in:

- raising concerns and reporting violence, abuse, neglect and exploitation
- receiving an appropriate and effective response
- being able to give evidence.

There are significant opportunities to address these issues and to improve outcomes for people with disability.

3.1 Identifying and reporting violence, abuse, neglect and exploitation involving adults with disability

3.1.1 Empowering people with disability to identify and report abuse

It is rare for the adult with disability who is subject to, or at risk of, abuse, neglect and exploitation to be the person who contacts the ADC. Between 1 July 2019 and 29 February 2020, the adult with disability was the reporter to our office in only 11.3% of matters.

It is critical that active and ongoing efforts are made to maximise the ability of people with disability to be able to recognise and speak up about abuse and other unacceptable situations. We recognise that there has been a range of projects and resources in recent years to provide information and practical assistance to people with disability on abuse, neglect and exploitation, and speaking up when something isn't right, including (but not limited to):

- the NSW Ombudsman's 'Speak Up' training workshops
- the Victorian Advocacy League for Individuals with Disability's (VALID) Staying Safe workshop and videos
- the NDIS Commission's Speak Up videos and posters
- NSW Fair Trading's video resources for consumers with disabilities

Nevertheless, there is significant scope for increased focus on this work, co-designed and delivered by people with disability. It is vital that the training and guidance focuses on prevention and safety measures as well as speaking up in response to abuse and adverse events.

However, it is unfair to people with disability to provide information about how to exercise their rights without ensuring that appropriate supports are in place to help them to do so, and that services are adequately prepared and equipped to respond. In NSW, the establishment of the ADC has been an important step in this regard. Among other things, it will support the development of a comprehensive and sophisticated approach across government and the community for recognising and appropriately responding to signs of abuse and neglect of adults with disability and older people.

3.1.2 The critical role of disability providers and support staff

There are some situations in which it is incredibly difficult for adults with disability to be able to raise concerns or report abuse, neglect and exploitation. This includes, for example, where the adult does not have access to the communication tools and equipment they need to be able to speak up; where the adult is never away from the alleged perpetrator to feel safe to raise concerns; and where the adult is under the coercive control of the alleged perpetrator.

Most of the people who raise concerns with the ADC about adults with disability are staff members (43.9%) – primarily disability support staff who have seen or heard things they are concerned about. This includes, for example, staff of community access/ day programs who see signs of neglect or abuse; in-home support staff who witness abuse or neglect; and NDIS support coordinators and Local Area Coordinators who identify concerns about the actions of the person's family or others that breach the person's fundamental human rights.

Our work has highlighted the critical role that service providers and support staff play in

bringing concerns and abuse to light, and providing vital assistance and support to the adult with disability to maximise their ability to gain effective access to justice and to improve their safety and circumstances.

Disability support staff are often in the best position to identify and initially respond to concerns about abuse, neglect and exploitation. Among other things, they tend to see the living conditions and what is happening for individuals in private residences; are in a position of trust with the adult with disability to elicit disclosures; and understand the adult with disability's communication and other support needs to assist in the provision of relevant information to police and other investigative agencies.

We have seen examples of excellent work by disability providers and staff in identifying and quickly responding to allegations of abuse, neglect and exploitation of their clients with disability – including reporting matters to police; assisting individuals to be able to provide a statement/ give evidence about the events; linking them in with counselling and other support services; and assisting them to make changes to improve their safety and wellbeing.

However, at times, we have identified the need for significant improvement in the actions by disability providers and staff to prevent, identify and respond to abuse, neglect and exploitation of their clients. In particular, there is a vital need to improve:

- the overall understanding of providers and staff about abuse, neglect and exploitation by family members and others, and what to do in these matters
- actions to seek, understand and uphold the will and preferences of the adult with disability
- record keeping in relation to these matters.

Importantly, the work of the ADC and the Ombudsman's office has shown that disability services staff are often the gatekeepers for adults with disability to gain access to justice. Their actions can play a key role in determining whether the issues are brought into the light, and the adequacy of the response. They are not the sole parties with responsibility, but they are often the first receivers of the information and in a critical position to effect what happens next. Consequently, it is imperative that they receive appropriate guidance and support to enable them to fulfil this vital role.

Case example 1

A woman with disability told her support worker that she had been physically assaulted by her sister, who she lived with. The support service made a report to police but also informed the sister about the allegation, which compromised the police investigation and presented additional risks to the adult with disability.

Guidance for disability providers and staff

Consistent with the Ombudsman's standing inquiry, our work has identified that there is a need for clear guidance for all parties, including service providers, about the actions that need to be taken in response to alleged abuse, neglect or exploitation by family members, spouses, informal carers, and other members of the adult with disability's support network. While disability providers and other agencies generally understand, and provide guidance to their staff on, actions to take in response to allegations against staff members, this is not the case

where the allegations pertain to families and others.

This is a priority area of work for the ADC. We are currently in the process of developing clear and easy to digest guidance for disability providers and staff on preventing, recognising, and effectively responding to abuse, neglect and exploitation of adults with disability by families, spouses and other community members. This guidance will help to inform the development of targeted and localised policies and procedures by disability providers on this topic, and work as a companion piece to already existing guidance on preventing, identify and responding to abuse and neglect by staff members.³

Will and preference of the person with disability

A significant area of work for the ADC in our handling of reports relating to adults with disability to date has been on re-focusing service providers and others on gaining the views and wishes of the person with disability. Unfortunately, we have often found that NDIS providers and other parties have deferred to the wishes of, and at times have solely consulted with, the adult with disability's family member or spouse – the party who tends to the subject of the allegations to our office. We have regularly seen this, despite:

- the focus of the NDIS being on the choice and control of the participant
- the person with disability often having the capacity to make their own informed decisions, and
- the provider(s) raising concerns with the ADC about the actions of the family member or spouse.

In some matters, the consequences of these actions are significant – including that it serves to perpetuate the abuse against the adult with disability; it prevents providers from hearing and understanding the experience of the adult and their wishes about the actions they want taken in relation to the situation; and it delays appropriate actions being taken, such as involvement of police, domestic violence services, and additional supports.

Our work highlights that there is substantial scope for widespread cultural change across disability providers and related agencies to enable 'choice and control' to be realised. This would serve to improve actions to prevent and effectively respond to alleged abuse of people with disability, and improve the outcomes of participants more broadly.

Record keeping relating to allegations and incidents

At times, the actions of the ADC (and police) in relation to a report about an adult with disability have been hampered by poor record-keeping practice on the part of the disability service. This includes, for example, where:

- the provider advises that the adult with disability has previously made disclosures to staff, but there are no or inadequate records of the communication
- staff have witnessed assaults or other abuse, but have not kept adequate records of the events
- the provider advises that there is a long history of neglect of the adult with disability

³ For example, the NSW Ombudsman's Resource guide on the initial and early response to abuse and neglect in disability services; National Disability Services' Zero Tolerance framework; and the NDIS Commission's guidance on reportable incidents.

and discussions with their family about these matters, but there are no records of this.

3.1.3 Reporting to police

We have found that matters involving family members and spouses are not always reported to police, even when they involve allegations of criminal conduct (such as physical assault), or evident significant and ongoing risk of harm to the adult with disability. There can be a number of reasons for this, including that:

- the agency or individual has not recognised that the matter involves potentially criminal conduct, or understood the steps they should take
- the adult with disability has indicated that they do not want the matter to be reported to police
- the fact that the allegations pertain to family members and informal carers affects the response of the agency or individual (see section 3.2.1)
- when agencies or individuals have previously sought to make a report to police, they have not received an adequate response.

In relation to the last point, at times providers and individuals have experienced difficulties in being able to make a report to police, associated with the response by duty officers. This has included advice by police that:

- the report would have to be made by the person with disability themselves (not a viable option in a range of matters)
- the report would only be accepted if the incident is occurring at the time of the contact with police (ie: not previous events).

Where the ADC receives a report, or part of a report, that may provide evidence of a criminal offence, we are required to refer that information to NSW Police or the Director of Public Prosecutions. Our experience has been that where we have made a report to police – including matters that others have had difficulties reporting – police have tended to accept and provide a response to the report. However, we note that the difficulty experienced by providers and individuals in attempting to initially report the allegations can have a negative impact on their willingness to report other matters. NSW Police is in the process of rolling out measures to assist in the prevention, identification and response to abuse, neglect and exploitation of vulnerable community members, including improving the awareness and response of police officers (see section 3.2.2).

3.2 Responding to violence, abuse, neglect and exploitation involving adults with disability

3.2.1 Failure to recognise domestic violence involving adults with disability

Many of the reports we receive about an adult with disability or older person pertain to alleged violence and abuse against them by a family member or spouse, typically within the family home. However, it is rare for support services and agencies involved with the person to recognise that the allegations may constitute domestic violence.

From our work, there appear to be a number of factors that cloud the ability of parties to identify these matters as domestic violence, including:

The 'caring' relationship and impact of perceived 'carer burden'

The fact that the allegations relate to a family member and spouse who is involved in providing care to the adult with disability tends to affect the response. This includes where the responding agency has sympathised with the alleged perpetrator, noting the 'burden' that is on them to provide support, and failed to adequately recognise the alleged criminal conduct.

The ADC is highly alert to potential carer stress, and takes this issue into account as part of its response to relevant reports, including working with parties to increase supports to reduce stress and improve outcomes for the adult with disability and their carer(s) when needed. However, it is important to note that:

- a) this is not at the expense of the rights of the adult with disability – they should still have access to justice and safety measures, with appropriate recognition of, and response to, the alleged criminal conduct
- b) in a range of matters handled by the ADC, the carer had actively refused additional supports and, in some cases, blocked the adult with disability's access to necessary supports and equipment. The existence of high support needs and the presence of a sole informal carer does not always provide an accurate picture of the situation and relationship.

Case example 2

A support worker reported concerns that a woman with communication difficulties and physical disability was subject to physical and psychological abuse by her husband (and carer), and her basic needs were being neglected. The allegations included that the husband had removed all of the woman's adaptive equipment, and was cancelling her support services. Support workers had witnessed the husband using excessive force when lifting and moving their client, causing bruises to her arm; and had witnessed him failing to administer her necessary medications.

The support worker reported the allegations to police. Police visited the woman and her husband at home and spoke to both parties. The woman did not disclose any allegations to police. Police advised that after attending the home they were more concerned about the wellbeing of the husband than the woman due to the enormous burden of care and lack of supports and services.

It is important that carers receive timely and adequate support to minimise potential stress and carer overload, and that their individual needs are appropriately identified and responded to. However, it is also critical that inappropriate and unlawful treatment of people with disability is not normalised and seen as a natural response to a perceived 'burden' of care.

The existence of a disability affects the response

The fact that the adult has a disability appears to affect the response that they receive to matters that involve alleged domestic violence. In the main, they do not tend to be referred to domestic violence services, or linked to Safer Pathway.

We have also noted that, at times, the ability of agencies to recognise domestic violence involving adults with disability is affected by perceptions about the 'behaviour' of the person. In these matters, assumptions have been made that the person with disability is difficult to control, and the alleged abuse (and associated red marks or bruising) has resulted from the family member attempting to prevent injury to themselves or others. It is only after the ADC has challenged these perceptions (and the lack of evidence in this regard) that an appropriate response has been provided.

Coercive control of adults with disability

We have seen a number of matters where the adult with disability is subject to a combination of coercive control, neglect and psychological abuse. Similar to coercive and controlling behaviour in domestic violence matters in the community more broadly, the allegations relate to the family member or spouse isolating the person, controlling their finances, and ongoing psychological abuse. However, in the matters raised with the ADC involving adults with disability, the coercive control also involves the family member or spouse preventing the adult with disability from accessing appropriate, necessary or desired supports to meet their disability-related needs – including support services and/or adaptive equipment.

Responding to situations of coercive control can be challenging, noting that such behaviour is not currently criminal conduct. In addition, at times we also find that the actions of providers and agencies to solely consult with the family member or spouse and to defer to their decisions, serves to perpetuate this abuse.

We welcome the recent information⁴ that the NSW Attorney-General intends to consult this year on laws to ban coercive and controlling behaviour, and we will be keen to have input to the consultations to ensure specific consideration of the needs of adults with disability.

Case example 3

A woman with disability was assisted by an allied health provider during a recent hospital stay to report concerns relating to her boyfriend. She reported that he:

- is controlling and intimidating towards her
- uses drugs around her
- has moved himself into her home
- prevents disability services from providing support to her at home
- takes money off her after she has used the ATM
- does not ask before allowing his friends to come to her house.

The woman indicated that none of the actions taken by the man had been with her consent. She advised that she wanted him to be evicted from her home, and an AVO put in place.

Involvement of adults with disability in domestic and family violence strategies

More broadly, there is a need to ensure that strategies to improve the awareness, prevention, recognition and response to domestic and family violence specifically includes adults with disability (and older people). In our experience, if they are not specifically included, they will be

⁴ Berkovic, Nicola, 'State seeks law to ban coercive domestic abuse', in *The Australian*, 16 March 2020.

effectively excluded.

3.2.2 Contact with police

In our work, we have noted examples of positive practice by police in providing a flexible and tailored approach to people with disability seeking to report criminal allegations. For example, in some matters, police have obtained advice from agencies involved with the person about their communication support needs; organised for a Justice Advocacy Service (JAS) representative or other support person to be present during the interview; initiated planning discussions about where the person would prefer to meet to make a report or participate in an interview; and met with the person in plain clothes.

However, more broadly there is scope for greater awareness and an improved response by police to matters involving people with disability. We welcome the introduction by NSW Police of Aged Crime Prevention Officers (ACPOs) – with a focus on people with disability, older people and homelessness – currently in six Police Area Commands (PACs), and extending to all PACs in NSW over the next few years. The ADC has seen the value of the ACPO roles in matters we have handled in those areas, and appreciate the commitment of NSW Police to enhance police understanding and practice in relation to people with disability and older people, and improve their effective access to justice.

Case example 4

We received a report that an older woman with a cognitive disability was being physically assaulted by her daughter.

The reporter, an experienced aged care worker, had first notified police seven months earlier. After attending the premises at that time, police advised that they could not take any action without a complaint by the older woman.

Following the report to the ADC, we referred the matter to police, which resulted in common assault charges (domestic violence) and an AVO against the daughter.

In relation to reports involving criminal-related allegations, the ADC seeks to assist and support the work of police. We ensure that criminal allegations are referred to NSW Police, but in many cases we also continue to work on those matters – in discussion with police, and in ways that complement and do not compromise police action. For example:

- working with agencies to put in place support arrangements for the adult with disability so they are not left at greater risk when police take action to remove or take out an AVO against the subject of allegation (and carer)
- following police advice that they are not taking action on the matter, conducting an investigation (and where evidence is obtained, referring the matter back to police)
- providing advice and assistance to police in relation to interviewing people with cognitive impairment and communication difficulties, to maximise the ability of the adult to give 'best evidence'.

3.3 Maximising the involvement of the adult with disability

It is vital that people with disability receive appropriate support to engage with the criminal justice system on an equal basis with others, including reporting to police and participating in investigations and court proceedings. An effective response requires a coordinated and person-centred approach to maximise the involvement of the person, and their ability to give best evidence.

It is critical that the presumption is always that the person has ability to make their own decisions. Where there is evidence to suggest that the person is currently unable to make an informed decision in relation to the matter at hand, the first response should be the provision of decision-making support (in whatever form works best for the person).

In our experience, there is scope to improve the access of adults with disability to appropriate decision-making support to maximise their ability to make decisions and exercise their rights, will and preferences. In responding to reports about alleged abuse, neglect and exploitation of adults with disability, we have accessed the support of trusted disability support staff and advocates to provide decision-making assistance to the adult and inform the strategies employed to enable the person to best participate and provide information. The Justice Advocacy Service also provides a critical service for people with disability in contact with the criminal justice system, to enable their voice to be heard. However, more broadly, and consistent with the recommendations of the NSW Ombudsman and the NSW Law Reform Commission, there remains a need to ensure that there are enhanced options for adults with disability to gain appropriate decision-making assistance.

Case example 5

A reporter raised concerns about the safety and wellbeing of his mother, a woman with disability, at the hands of her carer.

The woman has neurological disabilities and paralysis on one side of her body. She uses 'yes' and 'no' and gestures to communicate. The reporter indicated that the woman's carer was making decisions about her services and supports, including cancelling them, was isolating her from her family, and was overmedicating her to make her compliant.

The ADC conducted preliminary inquiries and spoke with the woman with disability. She confirmed the concerns raised by her son, and also alleged that she was being physically assaulted by her carer. We facilitated contact between the woman and police, and provided advice to police about her communication abilities and the need for a speech therapist to provide support during an interview. The police Domestic Violence Liaison Officer met with the woman and, following their discussions with her, initiated an apprehended domestic violence order. The carer was evicted from the house.

The woman is now engaging with all supports and services, including allied health, and is living with her sister and a friend in her local community, and again in contact with her extended family.

Supporting people with disability to provide 'best evidence'

In reports to the ADC, we often identify incorrect assessments by agencies about an adult with

disability's ability to communicate, and their ability to provide reliable and credible evidence. The views tend to be based on a superficial understanding of the person and their functional capacity, negative assumptions, and inadequate awareness of available communication and other supports to enable the person to participate.

The *Child Sexual Offence Evidence Program* recently introduced witness intermediaries to the justice process. Witness intermediaries are accredited professionals from five primary disciplines: speech pathology, social work, psychology, teaching and occupational therapy. Their primary role is to assist two-way communication between children and professionals involved in the investigation and trial stages of a case (including police officers, lawyers, judges and magistrates). On 1 April 2019, the witness intermediaries pilot for children transitioned to a permanent program at the existing District Courts and Child Abuse Unit locations, and is funded by the NSW Government until June 2022.

We understand that the witness intermediary scheme is able to be accessed in relation to adults with disability, but on a user-pays basis. Overall, there is very low awareness of the witness intermediary scheme by parties involved with vulnerable adults in NSW, and the opportunity to enable people with disability to give best evidence is being missed. It is imperative that the witness intermediary scheme is extended to include adults with cognitive disability and/or communication difficulties, to enable their appropriate access to justice.

On a related note, the Ombudsman's office previously engaged Professor Penny Cooper to develop a guide and related training package for disability providers on obtaining 'best evidence' from people with cognitive impairment, particularly those who are the subject of, or witnesses to, alleged abuse. Professor Cooper devised and delivers the national training and procedural guidance for registered witness intermediaries in the UK and also trained the first cohort of intermediaries employed by the child witness intermediary pilot in NSW. The resulting draft *Investigators guide to interviewing people with cognitive disability and communication support needs* has now transferred to the ADC to review and finalise.

3.4 Information sharing

We support the position of the NSW Ombudsman that there needs to be legislative provisions to enable agencies that have responsibilities relating to the safety of vulnerable adults to be able to provide and receive information that promotes the safety of vulnerable adults.

The ADC Act provides the ability for the ADC to exchange 'relevant information' with 'relevant agencies'. While these information sharing provisions are important, they require the ADC to be at the centre of any information exchange. To enable an effective and integrated response to alleged abuse, neglect and exploitation of vulnerable adults, it is vital that certain agencies are able to provide and receive information to promote and improve the safety of the alleged victim – without the ADC having to facilitate all of the information exchange.

3.5 Reducing the contact of people with disability in supported accommodation with the criminal justice system

In June 2017, the NSW Ombudsman's office released a [joint protocol](#) for disability providers and police to reduce the unnecessary contact of people with disability in supported group

accommodation with police and the criminal justice system. Among other things, the protocol aimed to:

- reduce the frequency of police involvement in responding to behaviour that would be better managed solely within the disability accommodation support service
- improve relationships, communication and information sharing between local police and disability services
- ensure that appropriate responses are provided to people with disability living in supported accommodation who are victims.

The Ombudsman's office monitored the implementation of the protocol via a Statewide Steering Committee and analysis of data provided by disability accommodation support providers on incidents in which police were called in response to the behaviour or conduct of a resident between 1 September 2017 and 30 June 2018. Among other things, the Ombudsman's data analysis identified that in 22% of those matters, it was not evident that police contact was warranted – including matters where staff indicated that contact with police was to comply with internal operating procedures; the incident involved verbal threats only; or risks had been mitigated before police were contacted. The [annual reports](#) of the NSW Ombudsman for 2016/17 – 2018/19 provide more detailed information regarding the joint protocol, its purpose, and implementation.

In July 2018, primary responsibility for the oversight of NDIS providers in NSW moved from the NSW Ombudsman's office to the NDIS Commission. For a period after that point, the joint protocol continued to be implemented in NSW, with the Ombudsman's office continuing to provide advice and support, and the Official Community Visitors providing a level of monitoring through their visits and visit reports. However, since that time, the joint protocol has not had a lead agency. While the protocol still exists and can be used by providers and police, in practice this is unlikely to occur without a lead agency that monitors implementation and promotes continued service improvements to reduce the unnecessary contact of people with disability in supported accommodation with the criminal justice system. There would be significant merit in the protocol being adapted and promoted by the NDIS Commission, and replicated in other states and territories.

More broadly, while the focus of the ADC is on adults with disability who are alleged victims of abuse, neglect and exploitation, we recognise that there are significant issues associated with the criminalisation of people with disability that warrant concerted and ongoing attention.

4. Summary of key opportunities for action

The work of the ADC in relation to adults with disability has highlighted the importance of:

- continuing work to empower people with disability to prevent, identify and speak up about abuse, neglect and exploitation – including through training co-designed and delivered by people with disability
- providing clear guidance for disability providers and other parties about preventing, identifying and effectively responding to abuse, neglect and exploitation of adults with disability involving families, spouses, informal carers and members of the community
- bringing about cultural change across service providers and agencies to give effect to 'choice and control' for adults with disability, including ensuring that the adult is at the

centre of the supports and decisions, and their will and preferences are sought, understood and upheld

- continuing the roll out of the NSW Police Aged Crime Prevention Officers to enable appropriate responses to reports, and improved awareness and understanding by officers of particular issues relating to the abuse, neglect and exploitation of adults with disability
- increasing recognition by agencies and community of domestic and family violence involving adults with disability, and improved access to domestic violence pathways and supports that are available to the broader community
- the specific inclusion of adults with disability in domestic and family violence strategies, including community awareness and training activities
- recognising the particular elements of coercive control in relation to adults with disability, and ensuring that these factors are taken into account in considering potential legislative changes
- continuing support for the Justice Advocacy Service, disability advocacy services, and enhancing options for adults with disability to gain appropriate decision-making assistance
- extending the witness intermediary scheme in NSW to apply to adults with disability who require this assistance.