

Comments on discussion paper

# **Independent Review of the Ageing and Disability Commissioner Act 2019**

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CPSA receives funding support from the New South Wales and Australian Governments

*CPSA is a non-profit, non-party-political membership association founded in 1931 which serves pensioners of all ages, superannuants and low-income retirees. CPSA's aim is to improve the standard of living and well-being of its members and constituents. CPSA receives funding support from the NSW Government Departments of Communities & Justice and Health and the Australian Government Department of Health.*

The Ageing and Disability Commission was set up to ensure the safety and wellbeing of older adults and adults with a disability in NSW. For the most part the *Ageing and Disability Commissioner Act 2019* provides a sound foundation for the Commission. However, there are points that could be further refined to ensure the commission is able to run smoothly and better help those it aims to protect.

Please note that CPSA is not commenting on questions 11 to 14, which relate to the Official Community Visitor Scheme.

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

The objects of the Act are valid and provide appropriate protections for adults with a disability and older adults. However, the Act defines an older adult as someone aged 65 years or over, or 50 years or over for Aboriginal and Torres Strait Islander people. CPSA is aware that this limit is likely to align with what once was the eligibility age for the Age Pension, but older people become vulnerable before 65.

Older people face ageism in many areas including in the rental market, especially when also receiving income support payments, when accessing healthcare and when attempting to find employment. The age-based difficulties of finding employment are recognised from the age of 55 with mutual obligations requirements for people receiving income support payments being altered after this age.

With the current definition of older adult as 65 years or older, many who are vulnerable specifically due to their age and in need of protection are not covered under the Act.

It is for this reason that CPSA suggests the definition of 'older adult' be changed to anyone aged 55 years or over. This age should be further lowered to 40 years or over for Aboriginal and Torres Strait Islander people to acknowledge the increased vulnerability they face.

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

It is CPSA's view that the principles included in section 4 continue to be appropriate.

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

It is CPSA's view that the current appointment process and status of the Commissioner as a statutory officer assures the independence of the Commissioner and the Commission.

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

It is CPSA's view that the functions of the Commissioner continue to be suitable and appropriate.

**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?**

The requirement for the Commissioner to refer relevant reports to other bodies is commendable in its aim to ensure that all reports are handled thoroughly. However, there are some privacy issues that need to be addressed. The lack of true confidentiality may prevent some people from reporting abuse or neglect to the Commission altogether which could lead to cases of neglect and abuse going unaddressed.

The Ageing and Disability Commission was established to fill the gaps of existing bodies and to ensure that reports weren't falling through the cracks. It was not intended to take over any of the responsibilities of other agencies such as the Aged Care Quality and Safety Commission or the Health Care Complaints Commission.

It is important that the bodies in sections 13(8) and 13(9) are aware of any relevant reports and issues under their jurisdiction. This information ensures accurate reporting is maintained and allows the bodies to take systemic action if need be.

It is for these reasons that it is important that reports that are clearly relevant to other agencies are still referred.

To address the confidentiality issue, reporters should be given the option of having the Commission refer the report or calling and reporting to the relevant agency themselves.

**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?**

The intention behind the South Australian legislation is to prevent harm to older people and adults with a disability by ensuring reports don't fall through the cracks. However,

there are many situations in which investigating a report without the express consent of the alleged victim can lead to more harm.

In situations such as family and domestic violence the victim may not want an investigation to occur for fear of retaliation. If the alleged abuser is intercepting communication or controlling the victim's responses, intervention could place them at significant risk.

The review should consider situations such as these where explicit consent is vital. Further investigation may be necessary, but the commission isn't always best equipped to prevent harm to the victim.

In the situation that a reporter themselves is unable to get in contact with the person they are concerned about, they should be encouraged to make a missing persons report to the police. This enables the police to investigate the wellbeing of the individual and conduct a welfare check if needed. They also have the resources to better support the victim and protect them from harm if there is any retaliation.

**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?**

It is CPSA's view that the Commissioner's information sharing powers should be expanded to allow them to share information with the organisations listed under 3.28. However, the privacy of reporters and alleged victims should still be respected. Information should not be shared without consent from those involved unless the exemptions discussed earlier apply. Other than this, the existing powers are suitable to achieve the objectives of the Act.

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

For the most part, the powers of the Commissioner allow for investigations to be completed successfully and the aims of the Act to be achieved. However, if an individual interferes with an investigation by failing to comply with a notice to attend a meeting or provide required documents, or they provide false or misleading statements the maximum penalty they face is a \$5,500 fine.

Depending on the situation, an individual subject to a direction under an investigation may prefer paying a maximum fine to compliance and possibly face further consequences. There should be adequate options to enforce compliance with the requirements of investigations to ensure all reports are taken seriously.

**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?**

CPSA's view is that the mandatory inclusions in the Commission's annual report are appropriate with one exception. CPSA does not believe it is necessary for the Commission to report on the outcomes of reports it has referred to agencies charged with, or better placed to deal with matters raised. This appears to amount to unnecessary duplication of reporting as agencies to which the Commission refers reports would have their own public reporting requirements, which would be readily accessible online. Obviously, in any cases where such agencies don't have public reporting requirements in this regard, it would be inappropriate for the Commission to report publicly.

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

It is CPSA's view that the role and membership of the Ageing and Disability Board is 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?**

The Commission has done a lot of work to ensure that older adults and adults with a disability are protected from neglect and abuse. This has translated to high numbers of reports, investigations and helpline calls with the number of reports increasing 11.5 per cent over 2021-22.

With an increasing workload it becomes even more important for the Commission to be properly resourced to ensure they are capable of properly following through all reports.

The budget for the Commission was initially set at \$29 million over four years but this was reduced to \$13.9 million prior to the Commission opening in 2019. An additional viability payment of \$3.5 million over four years was provided by the Department of Communities and Justice. However, Commissioner Robert Fitzgerald has said the Commission is facing a financial deficit that will prevent it delivering its statutory functions.<sup>1</sup>

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<sup>1</sup> NSW Legislative Council – Budget Estimates 2022-23, *Families and Communities, Disability Services*, 30 August 2022 accessed at <https://www.parliament.nsw.gov.au/lcdocs/transcripts/3034/Transcript%20-%20PC%205%20->

If the Commission is not properly funded, reports will begin falling through the cracks, calls will not be answered and many of the most vulnerable people will be placed at extreme risk.

The Commissioner has suggested that to carry out the core functions of the Ageing and Disability Commission as well as the Official Community Visitors Scheme, they will require at least an additional \$9 million over three years.