



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: ELCSC:JvdPsh131222

13 December 2022

Seniors Team
Department of Communities and Justice
GPO Box 31
Sydney NSW 2001

By email: Seniors@facs.nsw.gov.au

Dear Sir/Madam,

Independent Review of the Ageing and Disability Commissioner Act 2019

The Law Society appreciates the opportunity to contribute to the Independent Review of the *Ageing and Disability Commissioner Act 2019*. The Law Society's Elder Law, Capacity and Succession Committee contributed to this submission.

Our responses to relevant questions raised in the Discussion Paper are below.

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

Yes, the objects are valid, subject to comments below.

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

We consider the Principles generally appropriate for older adults and adults with disability.

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?

Application of the mandatory reporting requirements is not always consistent with the protection of privacy and confidentiality in relation to adults with disability and older adults. Consideration could be given to conferring on the Commissioner a discretion to report, which requires considering the preferences of the adult or a substitute decisionmaker (where possible), and the extent to which reporting would disclose personal or sensitive information, with risk to the adult's safety if the information were not reported.

Where matters are reported, it is important that the Commissioner has sufficient resources to follow up with the agency and report on outcomes.

Question 6 - In what circumstances should the Commissioner be able to investigate an allegation without the consent of the relevant adult?

The Law Society would generally support extending the circumstances where investigation may occur without consent to include the situation where the adult cannot be contacted, for example where the alleged perpetrator is blocking access. Care should be taken, however, in defining the degree of effort required to contact the adult to obtain consent.

THE LAW SOCIETY OF NEW SOUTH WALES

170 Phillip Street, Sydney NSW 2000, DX 362 Sydney
ACN 000 000 699 ABN 98 696 304 966

lawsociety.com.au

T +61 2 9926 0333 F +61 2 9231 5809
E lawsociety@lawsociety.com.au

Law Council
OF AUSTRALIA
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Question 7 - Should an exemption from the requirement to obtain consent, similar to the one in South Australian legislation, be included in the Act?

Yes, as this will enable investigation where there are concerns for an adult who cannot be contacted. However, it may be helpful to examine whether the broad requirement for “reasonable inquiries” in the South Australian legislation has proven effective.

Question 8 - Are the Commissioner’s information sharing powers appropriate and sufficient to achieve the objectives of the Act?

We would support a holistic approach to the prevention of abuse of older persons and persons with a disability that would allow the Commissioner to share with, and obtain information from, parties either engaged with, or able to provide support to, such persons, including NGO disability and aged care providers, private health practitioners and providers of financial and legal services.

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?

Yes – see response to Question 8.

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?

Noting that the Act is silent as to the qualifications and expertise required of Visitors, consideration could be given to requiring that ensure Visitors are appropriately trained and qualified to perform their function under the Act.

Question 16 - Should the Commissioner be required to continue reporting on the outcome of each referral to other agencies?

We understand there is significant work involved for the Commissioner in following up matters which have been referred, and which can take some time to resolve. However, the Commissioner’s reported data on this work may not necessarily reflect the entire outcome of the referral, and so may not indicate the overall effectiveness of services provided in response to reports of elder abuse, or whether the reporting channels are being used effectively. Consideration could be given to refining the parameters for reporting on referrals in relation to the outcome of the report.

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

Sustainable resourcing of the Commissioner at an appropriate level is critical, particularly to ensure that persons attempting to make a report are able to do so without delay, but also to support the Commissioner’s reporting functions.

If you have any further questions in relation to this letter, please contact Sue Hunt, Principal Policy Lawyer on (02) 9926 0218 or by email: sue.hunt@lawsociety.com.au.

Yours sincerely,



Joanne van der Plaats
President