

5 April 2023



**ACT HUMAN RIGHTS
COMMISSION**

Australian Capital Territory

Ms Rachel Muoio
National Ageing Research Institute
34-54 Poplar Road Melbourne
By email: r.muioio@nari.edu.au

Dear Ms Muoio

Evaluation of the National Plan to Respond to the Abuse of Older Australians 2019-2023

The ACT Human Rights Commission ('Commission') welcomes the opportunity to comment on the National Ageing Research Institute's evaluation of the National Plan to Respond to the Abuse of Older Australians 2019-2023 ('National Plan').

At the time of the first National Plan, the Commission did not have jurisdiction to consider complaints about the abuse, neglect and exploitation of vulnerable adults in the ACT. In May 2020, the role of the Commission was expanded to include this function. The Commission was given this power under the *Human Rights Commission Act 2005*.

Under the *Human Rights Commission Act 2005* a vulnerable adult includes a person over 60 who has a disability or impairment or for some reason is socially isolated or unable to participate in community life.

A complaint to the Commission can be made by the vulnerable person, a carer, friend, family member, service provider or other person concerned about the vulnerable person. The Commission can talk through options for trying to resolve the concerns informally and provide information and referral options to the person raising their concern with us. The Commission can also investigate the issues raised and try to resolve the complaint through conciliation, or where a complaint cannot be resolved the Commission might publish a report and make recommendations to improve service provision. The Commission's intention is always to improve the safety of the adult and uphold their rights.

Depending on the nature of the concern or issue raised the Commission may share information, or part of it, to another agency or service like the ACT Ombudsman, the Aged Care Quality & Safety Commission, the Senior Practitioner or the NDIS Quality and Safeguards Commission.

With this new adult safeguarding function, the Commission is well placed to draw on its work to inform the evaluation of the National Plan.

Please see the Commission's response to NARI's five questions below:

1. Were you or your organisation consulted or involved in developing the current *National Plan*?

The Commission was consulted in developing the National Plan and commented on the Council of Attorneys-General (CAG) consultation paper 'Developing the National Plan on Elder Abuse', which it provided to the ACT Office for Seniors and Veterans for distribution.

2. Have you observed any changes in the *National Plan* priority areas that you would attribute to the National Plan? (Please refer to page 2 for priority areas).

The following changes in the National Plan priority areas that we would attribute to the National Plan include:

1.1	Conduct a national prevalence study on abuse of older people
1.2	Develop an agreed set of national research priorities
2.2	Start building a National Knowledge Hub to consolidate information and resources about abuse of older people in one online location, including information and resources for diverse groups of older people
4.1	States and territories consider developing options for harmonising enduring powers of attorney, particularly in relation to financial powers of attorney, to achieve greater national consistency
4.2	Investigate the feasibility of developing a national online register of enduring powers of attorney

3. What should be included in the next *National Plan*?

The Commission considers the following priority areas should be included in the next National Plan:

a) National supported decision-making framework

The Commission recommends the next National Plan includes as a priority area the development of a national supported decision-making framework to achieve greater national consistency and commitment to the principle of supported decision-making across jurisdictions.

A national framework within which a person with disability can be assisted to make decisions and to receive whatever support they require to do so could assist with the

move away from substitute decision-making and towards a system which further enhances the rights and agency of older people.

A national framework could also set benchmarks for best practice in many sectors working with older people experiencing abuse.

b) *National anti-ageing campaign*

The Commission recommends the next National Plan includes as a priority area the development and implementation of a national anti-ageism strategy and campaign.

Ageism undermines the human rights of older people and can result in older people feeling disempowered and unable to exercise their agency. It can also be a contributing factor in elder abuse, either done so in good faith by family members seeking to adopt a protective approach over the older person's life, or in more extreme cases with intent to harm.

c) *Adult safeguarding agencies in each jurisdiction*

The Commission recommends the next National Plan includes as a priority area the creation of adult safeguarding agencies in each state and territory, with Commonwealth support and funding.

The ACT is only the second jurisdiction, together with NSW, to have a broad civil complaints process to respond to claims of abuse, neglect or exploitation of vulnerable people aged 60 years and above, and adults with a disability. The jurisdiction covers domestic and family settings, service providers, accommodation, guardianship arrangements, disability providers and in-home care.

The increase in vulnerable person complaints in the ACT from 20 in 2020–21 to 42 in 2021–22 indicates a community need for the jurisdiction.

d) *Interagency Protocol*

Services that support older people experiencing varying forms of abuse – including financial, emotional and psychological abuse – are not always equipped to meet the full scope of the abuse in all its presentations. It is therefore preferable that elder abuse be addressed through a coordinated multi-sectorial and multi-disciplinary approach. There is substantial empirical evidence that supports a multi-disciplinary and multi-sectorial model of service delivery with a sound coordination mechanism at the core of its response to elder abuse.¹

A formalised interagency protocol between Commonwealth and state and territory service providers would better allow for the coordinated implementation and review of the national principles, in particular addressing the current inconsistencies in

¹ World Health Organisation, 'World report on ageing and health' (Report, WHO, 2015).

assessment and response to elder abuse within and across jurisdictions. An interagency protocol would act as a guide, to assist workers across sectors to respond to potential, suspected or actual abuse using best practice principles that promote:

- Service provision consistency for older people and their families;
- Shared understanding of the aims of the response, including identification of lead coordination, roles, and responsibilities;
- Respect for the autonomy and dignity of older people; and
- Recognition of the rights of older people with capacity to refuse intervention based on principles of empowerment.

It is important to note that any information-sharing under the interagency protocol will need to be consistent with applicable legal protections of privacy.

e) Commonwealth legislative and policy review

The Commission recommends the next National Plan includes as a priority area a detailed analysis of Commonwealth laws and policies that may impede the effective service response to elder abuse at the state and territory level.

A review of Commonwealth legislation could include:

- Unimpeded access to aged care facilities for advocates and restrictive practices regulators
- Privacy constraints in the banking context (e.g. – the financial sector referring older consumers to safeguarding agencies where possible financial abuse has been identified)

A review of Commonwealth policies and practices which may impede effective service responses at the state/territory level could include:

- penalties for ‘gifting’ money where there has been financial abuse
- long delays in accessing Commonwealth funded aged care services to support a person’s independence at home without the perpetrator carer
- access to Commonwealth funded services in regional areas
- inability to access funds for carer roles if the elderly carer was pressured not to report their role
- the suitability of ACAT packages, particularly Home Care Level 4 packages, to help people age in place and be less reliant on carers who are perpetrating abuse or may be experiencing carer stress. The Commission supports the expansion of services in this context and has observed that current funding of HCL4 packages at times falls short of supporting an older person seeking independence without support from a carer perpetrating abuse.

A better understanding of how the Commonwealth and state/territory service systems intersect and the impediments to the effective delivery of service responses to elder abuse can assist agencies ameliorate the barriers to practice.

f) Oversight of aged care facilities under the OPCAT NPM structure

In December 2017, Australia ratified the United Nations Optional Protocol to the Convention against Torture (OPCAT), an international agreement aimed at preventing torture and cruel, inhuman or degrading treatment or punishment. The OPCAT requires state parties to establish domestic mechanisms – referred to as National Preventative Mechanisms (NPMs) – to conduct preventive oversight of all places of detention within their jurisdiction and control.

The UN Subcommittee on Prevention of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (the treaty body that visits States Parties and provides authoritative guidance on the OPCAT) has considered the scope of the term ‘places of detention’ (that is, the places that fall within the scope of OPCAT and that can be visited by the Subcommittee) for the purposes of Article 4 of the OPCAT. It concluded that places of detention include any place where people are deprived of their liberty, in the sense of not being free to leave, if the deprivation of liberty relates to a situation in which the State either exercises, or might be expected to exercise, a regulatory function.² Given this broad definition, in some circumstances, aged care facilities may fall within the scope of the OPCAT.

In the Commission’s submission to the Australian Human Rights Commission’s OPCAT consultation paper in 2017, the Commission raised the issue that aged care is widely recognised to be an area where there is inadequate oversight. The oversight jurisdiction of ACT bodies in relation to aged care facilities in the ACT that receive Commonwealth funding is limited. The Commission considers it will be necessary to ensure that an oversight body with sufficient powers in relation to aged care facilities be part of the federal NPM structure and have a regular presence in aged care facilities.

4. The duration of the current *National Plan* is 4 years. How long should the next *National Plan* run for?

The Commission considers four years to be a suitable time for the next National Plan to run, including commencing the implementation of new priority areas and the evaluation of earlier ones.

² Committee against Torture, Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 57th sess, Agenda Item 5, UN Doc CAT/C/57/4 (22 March 2016) annex.

5. Do you have any other comments?

The Older Persons Abuse Prevention Referral and Information Line (APRIL) which NARI has as the ACT contact is now defunct. We would be grateful if you replace the APRIL number and contact with the Commission's details. Complaints about the abuse, neglect or exploitation of vulnerable adults in the ACT can be made to the ACT Human Rights Commission on (02) 6205 2222 or by emailing human.rights@act.gov.au.

If you have any questions or would like more detailed information on any of the issues raised in this response, please do not hesitate to contact me or Elizabeth Samra on (02) 6205 2222.

We would be also pleased to meet with you to discuss our jurisdictional experience further.

Yours sincerely

Karen Toohey
ACT Disability and Community Services Commissioner