

Review of the Ageing and Disability Commissioner Act 2019

Report – Focus group outcomes

COTA NSW

COTA NSW is the peak body representing people over 50 in NSW.

We are an independent, non-partisan, consumer-based non-government organisation. We work with politicians, policy makers, service, and product providers as well as media representatives to make sure our constituents' views are heard and their needs met.

COTA NSW is an experienced social researcher known and recognised for engaging with older people and their significant others and researcher to collate and analyse their views. For example, COTA NSW's *What Older People Think* reports on the issues of concern for older people based on thousands of responses.

We use a variety of methodologies to collect qualitative and quantitative data including focus groups.

Background

Section 36 of *The Ageing and Disability Commissioner Act 2019* requires the Minister to commission an independent review of the Act. The public consultation period for this review was 17 November to 16 December 2022.

Using our extensive network of members and supporters (12,000 plus) we called for an expression of interest to participate in this review. Potential participants were given information about the approach and expectations of participation. All participants were offered a \$30 gift voucher for their time.

Two, one-hour focus groups were scheduled, and participants were selected randomly from the expression of interest response.

Demographic information

Age group	Number
50 - 59	1
60 - 69	4
70 - 79	4
80+	1

There was a good mix of gender and location, with a 60/40 split of female/male and 3 participants from regional or rural areas of NSW.

Overarching message

Prior to attendance at the focus group, 8 out of 10 participants had not heard of the Commission or the Ageing and Disability Abuse Helpline, indicating that a review of existing promotional and educational activities by the Commission would be opportune.

The participants recognised the need for the Commission/er to exist and the importance of providing adequate resourcing to ensure that the remit of the Commission can be fully realised.

One focus group attendee had direct experience of contacting the helpline. She had been seeking advice and assistance for a neighbour who she believed was experiencing financial abuse and issues concerning Power of Attorney and Guardianship. Unfortunately, she was not satisfied with the response that she received from the helpline and resorted to seeking her own legal advice. She was not aware that the Commission provides avenues for complaints or disputes if she was not satisfied with the handling of the case.

Theme – Rights within the Act

The participants felt that the rights contained within the act were comprehensive and encompassed groups that may be more vulnerable. One participant noted that to be free from harm should be seen as a basic human right. An additional point was made about the need of the Act, or the implementation thereof should be mindful of a traditional ‘western’ idea of autonomy or family might be compared to families from culturally and diverse backgrounds. An example was used in relation to consent, where it was argued that in some circumstances there may be emphasis on matriarch or patriarch, or family unit having the final decision on a matter.

Theme – Position of Commissioner

All participants felt that it was important that the position of Commissioner was independent from the government of the day and appointed by the NSW Governor. One participant thought that there should also be an independent selection panel, comprised of community representatives to ensure that it was an appointment that was supported by a political party.

In relation to the terms of appointment, there was not strong opposition to the ability to extend the term by an additional 5 years. However, there were suggestions that as with any job, there is an independent appraisal of the Commissioner’s performance that would provide a recommendation on the renewal of the position.

Theme – Function of Commissioner

The focus of the discussion related to the question of whether the Commissioner should be able to choose when to tell other organisations when a person has been hurt or abused. There was not consensus on this question. Participants recognised that this was a complex question and may impact on an individual’s right to privacy and personal autonomy.

Alternatively for others, the importance in protecting an individual from harm or abuse superseded any other considerations.

Others felt that guidelines were required that would assist the Commission to determine when mandatory notification was required.

Most participants did not feel that they were sufficiently informed of the legal and safety implications of changing the references within the Act from ‘must’ to ‘may’ and that complex and experienced legal advice would be required prior to modification.

Theme – Consent

In relation to the question of the ability of the Commissioner to progress investigations and provide assistance to protect a person even if they are being stopped from seeing the person, the majority of the focus group attendees believed that the Commissioner should proceed regardless of consent.

Another participant felt that there needed to be clear definitions within the Act as to areas such as ‘legal capacity’ and ‘reasonable inquiries’ as it could be interpreted in different ways and was a very grey area.

There was greater concern in relation to the ability to share information about the person to anyone who would be able to help that person, such as a doctor or legal practitioner. Some thought that this was necessary and that if it meant stopping the abuse then it was justified. Others raised concern about this very private information being shared more widely, particularly in CALD communities where they may be relationships with other family members. Another participant raised the concern about the confidentiality of the information and how would it be protected in another agency from cyber-attack.

There was a suggestion of providing the option to the person experiencing the abuse if they had cognitive capacity to do so. The other issue that was raised was that some felt that by sharing this information, the responsibility for addressing the issue was being transferred to a different party and that follow up would become more difficult.

The groups recognised that some people experienced significant complexity in their relationships, health, and personal circumstances. It is in these circumstances that the Act becomes critical and the role of a Commission imperative.

Theme – Powers

Focus group participants felt that the Commissioner had wide ranging powers that enabled the purpose of the Commission to be met.

It was noted that although the Commission held powers to conduct public inquiries or special investigations, this had not occurred since the Commission was established.

One participant queried what the trigger would be to hold public inquiries, or whether it was purely up to the discretion of the Commissioner. They raised the issue of legal documents such as enduring guardianship and enduring power of attorney where there is currently systematic abuse of the powers associated with these documents by some individuals in the community.

Theme – Reporting

All participants considered thorough detailed reporting to be essential. They asserted that comprehensive reporting provided important insights into trends, particular groups that were experiencing vulnerability and areas where regulation or compliance may be needed.

In addition, attendees thought that the Commissioner should report on what happened with complaints that were referred to other agencies or organisations – that it was the responsibility of the Commission to follow-up on these referrals to ensure the cases were

resolved. Some participants recognised that limited resources within the Commission may make this additional reporting challenging.