

**INQUIRY INTO PROVISIONS OF THE AGEING AND
DISABILITY COMMISSIONER BILL 2019**

Organisation: Combined Pensioners & Superannuants Association

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Submission to the NSW Legislative Council
**Inquiry into the provisions of the
Ageing and Disability Commissioner Bill 2019**

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Combined Pensioners & Superannuants Association of NSW Inc (CPSA)

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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 has 92 branches and affiliated organisations with a combined membership of approximately 23,000 people living throughout NSW. 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 Family & Community Services and Health and the Australian Government Department of Social Service.

CPSA welcomes the opportunity to make this submission to NSW Legislative Council's *Inquiry into the provisions of the Ageing and Disability Commissioner Bill 2019*.

CPSA supports the establishment of the office of Ageing and Disability Commissioner by the NSW Government. This action by the NSW Government demonstrates an active commitment to the safety and wellbeing of older people and people with disability in New South Wales. CPSA notes that the administration of the legislation as well as various schemes and arrangements relating to older people and people with disability have largely moved to the jurisdiction of the Commonwealth Government. However, CPSA understands that the NSW Government's commendable aim in the establishment of the office of Ageing and Disability Commissioner is to ensure older people and people with disability in New South Wales are protected where existing arrangements do not seamlessly mesh, or in the event that these arrangements do not cover certain sets of circumstances.

While supporting the establishment of the office of Ageing and Disability Commissioner, CPSA has a number of comments and concerns about certain provisions in the Bill.

Clause 3 defines an "older adult" as someone aged 50 or 65. The age limit of 50/65 seems to be an anachronism in that it seems to be based on the former qualifying age of 65 for the age pension. That age limit is gradually moving up to 67. This does not mean the Bill should take its cue from that. CPSA would rather have ages 40 and 55 used in the definition of an "older adult". 55 is the age at which the Social Security Act imposes age-related mutual obligation requirements on unemployed people in recognition of their reduced, age-related chance of finding permanent employment. It could be said that it is the age at which age-related vulnerability starts.

Clause 10 deals with the conditions under which the Commissioner may conduct an investigation. In general, an investigation requires the consent of the adult concerned "unless the Commissioner is of the opinion that: (a) the adult is incapable of giving consent, ..." Determining whether a person has mental capacity is a complex area requiring specific expertise. The question is whether 10(a) is really required. In cases where an adult is or seems incapable of giving consent, the presumption should be that the allegation on which an investigation is to be based is automatically so serious that consent is not necessary. This lowers the threshold for a decision to investigate and avoids the possibility of the Commissioner's decision being challenged by third parties on the grounds that the Commissioner's opinion about the lack of mental capacity on the part of the adult is wrong.

Clause 16(2) sets a financial penalty for non-compliance with a notice to attend meetings or produce documents. The maximum penalty is \$5,500. This seems to be a penalty that a person directed under clause 16(1) could conceivably prefer if they perceive it to be in their financial or other interest to do so.

Clause 16(3) does not provide a mechanism for testing whether a hypothetical application for a document under the *Government Information (Public Access) Act 2009* would fail. It appears a person can simply claim an overriding public interest against disclosure for a document to be exempt from being produced.

Clause 16(4) likewise does not provide such a mechanism.

Clause 18 is not specific about which legislation or laws do not operate to prevent the provision of information to the Commissioner. For example, a scenario is conceivable in which a person receiving aged care under the Commonwealth Home Support Program or Home Care Packages program is subject to abuse or neglect. The alleged perpetrator may not be a formal carer, but as part of an investigation it may be useful for the Commissioner to access documents that are classified as protected information under the *Aged Care Act 1997*. Which piece of legislation prevails?

Clause 30 sets a maximum financial penalty for non-compliance of \$5,500. This seems to be a penalty that a person could conceivably prefer if they perceive it to be in their financial or other interest to resist or obstruct.

Schedule 1, clause 1.3 essentially gives the office of Ageing and Disability Commissioner a blanket exemption for publicly releasing information under the *Government Information (Public Access) Act 2009*. CPSA is very concerned that essentially an entire NSW Government agency can be exempt from freedom of information legislation, where this legislation has strong exemption provisions to deal with applications. CPSA opposes this provision on the grounds that it promotes non-transparent conduct and unnecessarily reduces accountability of the office of Ageing and Disability Commissioner.