

PROTECTING OLDER CANBERRANS

REPORT ON WHAT WE HEARD



HELP US PROTECT OLDER CANBERRANS

We are committed to ensuring older Canberrans remain safe as they enter what can be a more vulnerable stage of life.

We are proposing various initiatives to protect older Canberrans against abuse and exploitation. We have an increasingly ageing population both in Canberra and across Australia. As Canberra becomes an age-friendly city, we are improving legislation to defend the safety and dignity of older Canberrans.

The most immediate legal reform proposed is the introduction of criminal offences which cover abuse of older and other vulnerable people. The ACT leads the way on this initiative and these changes will help prevent the abuse of vulnerable Canberrans.

We are also considering strengthening the oversight functions of the ACT Civil and Administrative Tribunal (ACAT) to enable the ACAT to remedy the abuse of powers by attorneys, guardians and managers.



CONVERSATION

In December 2019, we prepared a discussion paper to gain an understanding of community expectations for reforms to put in place elder abuse legislation, with a view to introduce legislation in 2020.

Through the discussion paper you were asked about how to best address elder abuse in our community, to consider whether new offence provisions for elder abuse could be an effective way to combat abuse, and if so what kind of offence might be most effective. We also asked you to consider providing ACAT with additional powers, including the ability to remedy misuse of powers of attorney, and the wrongdoing of guardians and managers.

WHO ENGAGED

During the online consultation period we received seven submissions, five were from individuals and two were from representatives of non-government organisations, Dementia Australia and Medical Insurance Group Australia (MIGA). Responses from individual community members were overwhelmingly positive, with all supporting the proposed legislative reforms to prevent elder abuse and exploitation, and empower ACAT.

Ten submissions were provided directly to the government prompted by this consultation process. Five of these were from government bodies and five were from non-government organisations such as ACT Greens and ADACAS. Responses from non-government organisations and government had mixed support for the proposals.

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Following the closure of the YourSay consultation, Government representatives also attended a roundtable forum hosted jointly by ACT Human Rights Commission (HRC) and Legal Aid ACT that discussed the proposals in the discussion paper, and separately and individually met with the Bar Association, the Law Society, the Office for Disability, and aged care providers to discuss the proposals.

Key insights from the community

While submissions received on the discussion paper were broadly supportive of initiatives to address elder abuse they showed mixed support for introducing specific criminal offences for elder abuse in the ACT. In relation to providing ACAT with powers to remedy the misuse of powers of attorney and wrongdoing of guardians and managers, comments noted the work on this proceeding in the Council of Attorneys-General (CAG).

Stand-alone offences

- Some responders considered that these measures would deter offenders and protect vulnerable people from abuse.
- One responder had personal experience with reporting elder abuse and noted it was a traumatic and complex legal process that could use reform.
- ADACAS “support[ed] the creation and implementation of a standalone [elder abuse] offence that would place emphasis on the harm a particular action affects an older person”. Its submission noted that the impact of offending against an older person could depend on their vulnerability and “For this reason, age should not be considered a reliable determinant of vulnerability.” ACT Policing and ACT Greens noted that legislation to protect all vulnerable adults is valuable.
- The Consumer Law Centre suggested stand-alone offences could help to increase awareness of elder abuse and prompt professionals in the sector to identify and respond to cases.
- The majority of responders from non-government organisations and the justice sector expressed concerns about potential unintentional impacts of criminal offences.
- Both the ACT and the Australian Age Discrimination Commissioners agreed with the Australian Law Reform Commission’s position against the creation of stand-alone offences and that the proposal for a stand-alone offence duplicates existing offences.
- The HRC stated that the introduction of new offences prior to the conclusion of the Royal Commission into Aged Care, Quality and Safety may further embed an inconsistent national approach, and that criminalisation does not address the underlying causes of offending.
- In relation to defining who is protected, some responders raised concerns or made comments about limiting the offence to those over a specific age, with one acknowledging that “age should not be considered a reliable determinant of vulnerability”, and another raising defining who the offences applied to by use of age, vulnerability including a disability, the relationship between the victim and the offender or a combination of those factors.
- Some responders commented the ACT Government should adopt language used in the CAG National Plan to Respond to the Abuse of Older Australians, which refers to ‘abuse of older Australians’ instead of ‘elder abuse’ to avoid confusion with the use of the term ‘elder’ in Aboriginal and Torres Strait Islander communities.

- The HRC also stated that criminalisation on its own does not proactively address the underlying causes of elder abuse and there is no clear evidence that new offences, alone, will provide a deterrent to offending behaviour.
- In relation to an offence targeted at people in authority failing to protect older people:
 - A formal submission from MIGA stated that **“doctors and other health professionals want to do what they can to ensure the protection of the vulnerable in society”**. MIGA noted that clearer information on what elder abuse is, and how to respond, would be helpful for healthcare professionals. MIGA noted concerns that the proposals “may unintentionally criminalise healthcare”.
 - A formal submission from Dementia Australia had seven recommendations on the proposed reforms including that “future criminal legislation take a collaborative approach” to addressing elder abuse, any change should be “clearly articulated to the community” and that legislation should be “accompanied by the appropriate level of supports for individuals impacted by abuse”.

Aggravated offences

- Responses to the proposal for aggravated offences were mixed. The individual community members who responded supported all proposed changes to better protect vulnerable people.
- A number of responses reflected concerns that any amendments in this area would need to be done carefully so as not to undermine protections that already exist in practice.
- Legal Aid ACT were “supportive of initiatives that aim to reduce instances of elder abuse and hold responsible those who commit elder abuse”. They considered this particular proposal “may not necessarily achieve the objectives of this reform” given existing sentencing options for the courts. However they noted that including “age and age-related vulnerability as a specific factor to be considered on sentence may clearly signpost that courts must take crimes committed against the elderly seriously in the sentencing exercise”.

Including abuse as an aggravating sentencing factor for specific offences

- The HRC, Legal Aid ACT and the Australian Age Discrimination Commissioner noted that age and vulnerability can already be considered on sentencing.
- Some submissions noted that the proposed criminal laws may duplicate existing offences and existing sentencing considerations were likely adequate to protect vulnerable people against abuse.
- ADACAS supported the “introduction of older person abuse as an aggravating sentencing factor”, noting that it could be an opportunity to allow courts to sentence the offender to programs or services to break the cycle of abuse.

Specific neglect offence

- The HRC stated that if this offence was introduced it should distinguish between institutional and non-institutional settings and sit within a continuum of interventions.
- Some responders suggested considering legislation to protect all vulnerable adults, not just those who are vulnerable due to age.
- The Australian Age Discrimination Commissioner noted that a stand-alone elder abuse offence targets conduct ‘largely prohibited under existing ACT laws’, a ‘notable exception to this is the introduction of a

specific neglect offence'. The Commissioner further noted that the ACT is the only jurisdiction without a specific neglect offence, and supported the introduction of a neglect offence for adults of all ages.

Options for improving protections for older people experiencing elder abuse (family violence order and personal violence order amendments)

- Very few submissions commented on the proposed changes to the *Family Violence Act 2016* (Family Violence Act) and the *Personal Violence Act 2016* (Personal Violence Act).
- Of the responses that addressed this issue, responders supported possible amendments to strengthen protections for older people in those Acts.
- One responder noted that restorative justice pathways should be used to maintain family ties and encourage older people to report abuse as many older people experiencing abuse want to be both safe from harm and to also maintain a relationship with the perpetrator.
- Legal Aid ACT noted that the Family Violence Act already encompassed circumstances where there is a level of dependency that takes on family-like characteristics, and the Personal Violence Act is sufficient to address abuse in non-familial settings. However, Legal Aid ACT supported amendment to allow longer orders to be made, and supported expansion of the definition of 'personal violence' under the Personal Violence Act.
- Legal Aid ACT also recommended amendments to the Family Violence Act to give the Court the power to order parties (with the consent of the Applicant in a proceeding) to attend lawyer-assisted mediation.
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Strengthening ACAT power to address misuse of powers of attorney and wrongdoing of guardians or managers

- Most responders supported amendment to strengthen ACAT powers.
- Most responders noted the participation of the ACT Government on the national level to work with the CAG to ensure a harmonised approach.
- The HRC emphasised the need to provide Members of ACAT with specialised training. It also recommends expanding the relevant powers of ACAT so they are co-extensive with those of the ACT Supreme Court.
- Both Legal Aid ACT and the HRC recommended that ACAT be subject to no jurisdictional monetary limit in granting relief, and that ACAT should have the power to refer an application to the Supreme Court where the matters involved are complex.
- The Australian Age Discrimination Commissioner noted that stand-alone offences for misuse of powers of attorney may lead to inconsistencies with work currently underway through CAG to consider developing options to harmonise power of attorney laws.
- Dementia Australia considered that education for ACAT employees about dementia awareness, information about ACAT services for the ACT community, and dementia-specific training incorporating identification and support for people impacted by elder abuse was important.



WHAT'S NEXT?

Following the stakeholder consultations and the feedback received on the discussion paper, legislative reforms have been developed which include three new offences targeting abuse by those responsible for the care of vulnerable people, including older people.

You can register for project updates at <https://www.yoursay.act.gov.au/elder-abuse>.

To find out more about these reforms and other initiatives, policies and projects in Canberra visit [yoursay.act.gov.au](https://www.yoursay.act.gov.au)

Key Timings

Step 1 – 3 December 2019

Discussion Paper on Elder Abuse released

Step 2 – 29 January 2020

Feedback on Discussion Paper closed

Step 3 – 7 May 2020

Crimes (Vulnerable People) Legislation Amendment Bill 2020 introduced in the Legislative Assembly

Step 4 – June/July 2020

Further consultation with key stakeholders on the Bill as introduced.

Step 5 – 14 August 2020

What We Heard report released

Step 6 – second half 2020

Pre-commencement engagement with stakeholders to support implementation

Step 7 – first half 2021

New offences commence

Ongoing

Consideration of further reforms to ACAT powers and power of attorney legislation in line with nationally consistent approach as agreed by CAG.

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THANK YOU FOR YOUR FEEDBACK

590

Page views on YourSay

17

Contributions on the
Discussion paper

100%

Responders who support
stronger protections for
older Canberrans

4

Consultations with internal
and external stakeholders