

New South Wales Department of Communities and Justice

Via email: seniors@facjs.nsw.gov.au

16 December 2022

To whom it may concern,

Speech Pathology Australia welcomes the opportunity to provide feedback to the New South Wales Department of Communities and Justice consultation on the review of the Ageing and Disability Commissioner Act. Speech Pathology Australia is the national peak body for speech pathologists in Australia, representing more than 13,000 members. Speech pathologists are university-trained allied health professionals with expertise in the assessment, diagnosis and treatment of communication and swallowing difficulties.

Speech Pathology Australia recognises the need to support people at risk of abuse to make and be involved in decision making and wishes to acknowledge the consultation to review the Act as an important first step. It is vital that the rights, preferences and will of older persons and people with disability are respected. The Association does however want to raise that the Act does not adequately address communication disability, and how frequently the ability to communicate is confused with the level of autonomy and capacity to make decisions.

Additional comments regarding the Act

The Association would recommend that a supported decision-making framework is developed in conjunction with the Act, and communication must be the cornerstone of this framework. The Association has long advocated for recognition of communication access being as important as physical access to people with disability and/or impaired cognitive capacity if they are to participate fully in social, economic, sporting and community life. Unfortunately, communication access is rarely thought about in relation to safeguarding, or decision-making processes.

Autonomy, the concept that people have a right to make decisions and choices that impact upon their own lives is a critical factor when discussing supported decision making. Within society, negative stereotypes and misconceptions frequently prevail that a communication difficulty, and ageing are synonymous with a loss of capacity and competence. People with disability in particular are often assumed to have a greater level of cognitive disability than they in fact do. This misconception can be dangerous within the decision-making space, as many people are denied opportunities, particularly those with complex communication needs, as it is assumed that they are not able to make autonomous choices, simply because they cannot communicate their choice.

Therefore, it is imperative that the communication needs of the person at risk are taken into account as part of any and all supported decision-making processes. This must occur at all levels, for example in the evaluation of the person's capacity being modified as necessary to ensure accessibility; in ensuring all information relating to the decision is communication accessible; and in provision of the necessary communication supports for the person to express their choice in their preferred modality. Websites with information and forms to gain consent should also be in Easy English or other accessible formats.

The Association notes that there is no reference to reducing restrictive practice with regard to the functions of the Commissioner, or role of the Official Community Visitors. There has been significant



shift, within both the aged care¹ and disability sectors to acknowledge the need to minimise and wherever possible remove restrictive practices such as the use of restraints. The review may look to the work that is currently being done within South Australia in the disability sector for NDIS participants². It should be noted that there is already national governance in place regarding the use of restrictive practices for NDIS participants, which would be considered to be the minimum standard that should also be applied to all at risk adults³.

It is also vital to acknowledge the different forms of restrictive practice, beyond just chemical or physical restraint. It is the position of the Association that for those with complex communication needs, denial of access to their method of communication including taking it away; only allowing access at certain times of the day; using a less complex form of communication as it is 'easier' etc. are all forms of restrictive practice. This purposeful exclusion of access to preferred methods of communication should be included in a definition of 'abuse'

Speech Pathology Australia also has specific responses to some of the consultation questions, detailed below:

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

The Association believes the principles could be improved by ensuring that communication accessibility is also included, so that the principles and the rights of the person are not overshadowed by their ability to communicate. The safeguarding response needs to be communication accessible at every level, with the person at risk centred within the approach. This would involve at a minimum ensuring that they are supported in whatever way necessary to give or withdraw their consent, and whatever actions are taken are communicated to the person in their chosen modality. Additionally, as people living with speech / communication difficulties are at increased risk of and particularly vulnerable to abuse, neglect and exploitation, this should be explicitly recognised within the principles. This may assist with the relevant sectors and communities' understanding for the need to ensure accommodations are put in place to ensure communication accessibility.

Specifically under 3.2, an addition could be made to read:

f) adults with disability and older adults are provided with appropriate supports and aids to ensure accessibility of information, mechanisms to report abuse, communicate and participate in decision making as needed to ensure 'communication accessibility'.

Section 3.3 could be modified to read:

*3.3 This section also recognises that adults with disability and older adults may face multiple disadvantages and are potentially more vulnerable to abuse, neglect and exploitation. It sets out particular groups of people who can face additional disadvantages as well as barriers to accessing supports and services, such as women, Aboriginal and Torres Strait Islander adults, gay, lesbian, bisexual, transgender and intersex communities, adults from culturally and linguistically diverse backgrounds, **adults living with communication or cognitive changes** and adults living in regional and remote areas*

4. Are the functions of the Commissioner suitable and appropriate to achieve the objectives of the Act?

In order to more effectively achieve the stated aims of the Commissioner, Speech Pathology Australia believes that the stated functions should more explicitly include the need to raise awareness and

¹ <https://www.agedcarequality.gov.au/minimising-restrictive-practices>

² <https://www.sa.gov.au/topics/care-and-support/disability/restrictive-practices>

³ <https://www.ndiscommission.gov.au/regulated-restrictive-practices>

educate service providers and clinicians about the Commissioner's role. Suggested additions to 3.11 are:

i) to raise awareness and educate service providers and clinicians about the Commissioner's role in relation to abuse, neglect and exploitation of adults with disability and older adults

7. Should an exemption from the requirement to obtain consent, similar to the one in South Australian legislation, be included in the Act?

With regard to this question and consent more generally, attempts to gain consent should be made wherever possible. It must be noted that there may be some difficulties in obtaining consent when someone does not understand the language that the consent documents are presented in, or the language used to explain the action or intervention. This may include individuals whose first language or dialect is not English, augmentative and alternative communication (AAC) users, individuals who have a brain injury, intellectual disability or deteriorating cognitive abilities. Therefore, there may need to be provision within the Act to allow for communication accessibility and the flexibility to gain consent within the person's mode of communicating or preferred language.

8. Are the Commissioner's information sharing powers appropriate and sufficient to achieve the objectives of the Act?

Speech Pathology Australia strongly supports the proposed broadening of information sharing powers to include all of the stipulated groups under 3.28, but particularly notes private health practitioners. Speech pathologists working with adults with a disability and older adults are often private practitioners. These practitioners must be consulted in order to provide appropriate advice regarding the communication access needs of the person, including how to best support this communication for reporting and decision-making. Additionally, as part of a speech pathologist's work in supporting communication of the person at risk, they may be privy to disclosures of abuse and neglect. It is vital that speech pathologists working in a private capacity and the Commissioner can effectively work together in such instances.

We hope you find our feedback useful, if Speech Pathology Australia can assist in any other way or provide additional information please contact Ms Kym Torresi, Senior Advisor Aged Care, on 03 9642 4899 or by emailing agedcare@speechpathologyaustralia.org.au.

Yours sincerely,



Tim Kittel
National President