

Public Consultation Draft: *National Plan to End the Abuse and Mistreatment of Older People 2024-2034*

Submission to the Attorney-General's Department,
Australian Government

20 February 2025

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Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.¹

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input to the Attorney-General's Department on the Public Consultation Draft of the *National Plan to End the Abuse and Mistreatment of Older People 2024-2034* ('Draft National Plan').
2. The ALA's submission addresses feedback from ALA members on:
 - a. the need for tangible action to address elder abuse, including to address the under-reporting of elder abuse; and
 - b. elements of the Draft National Plan.

Tangible action to address elder abuse

3. ALA members are concerned that the Draft National Plan offers no meaningful and tangible action regarding elder abuse, especially in the context of aged care.
4. There have already been many plans developed, including the predecessor to this National Plan. The ALA submits that what is needed now is action to assist older people in Australia.
5. We note that the main armoury in the Draft National Plan is awareness. After more than a decade of awareness programs about elder abuse, now is the time for tangible action and changes to improve the lives, safety and comfort of older people across Australia.
6. The ALA urges that careful consideration be given to the model for legal action on elder abuse which has been enacted in the ACT,² and which can be found in:
 - sections 36A (Abuse of vulnerable person), 36B (Failure to protect vulnerable person from criminal offence) and 36C (Neglect of vulnerable person) of the *Crimes Act 1900* (ACT); and
 - amendments to the *Crimes (Sentencing) Act 2005* (ACT).

² See: *Crimes (Offences Against Vulnerable People) Legislation Amendment Act 2020* (ACT).

The under-reporting of elder abuse

7. One matter, for example, that needs immediate action is the under-reporting of elder abuse.
8. If one is suspicious that elder abuse is occurring, the options for getting that investigated are very limited. The main avenue is to phone the police. The police will go out and talk to the people in the house, and will inevitably conclude that conflict between the family members should be resolved within the family. The police, generally, do not think that this is a problem for police attention – even if the person who reports the abuse is a party external to the family (for example, a neighbour). Often, the older person is in the background of all of this, and the older person will often say they are fine because of the risks of losing contact with their family.
9. **The ALA recommends that a national reporting structure is developed for reporting elder abuse, with independent assessors who – after receiving comprehensive training in this space – could investigate complaints of elder abuse and the safety of living arrangements for older people.** It is key that the person investigating is independent from family and carers.
10. The ALA also notes another idea for consideration by the Attorney-General's Department, that has been previously recommended, namely attaching a carer's pension to an obligation to have the older person reviewed by a GP at fixed intervals of time. That GP can then assess the older person and could then report any abuse or neglect to a national reporting structure.

Analysis of the Draft National Plan

11. ALA members have provided the following feedback on elements of the Draft National Plan.

Enforcement mechanisms, governance and accountability

12. The ALA is concerned about the enforcement mechanisms, governance and accountability of the Draft National Plan.
13. We note that the Standing Council of Attorneys-General (SCAG) and the Implementation Executive Group (IEG) have oversight over and are in charge of implementing the Draft National Plan.³

³ Draft National Plan 31.

14. However, there is no mention of the role of the Department of Health and Aged Care, which has been leading legislative and regulatory reforms to national aged care legislation – including to address elder abuse and mistreatment in aged care settings.
15. The ALA contends that effective implementation of the Draft National Plan will require an integrated response with a unified legal framework, something on which the Department of Health and Aged Care is working.
16. **The ALA is, therefore, seeking clarification from the Attorney-General's Department on these dual responsibilities for the welfare of older people, especially those in aged care, and how the SCAG, the IEG and the Department of Health and Aged Care will coordinate on these shared areas of focus.**

Referencing and defining “elder abuse”

17. The ALA notes that the following from the National Draft Plan: “The abuse and mistreatment of older people (sometimes referred to as ‘elder abuse’)...”⁴
18. “Elder abuse” is the only term that ALA members and their clients identify as appropriate to describe harmful conduct towards older people. **We recommend that the National Draft Plan be amended accordingly by the Attorney-General's Department to reflect this.**
19. Further, the National Draft Plan adopts the World Health Organization’s definition of “elder abuse”.⁵
20. The ALA notes, however, that the following definition was developed as part of the *National Elder Abuse Prevalence Study* (an initiative which came out of the *National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019–2023*):⁶

a single or repeated act or failure to act, including threats, that results in harm or distress to an older person. These occur where there is an expectation of trust and/or where there is a power imbalance between the party responsible and the older person.

⁴ Ibid 9.

⁵ Ibid 11.

⁶ Kaspiew et al, *Stage One research; Feedback from the technical advisory group* (2019), cited in: Australian Institute of Family Studies, *National Elder Abuse Prevalence Study: Final Report* (2021) 164.

21. **The ALA submits that this latter definition is more appropriate for capturing conduct relevant to the Draft National Plan regarding elder abuse. We urge the Attorney-General’s Department to amend the Draft National Plan to reflect this definition.**

Other terminology in the Draft National Plan

22. ALA members recommend that the definitions of or references to the following phrases in the Draft National Plan should be amended by the Attorney-General’s Department:

- a. “Grandparent alienation”:⁷ The Draft National Plan should clearly differentiate between instances of a grandparent being alienated after the death and/or divorce of the adult child and the in-laws have the grandchildren residing with them, and simply complicated family dynamics.
- b. “Inheritance impatience”:⁸ This is not an emerging term – it has been in use for twenty years.
- c. “Financial” (number 4 of the ‘Types of abuse and mistreatment of older people’):⁹ This description should include general powers of attorney as well. ALA members report that there can be far more abuse with a general power of attorney because it does not need to see the light of a solicitor’s office – anyone can print one off, fabricate the details and/or coerce a vulnerable, older person into nominating them as their attorney. No third party ever asks an attorney if the principal still has mental capacity, so this space is ripe for abuse and mistreatment.
- d. “older person”:¹⁰ The Draft National Plan defines “older person” as someone “aged 65 years or older” for non-Aboriginal or Torres Strait Islander people.¹¹ ALA members note with concern that this does not align with other definitions used by the Federal Government, including the Age Pension age of 67 years.¹²

⁷ Draft National Plan 12.

⁸ Ibid 13.

⁹ Ibid 13.

¹⁰ Ibid 18.


¹¹ Ibid.

¹² Services Australia, *Age Pension age* (26 April 2024) <<https://www.servicesaustralia.gov.au/who-can-get-age-pension?context=22526#whatagepensionis>>.

Conclusion

23. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to the Attorney-General's Department on the Public Consultation Draft of the *National Plan to End the Abuse and Mistreatment of Older People 2024-2034*.

24. The ALA is available to provide further assistance on the issues raised in this submission.

A handwritten signature in black ink that reads "Michelle James". The signature is written in a cursive, flowing style.

Michelle James

National President,

Australian Lawyers Alliance