

Sentencing for fraud and fraud-related offences in New South Wales

NSW Law Reform Commission and Sentencing Council
Department of Communities and Justice

Seniors Rights Service Preliminary Submission

Thank you for providing an opportunity to make a preliminary submission to the Sentencing Council's review into sentencing for fraud and fraud-related offences.

Seniors Rights Service is a rights-based community organisation that has been assisting older Australians across New South Wales, providing legal advice services, aged care advocacy and community education on the rights of older people since 1986. Last year we responded to over 9300 enquiries and provided over 2800 legal advices to older people.

Our responses to the questions raised by the Sentencing Council's review into sentencing for fraud and fraud-related offences in NSW are based on this experience of supporting older vulnerable people. While we are not involved in criminal law matters, we do assist clients through civil law processes especially if there is an attempt to recover money that has been obtained through financial exploitation – a common element of elder abuse – whether or not there is an element of fraud. However, we do get approached by many people who have experienced fraud of one kind or another, but very few of these end up being prosecuted. The fraud has been difficult to prove, especially where the allegation is that fraud has taken place within a family context. Therefore, we also do not have significant direct experience of people complaining about the sentences for fraud or commenting on them.

We can however respond to two of the questions you pose as follows:

1. What factors should courts take into account when sentencing for fraud

Seniors Rights Service strongly believes that the court should consider and take into account in sentencing, the victim's age and any co-vulnerability that they might have. It could be argued that being taken advantage of or being targeted due to a perceived age-related vulnerability adds an element of willful abuse on behalf of the perpetrator and should be recognised as requiring a strong penalty in sentencing in order to discourage this abusive exploitation of older vulnerable people. This would involve a consideration of the older person's peace of mind, their financial and social circumstances, and the impact of the fraud on their physical and emotional wellbeing. The older a person is, the less time they will have to remedy a significant loss of resources and the less capable they might be to cope with the stresses of their new diminished circumstances.

Q 5: Does sentencing for fraud appropriately respond to the needs of fraud victims?

The need of elderly fraud victims to be returned to the status they had prior to the fraud event is extremely important to the wellbeing of older fraud victims. If an older person is defrauded of their assets or finances, and is retired or unable to work for other reasons, they will have very limited capacity to recover from the fraud. A fraudulent loss of their resources could leave an older person destitute and much less able to manage their remaining older age. The stress of such a situation and the emotional and mental strain it can cause, is likely to be exacerbated in older people. We believe the age of the victim and their vulnerability must be taken into account in sentencing for fraud and if at all possible, orders for a restitution of the stolen resources should be made in conjunction with fines or prison sentences.

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It is worth stating that one of the most common areas of fraud that we deal with are those involving elder financial abuse, usually perpetrated by someone in a person's family or by someone in whom they have placed their trust. This is not surprising. A recent study by the Australian Institute of Family Studies (AIFS) into the prevalence of Elder Abuse in Australia found that one in six older Australians reported experiencing abuse in the twelve months prior to being surveyed in 2020 representing 14.8% of older people. It also found that people with poor physical or psychological health and higher levels of social isolation are more likely to experience elder abuse. Older people are also targeted by scammers. Scamwatch reports that often older people have more money and accumulated wealth than younger people, making them an attractive target for a scammer. It notes also that older people tend to be less internet savvy, or familiar with internet technology, and this can also make them vulnerable to cybercrime and fraud.

Should these cases be prosecuted, ensuring restitution for the older person of what they have lost would be a huge improvement on the current situation where there is almost no recourse for this abuse. Clearly, older people are being targeted by fraudsters and sentencing that would take their vulnerabilities into account would be welcome.

Again, thank you for this opportunity to advocate for stronger protections for older people against fraudulent activities by recognising their vulnerabilities in any sentencing for fraudulent acts against them.



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