

South Australian  
**Adult Safeguarding Unit**

# **Annual Report**

## **2019 - 2020**



Government  
of South Australia

SA Health



## Director's Foreword



It is with great pleasure that I present the inaugural Adult Safeguarding Unit (ASU) Annual Report for 2019-20. Located within the Office for Ageing Well, the ASU is committed to upholding the rights of adults vulnerable to abuse, ensuring they are able to live a life free from abuse and neglect - an important right for all South Australians.

Established under the *Ageing and Adult Safeguarding Act 1995*, the ASU commenced operation on 1 October 2019, with a strong focus on safeguarding the rights of adults at risk of abuse. For its first year of operation,

the ASU had a legal mandate to respond to reports of abuse or neglect of adults aged 65 and over, and 50 and over for Aboriginal and Torres Strait Islander peoples. In response to recommendation 3 of the Safeguarding Task Force's Interim Report released in June 2020, the South Australian Government approved expanding the scope of the ASU to respond to reports of abuse or neglect of adults living with a disability who may be vulnerable. This change will take effect on 1 October 2020.

The ASU's establishment is a key achievement for Office for Ageing Well and the South Australian community, who have been instrumental in its development. As the first of its kind in Australia, the first year represents significant growth and development, including stakeholder engagement, community awareness-raising and education, service development policies and procedures, client pathways, case coordination, data collection and reporting processes.

I wish to acknowledge the commitment and support from all who have contributed and assisted with the ASU's development, including older people and those with lived experience. I also wish to express my gratitude to staff of Office for Ageing Well, for their dedication in implementing best practice standards and establishing a flexible and responsive service, focused on safeguarding the rights of older South Australians who are vulnerable to abuse.

**Cassie Mason**

Director, Office for Ageing Well

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## Background

Adult safeguarding legislative reform was first raised in 2011, with the findings of the *Closing the Gaps Report (2011)*. The recommendations of the Australian Law Reform Commission Inquiry into *Protecting the Rights of Older South Australians from Abuse (June 2017)* and the *Final Report of the Joint Committee on matters relating to Elder Abuse (October 2017)*, called on the Government to develop adult safeguarding legislation, including the establishment of a Unit, to focus on the prevention of elder abuse in South Australia.

The “Protecting our Vulnerable Adults” election commitment outlined the Marshall Government’s intention to legislate to empower a government agency to conduct investigations into allegations of abuse or neglect of vulnerable adults.

To fulfil this commitment, legislation informed by state and national inquiries was passed by the Parliament of South Australia in November 2018, making important changes to the *Office for the Ageing Act 1995* (now known as the *Ageing and Adult Safeguarding Act 1995*) to safeguard the rights of adults who may be vulnerable to abuse by establishing the Adult Safeguarding Unit, a first of its kind in Australia.

On 1 October 2019, provisions in the *Ageing and Adult Safeguarding Act 1995* (the Act) came into effect and the new Adult Safeguarding Unit commenced. Among other matters, the Act provides for a rights-based legal framework for the prevention of abuse and exploitation of vulnerable adults. The ASU is located in Office for Ageing Well, Department for Health and Wellbeing and reports to the Minister for Health and Wellbeing. The Director, Office for Ageing Well is accountable for undertaking the assigned statutory functions and for the day-to-day operations of the ASU.

Part 3 of the Act sets out Adult Safeguarding provisions, including: Principles for the operation of the Act and the ASU (s12); Composition of the Unit (s14); Functions (15); Powers of Authorised Officers (Part 3, Div3); Reporting suspected risk of abuse of vulnerable adults (22); Assessment and investigation of reports (Part 4, Div 4);

Consent (s24); Further referral of matters (Div 5); Court orders (Div 6); Review of certain decisions (Part 5); and Information gathering (Part 6).

The ASU has a strong focus on safeguarding the rights of adults at risk of abuse. For the first three years it originally had a legal mandate to respond to reports of abuse or neglect of adults aged 65 and over, and 50 and over for Aboriginal and Torres Strait Islander peoples (elder abuse). On 15 June 2020, in its Interim Report<sup>1</sup>, the Safeguarding Task Force recommended expanding the ASU’s legal mandate to include adults vulnerable to abuse of any age. The Government accepted this recommendation and approved the expansion of the ASU’s mandate to include adults living with a disability who may be vulnerable to abuse from 1 October 2020, ahead of extending its service to all adults vulnerable to abuse in October 2022 as planned.

The Act requires the development of a *Charter of the Rights and Freedoms of Vulnerable Adults* (s20) and a *Code of Practice* (s21) to guide the ASU’s operations and service response. These documents were developed in consultation with a diverse range of stakeholders, including older people and people living with a disability, and are available on the SA Health website.

Whilst the Charter, underpinned by human rights principles, does not create legally enforceable rights or entitlements, the ASU and other State authorities must, in carrying out the Unit’s functions or exercising its powers, have regard to, and seek to give effect to the Charter. This obligation ensures that a rights-based approach informs both the administration of the Act and the operation of the ASU. The Code of Practice sets out in practical terms how the ASU will operate, including the interface with other organisations.

Office for Ageing Well is very grateful for the level of engagement and feedback from key stakeholders and community members who assisted in the development of a responsive service that meets community expectations.

1. [Safeguarding Task Force – Interim Report \(15 June 2020\)](#)

Due to the energy, commitment and determination across the state over a prolonged period of time, South Australia now has a single government agency with a clear statutory role for safeguarding rights and supporting adults who may be vulnerable to abuse or neglect.



## Role and Functions of the ASU

The adult safeguarding provisions and the ASU's role complement existing legal frameworks, agencies and statutory authorities, resulting in a more coordinated approach for reporting and responding to actual or suspected cases of elder abuse. Additionally, the ASU has an important legislative function to focus on prevention and early intervention.

### ASU Functions

Section 15 of the Act sets out its functions which include:

- ▶ promoting and advocating for the rights and interests of vulnerable adults in South Australia
- ▶ promoting participation by vulnerable adults in the making of decisions that affect their lives
- ▶ promoting and assisting in the development of coordinated strategies for prevention and early intervention of abuse of vulnerable adults
- ▶ to receive reports relating to the suspected abuse of vulnerable adults
- ▶ to assess reports relating to the suspected abuse of vulnerable adults
- ▶ to investigate reports relating to the suspected abuse of vulnerable adults

- ▶ to coordinate responses to reports relating to the suspected abuse of a vulnerable adult with State authorities and other persons and bodies
- ▶ to refer reports relating to the suspected abuse of a vulnerable adult to appropriate persons and bodies
- ▶ to follow up on reports that have been assessed or investigated where it is appropriate to do so
- ▶ to collate data on matters relating to the abuse of vulnerable adults
- ▶ to advise Ministers, State authorities and other bodies (including non-Government bodies) on matters relating to the abuse of vulnerable adults at a systemic level
- ▶ to prepare and publish reports on matters relating to the abuse of vulnerable adults at a systemic level
- ▶ to prepare and publish reports on issues relating to vulnerable adults that are of public importance
- ▶ to perform such other functions as may be assigned to the Adult Safeguarding Unit by the Minister or under this or any other Act.

In setting up the service, particular consideration was given to effective client response pathways, including how reports are triaged and prioritised to ensure resources are used where they are most needed.

During the reporting period, the ASU aimed to provide an approachable and flexible service response for older adults who may be vulnerable to abuse. In the majority of situations, the safeguarding process has been informal, guided by the needs and wishes of the person at risk. This is important, as older people have been reluctant to take formal action in response to abuse, especially where the abuse is by a family member or friend.

The Act has significant information sharing provisions that enable information sharing between a range of organisations to assist in the safeguarding process.

The ASU developed a number of Memoranda of Administrative Agreements with key stakeholders, such as the Office of the Public Advocate and the Legal Services Commission of SA, to facilitate clear and transparent information sharing arrangements that support a multi-agency approach.

In addition to the Director, the ASU comprised five staff; three adult safeguarding practitioners, one investigator and an education and engagement project officer, with a budget of \$689,000 in 2019-2020.

**Current Unit Staffing 2019-20 FTE**

Chief Adult Safeguarding Practitioner (AHP4)	1.0FTE
Senior Adult Safeguarding Practitioner (AHP3)	1.0FTE
Senior Investigator (ASO6)	0.8FTE
Safeguarding Practitioner (AHP2)	1.0FTE
Project Officer - Community Education and Engagement (ASO4)	0.7FTE
<b>Current Staffing - Actual</b>	<b>4.5FTE</b>

**Elder Abuse  
Elder Abuse Policy**

The South Australian Government, through Office for Ageing Well, has taken a strong leadership role in developing and implementing a rights-based response to elder abuse prevention, recognition and response through the *Strategy to Safeguard the Rights of Older South Australians 2014-2021* and its Action Plan 2015-2021. A suite of new and ongoing initiatives has been progressed in partnership with a range of government and non-government organisations.

Considerable innovative elder abuse prevention work by Office for Ageing Well in collaboration with many South Australian organisations continues to support the work of the ASU. This includes: partnering with Local Government to create an Age Friendly South Australia; the annual Stop Elder Abuse public awareness campaign; and establishing the SA Elder Abuse Prevention Phone Line.

In addition, South Australia’s leadership in elder abuse policy and practice contributed to

informing the key priorities of the *National Plan to Respond to the Abuse of Older Australians 2019-2022* and its Implementation Plan. Office for Ageing Well and the ASU, as well as other South Australian organisations, are involved in supporting and reporting against the National Plan’s implementation.

Key initiatives under the National Plan funded by the Australian Government include:

- ▶ National Elder Abuse Phone Line - 1800 ELDERHelp, that redirects South Australian callers to the SA Phone Line. Data for 2019-20 shows that the SA Elder Abuse Prevention Phone Line receives low numbers of redirected calls from the National Phone Line.
- ▶ The Elder Abuse Unit, managed by Uniting Communities that provides free information, support and legal advice to people who have been impacted by elder abuse<sup>2</sup> in Adelaide.

**What is Elder Abuse?**

One in 20 older Australians experiences some form of abuse, often by someone they know and trust, and usually a family member. For every one report, it is likely that another five remain hidden without any suspicions being aroused.

Abuse is any deliberate or unintentional action, or lack of action, carried out by a person, often in a trusted relationship, which causes distress and/or harm to a person who may be vulnerable.

Elder abuse can be physical, financial, sexual, chemical, neglect or emotional, with financial and emotional abuse occurring most frequently and often together.

Abuse is most likely to occur at home, or where services are provided, by someone familiar or trusted, such as an adult son or daughter, spouse or domestic partner, adult grandchild, friend, neighbour, or paid or unpaid carer.

2. People over 65, living in metropolitan Adelaide

# 2019 - 2020 Activity



# 946

Total number of calls to the South Australian Elder Abuse Prevention Phone Line



# 640

Number of advice and information calls



# 306

Number of reports to the Unit

## Caller Details

**28.0%**  
from a service provider

**37.1%**  
from a family member

## Gender of those Experiencing Abuse

**10.4%**  
from the person experiencing the abuse



**7.2%**  
from friends



**2.1%**  
from neighbours

**1.7%**  
from acquaintances

**53.4%**  
Female

**19.8%**  
Male

Gender is not always identified.



## Age and Location of those Experiencing Abuse



**65-74 years 7%**

**75-84 years 12.2%**

**85+ years 8.9%**

**64.3%**  
Metropolitan

**18.1%**  
Regional  
and Rural

**0.1%**  
Remote

In many calls age is not provided. Particularly where the call is for information and advice only.

## Types of Abuse reported

**42.7%**  
Financial

**35.6%**  
Emotional/  
psychological

**14%**  
Neglect

**13%**  
Physical

It is important to note that in a number of calls more than one type of abuse was identified.

**27.4%**  
Adult  
Sons

**19%**  
Adult  
Daughters

**Alleged  
Perpetrators**

## Stakeholder Engagement

The best practice approach to safeguarding the rights of adults who may be vulnerable to abuse is through coordinated multi-agency and multi-disciplinary responses. With the ASU the first of its kind in Australia, stakeholder engagement has been critical to developing the service response and client pathways. Significant energy has been invested in the development of relationships across the community over the past 12 months, engaging broadly, including with those with lived experience, and government and non-government organisations.

The Adult Safeguarding Advisory Group was established to provide strategic advice on the operations of the ASU, and includes key representatives from a diverse range of government and non-government organisations (see full membership list in appendix 3). During 2019-2020, this group met on four occasions.

The Interagency Phone Line and Adult Safeguarding Unit Implementation Workgroup<sup>3</sup> was established, whose role is to provide a forum for ASU and key external service providers to engage regarding the Elder Abuse Prevention Phone Line and referral pathways. The Interagency Phone Line and Adult Safeguarding Unit Implementation Workgroup met on four occasions during the reporting period, contributing to the development of internal procedures, referral pathways; promotional material; and providing significant assistance to the ASU to navigate complex cases.

The ASU worked alongside culturally and linguistically diverse organisations to promote its role and to seek guidance about how best to deliver a culturally appropriate service and culturally specific educational material.

## Community Education and Awareness

The ASU is responsible for raising community awareness about elder abuse, its signs, and strategies that may assist to safeguard the rights of older South Australians and prevent abuse.

Between 1 July 2019 and 30 June 2020, ASU staff met with 91 stakeholders comprising government agencies, non-government organisations and community members, including Aboriginal and culturally and linguistically diverse groups, to promote the ASU and how to make a report.

Additionally, eight Ageing Well Community Networks were established to raise awareness and increase community understanding of ageing well, elder abuse prevention strategies and the ASU. Local networks of community leaders and stakeholders delivered safeguarding information in culturally appropriate ways and through trusted networks to Aboriginal and Torres Strait Islander people, Lesbian, Gay, Bisexual, Transgender, Intersex, Queer communities, regional communities, and culturally and linguistically diverse communities.

Due to COVID-19 social distancing restrictions between March and June 2020, video conferencing facilities and digital meeting platforms ensured broad promotion of the ASU and a strengthened community response to elder abuse could continue.

3. Interagency Phone Line and Adult Safeguarding Unit Implementation Group

## Public Campaigns

To increase community awareness of elder abuse and where to go for information, advice or to make a report, Office for Ageing Well ran the annual statewide Stop Elder Abuse community awareness campaign between 3 May and 30 June 2020. In response to the impact of COVID-19 on increasing the social isolation of older people, this year's campaign focussed on the key message of 'now more than ever' it is important to check on the older people in your life, know the signs of abuse and speak up. The campaign was delivered using social media, digital, radio, stakeholder networks and print advertising. During and post-campaign, calls and reports to the ASU significantly increased.

This year, Office for Ageing Well launched a new co-designed community education campaign to raise awareness about the rights of older Aboriginal people and the importance of respect for Elders, connection and community. The new campaign emphasises valuing and respecting Elders and older Aboriginal people and their wisdom as pathways to maintaining culture and building a better future. It directs people with concerns about mistreatment of older Aboriginal people or Elders to call the Elder Abuse Prevention Phone Line, or find out more on the Stop Elder Abuse web site ([www.sahealth.sa.gov.au/stopelderabuse](http://www.sahealth.sa.gov.au/stopelderabuse)). Aboriginal Elders and advocates will be invited to be ambassadors to help spread the word throughout their communities over the next five years.

Ahead information and resources were distributed across South Australia through an extensive network of stakeholders ([www.sahealth.sa.gov.au/planningahead](http://www.sahealth.sa.gov.au/planningahead)).

Understanding that our rights do not change, nor does their value diminish, as we age is an important safeguarding measure. The *Knowing Your Rights - A Guide to the Rights of Older South Australians* publication was disseminated widely across South Australia in 2019-20, and is accessible online. The popular booklet contains a range of information to assist older South Australians, their families, carers and service providers understand their rights and make informed decisions confidently at critical life points as they age. This free publication includes information about housing, services, consumer and employment rights, financial matters, family and health, legal rights, security and safety, elder abuse, planning ahead and volunteering. This information was delivered to diverse communities in culturally appropriate ways through trusted community leaders.

## Elder Abuse Prevention Phone Line

The SA Elder Abuse Prevention Phone Line (Phone Line) is the portal to the ASU and operates 9-5pm, Monday to Friday (1800 372 310). Anyone with concerns about elder abuse can call the Phone Line for information and advice, and from 1 October 2019, could make a report.

Between 1 July 2019 and 30 June 2020, the Phone Line received 946 calls.

## Prevention Activities- Safeguards Against Abuse

Annually, Planning Ahead Week is an important ongoing elder abuse prevention initiative. It was held between 5 - 11 September 2019. Coordinated by Office for Ageing Well, with support from DonateLife SA, Legal Services Commission of SA and Office of the Public Advocate, this initiative raised community awareness and literacy about the benefits of early planning and the legal tools. Planning

## Total Number of Calls to the Phone Line

Q1: 1 Jul- 30 Sep 2019	214
Q2: 1 Oct - 31 Dec 2019	260
Q3: 1 Jan - 31 Mar 2020	214
Q4: 1 Apr - 30 Jun 2020	258

From 1 July 2019 until the Unit commenced operations on 1 October 2019, the Phone Line received 214 advice and information calls. From commencement of the Unit to 31 December 2019, the Phone Line received 260 calls. It received 214 calls from 1 January 2020 to 31 March and 258 calls were received from 1 April 2020 to 30 June 2020.

Calls for advice and information were found to be complex and often resulted in multiple calls to a broad range of organisations to ensure callers had the necessary information and support. On many occasions, the Unit received multiple calls over several weeks about the same case, before a formal report was made by the caller.

Detailed analysis of these calls assisted the Unit to target community education appropriately, and identify systemic issues or concerns, particularly in relation to providers or gaps in services.

## ASU Operations

The Act sets out requirements for receiving and responding to reports of suspicions or actual abuse, referring and investigating matters as well as consent and information sharing requirements.

As a statewide service, during the reporting period home visits were conducted in metropolitan and regional areas. The complexity and risks associated with the majority of reports necessitated two staff undertake these visits.

## Taking Reports

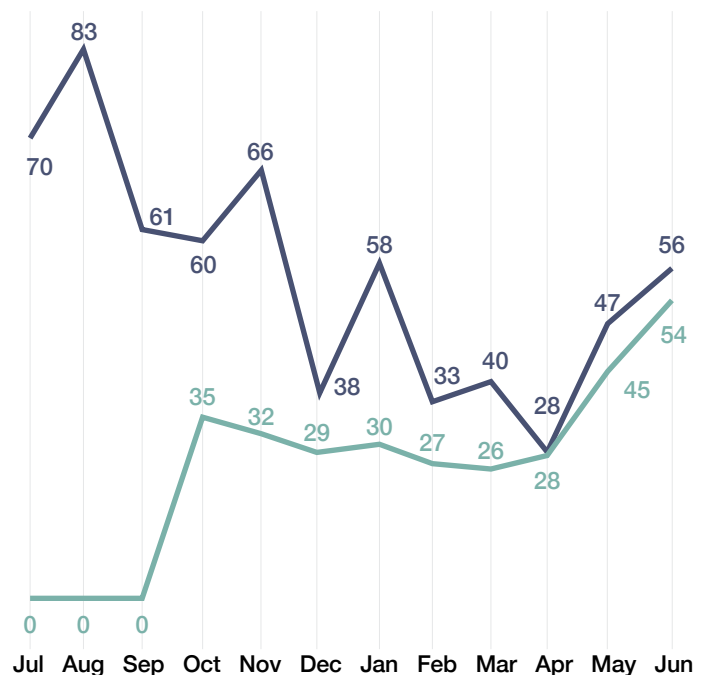
Anyone who suspects abuse of an older person who may be vulnerable, can report their concerns to the ASU via the Phone Line. Making a report to the ASU is not mandatory, however, once a report is made, the ASU has a statutory obligation to assess the report and take one of the following three actions:

- ▶ Investigate the matter.
- ▶ Refer the matter to a more appropriate organisation or body.
- ▶ Take no further action (because the matter has previously been dealt with; the matter is trivial, vexatious or frivolous; or there is another good reason why no action should be taken) (s23(3)).



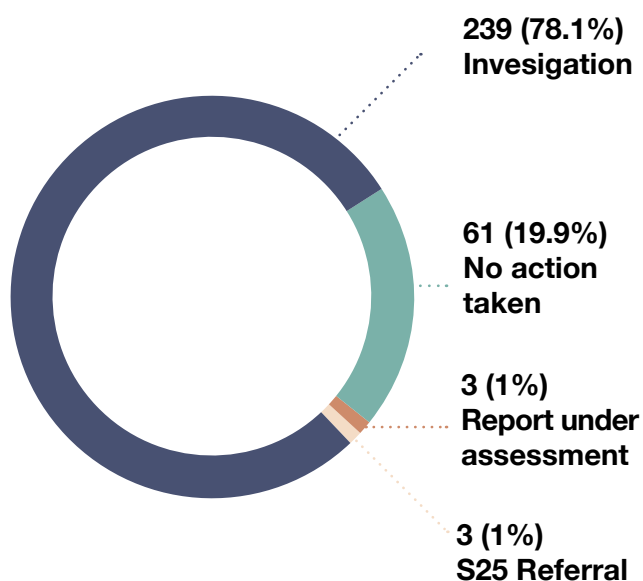
From 1 October 2019, there were 306 (41.8% of calls) reports to the ASU, requiring some form of action.

## Reports versus Enquiry Only



■ Enquiry only    ■ Action required

## Reason for No Further Action



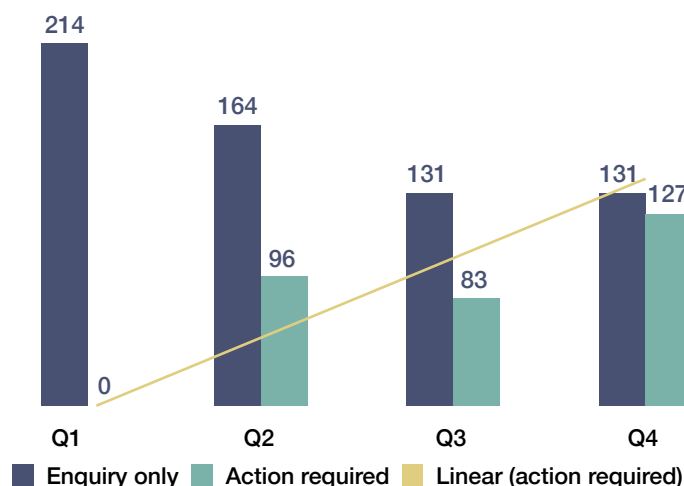
In 2019-20, 239 reports (78.1%) resulted in the ASU investigating the matter and three reports (1.0%) resulted in the ASU referring the matter to a more appropriate organisation or body. Sixty-one reports (19.9%) required no further action, as it was determined following an assessment: the matter had previously been dealt with; did not meet the threshold for action; was already appropriately managed/safeguarded; or a more appropriate statutory/regulatory response was required.

Section 23 (6) of the Act enables the Unit to gather confidential information for the purposes of assessing the initial report, and determining the most appropriate action.

In the majority of reports, the Unit determined the most appropriate action was to investigate rather than refer the matter due to insufficient information in the initial report. In most cases, additional information was sought to fully understand the situation to enable development of appropriate and well considered safeguarding plans.

Reports have steadily increased from quarter to quarter<sup>4</sup>: between 1 October 2019 - December 2019 (second quarter) 36.9%; 38.8% in the third quarter and 49.2% in the fourth quarter.

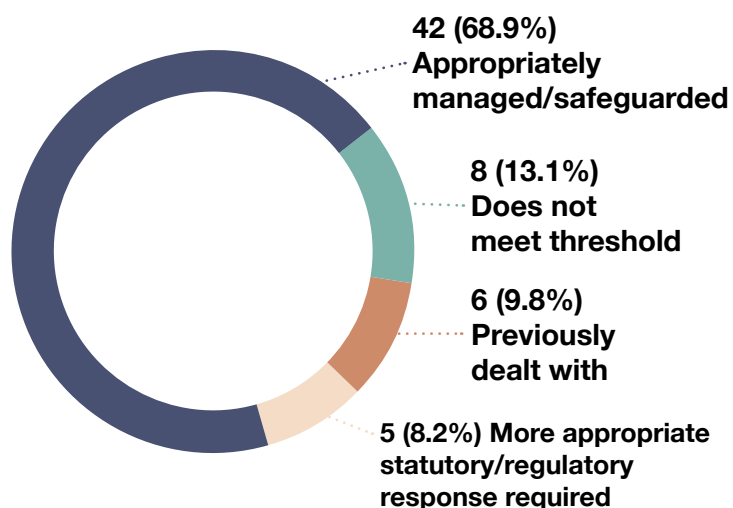
## Cases Requiring Action Versus Enquiry Only



Increased reports to the Unit necessitated regular risk assessments to effectively prioritise response timeframes. Additionally, there was a noticeable increase in the complexity of reports, particularly related to neglect and family complexities. Despite the data being anecdotal at this early stage, the complexities of reports and their impacts will be closely monitored over the second year of operations.

## Recommended Action Following Report

Following assessment it was determined that sixty-one reports required no further action. 42 (68.9%) of these reports were deemed appropriately managed/safeguarded; 8 reports (13.1%) did not meet the threshold for action, 6 (9.8%) had been previously dealt with; and for 5 (8.2%) of the reports there was a more appropriate statutory/regulatory response required.



4. Prior to 1 October 2019, the Unit was unable to take reports of abuse.

## Consent

Under the Act, is it presumed the person the report relates to has decision-making capacity unless there is evidence to the contrary. The Act outlines limited circumstances in which the ASU may take action without first obtaining the consent of the person at risk of abuse, including:

- ▶ the person's life or physical safety is at immediate risk
- ▶ the risk of abuse to which the report relates consists of an allegation that a serious criminal offence has been, or is likely to be, committed against the person
- ▶ the person to whom the report relates has impaired decision-making capacity in respect of a decision to consent to action of the relevant kind being taken
- ▶ the Adult Safeguarding Unit has not, after reasonable enquiries, been able to contact the person (s24).

In the majority of cases, and aligned with the Act's rights-based framework, the ASU sought consent from the person experiencing the abuse before taking safeguarding actions.

On 21 occasions the ASU took action without the person's consent. In the majority of these (71.4%), there was evidence that the person had impaired decision-making and was not able to consent to the action proposed by the ASU. Prior to taking action without a person's consent, in the majority of situations and where appropriate, the ASU met with the person to establish their wishes and preferences and ensure that, where possible, the person had the opportunity to be supported in their decision-making.

Under the Act, when taking action without a person's consent, the ASU must ensure that any action taken is the least interventionist and the least intrusive, ensuring that any consequential erosion of a person's rights is kept to a minimum (s12(f)).

## Undertaking Investigations

Where the Unit determined that further information was needed to better understand a person's situation, an investigation was undertaken. The purpose of an investigation is to gather further information to establish facts about an incident or allegation, explore risk factors, and identify the person's wishes and preferences to assist with safeguarding actions.

Investigations are undertaken based on an individual's unique situation and preferences. The first step in an investigation, often involved meeting with the person to explain the role of the ASU, and to better understand the person's situation, wellbeing and their perspective in relation to their situation.

Following an initial interview with the person, where appropriate and necessary, consent was sought to enable contact with other relevant agencies or individuals, including family members. The nature of investigations has been extremely varied during the reporting period and ranged from once-off contact with the person experiencing abuse, to gathering information from multiple individuals and organisations.

Whilst the Act provides the ASU with significant investigative powers, the majority of investigations have been informal in nature. This approach has been found to be preferable for the person experiencing the abuse, particularly when family members were named as alleged abusers. More often, older people want the support of the ASU to assist with stopping the abuse rather than undertaking any formal actions.

In the majority of investigations, relying on informal rather than formal investigative processes has enabled consent to be more easily obtained and allowed for the development of rapport and trust over time, which is key to working with an older person to understand their situation.

## Powers of Authorised Officers

Under section 19 of the Act, Authorised Officers have significant powers when investigating cases of serious abuse, including but not limited to the ability to:

- ▶ enter and remain on any premises, place, vehicle or vessel (and for that purpose require a vehicle or vessel to stop)
- ▶ inspect any premises, place, vehicle or vessel
- ▶ use reasonable force to break into or open any part of, or anything in or on, any premises, place, vehicle or vessel
- ▶ require any person (whether on particular premises or otherwise) who has possession of books of account or any other records relevant to a vulnerable adult to produce those books of account or records for inspection
- ▶ examine, copy or take extracts from such books of account or records
- ▶ remove and retain such books of account or records for so long as is reasonably necessary for the purpose of making a copy of the book of account or record
- ▶ take photographs, films, audio, video or other recordings
- ▶ require any person who is in a position to provide information relating to a vulnerable adult to answer any question put by the authorised officer on that subject
- ▶ require any such person to state their full name, address and date of birth
- ▶ give such directions as may be reasonably required in connection with the exercise of a power conferred by a preceding paragraph or otherwise for a purpose related to the administration, operation or enforcement of this Act. (s19).

Since the ASU commenced operations, there have been no incidences where the use of these powers has been considered the most appropriate action.

## **Investigations - Case Study - Penny**

The ASU received a phone call from a person wishing to remain anonymous but describing themselves as a long term neighbour of an 84 year old woman named Penny\*, who was concerned they had not seen Penny around the neighbourhood for many months. The caller reported that Penny used to walk her dog around the block every night and interact with neighbours. Penny's husband died a few years ago and at around that time, Penny's adult son moved in with her. The caller reported that Penny's son is away from the house for up to 10 hours a day. The caller recently knocked on the door to see if Penny was ok.

The caller spoke to Penny through the locked screen door who reported that she is locked in the house, does not have a key, food or access to a phone.

Based on the information provided in the initial report, the ASU determined that the most appropriate course of action was to undertake an investigation to ascertain more information about the situation so that effective safeguarding could be considered.

ASU staff went to the house to meet with Penny. As her door was locked, staff could only speak to her through the locked screen door. Penny told staff that she was locked in her house, had little food and no phone. Penny stated that her son and his girlfriend want to sell the house and 'get rid of her'. Penny stated that she used to love going out, including to the local RSL club and the hairdresser however she is unable to do this anymore.

Staff provided information about the role of the ASU and sought Penny's consent to speak with her son, and other interested parties including her GP and Community Geriatric Team, who Penny mentioned she had previous involvement with.

The ASU made several attempts to contact Penny's son, without success. As part of the investigation process, the ASU contacted Penny's GP and sought copies of previous assessments from the Community Geriatric team.

The information provided clearly highlighted that Penny required full assistance with personal care, was at high risk of falls and became disorientated when alone in the community. There were additional concerns about Penny's ability to make informed decisions in relation to her accommodation and lifestyle needs.

Further information was eventually gathered from Penny's son who indicated that he works fulltime and keeps the house locked due to his concerns about his mum becoming lost when out alone. He insisted that the decision to disconnect the phone was due to concerns that Penny frequently contacted 000 which resulted in regular Police welfare checks.

The information gathered throughout the course of the investigation highlighted a lack of understanding by Penny's son about his role as substitute decision maker in accordance with Penny's Advance Care Directive. ASU staff worked closely with Penny's son to provide education about the role of a substitute decision maker, specifically the focus on upholding a person's rights.

The ASU worked with Penny and her son to ensure that suitable supports including home modifications were placed in the home and this was monitored over a period of time to ensure Penny's rights were upheld. Regular review and inter-agency collaboration occurred to ensure that Penny was appropriately safeguarded.



## Referrals

Under section 25 of the Act, the ASU can formally refer a matter, requiring a formal written request from the ASU to the organisation, with the organisation required to provide a formal report in response.

Despite having the ability to formally refer matters in accordance with the Act, in the majority of cases it was more appropriate to undertake informal referrals. Utilising informal means of making referrals has ensured that multi-agency approaches were undertaken in a timely and collaborative manner, supported by key referral partners, who expressed initial concerns about the potential impact on capacity within individual organisations should frequent, formal referrals and subsequent requests for reports be made.

Once a report was received and assessed, the ASU considered whether one or more other organisations may be more appropriate to play a role in the development and/ or implementation of a safeguarding plan. The ASU's role is to complement rather than duplicate existing services, so where appropriate services could assist with safeguarding, and with the person's consent, cases were referred to that service for a response.

The ASU informally referred a high number of cases to a range of organisations, including My Aged Care, Uniting Communities Specialist Elder Abuse Unit, the Office of the Public Advocate Dispute Resolution Service and Community Health organisations. Organisations have demonstrated a positive and collaborative approach to working alongside the ASU to uphold the rights of older adults vulnerable to abuse.

## Referrals – Case Study

The Adult Safeguarding Unit and the Elder Abuse Unit<sup>5</sup> have referred matters to and from each other over the past year with great success.

The two services, while they are similar, also have some marked differences and staff of both services are aware of when it might be best to refer to the other service. We have also successfully worked with clients together and have been able to use the appropriate components of each service to best meet the needs of the client.

A challenge we have encountered with referrals between the two services is when client confidentiality is an issue. On occasion the ASU has requested information from our service that we have been unable to provide given the confidentiality requirements of being a legal service. This issue is usually overcome by the legal service requesting client permission to provide the information to the ASU but this authority can be refused by the client or we may be unable to obtain the client's authority.

The Elder Abuse Unit staff have a high level of respect for the ASU and its practitioners and are confident that any clients who are referred will be safeguarded appropriately and with their rights as the paramount consideration.

### **Nicole Stockdale**

Lawyer, Specialist Elder Abuse Unit

5. The Elder Abuse Unit is funded by the Australian Government under the National Plan and managed by Uniting Communities.

## No Further Action

Where it was determined a case was appropriately managed, staff of the ASU generally advised callers that the ASU had decided to take no further action and the reasons why. Where appropriate, the caller was provided with contact details for the organisations involved with the person so they could liaise directly. Callers were encouraged to contact the ASU should they have any future concerns. ASU staff also liaised with relevant service providers and stakeholders involved with the case and encouraged them to make contact in the future should the situation change.

On occasion, initial assessment of reports provided sufficient information to determine there was no abuse, but often found significant family conflict and breakdown in communication. Where conflict was identified and, where appropriate, the ASU provided information to family members regarding family counselling and/or family dispute resolution services.

Additionally, initial assessments might determine significant complexity (such as co-morbidity, disability, socio-economic disadvantage or carer stress) rather than abuse. Where this was the case, despite not taking any formal action, the ASU worked with the person and, where appropriate, their family, to ensure all necessary supports were in place and assisted to navigate what can be complex systems. Where appropriate, the ASU contacted the initial caller advising that no abuse was identified and, as such, no further action taken. Advising callers of outcomes is important to maintain community confidence and reinforce that concerns are taken seriously by the ASU.

## Safeguarding

Once an investigation is completed, and on occasion in the course of an investigation, the ASU worked with the person to develop an appropriate safeguarding plan.

### Safeguarding Plans

Safeguarding plans map out actions to assist in safeguarding the person's rights and are aimed at reducing the risk of future abuse.

Safeguarding plans were tailored to individual wishes, situations and preferences. For example, to reduce the risk of further financial abuse the ASU might work with a person to change their banking details, set up direct debit arrangements, or support them to make a Power of Attorney/Enduring Power of Attorney. To reduce the risk of further physical abuse, the ASU might assist the person to increase formal supports, or speak with police and/or domestic violence services.

In 2019-20, the ASU worked with a diverse range of service providers involving multi-agency meetings where actions of each agency were discussed and agreed to ensure that appropriate safeguarding occurred.

Prior to cases being closed, safeguarding arrangements were reviewed with both the person and relevant stakeholders to ensure arrangements were sustainable and still aligned with the person's wishes.

## Safeguarding Case Study - Julie

A hospital Social Worker contacted the ASU to discuss her concerns about Julie, who was regularly presenting to the emergency department for self-harm following arguments with her daughter.

Julie and her daughter moved to South Australia from interstate in 2019 and were living in private rental, with no other family living in South Australia. Julie told the hospital she experienced long-term verbal and financial abuse by her daughter, that her daughter had access to her bank account via an online app, and had accumulated thousands of dollars' debt in Julie's name.

Julie's daughter received the carers pension as Julie relied on her daughter to do her shopping, cooking and cleaning. During a recent hospital admission, Julie told staff she did not want to return to live with her daughter. The hospital organised emergency respite for Julie and ASU staff met with Julie during her respite placement.

Once sufficient information had been gathered to fully understand Julie's situation, the ASU worked with Julie to develop a safeguarding plan. Julie advised she wanted support to live independently, but was also clear that she wanted to maintain contact with her daughter and work on building a positive relationship moving forward. She stated that her daughter is 'all she has'.

As part of Julie's safeguarding plan, ASU staff accompanied Julie to Centrelink to apply for an emergency payment, and to remove her daughter as an authority/nominated person. Staff provided information to Julie about ensuring her bank account was not able to be accessed by her daughter, and Julie subsequently visited the bank and set up a new account.

Julie accepted advocacy support from the ASU for community housing, and was eventually offered her own furnished Housing SA property. Julie accepted a referral for an assessment via the Aged Care Assessment Team (ACAT) to ensure she was able to live independently with

supports, meaning she would not have to rely on her daughter. The ACAT team then referred Julie to the Community Geriatric Team for ongoing Social Work, Occupational Therapy, and Physiotherapy.

Once settled in her new home, staff discussed legal documents with Julie, including Enduring Power of Attorney (EPOA) and Advance Care Directive (ACD) to ensure future safeguards had been considered. Julie advised she was not ready to consider such documents, but requested information for when she feels ready. The ASU gathered and provided appropriate information prior to closing the case, and advised Julie she could contact the ASU in future if she had any further concerns regarding potential abuse.

## Addendum - Safeguarding Taskforce

On 21 May 2020, in response to the significant gaps in support of adults living with a disability, the State Government established the Safeguarding Taskforce, co-chaired by Dr David Caudrey and Ms Kelly Vincent. The Safeguarding Taskforce was tasked with examining the safeguarding gaps for adults living with a disability and providing recommendations to the State Government for immediate reform.

In its interim report, released on 15 June 2020, the Taskforce recommended the scope of the ASU expand to include adults of any age who may be vulnerable to abuse, earlier than 1 October 2022 as originally planned.

This recommendation was accepted by the State Government, and approval was given for the ASU's legal mandate to expand to include adults living with a disability who may be vulnerable to abuse from 1 October 2020. The ASU's legal mandate will further expand to include all adults vulnerable to abuse from 1 October 2022.

# Appendix 1 – The Act

## South Australia

### **Ageing and Adult Safeguarding Act 1995**

An Act to establish the Office for Ageing Well, to safeguard the rights of ageing persons and other vulnerable adults, to provide for the establishment of the Adult Safeguarding Unit, to prevent abuse of ageing people and other vulnerable adults, and for other purposes.

Version 1.10.2019

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## **Legislative history**

# The Parliament of South Australia enacts as follows:

## Part 1 - Preliminary

### 1 - Short title

This Act may be cited as the *Ageing and Adult Safeguarding Act 1995*.

### 2 - Interpretation

(1) In this Act, unless the contrary intention appears -

**abuse**, in relation to a vulnerable adult - see section 4;

**Adult Safeguarding Unit** means the Adult Safeguarding Unit established in accordance with section 13;

**authorised officer** means an authorised officer under section 18;

**Charter of the Rights and Freedoms of Vulnerable Adults** or **Charter** means the Charter of the Rights and Freedoms of Vulnerable Adults prepared by the Minister under Part 4 Division 1, as in force from time to time;

**Chief Executive** means the person for the time being holding or acting in the office of Chief Executive of the Department;

**code of practice** means a code of practice published under Part 4 Division 2, as in force from time to time;

**Court** means the Magistrates Court of South Australia;

**Department** means the administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act;

**Director** means the person for the time being holding or acting in the office of Director of the Office for Ageing Well;

**impaired decision-making capacity** - see section 5;

**member of the Adult Safeguarding Unit** - see subsection (2);

**State authority** means -

- (a) a person who holds an office established by an Act; or
- (b) a public sector agency; or
- (c) South Australia Police; or
- (d) a local council constituted under the *Local Government Act 1999*; or
- (e) an incorporated or unincorporated body -
  - (i) established for a public purpose by an Act; or
  - (ii) established for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, cooperatives, societies or other voluntary organisations); or
  - (iii) established, or subject to control or direction, by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown or a local council (whether or not established by or under an Act or an enactment); or
- (f) any other person or body declared by the regulations to be a State authority,

but does not include a person or body declared by the regulations not to be a State authority for the purposes of this Act;

**vulnerable adult** - see section 3.



- (2) For the purposes of this Act, a reference to a **member of the Adult Safeguarding Unit** will be taken to be a reference to a person assigned or appointed to the Adult Safeguarding Unit and includes a reference to the Director.
- (3) For the purposes of this Act, a reference to a **report under this Act** will be taken to be a reference to a report made in accordance with section 22, but does not include a report taken not to be a report under this Act pursuant to section 22(3).

### 3 - Meaning of vulnerable adult

For the purposes of this Act, a reference to a **vulnerable adult** will be taken to be a reference to an adult person who, by reason of age, ill health, disability, social isolation, dependence on others or other disadvantage, is vulnerable to abuse.

### 4- Meaning of abuse

- (1) For the purposes of this Act, a reference to **abuse** of a vulnerable adult means -
  - (a) physical, sexual, emotional or psychological abuse of the vulnerable adult; and
  - (b) financial abuse or exploitation of the vulnerable adult; and
  - (c) neglect of the vulnerable adult; and
  - (d) abuse, exploitation or neglect consisting of a person's omission to act in circumstances where the person owes a duty of care to the vulnerable adult; and
  - (e) the abuse or exploitation of a position of trust or authority existing between the vulnerable adult and another person; and
  - (f) a denial, without reasonable excuse, of the basic rights of the vulnerable adult; and
  - (g) any other act or omission of a kind declared by the regulations to be included in the ambit of this section,

but does not include an act or omission of a kind declared by the regulations to be excluded from the ambit of this section.

- (2) For the purposes of this section, a reference to the **basic rights** of a vulnerable adult will be taken to be a reference to the rights of vulnerable adults as set out from time to time in the Charter.
- (3) For the purposes of this section, a reference to the **physical abuse** of a vulnerable adult will be taken to include a reference to the unlawful physical or chemical restraint of a vulnerable adult.
- (4) For the purposes of this section, a reference to the **physical or chemical restraint** of a vulnerable adult will be taken to include a reference to the over-medication or under-medication of the vulnerable adult.

### 5 - Decision-making capacity

- (1) For the purposes of this Act, a person will be taken to have **decision-making capacity** in respect of a particular decision unless the person has impaired decision-making capacity in respect of the decision.
- (2) For the purposes of this Act, a person will be taken to have **impaired decision-making capacity** in respect of a particular decision if -
  - (a) the person is not capable of -
    - (i) understanding any information that may be relevant to the decision (including information relating to the consequences of making a particular decision); or
    - (ii) retaining such information; or
    - (iii) using such information in the course of making the decision; or
    - (iv) communicating his or her decision in any manner; or

- (b) if the person has given an advance care directive in which the person sets out when they are to be considered to have impaired decision-making capacity (however described) in respect of a decision of the relevant kind - if the person has impaired decision-making capacity as so set out.
- (3) For the purposes of this Act -
- (a) a person will not be taken to be incapable of understanding information merely because the person is not able to understand matters of a technical or trivial nature; and
  - (b) a person will not be taken to be incapable of retaining information merely because the person can only retain the information for a limited time; and
  - (c) a person may fluctuate between having impaired decision-making capacity and full decision-making capacity; and
  - (d) a person's decision-making capacity will not be taken to be impaired merely because a decision made by the person results, or may result, in an adverse outcome for the person.

## **6 - Interaction with *Independent Commissioner Against Corruption Act 2012***

Nothing in this Act limits the operation of the *Independent Commissioner Against Corruption Act 2012*.

## **Part 2 - Office for Ageing Well**

### **7 - Office for Ageing Well**

- (1) The *Office for the Ageing* established under this Act continues as the *Office for Ageing Well*.
- (2) The Office for Ageing Well consists of -
  - (a) the Director of the Office for Ageing Well (who is to be a Public Service

employee); and

- (b) such other Public Service employees as may be assigned or appointed to assist the Director.
- (3) A person cannot be appointed as Director, nor can the employment of the Director be terminated, except with the approval of the Minister.

### **8 - Objectives of Office for Ageing Well**

The objectives of the Office for Ageing Well include -

- (a) supporting South Australians of all ages to age well, unencumbered by stigma and discrimination; and
- (b) achieving proper integration of ageing persons within the community thus ensuring that the skills and experience of the ageing are not lost to the community through social alienation; and
- (c) creating social structures in which ageing persons are able to realise their full potential as individuals and as members of the community; and
- (d) creating a social ethos in which ageing persons are accorded the dignity, appreciation and respect that properly belong to them; and
- (e) ensuring that the multicultural nature of the community is reflected in the planning and implementation of programs and services relevant to ageing persons; and
- (f) achieving a proper understanding within the community of the problems affecting ageing persons and other vulnerable adults and ameliorating those problems so far as it is practicable to do so by modification of social structures and attitudes.

## 9 - Functions of Office for Ageing Well

The functions of the Office for Ageing Well are -

- (a) to assist in the development and coordination of State Government policies and strategies affecting the ageing and for that purpose to consult with the ageing, providers of services to the ageing and organisations for the benefit of or representing the interests of the ageing and other relevant persons;
- (b) to advise on the development and implementation of programs and services for the ageing and to actively foster and seek the involvement of the ageing, wherever practicable, in the development and implementation of programs or services that are intended for their benefit or that will have a special effect on them;
- (c) to monitor the effect on the ageing of -
  - (i) practices of the Government of the State, as well as the Commonwealth and local government; and
  - (ii) Commonwealth and State law (including local government by-laws), and to make appropriate representations in the interests of the ageing;
- (d) to ensure as far as practicable that the interests of the ageing are considered when programs or services that may affect them are being developed or implemented;
- (e) to undertake or commission research into matters affecting the ageing;
- (f) to compile data relating to the ageing;
- (g) to disseminate information for the assistance of the ageing;
- (h) to ensure as far as practicable that financial and investment advice is available to the ageing;
  - (i) to keep social attitudes towards the ageing under review and to promote a better understanding of the ageing within the community;
- (j) to assess the incidence of discrimination against the ageing in employment and to promote action to overcome such discrimination;
- (k) to keep under review the special needs of individual groups of the ageing (including Aboriginal peoples, those who suffer from physical or mental disabilities and those who are economically disadvantaged), and to promote various methods by which those needs may be satisfied;
- (l) to consult and cooperate with other bodies and persons that assist the ageing;
- (m) to plan, coordinate or administer, or assist in the planning, coordination or administration of, programs and services that may assist the ageing;
- (n) to consult with the ageing in relation to the means of promoting their interests and, as the Director considers appropriate, to represent the views of the ageing to the Minister;
- (o) to report to the Minister on any matter relating to the ageing referred by the Minister;
- (p) to support the Adult Safeguarding Unit in exercising their functions and powers under this Act;
- (q) to carry out such other functions as may be assigned to the Office by the Minister or under this or any other Act.

## 10 - Delegation

- (1) The Director may delegate a function or power under this Part (other than a prescribed function or power) to any person or body that is, in the Director's opinion, competent to perform or exercise the relevant function or power.
- (2) A delegation under this section -
  - (a) must be in writing; and
  - (b) may be conditional or unconditional; and
  - (c) is revocable at will; and
  - (d) does not prevent the delegator from acting in any matter.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

## 11 - Annual report

- (1) The Director must, on or before 31 October in each year, report to the Minister on the operations of the Office for Ageing Well during the preceding financial year.
- (2) The Minister must, within 6 sitting days after receiving a report from the Director, have copies of the report laid before both Houses of Parliament.

# Part 3 - Adult Safeguarding Unit

## Division 1 - Principles

### 12 - Principles

The following principles apply in relation to the operation of this Act to the extent that it relates to vulnerable adults:

- (a) all vulnerable adults are entitled to be treated with respect for their dignity, autonomy and right to self-determination;
- (b) it is presumed that a vulnerable

adult has decision-making capacity, unless there is evidence to the contrary;

- (c) except in those cases involving serious and imminent harm, the primary consideration in the operation of this Act is to ensure that a vulnerable adult's autonomy is respected and maintained rather than safeguarding the person from abuse;
- (d) vulnerable adults must be allowed to make their own decisions about their health care, residential and accommodation arrangements, financial affairs and other personal affairs to the extent that they are able, and be supported to enable them to make such decisions for as long as they can;
- (e) dignity in risk must be observed through acknowledging the right of all vulnerable adults to take informed risks and to make decisions that others (no matter their experience or background) may regard as wrong, reckless or inappropriate;
- (f) a vulnerable adult with decision-making capacity who is experiencing abuse has the right to decline support, assistance or other measures designed to safeguard them from abuse;
- (g) vulnerable adults must be involved in, and their wishes must directly inform, decisions made or actions taken to support and safeguard them;
- (h) the best approach to safeguarding vulnerable adults from abuse is through coordinating a multi-agency and multi-disciplinary response, drawing on the expertise of relevant persons and bodies in order to effectively support and empower vulnerable adults to safeguard their rights and mitigate against abuse;

- (i) subject to the laws of the State and Commonwealth, the will, preferences (including sexual preferences and sexual orientation), cultural and heritage beliefs, religious beliefs, racial origin, ethnicity, background and other beliefs or rights of a vulnerable adult must always be respected;
- (j) safeguarding measures should consist of those which are the least interventionist and the least intrusive to the vulnerable adult, thus ensuring that any consequential erosion of that person's rights is kept to a minimum;
- (k) safeguarding vulnerable adults from abuse is ultimately achieved through preventing abuse in the first place, and therefore awareness raising and community education programs must be a priority in the administration and operation of this Part.

## Division 2 - Adult Safeguarding Unit

### 13 - Separate Adult Safeguarding Unit to be established

- (1) The Chief Executive must ensure that a separate unit (the **Adult Safeguarding Unit**) is established within the Department to carry out functions under this Act.
- (2) To avoid doubt, the Adult Safeguarding Unit may be established within the Office for Ageing Well.
- (3) Where this or any other Act confers a power on the Adult Safeguarding Unit or requires that the Adult Safeguarding Unit perform any function (including requiring that the Adult Safeguarding Unit make a determination, or form an opinion, as to any matter) -
  - (a) the power or function may only be exercised or performed by a person who is authorised to do so

on behalf of the Adult Safeguarding Unit by the Director; and

- (b) the exercise of that power or the performance of that function by a person so authorised will be taken to be the exercise of that power or the performance of that function by the Adult Safeguarding Unit.

### 14 - Composition of Adult Safeguarding Unit

The Adult Safeguarding Unit is to consist of -

- (a) the Director of the Office for Ageing Well; and
- (b) other Public Service employees assigned or appointed to assist the Director.

### 15 - Functions of Adult Safeguarding Unit

- (1) The functions of the Adult Safeguarding Unit are -
  - (a) promoting and advocating for the rights and interests of vulnerable adults in South Australia; and
  - (b) promoting participation by vulnerable adults in the making of decisions that affect their lives; and
  - (c) promoting and assisting in the development of coordinated strategies for prevention and early intervention of abuse of vulnerable adults; and
  - (d) to receive reports relating to the suspected abuse of vulnerable adults; and
  - (e) to assess reports relating to the suspected abuse of vulnerable adults; and
  - (f) to investigate reports relating to the suspected abuse of vulnerable adults; and
  - (g) to coordinate responses to reports relating to the suspected abuse of a vulnerable adult with State authorities and other persons and bodies; and

- (h) to refer reports relating to the suspected abuse of a vulnerable adult to appropriate persons and bodies; and
    - (i) to follow up on reports that have been assessed or investigated where it is appropriate to do so; and
  - (j) to collate data on matters relating to the abuse of vulnerable adults; and
  - (k) to advise Ministers, State authorities and other bodies (including non-Government bodies) on matters relating to the abuse of vulnerable adults at a systemic level; and
  - (l) to prepare and publish reports on matters relating to the abuse of vulnerable adults at a systemic level; and
  - (m) to prepare and publish reports on issues relating to vulnerable adults that are of public importance; and
  - (n) to perform such other functions as may be assigned to the Adult Safeguarding Unit by the Minister or under this or any other Act.
- (2) The Adult Safeguarding Unit must, in carrying out its functions, have regard to, and seek to give effect to, the Charter of the Rights and Freedoms of Vulnerable Adults.

## 16 - Delegation

- (1) The Director may delegate a function or power of the Adult Safeguarding Unit under this Act (other than a prescribed function or power) to any person or body that is, in the Director's opinion, competent to perform or exercise the relevant function or power.
- (2) A delegation under this section -
  - (a) must be in writing; and
  - (b) may be conditional or unconditional; and

- (c) is revocable at will; and
- (d) does not prevent the delegator from acting in any matter.

- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

## 17 - Annual report

- (1) The Director must, on or before 31 October in each year, report to the Minister on the operations of the Adult Safeguarding Unit during the preceding financial year.
- (2) The Minister must, within 6 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.
- (3) A report under this section may be combined with the annual report of the Office for Ageing Well under section 11.

## Division 3 - Authorised officers

### 18 - Authorised officers

- (1) The following persons are authorised officers for the purposes of this Act:
  - (a) the Director;
  - (b) a member of the Adult Safeguarding Unit who is authorised by the Director by instrument in writing for the purposes of this paragraph.
- (2) An authorisation under subsection (1)(b) may be made subject to conditions or limitations specified in the instrument of authorisation.
- (3) An officer authorised under subsection (1)(b) must be issued with an identity card -
  - (a) containing the person's name and a photograph of the person; and
  - (b) stating that the person is an authorised officer under this Act; and

- (c) if the powers of the authorised officer have been limited by conditions - stating those limitations.
- (4) An authorised officer must, at the request of a person in relation to whom the officer intends to exercise powers under this Act, produce for inspection their identity card or other evidence of their authority.
- (5) The Director may, by notice in writing to an authorised officer, vary or revoke the authorisation of the officer, or a condition or limitation of the authorisation, on any grounds the Director thinks fit.

## 19 - Powers of authorised officers

- (1) Without limiting any other powers conferred under this Act, an authorised officer may, in the course of an investigation under section 26 relating to a vulnerable adult who is, or is suspected of being, at risk of serious abuse, exercise 1 or more of the following powers:
  - (a) enter and remain on any premises, place, vehicle or vessel (and for that purpose require a vehicle or vessel to stop);
  - (b) inspect any premises, place, vehicle or vessel;
  - (c) use reasonable force to break into or open any part of, or anything in or on, any premises, place, vehicle or vessel;
  - (d) require any person (whether on particular premises or otherwise) who has possession of books of account or any other records relevant to a vulnerable adult to produce those books of account or records for inspection;
  - (e) examine, copy or take extracts from such books of account or records;
  - (f) remove and retain such books of account or records for so long as is reasonably necessary for the purpose of making a copy of the book of account or record;
- (2) However, an authorised officer may only use force to enter any premises, place, vehicle or vessel, or to break into or open any part of, or anything in or on, any premises, place, vehicle or vessel-
  - (a) on the authority of a warrant issued by a magistrate; or
  - (b) if -
    - (i) entry to the premises, place, vehicle or vessel has been refused or cannot be gained; and
    - (ii) the authorised officer believes on reasonable grounds that the delay that would ensue as a result of applying for a warrant would significantly increase the risk of harm, or further harm, being caused to a vulnerable adult; and
    - (iii) the Director has approved the use of force to enter the premises, place, vehicle or vessel.
- (3) A magistrate must not issue a warrant under this section unless satisfied on information given on oath, personally or

by affidavit, that there are reasonable grounds for the issue of a warrant.

- (4) An application for the issue of a warrant under this section -
  - (a) may be made either personally or by telephone; and
  - (b) must be made in accordance with the rules of the Court.
- (5) A magistrate by whom a warrant is issued under this section must file the warrant, or a copy of it, and any supporting affidavit in the Court.
- (6) An authorised officer may, in exercising powers under this Act, be accompanied by such assistants as are reasonably required in the circumstances.
- (7) A person must not, without reasonable excuse, refuse or fail to comply with a requirement or direction under this section.

Maximum penalty: Imprisonment for 1 year.

- (8) To avoid doubt, this section does not limit any other powers conferred by any other provision of this Act, or any other Act.

## **Part 4 - Safeguarding vulnerable adults**

### **Division 1 - Charter of the Rights and Freedoms of Vulnerable Adults**

#### **20 - Charter of the Rights and Freedoms of Vulnerable Adults**

- (1) There is to be a *Charter of the Rights and Freedoms of Vulnerable Adults*.
- (2) The Charter is to be prepared by the Minister with the support of the Office for Ageing Well.
- (3) The Minister and Office for Ageing Well must, in preparing the Charter -
  - (a) consult with the persons and bodies prescribed by the regulations for the purposes of this paragraph (and

may consult with any other person or body that the Minister or Office for Ageing Well thinks appropriate); and

- (b) engage vulnerable adults, and their carers and families; and
  - (c) ensure an appropriate focus on the needs of priority population groups.
- (4) The regulations may make further provisions with regard to the Charter including, without limiting the generality of this subsection, provisions relating to-
    - (a) the form of the Charter and any variation of the Charter; and
    - (b) the kinds of information to be included in the Charter; and
    - (c) consultation requirements relating to the Charter; and
    - (d) requirements as to the ongoing review of the Charter.
  - (5) The Minister must cause the Charter, as varied from time to time, to be published-
    - (a) in the Gazette; and
    - (b) on a website determined by the Minister.
  - (6) A prescribed State authority must, in carrying out functions or exercising powers under this Act, have regard to, and seek to give effect to, the Charter.
  - (7) The Charter does not create legally enforceable rights or entitlements.

### **Division 2 - Code of practice**

#### **21 - Minister may publish codes of practice**

- (1) The Minister may, by notice in the Gazette, publish codes of practice for the purposes of this Act.
- (2) The Minister may, by subsequent notice in the Gazette, vary, substitute or revoke a code of practice published under subsection (1).



- (3) The Minister must cause each code of practice published under subsection (1), as varied from time to time, to be published on a website determined by the Minister.
- (4) A code of practice published under subsection (1) must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified by the Minister.
- (5) A prescribed State authority must, in the administration, operation or enforcement of this Act, to the extent that it is reasonably practicable to do so, comply with any relevant code of practice published under subsection (1).

### Division 3 - Reporting suspected risk of abuse of vulnerable adults

#### 22 - Reporting suspected risk of abuse of vulnerable adults

- (1) A person may, in accordance with this section, report to the Adult Safeguarding Unit a suspicion that a vulnerable adult is at risk of abuse.
- (2) A report under this section is to be made to the Adult Safeguarding Unit in accordance with any requirements determined by the Director.
- (3) However, a report will be taken not to be a **report under this Act** if -
  - (a) the report relates only to alleged abuse or suspected abuse of a vulnerable adult that occurred before the commencement of this section; and
  - (b) there is no ongoing risk of abuse in respect of the vulnerable adult to whom the report relates (whether because the vulnerable adult no longer resides in particular premises or for any other reason).
- (4) To avoid doubt -
  - (a) nothing in this section requires a person to report a suspicion that a vulnerable adult has been abused, or may be at risk of abuse; and
  - (b) nothing in this section prevents a person from reporting a suspicion that a vulnerable adult has been abused, or may be at risk of abuse, in any other manner or to any other person or body that the person thinks fit.

### Division 4 - Assessment and investigation of reports

#### 23 - Assessment

- (1) The Director must cause each report under this Act to be assessed in accordance with any requirements set out in the regulations.
- (2) The Director may, in the course of an assessment under this section, make use of or rely on such systems of information gathering, collating or reporting as the Director thinks fit (whether or not the system is operated or provided by a State authority).
- (3) Without limiting any other action that may be taken by the Director or the Adult Safeguarding Unit, but subject to section 24, the Director must, on completion of an assessment under this section, cause at least 1 of the following actions to be taken:
  - (a) an investigation into the matter must be carried out under section 26;
  - (b) the matter must be referred to an appropriate State authority or other person or body under section 25;
  - (c) if the Director is satisfied that-
    - (i) the matter has previously been dealt with under this or any other Act and there is no reason to reexamine the matter; or
    - (ii) the matter is trivial, vexatious or frivolous; or
    - (iii) there is good reason why no action should be taken in respect of the matter,

the Director may decline to take further action.

- (4) The Director must, in accordance with any requirements set out in the regulations -
  - (a) cause a record of each action taken under this section, and the reasons for the action, to be kept in relation to each report under this Act; and
  - (b) include statistical information relating to action taken under this section to be included in the annual report of the Adult Safeguarding Unit.
- (5) The regulations may make further provision in relation to an assessment under this section (including provisions relating to a system referred to in subsection (2) and the disclosure and confidentiality of information gathered, collated or provided under the system).
- (6) The Director may, for the purpose of an assessment under this section, by written notice, require a specified person or body to produce a written statement of information about a specified matter, or to answer specified questions, within a specified period and in a specified form, verified if the written notice so requires by statutory declaration.
- (7) A person must not refuse or fail to comply with a requirement of a notice under subsection (6)

Maximum penalty: \$10 000.

#### **24 - Consent of vulnerable adult should be obtained before certain action taken**

- (1) Subject to this section, the Adult Safeguarding Unit should not take action in respect of a report under this Act unless the vulnerable adult to whom the report or notification relates consents to the action being taken.
- (2) Subsection (1) does not apply in relation to the assessment of a report under section 23.
- (3) The Adult Safeguarding Unit may take action of a specified kind in respect of a report under this Act without first

obtaining the consent of the vulnerable adult if the taking of such action is authorised by an order of the Court under this Act.

- (4) The Adult Safeguarding Unit may take action in respect of a report under this Act without first obtaining the consent of the vulnerable adult if -
  - (a) -
    - (i) the vulnerable adult's life or physical safety is at immediate risk; or
    - (ii) the risk of abuse to which the report relates consists of an allegation that a serious criminal offence has been, or is likely to be, committed against the vulnerable person; or
    - (iii) the vulnerable adult has impaired decision-making capacity in respect of a decision to consent to action of the relevant kind being taken; or
    - (iv) the Adult Safeguarding Unit has not, after reasonable inquiries, been able to contact the vulnerable adult; or
    - (v) in any other circumstances declared by the regulations to be included in the ambit of this paragraph; and

(b) the Director approves the taking of the action.

- (5) The regulations may make further provision in relation to obtaining consent for the purposes of this section (including by allowing another person to consent on behalf of a vulnerable adult in specified circumstances).

#### **25 - Director may refer matter**

- (1) If, following an assessment of a report under section 23, the Director determines that it is more appropriate

that the matter, or a particular part of the matter, be dealt with by -

- (a) a State authority other than the Adult Safeguarding Unit; or
  - (b) a specified person or body other than a State authority, the Director may refer the matter, or part of the matter, to that State authority or that person or body.
- (2) To avoid doubt -
- (a) a matter may be referred to more than 1 State authority, or person or body, or a combination of State authorities and persons or bodies; and
  - (b) the Adult Safeguarding Unit may take action in relation to the matter even if it is referred to a State authority, or other person or body, under another Act.
- (3) Without limiting this section or any other Act or law, a matter that is referred under this section must be dealt with within a reasonable timeframe, having regard to the need to ensure that vulnerable adults are protected from abuse.
- (4) A person or body to whom a matter is referred under subsection (1)(b) must, as soon as is reasonably practicable after dealing with the matter, provide a report in relation to the matter to the Director.
- (5) The regulations may make further provision in relation to referrals under this section (including, to avoid doubt, by providing that a person or body may refuse a referral).

## **26 - Director may cause circumstances of vulnerable adult to be investigated**

- (1) Subject to this Act, the Director may cause an investigation into the circumstances of a vulnerable adult to be carried out -
  - (a) if a report is made under section 22 and the Director suspects on reasonable grounds that the

vulnerable adult may be at risk of abuse; or

- (b) in any other circumstances that the Director thinks appropriate.
- (2) An investigation under this section must be carried out by the Adult Safeguarding Unit in accordance with any requirements set out in the regulations.

## **Division 5 - Further referral of matters**

### **27- Director may report certain matters to appropriate professional body**

- (1) If, in the course of performing functions under this Act, the Director becomes aware of a matter that raises the possibility of professional misconduct or unprofessional conduct, the Director may report the matter to the relevant regulatory body for that profession.
- (2) The Director must comply with any reasonable request of the relevant regulatory body for further information in relation to the subject matter of a report under subsection (1).

### **28 - Director may make complaints to Ombudsman**

- (1) Despite a provision of the *Ombudsman Act 1972*, the Director may, on behalf of a vulnerable adult, or a class of vulnerable adults, make a complaint to the Ombudsman in respect of an administrative act and, for the purposes of the *Ombudsman Act 1972*, such a complaint will be taken to be a complaint made under that Act.
- (2) In this section -  
*administrative act* has the same meaning as in the *Ombudsman Act 1972*.

### **29 - Director may make complaints to Health and Community Services Complaints Commissioner**

Despite a provision of the *Health and Community Services Complaints Act 2004*, the Director may make a complaint to the Health and Community

Services Complaints Commissioner on behalf of a vulnerable adult, or a class of vulnerable adults, in respect of a ground referred to in section 25 of that Act (and such a complaint will be taken to be a complaint made under that Act).

*in respect of the vulnerable adult; or*

*(b) in any other circumstances with the permission of the Court.*

*(2) The regulations may make further provision in relation to an application under this section (including by limiting the circumstances in which an application, or application of a class, can be made).*

### **30 - Referral of matters to inquiry agencies etc not affected**

- (1) Nothing in this Act prevents a matter from being referred to an appropriate person or body at any time (whether or not an investigation or other action is being or has been undertaken under this Act).
- (2) The referral of a matter does not prevent the Director or the Adult Safeguarding Unit from performing functions or exercising powers in respect of the matter (but in such a case the Director and Adult Safeguarding Unit must endeavour to avoid, as far as practicable, prejudice to any person affected by the referral).

## **Division 6 - Court orders**

### **31 - Director may apply for Court orders**

- (1) *The Director may apply for an order of the Court under this Division -*
  - (a) *if the Director -*
    - (i) *reasonably suspects that a vulnerable adult is at risk of abuse; and*
    - (ii) *is of the opinion that the making of such orders is necessary or appropriate to -*
      - (A) *protect the vulnerable adult from such abuse; or*
      - (B) *to properly assess whether the vulnerable adult has been abused, or is at risk of being abused; or*
      - (C) *to allow the exercise of powers or the performance of functions under this Act*

### **32 - Parties to proceedings**

- (1) *The following persons are parties to an application for an order under this Division, or for the variation, extension or revocation of such an order:*
  - (a) *the Director;*
  - (b) *the vulnerable adult to whom the application relates.*
- (2) *If the Court is satisfied in any proceedings that it should make an order under this Division binding on a person who is not a party to the proceedings, the Court -*
  - (a) *may join that person as a party to the proceedings; and*
  - (b) *must allow the person a reasonable opportunity to make representations to the Court as to why such an order should not be made.*

### **33 - Orders that may be made**

- (1) *If, on an application under this Act, the Court is satisfied that it is appropriate to do so, the Court may make 1 or more of the following orders in relation to a vulnerable adult:*
  - (a) *an order authorising or requiring an examination or assessment of a specified kind of the vulnerable adult;*
  - (b) *an order requiring a specified person to do a specified thing, or to refrain from doing a specified thing, in respect of the vulnerable adult;*
  - (c) *an order authorising the Adult Safeguarding Unit, the Director or an authorised officer to take specified action where the vulnerable adult has refused to consent to the taking of that action;*

- (d) *such other orders as may be necessary or appropriate to enable the functions conferred on the Adult Safeguarding Unit under this Act to be performed in respect of the vulnerable adult;*
  - (e) *such consequential or ancillary orders as the Court thinks fit.*
- (2) *The Court may make such interim orders in relation to an application under this Act as the Court thinks fit.*
  - (3) *The Court may, on an application by a party to the proceedings, vary or revoke an order under this section.*

#### **34 - Court not bound by rules of evidence**

- (1) *Subject to this section, in any proceedings under this Division, the Court -*
  - (a) *is not bound by the rules of evidence but may inform itself as it thinks fit; and*
  - (b) *must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.*
- (2) *A fact to be proved in proceedings under this Division is to be proved on the balance of probabilities.*

#### **35 - Views of vulnerable adult to be heard**

- (1) *In any proceedings under this Act, a vulnerable adult to whom the proceedings relate must, unless the Court is satisfied that the vulnerable adult is not capable of doing so, be given a reasonable opportunity to personally present to the Court their views relating to the proceedings.*
- (2) *This section applies whether or not the vulnerable adult is represented by a legal practitioner in the proceedings.*

#### **36 - Right of other interested persons to be heard**

*In proceedings under this Division relating to a vulnerable adult, the Court may, on the application of -*

- (a) *a member of the vulnerable adult's family; or*
- (b) *a person who has at any time been responsible for or otherwise had care of the vulnerable adult (including, to avoid doubt, a guardian of the vulnerable adult); or*
- (c) *any other person who, in the opinion of the Court, has a proper interest in the matter, hear submissions the applicant wishes to make in respect of the vulnerable adult, despite the fact that the applicant is not a party to the proceedings.*

#### **37 - Contravention of Court order**

- (1) *A person who contravenes a term of an order of the Court imposed under this Division is guilty of an offence.*  
*Maximum penalty: \$10 000.*
- (2) *A person is not guilty of an offence of aiding, abetting, counselling or procuring the commission of an offence against this section if the person is a vulnerable adult protected by the order that has been contravened.*

#### **Note -**

*Part 4 Division 6 comes into operation on 1 October 2020.*

## **Part 5 - Reviews of certain decisions**

### **Division 1 - Internal**

#### **38 - Internal review**

- (1) *A person who is aggrieved by a decision of the Adult Safeguarding Unit or the Director under Part 4 of this Act is entitled to a review of the decision under this section.*
- (2) *An application for review -*
  - (a) *must be made in a manner and form determined by the Chief Executive; and*
  - (b) *must be made within 30 days after the day on which notice of the*

decision was given to the applicant (or such longer time as the Chief Executive may allow).

- (3) On an application for review under this section the Chief Executive may confirm, vary or reverse the decision under review.
- (4) The Chief Executive must, on completing a review under this section, give written notice to the applicant of the Chief Executive's determination in respect of the decision under review.
- (5) The regulations may make further provision in respect of a review under this section (including, to avoid doubt, by limiting the kinds of decisions that may be the subject of an application for review).

### **39 - Delegation**

- (1) The Chief Executive may delegate a function or power under this Division to any person or body that is, in the Chief Executive's opinion, competent to perform or exercise the relevant function or power.
- (2) A delegation under this section -
  - (a) must be in writing; and
  - (b) may be conditional or unconditional; and
  - (c) is revocable at will; and
  - (d) does not prevent the delegator from acting in any matter.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

## **Division 2 - External review by Ombudsman**

### **40 - External review by Ombudsman**

- (1) If -
  - (a) a person is dissatisfied with a determination of the Chief Executive following an internal review under section 38; and
  - (b) that determination relates to circumstances in which a vulnerable adult is, or is suspected of being, at risk of serious abuse, the person may apply to the Ombudsman for a review of the determination.
- (2) An application for a review of a determination under this section -
  - (a) must be made in a manner and form determined by the Ombudsman; and
  - (b) must be made within 30 days after notice of the determination is given to the applicant (or such longer period as may be allowed by the Ombudsman).
- (3) The Ombudsman may refuse to conduct a review under this section if the Ombudsman is of the opinion that the application is unreasonable, trivial or vexatious.
- (4) In conducting a review under this section, the Ombudsman -
  - (a) may carry out an investigation into the subject matter of the application (and for the purposes of such an investigation may exercise such of the investigative powers as are conferred on the Ombudsman by the Ombudsman Act 1972 in relation to an investigation duly initiated under that Act as the Ombudsman considers appropriate); and
  - (b) may -
    - (i) try to effect a settlement between the persons to whom the review relates at any time during the review; and

- (ii) *at the request of a person to whom the review relates, suspend a review under this section at any time to allow an opportunity for a settlement to be negotiated.*
- (5) *The Chief Executive, the Adult Safeguarding Unit and the Director (as the case requires), any relevant State authority and the applicant must cooperate in any process proposed by the Ombudsman for the purposes of a review under this section (including any attempt of the relevant review authority to effect a settlement between the participants), and must do all such things as are reasonably required to expedite the process.*
- (6) *The Ombudsman may dismiss an application if the Ombudsman considers that the applicant has failed to comply with subsection (5).*
- (7) *On completion of a review under this section, the Ombudsman may (based on the circumstances existing at the time of the review) confirm, vary or reverse the determination the subject of the review.*
- (8) *On making a determination on a review under this section, the relevant review authority must notify each of the following persons of the determination and the reasons for the determination:*
  - (a) *the applicant;*
  - (b) *the Chief Executive;*
  - (c) *the Adult Safeguarding Unit.*
- (9) *If the Ombudsman considers it to be in the public interest or the interests of a State authority to do so, the Ombudsman may publish, in such manner as the Ombudsman thinks fit, the reasons for a determination made on a review under this section (however the Ombudsman must not include in the reasons any information from the which the identity of the vulnerable adult can be determined).*
- (10) *In publishing reasons for a determination, the Ombudsman may comment on any unreasonable, frivolous or vexatious conduct by the applicant, the Chief*

*Executive, the Adult Safeguarding Unit or any relevant State authority.*

- (11) *If, following a review under this section, the Ombudsman is of the opinion—*
  - (a) *that the practice in accordance with which a specified act was done, or specified decision made, should be varied; or*
  - (b) *that the reasons for any act or decision to which the review relates should be given to a specified person; or*
  - (c) *that any other steps should be taken,*  
*the Ombudsman may report that opinion and the reasons for it to the Minister, and to the responsible Minister for any relevant State authority, and may make such recommendations as the Ombudsman thinks fit.*
- (12) *If it appears to the Ombudsman that appropriate steps have not been taken to give effect to a recommendation made under this section, the Ombudsman may make a report on the matter (containing a copy of the earlier report and the recommendation) to the Minister.*
- (13) *If the Ombudsman reports to the Minister under subsection (12), the Ombudsman may forward copies of the report to the Speaker of the House of Assembly and the President of the Legislative Council with a request that they be laid before their respective Houses.*
- (14) *In this section -*  
**responsible Minister** *for a State authority means -*
  - (a) *if the State authority is a public sector agency - the Minister responsible for the public sector agency;*
  - (b) *if the State authority is a local council - the Minister responsible for the administration of the Local Government Act 1999;*
  - (c) *if the State authority is a body established by or under an Act - the Minister responsible for the administration of that Act;*

- (d) *in any other case - the Minister responsible for the administration of this Act.*

#### **41 - Views of vulnerable adult to be heard**

*In any review under this Division, the vulnerable adult to whom the review relates must, unless the Ombudsman is satisfied that the vulnerable adult is not capable of doing so, be given a reasonable opportunity to personally present to the Ombudsman their views in relation to the review.*

#### **Note -**

*Part 5 Division 2 comes into operation on 1 October 2020.*

## **Part 6 - Information gathering**

#### **42 - Authorised officer may require information**

- (1) An authorised officer may, by notice in writing, require a specified person (whether or not the person is a State authority, or an officer or employee of a State authority) to provide to them such information, or such documents, as may be specified in the notice (being information or documents in the possession of the person that the authorised officer, the Director or the Adult Safeguarding Unit reasonably requires for the performance of functions under this Act).
- (2) A person required to provide information or documents under subsection (1) must give the specified information or documents to the authorised officer, or in any other manner specified by the authorised officer, within the period specified in the notice.
- (3) A person who refuses or fails to comply with a notice under subsection (1) is guilty of an offence.  
Maximum penalty: \$10 000.
- (4) If a State authority refuses or fails to comply with a notice under subsection (1), the Director may, after consultation with the State authority -

- (a) report the refusal or failure to the Minister and to the Minister responsible for the State authority (if any); and
  - (b) include details of the refusal or failure in the annual report of the Director.
- (5) The Minister may, by notice in writing, exempt a specified person or body, or persons or bodies of a specified class, from the operation of this section.
- (6) An exemption -
- (a) may be conditional or unconditional; and
  - (b) may be varied or revoked by the Minister by further notice in writing.

#### **43 - Sharing of information between certain persons and bodies**

- (1) This section applies to the following persons and bodies:
  - (a) the Adult Safeguarding Unit;
  - (b) a State authority;
  - (c) any other person or body declared by the regulations to be included in the ambit of this subsection.
- (2) Despite any other Act or law, a person or body to whom this section applies (the **provider**) may, in accordance with any requirement set out in the regulations, provide prescribed information and documents to another person or body to whom this section applies (the **recipient**) if the provider reasonably believes that the provision of the information or documents would assist the recipient -
  - (a) to perform official functions relating to the health, safety, welfare or wellbeing of a vulnerable adult or class of vulnerable adults; or
  - (b) to manage any risk to a vulnerable adult or class of vulnerable adults that might arise in the recipient's capacity as an employer or provider of services.



- (3) Despite any other Act or law, information or documents that do not directly or indirectly disclose the identity of any person may be provided by one person or body to whom this section applies to another without restriction.
- (4) Subsection (3) applies -
  - (a) whether or not the information or documents consist of or include prescribed information and documents; and
  - (b) whether the information or documents ever disclosed the identity of a person, or has been redacted so as to de-identify a person.
- (5) Information may be provided under this section regardless of whether the provider has been requested to provide the information.

- (6) In this section -

***prescribed information and documents*** means -

- (a) information or documents relating to the health, safety, welfare or wellbeing of a vulnerable adult; or
- (b) information or documents relating to the financial affairs of a vulnerable adult; or
- (c) any other information or document of a kind prescribed by the regulations for the purposes of this definition.

#### **44 - No obligation to maintain secrecy**

No obligation to maintain secrecy or other restriction on the disclosure of information applies in relation to the disclosure of information to the Director, the Adult Safeguarding Unit or an authorised officer under this Act.

#### **45 - Interaction with Public Sector (Data Sharing) Act 2016**

Nothing in this Part affects the operation of the *Public Sector (Data Sharing) Act 2016*.

## **Part 7 - Miscellaneous**

### **46 - Obstruction of person reporting suspected abuse of vulnerable adults**

A person must not, without reasonable excuse -

- (a) prevent another person from making a report under this Act relating to a suspicion that a vulnerable adult may be at risk of abuse; or
- (b) hinder or obstruct another person in making such a report.

Maximum penalty: \$10 000 or imprisonment for 2 years.

### **47 - Obstruction of Director etc**

A person must not, without reasonable excuse, hinder or obstruct the Director, an authorised officer or a member of the Adult Safeguarding Unit in the performance or exercise of a function or power under this Act.

Maximum penalty: \$10 000.

### **48 - False or misleading statements**

A person must not make a statement knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided under this Act.

Maximum penalty: \$10 000.

### **49 - Confidentiality**

- (1) A person engaged or formerly engaged in the administration of this Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except -

- (a) as required or authorised by or under this Act or any other Act or law; or
- (b) with the consent of the person to whom the information relates; or

- (c) in connection with the administration or enforcement of this or any other Act; or
- (d) for the purposes of referring the matter to a law enforcement agency, or a person or agency exercising official duties under an Act relating to the care or protection of vulnerable adults; or
- (e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions; or
- (f) if the disclosure is reasonably necessary for the protection of the lawful interests of that person.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by -
  - (a) the person to whom the information was disclosed; or
  - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

- (4) The regulations may make further provision in respect of the disclosure of information obtained in the course of the administration of this Act.

## 50 - Victimisation

- (1) A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has provided, or intends to provide, information under

this Act commits an act of victimisation.

- (2) Causing detriment on the ground that a person -
  - (a) has made a false allegation; or
  - (b) has not acted in good faith,
 does not constitute an act of victimisation.
- (3) An act of victimisation under this Act may be dealt with -
  - (a) as a tort; or
  - (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,

but, if the victim commences proceedings in a court seeking a remedy in tort, the victim cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, the victim cannot subsequently commence proceedings in a court seeking a remedy in tort.

- (4) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.
- (5) In proceedings against a person seeking a remedy in tort for an act of victimisation committed by an employee or agent of the person, it is a defence to prove that the person exercised all reasonable diligence to ensure that the employee or agent would not commit an act of victimisation.

- (6) A person who personally commits an act of victimisation under this Act is guilty of an offence.

Maximum penalty: \$10 000.

- (7) Proceedings for an offence against subsection (6) may only be commenced

by a police officer or a person approved by either the Commissioner of Police or the Director of Public Prosecutions.

etiquette or ethics, or to have departed from any acceptable form of professional conduct.

(8) In this section -

**detriment** includes -

- (a) injury, damage or loss; or
- (b) intimidation or harassment; or
- (c) discrimination, disadvantage or adverse treatment in relation to a person's employment; or
- (d) threats of reprisal.

### 51 - Protections, privileges and immunities

- (1) No liability attaches to the Director or any other person for any act or omission in good faith in the exercise or purported exercise of powers or functions under this or any other Act.
- (2) Nothing in this Act affects the privileges, immunities or powers of the Legislative Council or House of Assembly or their committees or members.
- (3) Nothing in this Act affects any rule or principle of law relating to -
  - (a) legal professional privilege; or
  - (b) "without prejudice" privilege; or
  - (c) public interest immunity.
- (4) A person is excused from answering a question or producing a document or other material if the person could not be compelled to answer the question or produce the document or material in proceedings in the Supreme Court.
- (5) A person who provides information or a document under this Act has the same protection, privileges and immunities as a witness in proceedings before the Supreme Court.
- (6) A person who does anything in accordance with this Act, or as required or authorised by or under this Act, cannot by so doing be held to have breached any code of professional

### 52 - Service

- (1) Subject to this Act, a notice or document required or authorised to be given to a person for the purposes of this Act may -
  - (a) be given to the person personally; or
  - (b) be posted in an envelope addressed to the person at the person's last known residential, business or (in the case of a corporation) registered address; or
  - (c) be left for the person at the person's last known residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or
  - (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

### 53 - Review of Act

- (1) The Minister must cause an independent review of the operation of this Act to be conducted, and a report on the review submitted to the Minister, before the third anniversary of the commencement of this section.
- (2) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

## 54 - Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for -
  - (a) the exemption of a person, or a class of persons, from the operation of a specified provision or provisions of this Act; and
  - (b) fines, not exceeding \$10 000, for offences against the regulations; and
  - (c) facilitation of proof of the commission of offences against the regulations.
- (3) The regulations may -
  - (a) be of general or limited application; and
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
  - (c) make provisions of a saving or transitional nature; and
  - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of a specified person or body; and
  - (e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body.
- (4) If a code, standard or other document is referred to or incorporated in the regulations -
  - (a) a copy of the code, standard or other document must be kept available for public inspection,

- without charge and during ordinary office hours, at an office or offices specified in the regulations; and
- (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

# Legislative history

## Notes

- In this version provisions that are uncommenced appear in italics.
- Please note - References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

## Formerly

*Office for the Ageing Act 1995*

## Legislation repealed by principal Act

The *Ageing and Adult Safeguarding Act 1995* repealed the following:

*Commissioner for the Ageing Act 1984*

## Principal Act and amendments

New entries appear in **bold**.

Year	No	Title	Assent	Commencement
1995	82	<i>Office for the Ageing Act 1995</i>	7.12.1995	20.6.1996 ( <i>Gazette 20.6.1996 p2971</i> )
1999	69	<i>Office for the Ageing (Advisory Board) Amendment Act 1999</i>	18.11.1999	1.7.2000 ( <i>Gazette 15.6.2000 p3131</i> )
2015	8	<i>Statutes Amendment (Boards and Committees - Abolition and Reform) Act 2015</i>	18.6.2015	Pt 27 (ss 177- 179) - 1.7.2015 ( <i>Gazette 25.6.2015 p3076</i> )
<b>2018</b>	<b>34</b>	<b><i>Office for the Ageing (Adult Safeguarding) Amendment Act 2018</i></b>	<b>22.11.2018</b>	<b>1.2.2019 (<i>Gazette 31.1.2019 p370</i>) except ss 4, 5, new Pt 3, Pt 4 Divs 1 to 5, Pt 5 Div 1, Pts 6, 7 (as inserted by s 6), s 7 &amp; Sch 1 - 1.10.2019 and except new Pt 4 Div 6 &amp; Pt 5 Div 2 (as inserted by s 6) - 1.10.2020 (<i>Gazette 20.6.2019 p2206</i>)</b>

## Provisions amended

New entries appear in **bold**.

Entries that relate to provisions that have been deleted appear in *italics*.

<b>Provision</b>	<b>How varied</b>	<b>Commencement</b>
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
	amended by 8/2015 s 177	1.7.2015
	<b>amended by 34/2018 s 7</b>	<b>1.10.2019</b>
Pt 1		
<b>s 1</b>	<b>amended by 34/2018 s 4</b>	<b>1.10.2019</b>
<i>s 2 before insertion by 34/2018</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
<b>ss 2-6</b>	<b>inserted by 34/2018 s 5</b>	<b>1.10.2019</b>
Pt 2	substituted by 34/2018 s 6	1.2.2019
<i>Pt 3 before deletion by 8/2015</i>		
s 8		
s 8(2)	<i>amended by 69/1999 s 3(a)</i>	1.7.2000
s 8(3)	<i>substituted by 69/1999 s 3(b)</i>	1.7.2000
s 8(5)	<i>amended by 69/1999 s 3(c)</i>	1.7.2000
<b>Pt 3</b>	<b>inserted by 34/2018 s 6</b>	<b>1.10.2019</b>
<b>Pt 4</b>	<b>inserted by 34/2018 s 6</b>	<b>1.10.2019 except Div 6 - 1.10.2020</b>
<b>Pt 5</b>	<b>inserted by 34/2018 s 6</b>	<b>1.10.2019 except Div 2 - 1.10.2020</b>
<b>Pts 6 and 7</b>	<b>inserted by 34/2018 s 6</b>	<b>1.10.2019</b>
<i>Sch</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	

## Transitional etc provisions associated with Act or amendments

### **Statutes Amendment (Boards and Committees - Abolition and Reform) Act 2015**

#### **179 - Transitional provision**

A member of the Advisory Board on Ageing ceases to hold office on the commencement of this section.

### **Office for the Ageing (Adult Safeguarding) Amendment Act 2018, Sch 1 - Transitional provision**

#### **1 - Application of certain provisions of Act limited during first 3 years of operation**

(1) The following provisions of the *Ageing and Adult Safeguarding Act 1995* (as amended or enacted by this Act) will, to the extent that the provision relates to the safeguarding of vulnerable adults, be taken only to apply to, or in relation to, prescribed vulnerable adults during the prescribed period:

- (a) Part 3;
- (b) Part 4;
- (c) Part 5.

(2) In this clause -

**prescribed period** means the period commencing on the day on which this clause comes into operation and ending on the third anniversary of that commencement;

**prescribed vulnerable adult** means -

- (a) a vulnerable adult within the meaning of section 3 of the *Ageing and Adult Safeguarding Act 1995* (as enacted by this Act) who is, on the commencement of this clause, aged -
  - (i) if the vulnerable adult is an Aboriginal or Torres Strait Islander Person - 50 years or older; or

- (ii) in any other case - 65 years or older; or
- (b) any other vulnerable adult, or vulnerable adult of a class, declared by the Minister by notice in the Gazette to be included in the ambit of this definition.

#### **Historical versions**

Reprint No 1 - 1.7.2000

1.7.2015

1.2.2019

## **Appendix 2 – South Australian Charter of the Rights and Freedoms of Vulnerable Adults<sup>1</sup>**

Based on International Human Rights Principles, The Charter will guide the Adult Safeguarding Unit's actions to prevent, identify and respond to abuse or neglect. It does not create legally enforceable rights.



**Dignity, respect and self-determination**

The right to be treated with dignity and respect.

The right to live autonomous and self-determined lives, to take risks and be supported to make their own decision/choices.

The right to freedom of movement and to choose where they live.

These rights shall only be restricted in accordance with the law.

**Liberty and security**

The right to liberty and security and to be free from exploitation and physical, social, psychological, financial, chemical and sexual abuse, or neglect. No person shall be deprived of their liberty except in accordance with the law.

The right to be free from torture and other forms of cruel, inhumane or degrading treatment.

**Equality and nondiscrimination**

The right to live free from all forms of discrimination, whether on the basis of age, disability, sex, gender identity, colour, sexual orientation, location, religion, political opinion, educational qualification, national origin, culture or ethnicity.

The right to be treated equally before the law.

**Standards of living and care**

The right to food and water to nurture them nutritionally and emotionally, adequate clothing and shelter, adequate means and resources, to enable them to enjoy the highest attainable standards of physical and mental health and wellbeing.

The right to make their own decisions about their health care and end of life, including in advance and for this to be respected.

**Privacy and family**

The right to live free from arbitrary or unlawful interference with their privacy, family, home or communications.

The right to a family life and to have their family unit respected by others, including government agencies and officials.

**Social and economic participation**

The right to freely associate with others and to participate fully in the social, economic and cultural life of their community.

Aboriginal and Torres Strait Islander vulnerable adults have the right, with other members of their community, to maintain and use their language, their kinship ties and connection to land and culture.

**Freedom of thought, conscience, spirituality, religion and expression**

The right to exercise freedom of thought, conscience, spirituality and religion.

The right to freedom of opinion and expression and to seek, receive and share information and ideas, and to lifelong learning.

The right to seek, and be provided with, personal information about them held by government agencies or officials.

1. Vulnerable adult is defined in the *Ageing and Adult Safeguarding Act 1995* as an adult who, by reason of age, ill health, disability, social isolation, dependence on others or other disadvantage, is vulnerable to abuse (s3). For the first three years this is defined as people 65 years of age and over, and 50 years of age and over for Aboriginal and Torres Strait Islander people.

## **Appendix 3 – Meeting Membership**

## **Appendix 3 – Meeting Membership**

### **Adult Safeguarding Advisory Group**

#### **Membership:**

Aboriginal rep (nominated by Aboriginal Health Strategy)  
Aged Care Quality Strategy, Commonwealth Department of Health  
Aged Rights Advocacy Service  
Attorney General's Department  
Commissioner for Aboriginal Engagement  
COTA SA  
Dementia Australia SA  
Department of Child Protection  
Disability Policy and Inclusion, DHS  
Disability Rights Advocacy Service (SA)  
Legal Services Commission of SA  
Oakden families representative  
Office of the Public Advocate  
Office of the Chief Psychiatrist, SA Health  
Intergovernment Relations and Ageing, DHW  
Ageing Policy Unit, Office for Ageing Well  
Adult Safeguarding Unit, Office for Ageing Well  
Mental Health Coalition of SA  
Multicultural Communities Council of SA  
Public Trustee  
School of Law, University of South Australia  
South Australian Council of Social Service  
South Australia Police  
Victim Support Service

### **Interagency Phone Line and Adult Safeguarding Unit Implementation Work Group**

#### **Membership:**

Aged Rights Advocacy Service  
Legal Services Commission of SA  
Office of the Public Advocate  
Relationships Australia  
Multicultural Communities Council of SA (MCCSA)  
Multicultural Aged Care Inc  
UnitingSA - Ethnic Link Services  
Aboriginal and Torres Strait Islander representative  
Public Trustee  
Carers SA  
South Australia Police  
Uniting Communities  
Adult Safeguarding Unit, Office for Ageing Well

For more information

## Office for Ageing Well

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