

Office for Ageing Well

# Ageing and Adult Safeguarding Regulations 2019

Discussion Paper

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of South Australia

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# Ageing and Adult Safeguarding Regulations 2019

## Discussion Paper

The abuse of vulnerable adults is unacceptable. It is never justified. New laws have been passed by the Parliament of South Australia to set up a new Adult Safeguarding Unit, which is expected to start later in 2019.

The Office for Ageing Well is seeking your feedback to inform the development of regulations to support the implementation of the new laws.

## Background

Parliament passed the *Office for the Ageing (Adult Safeguarding) Amendment Act 2018* in November 2018. The Act makes important changes to the *Office for the Ageing Act 1995* to help ensure vulnerable adults, and in particular older South Australians, are safeguarded from neglect or harm.

Importantly, the Act establishes an Adult Safeguarding Unit, to be located in the Office for Ageing Well (formerly Office for the Ageing), which will focus on the prevention of abuse and neglect of vulnerable adults. The Unit will complement the role of other government bodies and South Australia Police by providing the South Australian community with an approachable, empowered body with statutory responsibility and accountability for receiving and responding to reports of suspected abuse or neglect of vulnerable adults.

## Implementation

This significant legislation is the first of its kind in Australia. To ensure we get it right, a staged approach to implementation is being adopted.

In early 2019 the name of Office for the Ageing changed to the Office for Ageing Well and the provisions in the Amendment Act that set out the philosophy and principles underpinning the operation of the Office commenced.

### Commencement of the Adult Safeguarding Unit

Most of the provisions of the Act that relate to the establishment of the Adult Safeguarding Unit will commence later in 2019. The Unit will be able to respond to reports of actual or suspected abuse or neglect of vulnerable adults, and provide support to safeguard the rights of people experiencing abuse or neglect, tailored to their needs, wishes and circumstances.

The legal requirement for a *Charter of the Rights and Freedoms of Vulnerable Adults* and Code of Practice to guide the practice of the Office for Ageing Well will also commence at this time.

### Commencement of the remaining provisions of the Act

The remaining provisions of the Act (with the exception of Schedule 1) will commence 12 months after the Adult Safeguarding Unit opens. These provisions largely relate to court orders and statutory review of decisions by the Ombudsman. During this time, the Unit will work with the Courts and Ombudsman to ensure robust processes are in place to give effect to these important new powers and functions.

Schedule 1 modifies the definition of vulnerable adult for the first three years of the operation of the Act. For this period, a vulnerable adult will be defined as a person 65 years or older, or 50 years or older if the vulnerable adult is an Aboriginal or Torres Strait Islander person. At the conclusion of this three year period, the definition will automatically be extended to include all vulnerable adults (regardless of their age) who are experiencing suspected or actual harm.

### Feedback invited

The Office for Ageing Well is inviting feedback to help inform the development of regulations that are expected to commence later this year. These regulations will provide the detail around the operation of parts of the Act that relate to the Adult Safeguarding Unit.

As a starting point, a consultation draft setting out what the regulations could look like has been prepared. This draft has been informed by what the community and organisations have told us during earlier consultations.

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You will find a copy of the consultation draft at the end of this discussion paper (see Attachment 2). You may also download the draft regulations from <https://yoursay.sa.gov.au/decisions/adult-safeguarding/about>.

Any feedback on the draft regulations is welcome. In particular, we are seeking feedback on the following matters:

### Meaning of Abuse

Section 4 of the Act defines what constitutes abuse of a vulnerable adult for the purpose of the Act. It includes:

- 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.

The regulations may specify certain acts or omissions that will be exempt from the definition of abuse.

When responding to reports of suspected abuse, the Unit will work with the person to help safeguard them from the abuse. This may include a multi-agency and multi-disciplinary response, drawing on the expertise of relevant persons and bodies in order to effectively support and enable the person to safeguard their rights and mitigate against abuse. For this reason, the definition of abuse has been drafted to safeguard the person from abuse perpetrated by another individual.

### Consultation questions

1. Are there any other types of abuse that you think should be included in this definition?
2. Are there any acts or omissions that you think should be excluded from the definition of abuse?

### Consent

The new laws are underpinned by a rights-based approach that places at-risk adults at the very centre of decisions involving actions or interventions designed to safeguard them.

Section 24 makes clear that the Adult Safeguarding Unit **should not** take action in respect of a report under this Act unless the person to whom the report or notification relates consents to the action being taken.

The Unit may take action in respect of a report under this Act without first obtaining the consent of the vulnerable adult in some circumstances. These are if:

- the vulnerable adult's life or physical safety is at immediate risk; or
- 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
- the vulnerable adult has impaired decision-making capacity in respect of a decision to consent to action of the relevant kind being taken; or
- the Adult Safeguarding Unit has not, after reasonable inquiries, been able to contact the vulnerable adult; or
- in any other circumstances declared by the regulations to be included in the ambit of the paragraph; and
- the Director approves taking the action.

The regulations may also make further provision in relation to obtaining consent. This can include things such as the manner in which consent may be obtained (e.g. verbal or written) and the circumstances in which another person may provide consent on behalf of a vulnerable adult.

### Consultation questions

3. Are there any other circumstances in which you think the Adult Safeguarding Unit should be able to act without first obtaining the consent of the vulnerable adult?
4. Are there any considerations relating to how consent is obtained that you think should be included in the regulations?

### Referral following reports

Once a report has been assessed and where appropriate to do so, the Unit can refer the matter (or part thereof) to a State Authority or other specified person or body. In most cases, the person must consent to the referral occurring.

The referral process will be dealt with in the Code of Practice to be established under section 21 of the Act.

The regulations can provide further detail about how referrals will occur, such as the manner and form of referrals and the circumstances in which a person or body may refuse a referral.

It is proposed that the regulations will specify that all referrals from the Unit must be in writing and that the person or body must advise the Director within the period specified by the Director (not exceeding 5 business days) of whether they will be accepting or refusing the referral.

It is also proposed that a person or body should be able to refuse a referral on one or more of the following grounds:

- lack of resources or capacity to accept the referral at the relevant time;
- the referral is inappropriate having regard to the services provided by the person or body;
- the Director, after consultation with the person or body, agrees to the refusal.

### Consultation questions

5. Do you agree with the proposed timelines and criteria for accepting or refusing a referral?
6. Are there any additional considerations relating to referrals that you think should be included in the regulations?

### Information sharing

Section 43 of the Act empowers the Adult Safeguarding Unit, State Authorities and any other persons or bodies prescribed by regulation to share prescribed information and documents with the Unit or another State Authority. Information can be shared in accordance with the regulations where the provider reasonably believes that the information or documents would assist the recipient to:

- perform official functions relating to the health, safety, welfare, or wellbeing of a vulnerable adult or class of vulnerable adults; or
- 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.

Prescribed information includes:

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



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A regulation is proposed to allow a person or body who has received a referral from the Adult Safeguarding Unit to share information under the Act for the purpose of responding to that referral. This will allow people and organisations that are responding to a report to share the information they need to ensure a co-ordinated response.

It is also proposed that the regulations could require that before sharing information, the provider must:

- confirm the identity of the proposed recipient of the prescribed information;
- confirm the proposed recipient is a person or body to whom section 43 applies; and
- take reasonable steps to ensure that the prescribed information is not provided to any other person or body (being a person or body who is not a person or body to whom section 43 of the Act applies).

### Consultation questions

7. Are there any other persons or bodies that you think should be able to share information under section 43 of the Act?
8. Are there any other types of information that you think should be prescribed?
9. Do you agree with the proposed regulations relating to how information is shared? Is there anything else that you think should be included?
10. Do you have any other comments about the draft regulations?

### Next steps

Your feedback will help inform the drafting of regulations to support the implementation of the *Ageing and Adult Safeguarding Act 1995*.

It is expected the regulations will be made and published later in 2019.

You can provide your feedback via

<https://yoursay.sa.gov.au/decisions/adult-safeguarding/about>

Alternatively, submit your feedback via:

- Email to [officeforageingwell@sa.gov.au](mailto:officeforageingwell@sa.gov.au)
- Post to  
Office for Ageing Well  
PO Box 196, Rundle Mall  
ADELAIDE SA 5000
- Fax to 08 8204 2430

All submissions must be received by **5:00pm (ACST) on Friday 29 March 2019**.

### ATTACHMENT 1

#### Summary of consultation questions

1. Are there any other types of abuse that you think should be included in the definition of *abuse*?
2. Are there any acts or omissions that you think should be excluded from the definition of *abuse*?
3. Are there any other circumstances in which you think the Adult Safeguarding Unit should be able to act without first obtaining the consent of the vulnerable adult?
4. Are there any additional matters relating to how consent is obtained that you think should be included in the regulations?
5. Do you agree with the proposed timelines and criteria for accepting or refusing a referral?
6. Are there any additional considerations relating to referrals that you think should be included in the regulations?
7. Are there any other persons or bodies that you think should be able to share information under section 43 of the Act?
8. Are there any other types of information that you think should be prescribed?
9. Do you agree with the proposed regulations relating to how information is shared? Is there anything else that you think should be included?
10. Do you have any other comments about the draft regulations?

### ATTACHMENT 2

#### **Draft for comment**

(01)

South Australia

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under the *Ageing and Adult Safeguarding Act 1995*

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#### **1—Short title**

These regulations may be cited as the *Ageing and Adult Safeguarding Regulations 2019*.

#### **2—Commencement**

These regulations will come into operation on the day on which section 6 of the *Office for the Ageing (Adult Safeguarding) Amendment Act 2018* comes into operation.

#### **3—Interpretation**

In these regulations, unless the contrary intention appears—

*Act* means the *Ageing and Adult Safeguarding Act 1995*;

*Public Advocate* means the person holding or acting in the office of Public Advocate under the *Guardianship and Administration Act 1993*.

#### **4—State authorities**

For the purposes of the definition of *State authority* in section 2(1) of the Act, each court, and each tribunal established under an Act, in the State is declared not to be a State authority for the purposes of the Act.

#### **5—Preparation of the Charter**

For the purposes of section 20(3)(a) of the Act, the Public Advocate is prescribed.

#### **6—Prescribed State authorities—Charter**

For the purposes of section 20(6) of the Act, the Office for Ageing Well is prescribed.

### **7—Prescribed State authorities—Codes of practice**

For the purposes of section 21(5) of the Act, the Office for Ageing Well is prescribed.

### **8—Consent**

- (1) For the purposes of section 24(4)(a)(v) of the Act, circumstances in which it is, in the opinion of the Adult Safeguarding Unit, necessary or appropriate that action of the relevant kind be taken without first obtaining the consent of the vulnerable adult are declared to be included in the ambit of that paragraph.
- (2) Pursuant to section 24(5) of the Act—
  - (a) consent for the purposes of that section may be obtained verbally or in writing;
  - (b) the obtaining of consent for the purposes of that section must comply with any requirements determined by the Director.

### **9—Referrals**

- (1) Pursuant to section 25(5) of the Act, a referral under that section must be by notice in writing (including, to avoid doubt, by electronic means).
- (2) Pursuant to section 25(5) of the Act, a person or body to whom the Director refers a matter, or part of a matter, under that section may refuse the referral on 1 or more of the following grounds:
  - (a) lack of resources or capacity to accept the referral at the relevant time;
  - (b) the referral is inappropriate having regard to the services provided by the person or body;
  - (c) the Director, after consultation with the person or body, agrees to the refusal, however, nothing in this subregulation affects any statutory duty that the person or body may have in respect of a matter that is the subject of the referral.
- (3) Pursuant to section 25(5) of the Act, a person or body to whom the Director refers a matter, or part of a matter, under that section must, in a manner and form determined by the Director and within the period specified by the Director (not exceeding 5 business days), indicate to the Director whether or not the person or body will refuse the referral.
- (4) Pursuant to section 25(5) of the Act, if the Director refers a matter, or part of a matter, to a State authority other than the Adult Safeguarding Unit under section 25 of the Act, the State authority must, if the Director so requires, provide a report in relation to the matter to the Director.
- (5) A report under subregulation (4) must be made in a manner and form, and within the period, determined by the Director.

### **10—Sharing of information**

- (1) For the purposes of section 43(1)(c) of the Act, the following persons and bodies are declared to be included in the ambit of that subsection:
  - (a) the Legal Services Commission;

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- (b) a person or body to whom a matter, or part of a matter, is referred under section 25 of the Act.
- (2) For the purposes of section 43(2) of the Act, a recipient who is a person or body referred to in subregulation (1)(b) may only provide, or be provided with, information or documents under that section in relation to the extent that the information or documents relate to a matter, or part of a matter, referred to recipient under section 25 of the Act.
- (3) For the purposes of section 43(2) of the Act, a provider must comply with the following requirements:
  - (a) the provider must confirm the identity of the recipient to whom prescribed information is to be provided;
  - (b) the provider must be satisfied that the recipient is, in fact, a person or body to whom section 43 of the Act applies;
  - (c) the provider must take reasonable steps to ensure that the prescribed information is not provided to any other person or body (being a person or body who is not a person or body to whom section 43 of the Act applies).

### 11—Confidentiality

Pursuant to section 49(4) of the Act, information obtained in the course of the administration of the Act may be disclosed by a person in accordance with the written authorisation of the Director.

#### Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

### Made by the Governor

with the advice and consent of the Executive Council  
on  
No        of 2019

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