

## SUBMISSION TO THE

### Review of the *Ageing and Adult Safeguarding Act 1995*

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#### Who is COTA SA?

COTA SA is an older people's movement run by, for and with older people. We represent the rights, interests and futures of more than 630,000 older South Australians. COTA SA reflects the diversity of modern ageing in terms of living arrangements, relationships, income, sexuality, culture, health, geography and aspirations. COTA SA connects with thousands of older people each year throughout SA. Our policy and advocacy are guided by the COTA SA Policy Council made up of older South Australians from a diverse range of backgrounds, along with a number of advisory groups. COTA SA's social enterprise, The Plug-in undertakes regular surveys with older South Australians in addition to its work facilitating access to older people for organisations, researchers and service providers. COTA SA is part of the COTA Federation with independent COTAs in each state and territory along with COTA Australia. The COTA Federation undertake regular State of the Older Nation surveys (2018 and 2021) to understand the views, life experiences and needs of Australians aged 50+.

#### Acknowledgement of Country

*COTA SA acknowledges and respects Aboriginal people as the traditional custodians of the land of South Australia. We honour Aboriginal peoples' continuing connection to Country and recognise that their sovereignty was never ceded. We pay our respects to First Nations Elders past, present and emerging and extend that respect to all Aboriginal people.*

## INTRODUCTION

COTA SA welcomes the opportunity to contribute to the review of the *Ageing and Adult Safeguarding Act 1995 (the Act)*.

COTA SA engages widely with older South Australians across the state, in person and via phone and email. The lived experiences of the diverse community of older South Australians shape our policy and advocacy work.

This submission has been prepared in consultation with COTA SA's Policy Council and key stakeholders including JFA Purple Orange and the South Australian Council of Social Service (SACOSS).

It is important in responding to this review that COTA SA clearly states its expertise and representation is with and by older South Australians and not in relation to other vulnerable groups.

As part of its review, the South Australian Law Reform Institute (SALRI) has published a series of fact sheets with corresponding questions. This submission refers to these questions where appropriate, however we have also addressed other concerns that we consider important as part of this review.

Elder abuse affects one in six older Australians (15%).<sup>1</sup> It has harmful psychological, physical and financial consequences to those experiencing it and can result in serious injury, neglect and death.

Given the prevalence and perniciousness of elder abuse in South Australia and the compelling, comprehensive work undertaken as part of the Closing the Gaps report<sup>2</sup>, COTA SA supported the provision for an Adult Safeguarding Unit (ASU) to be established through amendments to the *Ageing and Adult Safeguarding Act 1995* in 2018.

COTA SA acknowledges that the SA Government responded with priority and urgency in amending *the Act* and establishing the ASU within challenging timeframes.

It is important, given the formative nature of the service in South Australia and the absence of exemplars in other jurisdictions, to see the ASU as it currently operates as the first step and important progress toward improved protection of the safety and human rights of older people and other vulnerable adults. It is very unlikely to represent the final shape of an optimal response.

## DISCUSSION

Provision for an “independent review of the operation” of *the Act* is provided for at S53. This review therefore is expressly both a review of the legislative provisions and of the practical implications of *the Act*. Provision for an “action learning” oriented review was important in persuading COTA SA to support the ASU's formation and is entirely appropriate given the cutting edge and evolving nature of the legislation and service.

We expect therefore that the review will look at both the semantics of the legislation and its practical application; its impact and deliverables. The only proper assessment of its value and

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<sup>1</sup> [National Elder Abuse Prevalence Study Summary Report \(aifs.gov.au\)](https://aifs.gov.au)

<sup>2</sup> <https://researchprofiles.canberra.edu.au/en/publications/closing-the-gaps-enhancing-south-australias-response-to-the-abuse>

effectiveness must be against the outcomes for those South Australians whose safety and human rights are at risk of or being abused.

Put simply the review must test whether –

- the ASU has made, and can make, a material difference to older people seeking safety and who need to be safeguarded.
- the ASU has contributed to, and will increasingly contribute to, the safety of older South Australians across the diversity of cultures, backgrounds, experiences and circumstances.
- older South Australians are better off, and will continue to be better off, as a result of the intervention and actions of the ASU.

The outcome of the review will be to make recommendations that will enable *the Act* and its provisions, including for any services, to continue to build effective safeguards for older South Australians.

While this is ostensibly a review of the entire *Ageing and Adult Safeguarding Act 1995*, COTA SA believes it is not reasonable given the short timeframes and the narrow stakeholder group targeted for contributions and submissions, to deal properly with *the Act* beyond the adult safeguarding provisions. We would support a much more comprehensive review of *the Act* over a longer period and with much broader representation from older South Australians and other stakeholders.

It is important to note however that COTA SA is troubled by the dilution of focus on older South Australians through the amendments made in 2018. There is considerable risk that the resources of and through the Office for the Ageing have been diverted from older people to be shared across the life course under the new mantra of “ageing well”. This has the potential to erode the accountability, reporting and focus on the legitimate and particular needs and aspirations of older people. While there is merit in considering a life course approach across all public policy and services, this should not be at the expense of a diminishing focus on older South Australians whose unique needs and voices on a whole of government basis are at risk of being muted.

#### Where should the ASU be hosted?

COTA SA recognises that the Office for Ageing Well achieved the establishment of the ASU within very tight timeframes and with a high level of credibility.

No doubt the review will now consider whether adult safeguarding should be a continuing function within the Office for Ageing Well for all or part of the service or whether there is a better host for the next stage of the service’s development.

To this end, we recommend that as part of its review, SALRI considers the need for adult safeguarding policy to be separated from direct responsibility for the Unit so that there is a level of independence and objectivity.

It is also important to consider whether it is reasonable for one service to operate across the diverse needs of all vulnerable adults or whether specialisation and particular expertise will be required.

## The system of safeguarding

With the benefit of hindsight, one of the shortcomings of the provisions for the ASU is that while the principles and functions are articulated, the purpose is not.

The safeguarding of older South Australians at risk of abuse will be achieved through the operation of a “safeguarding system”. It is not clear what the system of safeguarding is in South Australia, what the other elements are and what the place of the ASU is within this system. It is also not clear how effective these other elements are or how well the system operates as a whole.

We urge that the review include an examination of the practical operation of *the Act* through the experiences of older people seeking safety. It is critical to consider through case studies that we are not privy to how well the adult safeguarding system operates to deliver safeguarding. This includes an evaluation of the ASU itself, and of the way the ASU interacts with other services and resources as a key coordination point in a safeguarding system. There is an opportunity to map the journeys of clients using real case studies. We think this will also assist in determining the value to vulnerable older people of functional elements such as assessment, investigation and coordination and whether there are adequate resources inside and outside the ASU to deliver services that increase the safety and support the rights of older people. An important consideration will be how well the service has been used across the diversity of older South Australians including LGBTI elders, Aboriginal Elders and older people living in our regions.

## Reporting and evaluation framework

It is critical that a much more robust reporting framework be established using both quantitative and qualitative data and case studies. This would enable ongoing reflection and learning and lead to appropriate resourcing, training and intervention decisions as the service evolves. It would also assist in informing an understanding of the patterns of abuse in South Australia and of better practice responses.

The Australian Institute of Family Studies found that one in six older Australians reported experiencing abuse in the previous 12 months.<sup>3</sup> Of those, 12% experienced psychological abuse, 3% experienced neglect and 5% experienced financial, physical or sexual abuse<sup>4</sup>. Critical risk factors for abuse included the health of older people and levels of isolation.

The COTA Federation State of the Older Nation surveys<sup>5</sup> indicate that a large proportion of elder abuse goes unreported with a substantial proportion (41%) of those who either knew someone or had themselves experienced abuse not raising the issue with anyone else.

The ASU Annual Report 2020-21<sup>6</sup> provides some data about the operation of the ASU in its first full year. Importantly this data underlines the rapid growth of the ASU in terms of staff and telephone calls and reports in comparison to its period of operation in the 2019-20 financial year. We are pleased to see data separated for older people and younger people with disabilities but note that it is somewhat basic data and is not yet reported within a framework designed to analyse trends in awareness, reporting or outcomes.

A reporting framework must consider the diversity of older adults and the importance of reaching and being relevant and useable by people of CALD and LGBTI backgrounds, and of

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<sup>3</sup> <https://aifs.gov.au/research/research-reports/national-elder-abuse-prevalence-study-final-report>

<sup>4</sup> [National Elder Abuse Prevalence Study Summary Report \(aifs.gov.au\)](#)

<sup>5</sup> [State of the \(Older\) Nation • COTA SA](#)

<sup>6</sup> [ASU Annual Report 2019 - 2020 \(sahealth.sa.gov.au\)](#)

being accessible to those living in our regions. It must also make sense to, and address the needs of, Aboriginal Elders throughout South Australia for whom “humberging” is well known.

A proper reporting framework of adult safeguarding might seek to answer questions including –

- How is efficacy defined and measured?
- How is it reviewed on an ongoing basis?
- Is the service of the ASU the best way to safeguard adults from abuse?
- Are the rights and safety of older people from diverse backgrounds proactively addressed?
- How can independent oversight of the ASU be built into its operations to ensure the ongoing evolution of the ASU to achieve best practice?
- What public reporting is needed to build awareness and ensure accountability?
- How might a reporting framework contribute to monitoring the prevalence, awareness, and reporting of abuse and outcomes of safeguarding action?
- What are the trends in elder abuse incidence, reporting and response?

### Independent oversight

The amended provisions of *the Act* and the establishment of the ASU were important and bold steps to prevent and respond to elder abuse. There is an opportunity for the ASU to contribute significantly to evolving best practice in responding to elder abuse and COTA SA is very concerned that there is a risk of a “set and forget” approach long before better practice and optimal legislative and service provisions are settled.

To this end COTA SA has consistently called upon the government to establish external and independent oversight of adult safeguarding policy, the safeguarding system and of the continuing development of the ASU. Such a committee would be separate from –

- Arrangements for the management of the ASU which are well described by *the Act*.
- Arrangements for the review of individual decisions which are clearly provided for both internally (s38) and externally through the Ombudsman (s40).
- Arrangements for collaboration and information exchange which are facilitated through the existing Adult Safeguarding Advisory Group.

An external committee would ensure the transparent operation of *the Act* and the ASU, and guide and support its ongoing development. The Committee should be chaired independently of government and include strong consumer involvement. It is important because of –

- The formative nature of the ASU in SA and, in fact, in Australia.
- The vulnerability of the people it is set up to serve.
- The instances of systems failure (or breakdown at the point that systems interact) that increase the risk that vulnerable adults will be unprotected.
- The perception and the reality that such a system will be “safer” if there is independent and non-political scrutiny.
- The opportunity to identify resource, systems or management improvements and innovations.

- The diversity of background, need, culture and circumstance of the vulnerable adult population.
- The importance of a priority on work that will reduce vulnerability, risk and harm including by increasing awareness, education and information, addressing ageism, tackling power imbalance, promoting inclusion etc.

The guidelines for its operation should include –

- The committee is not as an additional layer of management and it must explicitly avoid that.
- The committee’s primary purpose would not be to promote collaboration for agencies participating in safeguarding - this is served by mechanisms like the existing Adult Safeguarding Advisory Group.
- The committee would not review individual decisions but may use de-identified case material as illustration.
- The committee would report to the Minister/Parliament.
- The interaction of the systems (including at so-called “fault lines” where there is the potential to break down).
- The committee would particularly champion meeting the diverse needs of the target population.
- The effectiveness of the ASU including an evaluation framework for data collection and reporting to analyse its use and outcomes.
- Establishing a practice-based evidence about abuse risk factors (eg literature identifies social isolation; physical or cognitive disabilities) and what works and what doesn’t.
- Tracking innovation and best practice in other jurisdictions.
- The resource and service gaps that impact adult safeguarding and elder protection.
- Service gaps that prevent sustainable outcomes including as a result of new NDIS and aged care arrangements.

## RESPONSE TO SALRI’s CONSULTATION QUESTIONS

### Office for Ageing Well (Fact Sheet 2)

#### Scope of this review

As already discussed, the clear and reasonable priority of this review is to examine the legislation and operation of the adult safeguarding provisions. This is reinforced through the fact sheets provided by SALRI, the timeframe provided to conduct the review and the segment of the community consulted as part of the review.

While it is important for this review to apply a depth of focus to the functions and operation of the ASU, COTA SA urges a separate process to consider the rest of *the Act* including its purpose and the role and function of the Office for Ageing Well.

## Objectives of Office for Ageing Well

In addition to those comments made in the introduction to this submission, COTA SA highlights the following considerations in the review of the objectives of the Office for Ageing Well:

- There is no clear statement of ageism. Given the correlation between ageism and elder abuse, this is a critical omission that needs to be corrected.
- We have considerable concern that, in adapting the objectives to reflect a life-course approach to enable the establishment of the ASU with a broader remit, the focus on older people is dissipated. There is a risk that a life-course approach is obscuring the lens on older people, reducing the effectiveness of whole of government responses to their issues and needs and obfuscating accountability for how well older people are faring in terms of both policy and service settings well beyond safeguarding.

## Language used to describe older people

*The Act* currently refers to older people as *ageing persons* and *the ageing*. The impersonal nature of this language reinforces a view that ageing itself is a burden and vulnerability and risks a “job lot” approach in responding to the needs of older South Australians. Such an approach diminishes the vast diversity of older people in terms of culture, income, gender identity, health, circumstances, background and experience. It is very important that this diversity is reflected in *the Act* and responded to through services. The term older person/people is commonly used in Australia, including across the COTAs, and we recommend a change to bring SA legislation in line with contemporary language.

## Background to the Act (Fact Sheet 3)

COTA SA provides no advice about the needs of all vulnerable adults or the merits of extending the safeguarding provisions to this group. Vulnerable younger adults are neither our expertise nor our constituency.

However, it is imperative that any expansion does not diminish the focus on older people. The dynamics of elder abuse are unique and different from the abuse experienced by other age groups and cohorts, and abuse is fueled by widespread ageism and the devaluing of older lives.

In addition, we are very persuaded that there is a level of expertise required to understand the unique needs of older people, and a specialist set of skills and services is vital to address them. The ASU, and other services, must maintain a specialised skill set that allows for the effective assessment, investigation and safeguarding of older people experiencing abuse.

We are very concerned that a broader focus will muffle the voices of older people and compromise the ASU’s capacity and accountability to provide effective protection and services for older people at risk of abuse.

## Guiding Principles of the Adult Safeguarding Unit (Fact Sheet 4) and Capacity and Consent (Fact Sheet 9)

COTA SA acknowledges the importance of a rights-based approach to give older people agency and autonomy. We are aware of differences and criticisms of the ASU in terms of understanding and responding, including of the relative priority of some of the principles in S12 over provisions elsewhere in *the Act*.

In considering the question of rights-based versus interventionist approaches we consider the following-

- Benevolent ageism, which overrides the agency and self-determination for the “person’s own good and protection” in a way that is unacceptable for adults of other ages, is just as insidious and harmful as other forms of ageism.
- Is the rights-based approach delivering practical outcomes for adults safeguarded under *the Act*? If not, what does an analysis of failures suggest are the risks and solutions?
- Could decision-making capacity and consent be considered within a frame of risk-based intervention? In this model, real cases are analysed to identify the predictors of serious risk of harm and the model would become part of ASU’s operating procedures to guide officers to determine whether intervention is required. An ongoing review of cases through an independent committee, and the interrogation of emerging best practice in other jurisdictions, would help to evolve and strengthen the approach over time.
- Should serious and imminent harm (Part 3, 12(c)) be defined in *the Act* to allow for greater transparency of the circumstances that require an interventionist approach?

### Definition of Vulnerable Adult (Fact Sheet 6)

*The Act* refers to adults who are more susceptible to experiencing abuse or neglect as a *vulnerable adult*. Our concerns with this terminology and the current definition in *the Act* include-

- Vulnerable is a nebulous term. If used without context that describes the vulnerable situation, people may well make invalid assumptions about the risk and needs of the person.
- Vulnerability is not static and depends on setting and circumstance.
- It can reinforce ageist stereotypes that older age itself creates vulnerability.
- Terms like vulnerable attribute a characteristic and a deficit to the older person experiencing abuse rather than to their circumstances or to the predatory behaviour of the perpetrator.
- Adults experiencing abuse may not consider themselves to be vulnerable and may fall through the gaps of safeguarding.

We consider *adult at risk of abuse* a better term.

It continues to be important to understand that some circumstances experienced by older people (health status and isolation for example) will elevate the risk of abuse.

### Definition of Abuse (Fact Sheet 7)

COTA SA supports moving to an agreed and national definition of abuse. The World Health Organisation (WHO) defines elder abuse as, “a single or repeated Act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust...”<sup>7</sup>

Elder abuse occurs within the context of a relationship of trust or where there is an implication of trust. This is an important element of the definition because it underlines the seriousness of a breach where trust might reasonably be expected and it highlights the hurt, harm and violation that is part of such abuse.

The WHO definition of elder abuse could be adapted to include other adults at risk of abuse.

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<sup>7</sup> [Abuse of older people \(who.int\)](#)



## Interaction of Current Law with ASU's Service Model (Fact Sheet 8)

Safeguarding as an action has three parts –

- Actions that address ageism and promote community awareness of abuse.
- Actions that prevent abuse from occurring.
- Actions that stop abuse that is occurring.

Safeguarding therefore must include upstream or preventative measures. Whilst the function of the ASU is to safeguard an individual adult from further harm, the interplay with the Office for Ageing Well and beyond to shift ageist attitudes and promote awareness of abuse needs to be addressed in *the Act*.

Whilst not the only cause, we know that ageism fosters elder abuse and equivalent investment in primary prevention is critical. Research is clear that the global community, of which South Australia is a part, generally does not recognise, appreciate the scale, nor understand the harm of ageism. As a result we also largely do not tackle ageism.<sup>8</sup> Ageism remains pervasive and largely unchallenged in the community, creating an environment of risk particularly if older people are isolated, require increasing support for living or lose capacity to protect themselves. Better practice in addressing violence against women includes strategies that address gender inequality and counter sexism. There must be a similar priority both in SA and as part of a national approach to preventing elder abuse.

The absence of a definition of safeguarding, including examples of safeguarding and recognition that it is an action of both the Office for Ageing Well and the ASU is problematic. If there is no legislative impetus nor clear understanding of what safeguarding is, it is difficult to deliver an outcome for the person seeking safety.

Assessment and investigation are important processes as part of the safeguarding provided for in *the Act* but they do not necessarily deliver an outcome for the older person. Outcomes of safeguarding must be measured in terms of the older person's experiences and might include-

- Increasing safety.
- Addressing and reducing risk.
- Enabling personal strategies such as accommodation options.
- Preventing abuse.
- Stopping abuse from occurring.

COTA SA welcomes a review of the interaction between *the Act* and the ASU's operational model including referral system triggers for investigation and feasible safeguarding actions the ASU can take once and investigation has been carried out.

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<sup>8</sup> <https://www.who.int/teams/social-determinants-of-health/demographic-change-and-healthy-ageing/combating-ageism/global-report-on-ageism>