

## **SUBMISSION TO THE**

### *Supplementary Consultation Regarding the Mental Health Act 2009 – Government Review*

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Submission authorised by

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COTA SA welcomes the opportunity to contribute to the Supplementary Consultation Regarding the Mental Health Act 2009 – Government Review.

COTA SA is an older people's movement run by, for and with older people. We are the peak body representing the rights, interests, and futures of 700,000 older South Australians aged 50+. We engage widely with older South Australians across the state and the lived experiences of the diverse community of older South Australians shape and inform COTA SA's policy and advocacy work.

COTA SA cares deeply about ageing well and is committed to ensuring older South Australians have the opportunity, capacity and ability to navigate the changes of ageing in their place of choice. The Supplementary Consultation Regarding the Mental Health Act 2009 – Government Review is an opportunity to ensure older South Australians are safeguarded now and into the future. Our population is ageing: in June 2020, approximately 16% of Australians were aged 65 and over and this is projected to rise to 21-23% by 2066<sup>1</sup>. Our ageing population should be a major driver for appropriate, rights-based mental health legislation that safeguards the well-being of older people.

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<sup>1</sup> [Older Australians, About - Australian Institute of Health and Welfare](#)

### Issues for consideration

Mental health challenges among older Australians are significant, with rising reports of depression, anxiety, and increased demand for mental health services<sup>2</sup>. The consultation paper outlines the approaches used to inform the proposed amendments, which COTA SA welcomes, particularly the emphasis on both human rights and wellbeing as guiding principles. However, we provide the following concerns and points for further consideration, regarding the proposed amendments:

### Restrictive practices

COTA SA strongly advocates for minimising the use of restrictive practices in mental health care, particularly for older people and those living with dementia and/or Mild Cognitive Impairment (MCI). Any amendments to the Mental Health Act must ensure that restrictive interventions are used only as a last resort, in line with human rights principles, person-centred care, and dignity of risk. We urge the government to adopt safeguards and clear guidelines that prioritise least restrictive alternatives, ensuring that older people retain autonomy and control over their lives wherever possible.

The use of restrictive practices must:

- Be consistent with human rights principles, ensuring dignity, autonomy, and the right to make decisions about one's own life.
- Be strictly regulated, independently authorised, and subject to ongoing expert review, rather than implemented for reasons of operational convenience.
- Never be used as a substitute for appropriate care, staffing, or training deficiencies, or as a means to manage behaviours that stem from unmet needs or distress.
- Be supported by cultural change and education, including mandatory dementia training for first responders and healthcare providers to reduce reliance

### Framing of Dementia and Cognitive Impairment

COTA SA is concerned that the consultation appears to categorise behaviours associated with MCI and dementia as "behaviours of concern" to *be managed*, rather than recognising them as responsive behaviours—expressions of unmet needs or reactions to the environment. COTA SA has heard similar concerns about the proposed amendments, expressed by older South Australians with lived experience of dementia and MCI. COTA SA would welcome a more person-centred approach acknowledging dementia as a condition requiring supportive care rather than a problem to be solved. This approach is also in line with expert advice from Dementia Australia<sup>3</sup>.

### Human Rights Considerations

We welcome the use of the Human Rights Analysis Tool in shaping amendments but strongly recommend that the Human Rights and Coercion Reduction Committee conduct a Human Rights Impact Assessment on the proposed changes. This assessment should specifically consider the impact on people with major and mild neurocognitive disorders, their families, and carers, identifying both intended and unintended consequences and outlining necessary actions to mitigate any adverse effects.

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<sup>2</sup> [COTA State of the Older Nation 2023](#).

<sup>3</sup> [Dementia Australia, "How to talk about dementia"](#)

### **Categorisation of Dementia and Delirium**

COTA SA is concerned that the consultation paper combines dementia, with delirium, and intoxication. Our national system for identifying mental health conditions, the DSM-5, identifies dementia as a major neurocognitive disorder and MCI as a mild neurocognitive disorder, both existing on a spectrum. By contrast, delirium is a distinct condition, and substance-related disorders have separate diagnostic criteria. We would welcome a professional review of this section to ensure it is clinically and legally appropriate.

### **Accessibility of the Consultation Process**

COTA SA has noted that the Easy Read version of the consultation paper is not sufficiently tailored for individuals living with cognitive impairment. Feedback from our community members suggests that engaging with the document has required significant effort from carers and family members, who may also require legal expertise to understand the implications. We would encourage any future consultation to provide more accessible materials to allow meaningful consultation with people living with MCI and dementia, so that the South Australians most affected by the amendments, can more easily provide their views.

### **Upholding Person-Centred Care**

The revised Act must prioritise dignity, autonomy, and privacy for older individuals. Overly medicalised approaches risk disempowering individuals rather than supporting their right to make decisions about their own care. COTA SA would welcome the legislation reinforcing supported-decision-making frameworks, allowing older people to retain greater control over their choices and decisions that impact their lives.

### **In closing and for future discussion**

COTA SA recognises the importance of ongoing consultation on and development to drive meaningful change in our South Australian communities. We welcome the opportunity to contribute further. Please contact Chief Executive, Miranda Starke in the first instance.

### **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.