



Closing the Gaps:

Enhancing South Australia's Response to the Abuse of Vulnerable Older People

Report for the Office of Ageing and Disability Services

Office of the Public Advocate in collaboration with



University of
South Australia
HUMAN RIGHTS AND SECURITY
Research & Innovation Cluster

October 2011

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October 2011

Dear David

Re: *Closing the Gaps*

I present to you the Office's report on strategies for improving this state's responses to prevention of and intervention in the abuse of older persons. ***Closing the Gaps*** is the result of collaborative efforts between this office, the University of South Australia and a large group of service providers.

We have been overwhelmed by the enthusiasm and support for this project amongst service providers who work with vulnerable older people and by their desire for enhanced service coordination and improvement in the system's capacity to respond. There is much good work being undertaken within individual organisations, however workers believe that better outcomes for older people can be achieved with a defined legal framework, more comprehensive inter agency collaboration, information and knowledge sharing and by improving ways of engaging community and business organisations who provide services to older people in the community.

The abuse and neglect of older people is everybody's business. The challenge is to create a South Australian community which does not tolerate a culture of abuse and neglect. This will be a community which offers information and support to its vulnerable citizens, informing them of their rights and offering protection through legal and social mechanisms which prevent abuse, provide easy pathways to help and provide a mandated service response so that vulnerable older people are offered help and opportunities for ongoing assistance. The report is presented in 2 parts.

Part 1 Describes the project processes and provides information on best practice in other jurisdictions, considers legal and service considerations for improving the South Australian response and proposes a comprehensive policy and practice framework based on a charter of human rights of older persons.

Part 2 is the draft whole of government policy framework which we are proposing for your consideration

The tight timeframes of this project have not allowed for wide consultation on these documents, in particular, older people have not had an opportunity to comment.

We commend these document to you and look forward to having the opportunity to discuss these ideas with a broader audience.

John Brayley
Public Advocate

This Project was funded by the Disability, Ageing and Carers Branch of the Department of Families and Communities through *Improving with Age - Our Ageing Plan* and Community Care Innovation Funds

THE HUMAN RIGHTS PERSPECTIVE

Principle 17

Older persons should be able to live in dignity and security and be free of exploitation and physical and mental abuse.

United Nations Principles for Older Persons 1991

The abuse of vulnerable older people and harm through self neglect and isolation is not new and yet we still lack a coordinated response to this issue. There has been a considerable amount of work done in South Australia in recent years to raise the awareness of the abuse and exploitation of vulnerable older people in our community. Influenced by the *Improving with Age: Our Ageing Plan for South Australia*¹ and *Our Actions to prevent the abuse of older South Australians*² agencies have developed policies and procedures to detect and respond to abuse whilst attempting to protect the rights and autonomy of the older person. However, anecdotal evidence suggests that there are barriers to individual agencies' level of response which result in gaps in the system, leaving some vulnerable older person without an adequate response or protection. Some responses erode the rights of the older person by removing their decision making ability simply to protect them from being harmed or abused by another person.

People do not lose their rights as they age and a society that values their older citizens should provide support, assistance and if necessary, protection to older people to live safely and with dignity in the community. A rights based perspective places a duty on the community to provide a safe and secure environment for older people, and one that affords them the highest level of autonomy possible. Such a community would ensure the right balance is struck between promoting and protecting an individual's right to independence and self determination, whilst recognising their vulnerabilities and right to protection.

Australia is a party to a number of international human rights instruments meaning that all older persons in South Australia should expect these rights and freedoms. Whilst we also recognise The UN Principles for Older Persons (1991), they are non binding principles rather than rights. The core objectives laid out in South Australia's Ageing Plan requires that that rights and freedoms of older persons are properly recognised and respected³. An agreed Charter of Rights and Freedoms of Older Persons is required in order for us to set this state's standards and measure our performance. This project proposes a Charter of Rights and Freedoms of Older Persons⁴ combining key rights already agreed to in United Nations instruments.

Adopting a human rights framework will strengthen local communities, clarify the principles of good practice and facilitate service development which is designed to recognise, prevent and respond to vulnerable adults who are at risk of being harmed. South Australia has many good agencies and community groups delivering services to older people. Underpinning these services with a rights based framework will build on existing good practice and provide a robust framework within which agencies can effectively respond to the issues affecting older people. Knowledge of their rights and

¹ Improving with Age:-Our Ageing Plan for SA' Department for Families and Communities, Government of South Australia February 2009

² Our Actions to prevent the abuse of older South Australians

³ Safeguarding Vulnerable Adults in South Australia: A whole - of - Government policy for the protection of older persons from abuse

⁴ The United Nations Principles for Older Persons, December 1991

of appropriate services that provide information and assistance will greatly assist and empower older people.

The policy framework developed through this project reflects the rights and freedoms of older people and should inform the delivery of services, both government and non government, to older people throughout South Australia.

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EXECUTIVE SUMMARY

In his annual report in 2009, the Public Advocate highlighted the gaps that exist in adult protection systems in Australia. Compared to overseas models, our systems often focus on the mental capacity of victims of abuse, providing support and intervention to those people who have a 'mental incapacity', but failing to provide quick, practical assistance to keep vulnerable people in our society safe. The Office of the Public Advocate (OPA) has, for some time, been concerned with the over reliance on guardianship services and the lack of inter-agency cooperation for the safeguarding of vulnerable adults. The OPA advocates for a systemic policy response to adult protection from government, one that includes forming strong links with the community and service providers.

FUNDING

In 2010 the Office of the Public Advocate prepared a discussion paper on this issue and was successful in obtaining funding from the Disability, Ageing and Carers' Branch of the Department of Families and Communities to further develop these ideas for vulnerable older people. Although there has been considerable work done in South Australia in recent years to raise the awareness of the abuse and exploitation of vulnerable older people in our community, anecdotal evidence suggests that there are barriers to effective responses from individual agencies which result in gaps in the system, leaving some vulnerable older people without adequate assistance or protection. Furthermore, some responses erode the rights of the older person by removing their decision making ability simply to protect them from being harmed or abused by another person.

Following background preparation in 2010, the project commenced in January 2011. The OPA Project Team worked in collaboration with a team from the University of South Australia's Human Rights and Security Research & Innovation Cluster.

AIM OF THE PROJECT

The project aimed to develop a rights -based framework that provided a consistent, coordinated, joined – up response across all relevant agencies in order to prevent and address the issues of abuse and harm to vulnerable older people. The envisaged framework would promote and preserve the rights of older people, enabling them to live as autonomously as possible while delivering a respectful intervention to assist where the older persons are not able to safeguard themselves. To do so, it was agreed that the outcomes of the project should involve the following elements:

- Be based on respect for the human rights of older persons rather than paternalistic approaches to protection and intervention;
- Include strategies to promote education and awareness about abuse of older people;
- Be aimed at promoting a coordinated, multiagency approach to adult protection, early intervention and strategies for the prevention of abuse;
- Facilitate the establishment of localised community networks for promoting awareness of abuse as well as the monitoring and reporting of abuse;
- Include strategies for filling any gaps in the current legal and policy framework for responding to allegations of abuse.

PROJECT TEAM

Responsibility for the project set up and management, convening the Strategic Advisory Group (Project Steering Committee) supervision of project staff and funding and contract management was undertaken by;

- John Brayley, Public Advocate
- Margaret Farr, Assistant Public Advocate
Diane Chartres, Attorney General's Department (until April 2011) Elly Nitschke, an OPA Senior Advocate Guardian,

The OPA Team contracted assistance from the University of South Australia. The UniSA Project Team comprised of;

- Dr Wendy Lacey, Associate Professor, School of Law, University of South Australia
- Dr Nicholas Proctor, Professor, Chair, Mental Health Nursing, University of South Australia
- Dr Kay Price, Associate Professor, School of Nursing, University of South Australia

The Project Teams were supported by a Centre of Practice comprising key service providers who work with vulnerable older people and a Strategic Advisory Group which included senior managers of key organisations which would drive policy and practice changes.

POLICY RESEARCH AND ANALYSIS

The Project Team conducted policy research and analysis of existing State frameworks, and national and international best practice in adult protection law and policy⁵. This provided an overview of the adult protection frameworks in a number of jurisdictions where best practice is adopted. The overview was largely limited to frameworks in the United Kingdom where the *Human Rights Act, 1998* (U.K.) has had considerable influence on the debate surrounding adult protection; in some Canadian Provinces and in New South Wales where a new policy framework has been adopted to promote better interagency cooperation with regard to adult protection.

This analysis revealed the enhanced effectiveness of adult protection services that were underpinned by Human Rights legislation and indicated how a South Australian Framework could be positively influenced by the adoption of such rights, and their practical realisation through law and policy.

ENGAGEMENT WITH PRACTITIONERS IN THE FIELD TO EXPLORE CURRENT ISSUES

There are numerous organisations and service providers in South Australia who play important roles in the support and protection of vulnerable older adults. Therefore, the project team consulted widely with these key organisations and agencies to ensure that the developed framework would reflect the experience and knowledge of those who have significant input into the lives of vulnerable older people⁶. This consultation enabled the project team to define the current local issues, including identifying barriers to an effective response and to exposing any gaps in the present system.

The research examined how legislation, policies and practices from other jurisdictions and the information gained from the practitioners' experience of current adult protection practices could be

⁵ Briefing Paper: International and National Best Practice in Adult Protection Law and Policy. Lacey, Proctor and Price, 2011.

⁶ Centre of Practice, Appendix 2

combined to enable the development of a rights based framework in South Australia and ensure a coordinated and consistent response to the prevention of abuse of vulnerable older adults across all of government and the community.

THE WAY FORWARD

Abuse of older people is everybody's business. The gaps identified in our system must be closed to ensure that vulnerable older people are offered support and protection to enable them to live their lives free of abuse and exploitation.

The key strategy proposed for the way forward is legislative reform: - the project team and participants were unanimous in their support for legislative reform. They consider this the only way to close all of the gaps in the current system and thus enable a consistent, coordinated response to prevent and respond to the abuse and harm of vulnerable older people in the community.

Such legislation should include

- Clear definitions of 'abuse' and 'vulnerable adult'.
- Powers conferred on a new adult protection unit to investigate abuse and intervene in cases of serious abuse.
- The adult protection unit should be conferred the responsibility to receive reports or notifications of abuse and to convene adult protection case conferences involving key agencies and organisation:
- An obligation on agencies and organisations to assist in the investigation of a case of abuse or neglect and to comply with Information Sharing Guidelines:
- The adoption of a human rights based approach, whereby the rights and freedoms of older persons are clearly set out, together with guiding principles on how those rights and freedoms can be respected:.
- The adoption of a system of voluntary reporting of abuse and neglect, but a system of mandatory response that involves stages or levels of response appropriate to the circumstances of each case, and ensuring that the rights and freedoms of the adult dictate the nature of any response.
- Provisions to protect workers who report abuse within the context of their employment and provisions which ensure the confidentiality of any person who reports abuse as well as protecting them from any liability arising from the making of a report.
- The inclusion of a system for developing Community Networks for Adult Protection (CNAPs):
- The development of a practically focused Code of Practice, similar to that which supplements the *Scottish Adult Support and Protection Act 2007*, to support and promote the implementation of the Act..

The project team and participants realise that legislative change will take some time to implement and so propose that, in the interim, a clearly mandated response framework, embedding a human rights based approach within it, is developed and implemented.

An outcome of this project is the drafting of a whole of Government Policy⁷ which contains the following key elements:

- The adoption of clear definition of abuse, its signs and what makes an older person 'vulnerable'.
- The adoption of information sharing guidelines that are premised on a consent based system and do not include a Cabinet exemption, at least until clients and other stakeholders are properly consulted.
- The establishment of an Adult Protection Unit, perhaps best located within the Department of Families and Communities, which would assume responsibility for receiving reports or notifications of abuse and for convening case conferences involving key agencies and organisations.
- The development of an Adult Protection Response Framework (APRF) which sets out clearly how a coordinated interagency response would operate. The Framework would not remove or replace the ability of agencies to handle cases unilaterally, but would provide a framework for complex and serious cases to be referred to an interagency team equipped to provide a coordinated response, thereby enhancing the capacity to safeguard vulnerable adults. The APRF would need to rely on the powers of SAPOL to intervene in serious cases or where consent was not given, as no agency would have authority to respond to cases of abuse (given the absence of legislative reform). However, interagency responses based on the consent of the older person could enhance the current system, but would not cover every case.
- The policy should be adopted as a whole-of-government policy so that it applies across government providers, and should be included in all agreements made between government and organisations funded by government to deliver services to older persons. Memorandums of Understanding could be developed between Local Governments and the State government, for the purposes of extending the policy's reach and for the establishment of Community Networks for Adult Protection. These networks should act as a critical component of the government strategy to promote education and awareness of abuse and the APRF.

The project team and participants strongly emphasise that the development of a whole of government policy should be a first stage in the government's strategy for protecting vulnerable older adults and should not delay consideration of the development of adult protection legislation. However such a policy accepted and promoted by government, together with a funded structure to provide coordination and leadership will greatly improve the current system and inform any legislative initiative.

In the medium term, the only way to close the gaps and afford vulnerable older people optimal support and protection is for rights based legislation to be enacted. Such legislation would be groundbreaking in Australia, and would lead the way for the nation in the safeguarding of vulnerable older people.

Whilst the project focused on vulnerable older people, it is quite possible that adult protection legislation could be extended to all vulnerable adults within the community.

⁷ Safe guarding Vulnerable Adults in South Australia; A Whole of Government Policy for the Protection of Older Persons From Abuse (Part 2 of Closing the Gaps Report)

RECOMMENDATIONS

LEGISLATION

South Australia should consider enacting comprehensive legislation for the protection of vulnerable adults. Features of an Adult Protection Act should include the following:

- Clear definitions of abuse and vulnerability;
- The adoption of a human rights based approach, supported by a Charter of Rights and Freedoms of Older Persons and be accompanied by a set of guiding principles;
- Stepped powers of investigation and intervention conferred upon a new Adult Protection Unit, which has responsibility for receiving referrals, collating data, monitoring agency responses to reported cases, convening multi-agency adult protection case conferences and coordinating an interagency response in cases of reported abuse;
- A system of voluntary reporting of abuse, but a mandatory response system which is triggered by a report or notification of abuse;
- An obligation on key agencies to assist with the investigation of abuse and with any plan developed for the support and protection of vulnerable adults in accordance with the Act;
- An obligation on agencies and organisations to apply newly developed Information Sharing Guidelines, which should be based on consent and operate together with a Cabinet Exemption from the test of imminence of harm. (The Exemption should not to be sought until community consultation, particularly with older people, takes place.)
- Provision for the establishment of Community Networks for Adult Protection to promote education and awareness of abuse and the framework for responding to abuse;

Further consultation is required to examine South Australian support for legislation which encompasses protection of all vulnerable adults.

New legislation should be accompanied by a practically focused Code of Practice that can be used to support the Act's implementation.

Government should also consider the need and desirability for including a working with vulnerable people checking system as part of the proposed Act. (This issue was not the subject of detailed discussion throughout the project and would require further examination).

INTERIM MEASURE – POLICY DEVELOPMENT

As an interim measure, and pending legislative reform, the South Australian Government should adopt a whole-of-government policy for safeguarding vulnerable adults, as well as new Information Sharing Guidelines modelled on those which apply in South Australia with respect to children, young people and their families.

The Guidelines should operate on a consent based system, and no Cabinet exemption should be sought until further consultation with relevant stakeholders, particularly clients, had been carried out.

A Draft Policy and Draft Information Sharing Guidelines are attached to this Report.

FURTHER CONSULTATION

As part of the process leading to reform, government should conduct a process of consultation with the wider community and key stakeholders prior to the implementation of any reform measures.

This project has only involved consultation with key agencies and service providers, but not with all providers or older persons.

REVIEW OF EXISTING LEGISLATION

If legislative reform is pursued, a review of related existing legislation will be necessary. In particular, the *Guardianship and Administration Act 1993 (SA)*, the *Criminal Law Consolidation Act 1935 (SA)* and the *Intervention Orders (Prevention of Abuse) Act 2009 (SA)* will need to be reviewed and consequential amendments considered.

COMMUNITY EDUCATION / COMMUNITY ENGAGEMENT

Reform measures should be accompanied by a detailed plan for community education and awareness, and training programs devised and delivered across government agencies and to relevant organisations within the aged care sector.

In addition, there is a need for a creative strategy to engage the various and diverse community groups to provide contact points and support to older people in the community.

SERVICE RESPONSE, LEADERSHIP AND COORDINATION

The current government response needs leadership and coordination. Central to moving forward to provide a coordinated response to vulnerable older people at risk, is the identification of a clear point of accountability within the government. Service providers and community members need to know where to go if they have a concern about a vulnerable older person and to have confidence that a response will be offered. A central body would provide the point of accountability and carry responsibility for leadership in these reforms both at a policy and a practical level.

DATA COLLECTION

There needs to be a State wide data collection system across government and non-government agencies to collect accurate data about abuse of older people. The data system should enable the measurement of the incidence, causes and contributors to abuse of vulnerable older people.

This work should assist in developing a profile for those who perpetrate abuse and their relationship to the older person. Such data could be analysed to assist the prevention of, and timely response to, the abuse of older people.

RISK ASSESSMENT TOOLS

Risk assessment and risk management are significant components of adult protection work to ensure that the individual circumstances of vulnerable older adults are considered in order to produce outcomes that respect self determination and choice to the fullest extent of the older person's abilities. Assessment of risk to a vulnerable older person can be a complex matter, needing to consider the older person's wishes, lifestyle, physical environment, any physical dependence, mental ability and any power and influence being exerted upon them from another individual.

The development of a risk assessment model to enable a rights - based, coordinated, interagency response is likely to be a complex task, but one which needs to be undertaken to enable consistency throughout the system.

INCLUSION OF ALL VULNERABLE ADULTS

While this project focused on the protection of vulnerable older adults, the Project Team recognise that vulnerable adults of all ages can find themselves in situations where they are at risk of harm or abuse. It is possible that the proposed policy and legislation from this Project could be extended to all vulnerable adults in our community.

1. INTRODUCTION

Throughout Australia, the number of persons over 65 years is increasing. Over the next 25 years, the number of persons who are aged over 65 will double, thanks largely to post-war immigration and the baby boomer generation. In South Australia, these trends are even more marked, given the State's demographic history. In the two post-war decades, South's Australia's growth rate was faster than the national average but, in the past three decades, has slowed to below the national average.⁸ As the *State of Ageing in South Australia* Report states, 'South Australia's population is more aged than the nation and this pattern will continue until 2051'.⁹ Coupled with improved longevity of older people, the ageing population will have considerable implications for service provision. The fact that one in five older South Australians reside outside Adelaide¹⁰ presents additional challenges in providing support and services to older persons.

Almost a third of South Australians over the age of 65, and over 40 percent of those over the age of 75, live alone.¹¹ Women are more likely to live alone later in life, due to having longer life expectancy rates than men and the tendency of women to marry older men. Men, therefore, are more likely to age with the support of a carer whereas women are more likely to need formal support or supported accommodation in their old age.¹² Immigration patterns since the Second World War also mean that South Australia has significant ethnic ageing populations requiring access to services that are sensitive of their cultural and linguistic diversity.

South Australia's Strategic Plan includes as core objectives the promotion of a better quality of life and a more inclusive society. The 2006 Ageing Plan for South Australia¹³ was framed around five priority actions:

- **Enabling choice and independence** – in where we live, in getting around, connecting to our community and staying healthy.
- **Valuing and recognising contribution** – in our work, as grandparents, carers and volunteers.
- **Providing safety, security and protection** – in our homes, communities and as consumers.
- **Delivering the right services and the right information** – timely, responsive and tailored to the needs of individuals.
- **Staying in front** – through research, innovative practices and collaboration with others.

There is a clear policy direction towards encouraging and supporting people to live independently and healthily into their old age, and the majority of persons over 85 continue to live independently with various levels of ongoing support or care.

There exists considerable variation between the support networks of different older persons, however, and a range of factors can contribute to a person's vulnerability. Marriage, divorce, widowhood, children, mobility, capacity and disability, for example, can all have very significant influences on a person's capacity to live independently and healthily into old age. Older persons with

⁸ South Australian Office for the Ageing, Department for Families and Communities, *State of Ageing in South Australia*, October 2009, 40.

⁹ Ibid, 48.

¹⁰ Ibid, 63.

¹¹ Ibid, 111.

¹² Ibid, 112.

¹³ Government of South Australia, *Improving With Age: Our Ageing Plan for South Australia*, February 2006.

particular vulnerabilities, disabilities or infirmities are also less likely to be able to protect themselves against harm as they age and become therefore more susceptible to abuse by others. The abuse of older persons is an increasingly concerning issue for society and its prevention must be an imperative for any plan to promote healthy and independent lives for older persons.

In November 2007, the Office for the Ageing released a document outlining a series of strategies for preventing the abuse of older people, in *Our Actions to Prevent the Abuse of Older South Australians*.¹⁴ The initiatives proposed included:

- Providing safety and security by strengthening reporting mechanisms and accountability;
- Implementing strategies for education and training;
- Raising awareness of older people, the community and professionals;
- Working together to build strong relationships;
- Supporting research and innovation to develop effective prevention models.

The *Our Actions* document places the rights of older persons at the centre of its proposed initiatives. It also advocates the adoption of collaborative engagement across agencies. Arising out of *Our Actions*, the Aged Rights Advocacy Service was subsequently commissioned to develop its *Protocol for Responding to Abuse of Older People Living at Home in the Community*. This draft Protocol was formally adopted in 2011.

In recent years, the Office of the Public Advocate (OPA) has also sought to raise a number of concerns regarding the efficacy of adult protection systems in South Australia. In particular, the OPA has been concerned with an over-reliance on guardianship services, the lack of inter-agency cooperation for the safeguarding of vulnerable adults and the need for a systemic policy response to adult protection from government but involving strong links with the community and various service providers. The lack of a systemic whole-of-government approach to adult protection means that individuals in need of support or intervention can potentially fall through the gaps between service providers.

As the OPA's 2010 Annual Report states, 'work needs to be undertaken now to improve protection of the rights and interests of vulnerable adults in order to better respond to the predicted increase in the number of potentially vulnerable people and our changing community structures, expectations and social and economic conditions'.¹⁵

The proposal put forward to the Office for Ageing in the OPA's 2010 Annual Report was for the development of a new framework for adult protection with the following objectives and elements:¹⁶

- A focus on prevention, as well as protection.
- An agreed vision for adult protection in South Australia – the starting point being existing policy goals that envision a society where people
 - Live and age positively, with their wellbeing being maintained and improved wherever possible;
 - Stay in charge of their lives for as long as possible;
 - Enjoy independence, choice and control as citizens, consumers and users of services;
 - Have easy access to a range of inclusive and supportive community networks;

¹⁴ Office for the Ageing, Department of Families and Communities, *Our Actions to Prevent the Abuse of Older South Australians*, November 2007.

¹⁵ South Australian Office of the Public Advocate, *Annual Report 2010*, 62.

¹⁶ *Ibid*, at 63-64.

- Have options, information and support to make their own safeguarding decisions and if they are unable to do so themselves;
- Are kept safe from harm, abuse, neglect and exploitation.
- A joined up and where necessary wrap around holistic approach to ensure that in any situation of suspected abuse there is a coordinated and consistent response at both a system level, involving
 - (a) At a system level across the state, and in each region:
 - A common policy framework across government supported by key partners in aged care, social services, health, housing and the law;
 - Defined organisational responsibility for acting on adult protection matters;
 - A network of local and state-wide groups to ensure effective communication and coordination between services;
 - (b) So that at an individual level:
 - There is a defined responsibility for identifying and responding to abuse;
 - That there will be effective systems of coordination between local services;
 - Quality monitoring systems to ensure review of positive outcomes and, negative incidents, for improvement.
- Multi agency knowledge and practices that identify and respond to situations requiring intervention as early as possible.
- Appropriate safeguarding measures that are cognisant of personal autonomy, choice and rights and embrace the principles of personalisation and Supported Decision Making,

The result should be safeguards that

- Are responsive, graduated and personalised;
- Keep autonomy, rights, self-determination and choice paramount;
- Focus on peoples abilities; and
- Build and maintain individual capacity, community inclusion and citizenship.

The impetus for the current project was borne out of a desire to achieve several objectives around the improvement of current systems for the protection of vulnerable adults in South Australia. In particular, the focus was directed towards older persons, defined as persons over the age of 65 years, who are vulnerable to abuse. The objectives underlying the project were shared among the participants involved in the Centre of Practice (COP) workshops and Strategic Advisory Group (SAG) meetings held throughout the project. There was common agreement that the project outcomes should involve the following elements:

- Be based on respect for the human rights of older persons rather than paternalistic approaches to protection and intervention;
- Include strategies to promote education and awareness about abuse of older people;
- Be aimed at promoting a coordinated, multiagency approach to adult protection, early intervention and strategies for the prevention of abuse;
- Facilitate the establishment of localised community networks for promoting awareness of abuse as well as the monitoring and reporting of abuse;
- Include strategies for filling any gaps in the current legal and policy framework for responding to allegations of abuse.

This Report centres upon the legal and policy considerations involved in developing a framework for adult protection in South Australia. It should be read in conjunction with Appendices 1, 2 & 3, which outline the project methodology, input from Community Practitioners and the definitions adopted by the project participants.

2. CURRENT PRACTICE IN SOUTH AUSTRALIA

2.1. THE CURRENT LEGAL AND POLICY FRAMEWORK IN SOUTH AUSTRALIA

In South Australia the safeguarding of vulnerable adults who may be at risk of harm or abuse is not presently coordinated or driven by a single policy framework. Related agencies presently work to the best of their ability within the restraints imposed by their mandates or service criteria, and often in collaboration with other service providers, but this presently occurs in an ad hoc and unregulated manner.

There are numerous organisations and service providers that play important roles in the support and protection of vulnerable adults in South Australia. The following bodies represent key agencies of relevance:

- South Australian Police (SAPOL)
- Office of the Public Advocate (OPA)
- Aged Rights Advocacy Service (ARAS)
- Legal Services Commission (LSC)
- Public Trustee
- Domiciliary Care (Dom Care)
- Royal District Nursing Service SA Inc (RDNS)
- Local Governments
- Council of the Ageing (COTA)

The first five bodies are members of the Alliance for the Prevention of Elder Abuse (APEA). The current legislative framework which does exist to support vulnerable older persons has been framed with objectives in mind that are not necessarily targeted towards the prevention of abuse or neglect and the safeguarding of older persons from harm. Relevant legislation includes:

- *Mental Health Act 2009 (SA)*
- *Guardianship and Administration Act 1993 (SA)*
- *Criminal Law Consolidation Act 1935 (SA)*
- *Intervention Orders (Prevention of Abuse Act) 2009 (SA)*
- *Aged and Infirm Persons' Property Act 1940 (SA)*

The authority to intervene for the purposes of supporting and safeguarding vulnerable older persons is generally limited to cases where the older person has a mental illness or mental incapacity, or where there exists a serious and imminent threat to the life and health of the older person, usually in cases where the older person is a victim of crime. Where the safety or wellbeing of a child is involved (ie, where a child resides with the older person), the legislative framework for children's protection is able to be activated.

The *Mental Health Act 2009 (SA)* and the *Guardianship and Administration Act 1993 (SA)* provide important statutory measures for protecting adults with a mental illness or mental incapacity, but neither Act covers completely the many instances of risk or vulnerability that do not involve the mental illness or incapacity of older persons. The mandate of the Office of the Public Advocate (OPA) is limited, for example, to supporting persons with a 'mental incapacity', which is defined as:

- the inability of a person to look after his or her own health, safety or welfare or to manage his or her own affairs, as a result of –
- (a) any damage to, or any illness, disorder, imperfect or delayed development, impairment or deterioration, of the brain or mind; or
 - (b) any physical illness or condition that renders the person unable to communicate his or her intentions or wishes in any manner whatsoever.¹⁷

Whilst the Aged Rights Advocacy Service (ARAS), an organisation which is funded by the State and Commonwealth Governments, is able to provide advocacy services and support to older persons who have experienced, or who are experiencing, abuse, ARAS does not have a legislative mandate to intervene in a case in order to safeguard a vulnerable older person. Thus, in cases where mental illness or incapacity is not an issue, SAPOL is the only body with the power, supported through South Australia's criminal laws and intervention orders legislation, to protect an older person who has been, or is continuing to be, the victim of abuse.

The enactment of the *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*, which will enter into force in December 2011, is itself an important piece of legislation, but it does not provide adequate coverage of the many facets of what is commonly referred to as 'elder abuse'.¹⁸ It has been particularly framed to address issues around domestic violence and, although the definition of abuse extends to material and psychological harm and some sections are particularly relevant to older persons who are the victims of abuse, the Act is not well tailored to the abuse of older persons generally. The Act itself remains untested and the fact that it is not comprehensive in its coverage of the categories of abuse committed against older persons, may lead to issues associated with its adoption in cases involving a vulnerable older person. However, it does provide an additional means of safeguarding older persons, but education and training will be required for both SAPOL and other agencies and service providers on when intervention orders might be sought.

Criminal laws in South Australia make numerous acts and omissions an offence. Crimes, potentially relevant to the abuse of older persons, include the following:

- Homicide
- Assault
- Harm
- Acts endangering life or creating risk of serious harm

¹⁷ *Guardianship and Administration Act 1993 (SA)*, s 3.

¹⁸ Internationally, the abuse of older persons is referred to as 'elder abuse'. In an Australian context, it must be recognised that 'elder' has particular meaning and significance to indigenous communities, and there may be very sound reasons why the phrase 'older person' should be preferred to 'elder'. This document uses the two phrases interchangeably, particularly when referring to international frameworks, however, it endeavours to use the phrase 'older person' when referring to the domestic setting.

- Failing to provide food etc in certain circumstances
- Spiking of food or beverages
- Rape
- Compelled sexual manipulation
- Indecent assault
- Procuring sexual intercourse
- Incest
- Theft (and receiving)
- Deception
- Dishonest exploitation of position of advantage

However, abuse in any given situation may not constitute a crime or at least a crime that is likely to be successfully prosecuted. Anecdotal evidence also indicates that, in cases of abuse perpetrated against older persons, it can be very difficult to secure a conviction or to convince the victim that the abuse should be treated as a crime. Many perpetrators are known to the victim, are close family members or carers, and the complexities of the familial or personal relationships involved can create barriers and difficulties associated with the application of the criminal law. Unlike in cases of child abuse, where the victim is automatically treated under the law as vulnerable and in need of support and protection, cases of abuse against older persons cannot be approached using the same assumption. Indeed, if the rights and freedoms of the older person are to be respected, the starting premise must always be that every older person is presumed to have the capacity to self-protect and to make decisions for him/herself. Until incapacity and/or an inability to self-protect are established, intervention should not be carried out.

The present legal framework therefore provides protective frameworks for serious cases of abuse and for those who are particularly vulnerable due to mental illness or incapacity, but it does not provide a framework for less intrusive methods of intervention, or early intervention, and at a time when serious abuse or neglect could be avoided. In these respects, the current legal system is not preventative in nature and fails to provide an incremental approach to intervention that recognises degrees of vulnerability falling short of complete incapacity. In addition, there is presently a vacuum within which agencies and organisations operate, for the purposes of providing complementary and coordinated services to older persons. The lack of a legal or policy framework which requires or promotes inter-agency collaboration, together with information sharing guidelines, creates a vacuum within which providers must operate. The result is that any collaboration and coordination between agencies is largely left to the goodwill of individuals working within those agencies and can involve instances where an agency's legal mandate is being creatively stretched beyond its actual limits. In such cases, workers can expose themselves and their employers to considerable risk, but in these instances such action can also reflect the only possible option for supporting an older person who is vulnerable to abuse. The potential can also arise for guardianship orders to be used, as an option of last resort, where less intrusive measures would have been more appropriate and more respectful of an older person's rights and freedoms.

2.2. REFORM OBJECTIVES

The Centre of Practice (COP) workshops held throughout the project highlighted numerous issues and concerns associated with the current legal framework. Further detail is provided in Appendix 2 which captures more specifically the discussion and feedback of COP members.

Throughout this project the feedback from service providers has consistently identified a number of objectives that should inform the development of a new framework for safeguarding vulnerable adults from abuse. Those objectives include the following:

- To promote greater awareness among the community and service providers (both government and non-government) of the types of abuse committed against older persons and its indicators, along with key determinants of vulnerability in older persons:
- To develop a more coordinated and consistent approach across agencies for responding to suspected, actual or reported abuse, facilitated through clear information sharing guidelines and protocols for use by the key agencies.
- To develop a model that promotes, and is premised on, the rights of older persons as opposed to a model which is protectionist and paternalistic in nature.
- To develop a framework that ensures that vulnerable adults who experience abuse do not fall through the cracks of service provision, but that when abuse is reported or notified there is an automatic response from key agencies and organisations working in a collaborative and coordinated fashion.
- To ensure that early intervention in cases of suspected abuse can occur, but that any intervention is appropriate to the needs of the older person and is consistent with the person's right to make decisions regarding their own personal life, health care and financial arrangements.

Throughout the project, it was clear that service providers and agencies had a shared and strong commitment to the development of a more coherent and coordinated approach to safeguarding vulnerable older persons within the community. There are several ways in which such an approach might be developed, but the most logical form of a new framework might involve:

- a policy framework which facilitates multiagency collaboration between existing agencies and service providers;
- legislative amendment or reform, which could involve augmentation of the powers and functions of existing agencies, or the adoption of a stand-alone Adult Protection Act.

Other strategies include the development of an 'Older Persons Gateway' and a centrally located call centre (with a 1800 number), the adoption of a Working with Vulnerable People Checking System and community networks for adult protection. These proposals are not necessarily mutually exclusive but should ideally be combined to develop a multi-layered approach to adult protection.

Workshops and meetings held throughout the project demonstrated clearly that agencies, organisations and service providers feel strongly that any new framework developed should include the following elements:

- a community based education program to raise awareness of abuse and its signs;
- the power of a central agency or unit to intervene in cases of abuse (often accompanied by calls from Strategic Advisory Group (SAG) and Centre of Practice (COP) participants for a 'mandatory response' (as opposed to mandatory reporting') when abuse is reported or notified);
- the ability to provide a coordinated response through the holding of multi-agency case conferences;
- the adoption of a human rights based approach; and,
- a requirement or authority to share relevant information with other agencies for the purposes of safeguarding vulnerable adults, which would facilitate interagency cooperation.

2.2.1 A COMMUNITY – BASED EDUCATION PROGRAM

The success of any new proposed framework will ultimately depend on the extent to which a set of clear definitions are able to be developed. In order to promote community awareness about the abuse of older persons, its signs and what factors make an older person particularly vulnerable to experiencing abuse, the project needed to settle on a set of definitions and clear parameters of the framework. Thus, the following questions were a key element of the project's focus:

- What is abuse and what are its signs or key indicators?
- Who is an 'older person'?
- What makes an older person vulnerable or at risk of experiencing abuse?

The definitions adopted by the SAG and COP participants, and the debate which led to the formation of these, are outlined in Appendix 3.

In considering strategies for promoting community awareness, the project participants acknowledged the considerable work that ARAS is already engaged in through promoting awareness about the abuse of older persons. However, a key feature of overseas models is the notion that preventing the abuse of older persons is everybody's business, both within the community and across government. Educating the entire public sector as well as the wider public ensures that awareness is not just restricted to key agencies and service providers, but reaches across government and into the community. Ideally, any strategies for promoting awareness and education around the abuse of older persons need to include strategies for harnessing the support of community based and non-government services, local government and the wider public.

One of the more advanced community based models for adult protection can be found in Canada where British Columbia has developed a system of Community Response Networks (CRNs) that are open to all members of the community, including local organisations and clubs. Interested individuals and groups form local community networks, whose main role is to promote community awareness of elder abuse and support the relevant intervention mechanisms that can be used by certain authorities under the *Adult Guardianship Act 1996*. British Columbia currently has 43 CRNs.

Recognising the importance of local governments in servicing the needs of older persons within the community, South Australia's 74 local council areas could be used to establish locally based and coordinated community networks for adult protection. While an education campaign would need to be developed for the entire State, the dissemination of information and the raising of awareness at the grass-roots level will be needed to support a State-wide education plan. Local governments, working with key agencies such as ARAS, could be encouraged to lead the development of community networks for adult protection, whether that was articulated as an element of new legislative provisions (as occurred in British Columbia) or through the adoption of a whole-of-government policy, together with the use of Memorandums of Understanding (MOUs).

2.2.2 THE POWER TO INTERVENE, AND TO INTERVENE EARLY

Consideration was given by the SAG and COP participants to two options: (1) the augmentation of powers and functions of an existing agency or organisation, and; (2) the establishment of new agency/unit (perhaps within the Department of Families and Communities (DFC)) with the authority to coordinate and lead the response and intervention efforts of the core agencies.

The preference of participants was clearly for option (2), for several reasons. The two agencies considered in the context of option (1) were OPA and ARAS. Whereas OPA is a government body, it is a statutorily independent body and performs a very important role in delivering an independent advocacy role. To add to the powers of OPA by conferring upon it the power to coordinate and lead an intervention or multi-agency response, would have a detrimental effect on the ability of OPA to act as an independent advocate for an older person within that process.

ARAS, on the other hand, is not a government agency, and the view was shared that the power to coordinate a multi-agency response in cases of actual or suspected abuse should be located somewhere within government. As with OPA, the ability of ARAS to perform its advocacy services would be compromised if it assumed the lead responsibility for coordinating interventions or a multi-agency response.

Consequently, the views of participants were in favour of the establishment of a new agency or unit, supported by a legislative mandate to coordinate and lead the response of multiple agencies working collaboratively. A desire for early intervention also lead participants to favour the adoption of new legislation and a preference was given to a comprehensive stand-alone Adult Protection Act. International practice, outlined below, does provide different models, however. Scotland, for example, has a comprehensive *Adult Support and Protection Act 2007*, whereas in Canada, British Columbia has inserted a new Part into its *Adult Guardianship Act 1996* (which entered into force in 2000).

Either model could be adopted in South Australia, but SAG and COP participants expressed strong concerns around the extent to which a human rights based approach could be possible if a new Part was inserted into the *Guardianship and Administration Act 1993* (SA) without a serious review and updating of the Act itself. The reservations of participants lead them to favour the adoption of a new and comprehensive Act, rather than seek to amend the *Guardianship and Administration Act 1993* (SA). However, even in the event that comprehensive legislation was adopted, the relationship between the two Acts would need to be fully considered, with the possibility that amendments to the 1993 Act would be necessitated.

2.2.3 A COORDINATED INTERAGENCY RESPONSE

Strategies for safeguarding older persons who are vulnerable to abuse often require the involvement of multiple agencies working collaboratively. At present, South Australian agencies and organisations do not have a framework which ensures that a coordinated interagency response occurs when a case of abuse is notified. In order for such a response to take place, several things are required:

- A central unit for the recording or notification of abuse cases. This unit should include a 1800 number or 'Older Persons Gateway' (however described), whether that central gateway was a new agency conferred with powers and functions under new adult protection legislation, or a small administrative unit within DFC that supports a new policy framework for responding to abuse. Whatever its legal status or authority, the unit could be known as the Adult Protection Unit, or something similar. The 1800 number or central portal for notifications and reports of abuse could be referred to as the 'Older Persons Gateway' or 'Safeway' (with the focus on safeguarding adults through accessing multiple services) or something like the Elder Abuse Report Line (similar to the Child Abuse Report Line).¹⁹
- The ability for multiple agencies to participate in adult protection case conferences as a means of developing strategies for responding to reports or notifications of abuse in a coordinated and collaborative fashion. The Adult Protection Unit (however described) would be responsible for convening and coordinating these conferences, though other agencies may take the lead role when implementing the plan negotiated through a case conference. In the absence of comprehensive legislation which gave authority to a central unit to take steps to intervene in a case of abuse, SAPOL would need to lead any intervention. The capacity for agencies and organisations to participate effectively in a response framework will, however, depend on their being required or able to share relevant information within that framework. This matter is considered more fully below.

2.2.3 A HUMAN RIGHTS BASED APPROACH TO INTERVENTION

Both the SAG and COP participants expressed concern that the present system all too easily allows for the erosion of certain rights and freedoms of older persons under the guise of safeguarding or protecting them. Strong support was given to the adoption of a system for adult protection and, within it, of an interagency response framework, that is premised on respect for the rights and freedoms of all older persons.

In adopting a human rights based approach, agency workers need to be guided on how to adapt their behaviour to ensure that the rights of older persons are not ignored, overlooked, or breached by service providers. Thus, not only is there a need to identify and articulate what rights and freedoms older persons have, it is also important that a set of guiding principles be developed which can assist workers and members of the community when interacting with older persons or other workers. The absence of a binding international instrument, or Convention on the Rights of Older Persons, places greater emphasis on the need to articulate the rights and freedoms of older persons which would underpin a new adult protection framework for South Australia. In this respect, the safeguarding of adults

¹⁹ Elder Abuse Report Line, or EARL, includes the term 'elder abuse' which may wish to be avoided. Using the term 'abuse' may discourage members of the public and victims from reporting an incident. However, the term and acronym would be easily recalled by people within agencies and organisations.

presents challenges that are not encountered when dealing with systems for child protection, where the Convention on the Rights of the Child can be referred to. That Convention has been adopted by more nation-states than any other human rights instrument, including Australia.²⁰

Overseas jurisdictions with developed systems for adult protection all operate under the backdrop of human rights legislation or charters. Australian jurisdictions, other than Victoria and the Australian Capital Territory, which both have human rights charters in statutory form,²¹ do not operate within such a legal context. Thus, human rights considerations in all other Australian jurisdictions (including South Australia) do not directly inform the development and implementation of law and policy. However, there is no constitutional or legal reason why new South Australian law or policy could not, or should not, be informed by human rights principles. This fact is considered in much greater detail below.

One final reason why a human rights based approach is warranted in a South Australian system for adult protection is to ensure that the rights and freedoms of all older persons are recognised and respected. Older persons currently living in residential aged care facilities, or accessing Commonwealth funded community care packages, already have Charters of Rights included as Schedules to the *Aged Care Act 1997* (Cth). Persons still living within the community, but not accessing Commonwealth funded services, do not have the same recognition of their rights. Accordingly, service providers are not required to take into account a Charter of Rights and Freedoms of Older Persons which can inform and guide their interaction with, and treatment of, older persons living within the community. In developing a new framework for adult protection, it is important to ensure that the rights of *all* South Australians are respected by agencies and organisations working in aged care and service delivery.

2.2.4 OBLIGATION OR AUTHORITY TO SHARE INFORMATION

Project participants were very strongly in favour of an obligation being imposed, or an authority conferred, upon agencies and organisations to share relevant information in an appropriate manner, where that information sharing can assist in safeguarding a vulnerable adult. Under comprehensive legislation, the obligation to share relevant information could be expressly provided, as occurs under the *Scottish Adult Support and Protection Act 2007*. However, in the absence of legislation, agencies and organisations could be required to apply new information sharing guidelines for promoting the safety of vulnerable adults, modelled on the *Information Sharing Guidelines for Promoting the Safety and Wellbeing of Children, Young People and their Families*. The latter Guidelines benefit from a cabinet exemption with respect to the Information Privacy Principles,²² meaning that a serious risk to the life and health of a person need not be imminent before information can be shared.

²⁰ The Convention currently has 193 parties.

²¹ *Human Rights Act 2004* (ACT); *Charter of Rights and Responsibilities Act 2006* (Vic).

²² The Information Privacy Principles form a Cabinet Instruction and apply to all South Australian government agencies, regulating the way they collect, use, and disclose personal information. See, Government of South Australia (1989, amended 1992), *Cabinet Administration Instruction No 1 of 1989*, Premier and Cabinet Circular 12, Government of South Australia. Regarding the exemption from the test of imminence see, Terry Ryan, Presiding Member, Privacy Committee of South Australia, 2 May 2008; Government of South Australia, *Information Sharing Guidelines for Promoting the Safety and Wellbeing of Children, Young People and their Families*, 2008, 11.

SAG and COP participants were reluctant to endorse the seeking of a similar exemption for vulnerable adults until older persons and the wider community had first been consulted. Thus, until older people themselves have expressed their support for a lowering of the threshold, any information sharing guidelines which are adopted should operate without a cabinet exemption.

2.3. OTHER LEGAL ISSUES TO CONSIDER

In considering possible frameworks for adult protection in South Australia, a number of points need to be acknowledged. First, the constitutional and legal framework that applies in Australia is very distinct from other overseas jurisdictions. Australia, unlike the United Kingdom, for example, has a formal written Constitution.²³ Legislative powers are distributed between the federal and State governments, though legislative supremacy is accorded to the federal parliament in the event of any inconsistency between laws in the many subject areas where both the federal and State parliaments have power to enact laws.²⁴ Aged care is not, however, an area where the federal parliament has direct legislative power. It is only through the funding of pensions and aged care programs,²⁵ including residential aged care, that the federal parliament is able to regulate the sector. However, where federal funding is provided, the parliament has almost unlimited power to attach conditions and regulatory measures to that funding and federal parliament's involvement in community aged care programs is only likely to increase in future years. Other powers conferred on the federal parliament which have relevance for dealing with financial abuse, include the power to regulate banking and finance.²⁶

Many other aspects of aged care, including many aspects of non-residential aged care, remain the responsibility of State parliaments - though aged care is increasingly becoming an area of federal legislative concern. In contrast to federal parliament, State parliaments have greater flexibility to develop schemes for the protection of older persons that are both general and comprehensive in their application and coverage. Federal parliament, by contrast, would need to attach such a scheme to funding schemes or use their power to implement international human rights treaties²⁷ relevant to older persons. Federal parliament therefore lacks the legislative flexibility of State parliaments to adopt comprehensive schemes for adult protection.

Another important point to consider when evaluating the different adult protection models is the complexity within and across Australian jurisdictions; agencies across public and private sectors are involved in aged care services and agencies from Commonwealth, State and Local Government are also engaged in the provision of different aged care services. These complexities place State governments in a strong position to develop systems for adult protection, given their relationship with local governments and their general responsibility for criminal law at the State level.

²³ *Commonwealth of Australia Constitution Act 1900* (hereafter referred to as 'the Constitution').

²⁴ Section 109 of the Constitution provides that '[w]hen a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid'.

²⁵ Section 51(xxiii) of the Constitution confers power on the federal parliament to enact laws with respect to 'invalid and old-age pensions'. Section 51(xxiiiA) extends the power to give pensions, benefits and allowances for various reasons, including the provision of pharmaceutical, sickness, hospital, medical and dental services. Section 96 enables the federal parliament to grant financial assistance to the States subject to any terms or conditions it thinks fit.

²⁶ See section 51(xxiii).

²⁷ Using the external affairs power under s 51(xxix).

While the federal parliament has authority to criminalise acts of abuse committed within residential aged care facilities and by workers employed in services funded by the Commonwealth, the *Aged Care Act 1997* (Cth) does not presently adopt such an approach. It includes offence provisions and a system of mandatory reporting for abuse, but the Act operates alongside State criminal laws and is designed to work in conjunction with local police authorities. Thus, there remains an imperative for each State to ensure that its criminal laws are appropriately designed to capture acts of abuse perpetrated against older persons, no matter where they occur.

It is also feasible that residential aged care providers and other service providers funded by the Commonwealth could engage with a new legal or policy framework adopted within South Australia. This could occur through their participation in community networks for adult protection, or through accessing the Older Persons Gateway (however described) when cases of abuse are reported in accordance with the provisions of the *Aged Care Act 1997* (Cth). Organisations such as ARAS and agencies like OPA have a mandate to support people within the State no matter where they reside, provided that a person meets the relevant criteria of ARAS or falls within the scope of the *Guardianship and Administration Act 1993* (SA). An Older Persons Gateway may actually prove therefore to be a very effective mechanism through which residential aged care providers are able to simultaneously access multiple agencies at the State level. Notwithstanding the potential future reach of any framework developed, this project was, however, concerned specifically with older persons living within the community who are vulnerable to abuse or neglect and are who not covered by the protective provisions of the Commonwealth's *Aged Care Act 1997*.

3. COMPARATIVE PRACTICE IN ADULT PROTECTION

This section provides an overview of some of the more advanced adult protection frameworks both overseas and in Australia. It includes the United Kingdom (where the *Human Rights Act 1998* (UK) has had a considerable influence on the debate surrounding adult protection), Canada (where the Charter of Rights and Freedoms 1982 applies and where community based models for adult protection have been adopted), and New South Wales, where a policy framework has been adopted to promote better inter-agency cooperation with regard to adult protection.

It must be noted that Australia's constitutional framework is very different to the system in the UK. The UK is not a federal system, and local councils perform considerably more significant roles than their counterparts in Australia. In Australia, State governments exercise considerable powers with respect to aged care outside institutional settings. This fact stems from the limitation in Commonwealth legislative power under s 51 of the Constitution.

The models below provide a sample of current best practice throughout Australia and the world. The only Australian model – from NSW – is embodied in a policy, rather than a legislative framework. Only Scotland's framework involves an Act of Parliament, though that Act is 4 years old, and Wales is currently reviewing its existing policy framework in light of the Scottish reforms. There are similar themes and objectives across jurisdictions, though Australia does not share a similar legal context to other jurisdictions given the absence of a human rights charter. However, New South Wales, like South Australia, does not have a charter of rights.

The absence of a human rights backdrop (whether contained in a constitutionally entrenched Charter as in Canada, or a statutory model as in the UK), is a significant point. It means that the development of policy is not guided or framed by considerations of human rights which are legally mandated. Thus, were South Australia to adopt a policy based model, as has occurred in the UK or NSW, that model would not be applied within a legal setting where human rights were required to be taken into account. If one of the primary objectives is to ensure that human rights inform the development and implementation of an adult protection framework in South Australia, then, the need would arise to articulate the human rights of older persons within that framework.

3.1. NEW SOUTH WALES

In 2007 the New South Wales Government adopted a revised *Interagency Protocol for Responding to Abuse of Older People*. The Protocol reviewed and merged a 1995 *Abuse of Older People: Interagency Protocol* and *Legal Issues Manual*, taking into account changes in service delivery and practice, legislation and approaches to victims' rights.²⁸

The 2007 Protocol has several purposes including:

- outlining the State Government's commitment to responding to abuse of older people living in community settings;

²⁸ See, New South Wales Government, *Interagency Protocol for Responding to Abuse of Older People*, 2007, at 1.

- providing workers, including volunteers, and agencies working with older people with a clear understanding of the various roles played by key NSW Government agencies in responding to abuse of older people in the community;
- providing a practical framework that Government and non-government agencies working with older people can apply in their response to abuse of older people living in community settings; and
- providing information that agencies can use to inform development and or updating of agency policies and procedures to ensure a coordinated response to the abuse of older people.²⁹

Divided into 6 sections, the protocol includes a general background section, definitions of abuse of older people, outlines principles for responding to abuse of older people, outlines key concepts in responding to abuse of older people, details the role of key NSW Government agencies and the good practice framework for responding to abuse, as well as providing a list of useful contacts.

For the purposes of the Protocol, 'abuse' is defined as including neglect, physical abuse, sexual abuse, psychological abuse and financial abuse. Each definition is followed by a non-exhaustive list of indicators. For example, 'financial abuse' is defined as:

The illegal or improper use of an older person's property or finances. This includes misuse of a power of attorney, forcing an older person to change their will, taking control of a person's finances against their wishes, denying them access to their own money and door-to-door scams.³⁰

Indicators of financial abuse may include: 'unexplained or sudden inability to pay bills, significant withdrawals, drastic changes to wills, unexplained disappearance of possessions, lack of funds for food or clothing, disparity between living conditions and money, recent addition of a signature on a bank account.'³¹

One of key features of the NSW Protocol is its inclusion of General Principles and Principles for Intervention. These principles are also supported by Principles for Interagency Practice and Principles for Reporting Abuse of Older People to the NSW Police. The Protocol's General Principles are premised on respect for the human rights of older people, as the following extract indicates:

Older people have the right to:

- be treated with dignity and respect
- make their own decisions and choices
- live in a safe environment
- access the protections available to other adults in the community

Older people who are risk of, or who have experienced abuse may require varying support depending on the nature of the abuse, their level of independence, their

²⁹ Ibid, at 2.

³⁰ Ibid, at 8.

³¹ Ibid.

health status and their capacity to make informed decisions. The needs, wishes and feelings of the older person must be sought throughout the response process. In supporting the older person it is important to believe them and to avoid being judgemental.³²

The Protocol's Principles for Intervention are intended to guide agency practice and partnerships in responding to abuse and include the following:

- Older people who are at risk or have experienced abuse are to be:
 - provided with information about all relevant options available to them
 - encouraged and assisted to make their own decisions
 - respected and given the choice to refuse services if competent to make that decision.
- Even when it has been determined or observed that an older person cannot make their own decisions, every effort must be made to ensure their views are taken into account.
- Responses to the abuse of older people will be in the interests of the older person at risk or who has been abused, and focussed on ensuring safety and ongoing protection from violence and abuse.
- Many forms of abuse of older persons are crimes. Legal remedies and protections are available for older people who have experienced violence, sexual assault, physical assault, domestic violence, abuse, threats, fraud, neglect, stalking, intimidation and harassment.
- Responses to the abuse of older people will be consistent with the NSW Charter of Victims Rights (refer to the Appendix).
- Responses to the abuse of older people will, as far as possible, take account of the needs of the older person in relation to Aboriginality, culture, disability, language, religion, gender and sexuality.
- The needs of the older person at risk or who has been abused and the abuser must be kept separate at all times. This is particularly important in situations where the abuser has been the victim's carer or has complex needs.
- When the safety of others is involved, confidentiality cannot be offered unconditionally, in situations where a report to the NSW Police is required, the consent of the person involved is not necessary.
- Any person should be able to report abuse of older without fear of retaliation or retribution and in a supportive environment.³³

The NSW Protocol outlines the roles, including the lead role, of each major NSW Government agency involved in responding to abuse of older people. Agencies included are NSW Police, NSW Health (including Aged care Assessment Teams and Aged Care Services), Hospitals (Acute Care Staff), Sexual Assault Services, Mental Health Services and the Guardianship Tribunal.

The Protocol also details a framework for action when abuse of an older person is recognised, disclosed or suspected. This framework outlines the expectations of workers and

³² Ibid, at 9.

³³ Ibid at 9-10.

coordinators, protocols for assessing the urgency and risk to the older person and whether immediate intervention is required. In this respect, a number of factors need to be considered in assessing the level of urgency and risk, including:

- the vulnerability of the older person
- the danger to the older person or any other person
- the need for medical attention
- the nature and extent of the abuse
- the impact on the older person
- the risk of repeated or increasing abuse
- the risk of financial assets being lost irretrievably
- the relationship between the older person who has been abused and the abuser.³⁴

The Protocol also outlines steps for comprehensive assessment and case management/care coordination in responding to abuse of older people. Here, the Protocol also outlines procedures where a person is assessed as having diminished mental capacity.

Legal interventions, namely, the reporting of crimes to NSW Police, the seeking of apprehended violence orders and the making of applications to the Guardianship Tribunal are also clearly outlined together with relevant contact details, in the Protocol.³⁵

The NSW Protocol is a well written and useful tool for service providers. However, its weakness lies in the fact that it simply defines the key terms and role of lead agencies and does not add considerably to the existing framework. Throughout the project, service providers were adamant that any new framework adopted in South Australia should go further in enabling a more coordinated response in cases of abuse.

3.2. ENGLAND

The *No Secrets: Guidance on Developing and Implementing Multi-Agency Policies and Procedures to Protect Vulnerable Adults from Abuse*, was adopted by the Department of Health in 2000. *No Secrets* is actually a guidance issued under section 7 of the *Local Authority Social Services Act 1970* (UK) and operates on the assumption that codes of practice for responding to the abuse of vulnerable adults is best coordinated locally through local authority social services departments.

No Secrets contains a number of key definitions, from 'vulnerable adult', to what constitutes 'abuse'. A 'vulnerable adult' is a person 'who is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation'.³⁶

Abuse is defined generally as 'a violation of an individual's human and civil rights by any other person or persons', but extends specifically to physical abuse, sexual abuse, psychological abuse, financial or material abuse, neglect and acts of omission, and

³⁴ Ibid, at 28.

³⁵ Ibid, at 33-35.

³⁶ United Kingdom Department of Health, *No Secrets: Guidance on Developing and Implementing Multi-Agency Policies and Procedures to Protect Vulnerable Adults From Abuse*, at 8-9.

discriminatory abuse.³⁷ Like the NSW Protocol, the Guidance also adopts a multifactorial approach to assessing when intervention is justified. In the UK, this assessment is based on the prevention of significant harm and requires that the following factors be considered:

- the vulnerability of the individual
- the nature and extent of the abuse
- the length of time it has been occurring
- the impact on the individual, and
- the risk of repeated or increasingly serious acts involving this other vulnerable adults.³⁸

The fundamental premise of the *No Secrets* guidance is that local authorities should collaborate and work together in managing and responding to abuse of vulnerable adults. The Guidance thus sets out detailed provisions for the development of an inter-agency framework, which includes the identification of all responsible and relevant agencies, the establishment of a multi-agency management committee and the development of mechanisms, procedures and policies within the framework.³⁹

Inter-agency policies developed within local frameworks must adhere to a set of principles set out in the *No Secrets* Guidance. These principles require that agencies adhere to the following:

- actively work together within an inter-agency framework;
- actively promote the empowerment and well-being of vulnerable adults through the services they provide;
- act in a way which supports the rights of the individual to lead an independent life based on self determination and personal choice;
- recognise people who are unable to take their own decisions and/or to protect themselves, their assets and bodily integrity;
- recognise that the right to self determination can involve risk and ensure that such risk is recognised and understood by all concerned, and minimised whenever possible (there should be an open discussion between the individual and the agencies about the risks involved to him or her);
- ensure the safety of vulnerable adults by integrating strategies, policies and services relevant to abuse within the framework of [applicable legislation];
- ensure that when the right to an independent lifestyle and choice is at risk the individual concerned receives appropriate help, including advice, protection and support from relevant agencies; and
- ensure that the law and statutory requirements are known and used appropriately so that vulnerable adults receive the protection of the law and access to the judicial process.⁴⁰

The *No Secrets* Guidance also makes specific reference to a number of general principles regarding confidentiality and information sharing:

³⁷ Ibid, at 9.

³⁸ Ibid, at 12-13.

³⁹ Ibid, at 14-19.

⁴⁰ Ibid, at 21.

- Information will only be shared on a 'need to know' basis when it is in the best interests of the service user;
- Confidentiality must not be confused with secrecy;
- Informed consent should be obtained but, if this is not possible and other vulnerable adults are at risk, it may be necessary to override the requirement, and
- It is inappropriate for agencies to give assurances of absolute confidentiality in cases where there are concerns about abuse, particularly in those situations where other vulnerable people may be at risk.⁴¹

The Guidance sets out detailed requirements regarding procedures for responding in individual cases. Inter-agency frameworks must adopt detailed procedures for matters such as the management and coordination of the response to an allegation of adult abuse, investigations, reporting and record keeping, and assessment planning for future protection of a vulnerable adult.⁴² An example of the No Secrets Guidance in practice is *Protecting Adults at Risk: London Multi-Agency Policy and Procedures to Safeguard Adults from Abuse*.⁴³

The Welsh experience has, in many respects, mirrored that of England. In July 2000, the Welsh Assembly Government issued Guidance under s 7 of the *Local Authority Social Services Act (1970)*, called *In Safe Hands*.⁴⁴ However, following several reviews, recommendations have been put forward for policy and legislative changes,⁴⁵ drawing on the experience in Scotland under its new legislation.

Interestingly, the Welsh framework includes the recognised capacity for the Ombudsman to investigate complaints of abuse made against social services workers.⁴⁶ However, many existing Ombudspersons would already have the authority to investigate such complaints under their general mandate, and this would be the case in Australia.

3.3. SCOTLAND

The impetus for reform in respect of vulnerable adults began in 1997 with a set of recommendations accompanied by a draft Bill developed by the Scottish Law Commission. Since then, policy in the area has developed considerably, culminating in the *Adult Support and Protection Act 2007*. As with England, developments in Scotland take place against the backdrop of the European Convention on Human Rights and the *Human Rights Act 1998* (UK). Thus, human rights principles are embedded into legislative and policy processes.

The *Adult Support and Protection Act 2007* is designed to protect those adults who are unable to safeguard their own interests, such as those affected by disability, mental disorder, illness or physical or mental infirmity, and who are at risk of harm or self harm,

⁴¹ Ibid, at 21.

⁴² Ibid, at 26-33.

⁴³ Social Care Institute for Excellence, *Protecting Adults at Risk: London Multi-Agency Policy and Procedures to Safeguard Adults from Abuse*, Great Britain, 2011.

⁴⁴ *In Safe Hands: The Role of Care and Social Services Inspectorate Wales*, (Third Supplement, November 2009), available at: <http://wales.gov.uk/topics/health/publications/socialcare/reports/insafehands;jsessionid=h3TxkWYG6v3Q8Y5hfXKyk6J0Tv1HhXPp3pjBHyX2k971XVdCChG!442808764?lang=en>.

⁴⁵ *Report of the Protection of Vulnerable Adults Protection Board*, February 2011, available at: <http://cymru.gov.uk/topics/health/publications/socialcare/reports/report/?jsessionid=hXvkNk8S6JQ2RndyRyTqJsjJTp3vq5w4vzhVMYlh8QJ25fyQ10s8!1323448023?lang=en>.

⁴⁶ See the Public Services Ombudsman's Protection of Vulnerable Adults Factsheet, available at: www.ombudsman-wales.org.uk/uploads/publications/448.pdf

including neglect. The Scottish Government has also developed a *Code of Practice for Local Authorities and Practitioners Exercising Functions Under Part I of the Act*, which was amended in January 2009. This document outlines, in a practical way, how the Act is to be implemented. Part I of the Act makes provision for inquiries, investigations, assessment orders, removal orders, banning orders, protection orders and visits, as well as the establishment of adult protection committees.

The Act itself approaches adult protection from the position that harm should be prevented, rather than labelling types of abuse. This point is an important one, as it highlights the differences between the language of 'harm' compared with the language of 'abuse'. The former can often be more appropriate when communicating with victims of abuse, whereas many providers support the idea that a formal legal or policy should always label abuse as abuse.

Section 3 defines 'adults at risk' as adults who:

- are unable to safeguard their own well-being, property, rights or other interests, and;
- are at risk of harm, and;
- because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.

As the Code of Practice makes clear, all three elements of this definition must be met, but the Code also states that it will be 'the whole of an adult's particular circumstances which can combine to make them more vulnerable to harm than others'.⁴⁷

Sections 1 and 2 of the Act set out general principles which apply to any public body or office holder authorising any intervention or carrying out a function in relation to an adult. Thus, while a social worker, care provider or health professional will be subject to the principles, a number of key persons will not be bound, including the adult person, the adult's relatives, primary carer, independent advocate, lawyer, guardian or attorney.

According to section 1, a person may intervene, or authorise an intervention in an adult's affairs, only if satisfied that the intervention:

- (a) will provide benefit to the adult which could not reasonably be provided without intervening in the adult's affairs, and
- (b) is, of the range of options likely to fulfil the object of the intervention, the least restrictive to the adult's freedom.

Section 2 sets out further principles relevant to performing functions under Part 1. The Code of Practice describes those principles in a more practical and detailed manner, providing as follows:

The principles in section 2 require that any public body or office holder performing a function under part I of the Act, in considering a decision or course of action, in addition to the general principles in Section 1, must have regard to the following:

⁴⁷ The Scottish Government, *Adult Support and Protection Act 2007 Code of Practice: For Local Authorities and Practitioners Exercising Functions Under Part I of the Act*, October 2008 (amended 15 January 2009), (hereafter referred to as the 'Code of Practice'), at 12.

- **the wishes of the adult** – any public body or office holder performing a function or making a decision must have regard to the present and past wishes and feelings of the adult, where they are relevant to the exercise of the function, and in so far as they can be ascertained. Efforts must be made to assist and facilitate communication using whatever method is appropriate to the needs of the individual. For example, where the adult has an Advance Statement made under Section 275 of the Mental Health (Care and treatment) (Scotland) Act 2003 then this should be given due consideration.
- **the views of others** – the views of the adult’s nearest relative, primary carer, and any guardian or attorney, and any other person who has an interest in the adult’s well-being or property, must be taken into account, if such views are relevant.
It is important that the adult has the choice to maintain existing family and social contacts. What the Act seeks to provide is support additional to the networks that may already be in place. Thus a person who may be an adult at risk may have neighbours or friends who have an interest in his/her well-being and are willing to give support. Every effort should be made to ensure that any action taken under the Act does not have an adverse affect on this.
- **the importance of the adult participating as fully as possible** – the adult should participate as fully as possible in any decisions being made. It is therefore essential that the adult is also provided with information to help that participation (in a way that is most likely to be understood by the adult). Where the adult needs help to communicate (for example, translation services or signing) then these needs should be considered. Any unmet need should be recorded.
Wherever practicable the adult should be kept fully informed at every stage of the process, for example, whether an order has been granted, what powers it carries, what will happen next, whether they have the right to refuse, what other options are available etc.
- **that the adult is not treated less favourably** – there is a need to ensure that the adult is not treated, without justification, any less favourably than the way in which a person who is not an “adult at risk” would be treated in a comparable situation; and
- **the adult’s abilities, background and characteristics** – including, the adult’s age, sex, sexual orientation, religious persuasion, racial origin, ethnic group and cultural and linguistic heritage.

For the purposes of these principles, making a decision not to act is still considered as taking a decision and the reasons for taking this course of action should be recorded as a matter of good practice.⁴⁸

The Act confers powers and duties primarily upon local councils. For example, a council has a duty under section 4 to make inquiries and visit any place in order to establish whether action is required, where it is known or believed that an adult is at risk of harm and that intervention may be necessary to protect the adult. Pursuant to sections 7-10, council officers may interview, in private, any adult found at the place being visited, and may arrange for a medical examination of an adult known or believed to be at risk to be carried out by a health professional. Health, financial and other records relating to an adult at risk

⁴⁸ Code of Practice, at 11-12.

may be requested and examined, but only a health professional may inspect health records. A council officer may also apply to the sheriff for the grant of a protection order. This may be an assessment order, a removal order, a banning order or temporary banning order.

Certain bodies and office holders⁴⁹ must, so far as is consistent with the proper exercise of their functions, cooperate with a council conducting inquiries (section 5). In accordance with section 5(3), if a public body or office holder believes that a person is an adult at risk of harm and that action needs to be taken under part I of the Act, then the facts and circumstances of the case must be reported to the council for the area in which it considers the person to be located.

Councils must consider the provision of appropriate services, including independent advocacy services, to the adult concerned. Adult representation may be provided through independent advocacy services not attached to the council. The Act also promotes a best practice approach of involving the Office of the Public Guardian where an adult is incapable of giving consent.

Importantly the Act promotes cooperation between bodies as well as a multi-disciplinary approach. As *the Code of Practice* states:

What one person or public body may know may only be part of a more concerning picture. Good practice would be that all relevant stakeholders would cooperate with assisting inquiries, not only those who have a duty to do so under the Act. Councils may therefore wish to review their contract agreements with voluntary or private sector providers to ensure that their services are consistent with the principles of this Act ...

Many different professionals in statutory agencies and other organisations have contact with adults at risk of harm including social workers, medical and nursing staff and other health professionals, psychologists, staff delivering care services, Procurators Fiscal, the police and staff of voluntary organisations. A multi-agency and multi-disciplinary approach to inquiries, investigations and training between the council, other bodies and specialist voluntary organisations is therefore appropriate.

Voluntary and private service organisations do not have specific legal powers and duties under the Act, other than a duty to comply with requests to examine records. The *Code of Practice* states that such organisations do have a responsibility to involve themselves in the Act, particularly by contributing to investigations, discussing and sharing information with relevant statutory agencies, and through providing advice and expertise to such agencies. The Act also envisages a role for private and voluntary organisations on Adult Protection Committees.

The Code of Practice provides straightforward yet detailed guidance on how to exercise powers and duties under the Act. It provides clear guidance on such things as:

- Who may undertake visits?
- What places may be visited?
- What if entry is refused?

⁴⁹ These include, the Mental Welfare Commission for Scotland, the Care Commission, the Public Guardian, all councils, chief constables of police forces, the relevant Health Board and any other body or office holder specified by the Minister.

- Who can apply for a warrant?
- What can be done in cases of urgency?
- Where can an adult be interviewed?
- What are an adult's rights during an interview?
- Can anyone else be interviewed?
- Does an individual have the right to refuse a medical examination?
- Does an adult have to consent to disclosure?
- Can an order be granted or enforced without an adult's consent?

The Act enables a council to apply to the sheriff for different types of orders. Orders include the following:

Assessment Orders – to determine whether the adult is an adult suspected to be at risk; and whether there is reasonable cause to suspect that the adult at risk is being, or is likely to be, seriously harmed; and whether any action should be taken to protect the adult from serious harm. Assessment orders enable officers to conduct interviews in private and to take an adult to a different location for the purposes of an investigation, including medical examinations.

Removal Orders – are primarily for protection and are not used to facilitate a council interview or medical examination. It permits the person named in the order to be removed from any place to protect them from harm. Removal orders can be conditional, for example, including conditions permitting certain persons to have contact (whether supervised or unsupervised) with the adult person to assist in maintaining family or social relationships.

Banning or Temporary Banning Orders – which ban the subject of the order from a specified place, may have other conditions attached to it, and may last for a time not exceeding 6 months. The purpose of these orders is to better safeguard the adult at risk's well-being and property more effectively than would removing the adult from a place where they are at risk of harm from another person. Banning orders can be accompanied with a power of arrest, based on the likelihood that the subject would breach the order.

Additional features of the Scottish legislation include the creations of offences for obstruction in the application of the Act and a requirement that councils establish Adult Protection Committees. Functions of the Committees will include:

- Developing and introducing arrangements and protocols for inter-agency working and auditing and evaluating the effectiveness of these arrangements;
- Developing procedures, policies and strategies for protecting adults at risk and reviewing these;
- Developing and introducing arrangements to monitor, review, disseminate and report activity in relation to the protection of adults at risk. For example, this might include gathering key information relating to:
 - Numbers of inquiries and investigations;
 - The number of adult protection referrals by age, client group, gender etc;
 - Types of abuse;

- Agency involvement;
- Outcome of referrals and recommendations; and number of initial case conferences convened;
- Raising awareness and providing information and advice to the wider community and to professionals;
- Training and development activities;
- Improving local ways or working in light of knowledge gained through local and national experience, case review and research; and
- Undertaking any other functions relating to the safeguarding of individuals as the Scottish Ministers may specify.⁵⁰

An example of a local plan for implementation of the Act is the Highland Council's *Adult Support and Protection in Highland: Inter-Agency Procedures for the Implementation of the Adult Support and protection (Scotland) Act 2007*, March 2010. These Procedures build upon the Act in several ways. First, they outline values which underpin the Inter-Agency Procedures, stating that every adult is entitled to:

- Live in a home-like atmosphere without fear of violence or harassment;
- Make informed choices about intimate relationships without being exposed to exploitation or sexual abuse;
- Have his/her money and property treated with respect;
- Be empowered (through support if necessary) to make choices about his/her life; and
- Be given information about keeping safe and exercising his/her rights as a citizen.

Key principles include the following:

- Every adult has the right to be protected from all forms of abuse, neglect and exploitation;
- Every adult must be enabled to express his/her wishes and to make decisions to the best of his/her ability, whilst recognising that self-determination may involve an element of risk;
- Where it is found to be necessary to override the wishes of the adult or to make decisions on his/her behalf for their own safety (or the safety of others), this must be explained to the individual in a way that can be clearly understood;
- Any action, which is not in accordance with the wishes of an individual, but is deemed by legislation to be a requirement, should always be proportionate and be the least disruptive to the person's life; and
- Effective partnership working across the statutory, voluntary and independent sectors is a prerequisite to ensuring timely and appropriate responses to situations where adults are at risk of harm.

The Procedures also outline, unlike the Act itself, the key categories of harm (physical, emotional and psychological, financial and material, sexual, neglect) as well as the indicators or signs of such harm. A three staged approach is set out (by way of flow chart) in respect of responding to allegations of abuse or suspected harm. The stages include the initial response stage, followed by the intervention stage where a case conference is carried out and an

⁵⁰ Code of Practice, at 65.

investigation plan is made, leading to the third stage involving a multi-agency action plan and review.

3.4. BRITISH COLUMBIA

British Columbia amended its *Adult Guardianship Act 1996* in 2000, inserting a new Part into the Act which deals with abuse. The purpose of the new Part was to provide support and assistance for adults who are abused or neglected and who are unable to seek support or assistance because of:

- Physical restraint;
- A physical handicap that limits their ability to seek help; or
- An illness, disease, injury or other condition that affects their ability to make decisions about the abuse or neglect.⁵¹

'Abuse' is defined as the 'deliberate mistreatment of an adult that causes the adult: (a) physical, mental or emotional harm; or (b) damage to or loss of assets, and includes intimidation, humiliation, physical assault, sexual assault, overmedication, withholding needed medication, censoring mail, invasion or denial of privacy or denial of access to visitors'.⁵²

The Act covers abuse or neglect occurring in a public place, the adult's home, a relative's home, a carer's home or a care facility.⁵³ All persons with information about abuse or neglect *may* report the circumstances surrounding that abuse or neglect to a 'designated agency'. Thus, there is no system of mandatory reporting, but the Act extends protection to workers who do make reports.⁵⁴ The identity of a person who made a report is protected and an action for damages cannot be sought against a person who made the report, or against a person who assisted with an investigation into abuse or neglect.⁵⁵

There are several guiding principles under the Act:⁵⁶

- all adults are entitled to live in the manner they wish and to accept or refuse support, assistance or protection as long as they do not harm others and they are capable of making decisions about those matters;
- all adults should receive the most effective, but the least restrictive and intrusive, form of support, assistance or protection when they are unable to care for themselves or their assets;
- the court should not be asked to appoint, and should not appoint, decision makers or guardians unless alternatives, such as the provision of support and assistance, have been tried or carefully considered.

The Act also provides that every adult is presumed to be capable of making decisions about personal care, health care, legal matters or about the adult's financial affairs, business or

⁵¹ *Adult Guardianship Act 1996*, s 44.

⁵² Section 1.

⁵³ Section 45.

⁵⁴ Section 46.

⁵⁵ Sections 46(2) and (3).

⁵⁶ Section 2.

assets, until the contrary is proven.⁵⁷ A person's way of communication with others is also not to be used as a basis for deciding that a person lacks capacity.⁵⁸

While the Act operates on the basis of a voluntary reporting system, it imposes a mandatory response framework⁵⁹ involving 'designated agencies' (currently including 7 health authorities⁶⁰). Section 47 of the Act sets out the obligations of designated agencies:

- (1) A designated agency must determine whether an adult needs support and assistance if the agency:
 - (a) receives a report under section 46;
 - (b) has reason to believe that an adult is abused or neglected; or
 - (c) receives a report that the adult's representative, decision maker, guardian or monitor has been hindered from visiting or speaking with the adult.
- (2) If the designated agency determines that the adult does not need support and assistance, the designated agency:
 - (a) must take no further action, and
 - (b) may advise the Public Guardian and Trustee.
- (3) If the designated agency determines that the adult needs support and assistance, the designated agency may do one or more of the following:
 - (a) refer the adult to available health care, social, legal, accommodation or other services;
 - (b) assist the adult in obtaining those services;
 - (c) inform the Public Guardian and Trustee;
 - (d) investigate to determine if the adult is abused or neglected and is unable, for any of the reasons mentioned in section 44, to seek support and assistance.

Designated agencies also have powers of investigation.⁶¹ Unilaterally, and without the need for a court order, they are required to make every reasonable effort to interview the adult, but are also authorised to do the following:

- interview the adult's spouse, the adult's near relatives, the adult's friends or anyone else who may assist in the investigation;
- obtain any information that the circumstances require, including a report from a health care provider who has examined the adult, any agency that provides or has provided health or social services to the adult, and any person that manages the adult's financial affairs, business or assets.

A designated agency can also apply to the court for an order where they believe it is necessary to enter premises to interview the adult, but have been denied access to the premises by any person,

⁵⁷ Section 3(1).

⁵⁸ Section 3(2)

⁵⁹ Section 47.

⁶⁰ The 7 designated agencies in British Columbia include, Vancouver Coastal Health Authority, Providence Health Care Society (Vancouver Catholic Hospitals), Fraser Health Authority, Interior Health Authority, Vancouver Island Health Authority, Northern Health Authority, Community Living BC.

⁶¹ Section 48.

including the adult.⁶² Where delay could result in harm to the adult, a warrant can be obtained from a Justice of the Peace.⁶³

Following an investigation, a designated agency is able to decide on a number of different actions, including:⁶⁴

- to take no further action;
- to refer the adult to available health care, social, legal, accommodation or other services;
- to report the case to the Public Guardian and Trustee or another agency;
- to assist the adult in obtaining a representative;
- to apply to the court for an interim order requiring a person
 - to stop residing at and stay away from the premises where the adult lives, unless the person is the owner or lessee of the premises,
 - not to visit, communicate with, harass or interfere with the adult,
 - not to have any contact or association with the adult or the adult's assets, business or financial affairs, or
- to comply with any other restriction of relations with the adult, for a period of up to 30 days;
- apply to the court for an order under Part 7 of the *Family Relations Act* for the adult's maintenance;
- prepare a support and assistance plan that specifies any services needed by the adult, including health care, accommodation, social, legal or financial services.

Designated agencies must involve the adult, to the greatest extent possible, in decisions about how to seek support and assistance and explain the details of any support and assistance plan that has been developed.⁶⁵ Agencies must also communicate with the adult in a manner appropriate to the adult's skills and abilities, and may allow the adult's spouse or any relatives or friends who accompany the adult or who offer their assistance, to help the adult to understand or demonstrate an understanding of the support and assistance plan.⁶⁶ An adult with capacity can also refuse support and assistance and, in such cases, designated agencies are unable to implement a support and assistance plan.⁶⁷ If a person does not have capacity (based on an assessment carried out by the Public Guardian and Trustee), the agency can apply to the court for support and assistance orders.⁶⁸ In serious cases, designated agencies are authorised to do anything without the consent of the adult where such action is necessary to preserve the adult's life or prevent serious harm.⁶⁹

Unique to the British Columbia model is its approach to involving the community in adult protection. The Act enables the Public Guardian or Trustee to organise networks of bodies, organisations or persons for the provision of support and assistance to abused or neglected adults.⁷⁰ British Columbia has an Association of Community Response Networks, which funds nearly 40 CRNs throughout British Columbia. The CRNs are informal networks of agencies and organisations aimed at building the community's capacity to address and prevent abuse

⁶² Section 49(1).

⁶³ Section 49(3).

⁶⁴ Section 51(1).

⁶⁵ Sections 52 and 53.

⁶⁶ Section 53(3).

⁶⁷ Section 53(4) and (5).

⁶⁸ Section 54.

⁶⁹ Section 59.

⁷⁰ Section 61.

through coordinating help to those who need it, and promoting education and awareness at the local level. The benefits of CRNs are that more organisations and service providers know what to do when faced with abuse, more members of the public can recognise abuse and access help, there is more effective use of resources within local communities and the safeguarding of adults becomes a community owned issue.

An information sheet prepared by the Public Guardian and Trustee of British Columbia on Community Response Networks describes the CRNs and their role in the following way:⁷¹

A Community Response network or CRN is a group of people and organisations in a community who work together to create a coordinated response to adult abuse, neglect and self-neglect by:

- Including everyone in the community who wants to be involved,
- Raising community awareness and providing education agreements or protocols among members about how organisations or agencies will respond when an adult needs help,
- Keeping track of how the response is working.

CRN members can be anyone in the community concerned about adult abuse and neglect including designated agencies, police, community organisations serving specific groups, faith communities, financial institutions, advocacy organisations and concerned citizens.

In this respect, the British Columbia model combines a clear framework for responding to abuse and neglect, as well as establishing an innovative community based model for promoting the support and protection of vulnerable adults.

⁷¹ *B.C.'s Adult Guardianship Laws: Supporting Self-Determination for Adults in British Columbia – Protecting Adults From Abuse, Neglect and Self Neglect*, Public Guardian and Trustee of British Columbia.

4. OPTIONS FOR REFORM

There are a number of different options for improving the protection of vulnerable adults from abuse. South Australia could pursue any or several of the following options outlined below.

4.1. COMPREHENSIVE ADULT PROTECTION LEGISLATION

Project participants were strongly supportive of the adoption of comprehensive adult protection legislation in South Australia. The Scottish *Adult Support and Protection Act 2007* provides a good example, which could be used to model draft legislation. However, some aspects of the Scottish Act may not be appropriate for South Australia, where elements of the British Columbia Act may be more appealing.

Based on the feedback from project participants, comprehensive legislation in South Australia should include the following elements:

- Clear definitions of ‘abuse’,
 - Refer to Appendix 3 which outlines the definitions adopted by the project participants and the debate that led to them.
- Powers conferred on a new adult protection unit to investigate abuse and intervene in cases of serious abuse.
 - Here the provisions of the British Columbia *Adult Guardianship Act 1996* can be seen to strike a reasonable balance between the rights of the adult and the intervention powers of the investigating agency. The *Scottish Adult Support and Protection Act 2007* takes a stronger approach to intervention.
 - The adult protection unit should have powers to investigate without court order, and the ability to seek more interventionist orders from a court. They should also have powers to intervene in emergency situations. The British Columbia model provides a good example of how those powers can be framed.
- The adult protection unit should be conferred the responsibility to receive reports or notifications of abuse and to convene adult protection case conferences involving key agencies and organisation:
 - Case conferences could result in a range of possible outcomes that should be set out in the legislation, ranging from no action, to taking emergency action and seeking court orders.
- An obligation on agencies and organisations to assist in the investigation of a case of abuse or neglect and to comply with Information Sharing Guidelines:
 - This would impose a statutory obligation to cooperate with the adult protection unit, but would not necessarily override the Information Privacy Principles, depending on how the obligation was framed. Unless there was a clear statutory obligation to share information, Information Sharing Guidelines would need to be developed and should operate on a consent based system, which is more reflective of a human rights based approach.

- Key agencies should be identified and required to participate in adult protection case conferences convened by the adult protection unit, and participate in a coordinated interagency response designed to support and protect a vulnerable older person.
- The adoption of a human rights based approach, whereby the rights and freedoms of older persons are clearly set out, together with guiding principles on how those rights and freedoms can be respected:
 - This approach would be best achieved through the inclusion of a Charter of Rights and Freedoms as a Schedule to the Act, and a statement in the Act which imposed an obligation upon agencies to take the Charter into account when making decisions which affect older persons, when engaging with or providing services to older persons, and when developing internal policies and procedures. The Act would make it expressly clear what the legal effect of the Charter would be, ensuring that it provided no new cause of action.
 - It is important to ensure that the legislation makes it expressly clear that the adult protection response framework operates on a system of consent, whereby a person with capacity has the ability to refuse treatment. It is also important that any plan or intervention devised should involve action which is the least restrictive of a person's rights and freedoms.
- The adoption of a system of voluntary reporting of abuse and neglect, but a system of mandatory response that involved stages or levels of response appropriate to the circumstances of each case, and ensuring that the rights and freedoms of the adult condition the nature of any response.
 - Here, the British Columbia Act provides an excellent example of how interventions can only occur without the adult's consent in the most serious and extreme cases.
- Provisions to protect workers who report abuse within the context of their employment and provisions which ensure the confidentiality of any person who reports abuse as well as protecting them from any liability arising from the making of a report.
 - The relevant sections of the *Adult Guardianship Act 1996* in British Columbia provide a useful reference point, from which those provisions could be modelled.
- The inclusion of a system for developing Community Networks for Adult Protection (CNAPs):
 - The British Columbia innovation should be replicated in South Australia and underpin the development of a State-wide education campaign around the abuse of older persons and the development of stronger support networks for vulnerable adults within local communities;
 - Local governments could be called upon to lead the establishment of CNAPs throughout the State, which would be open to all interested members of a community (ie, schools, sporting, cultural and religious organisations etc).
- The development of a practically focused Code of Practice, similar to that which supplements the *Scottish Adult Support and Protection Act 2007* in Scotland, to support and promote the implementation of the Act.

The adoption of comprehensive legislation could possibly be extended to all vulnerable adults within the community and demonstrate the importance of the issues involved. It

would give appropriate recognition of government's and the community's responsibilities for safeguarding vulnerable adults, just as the *Children's Protection Act 1993 (SA)* does with respect to children.

4.2. INCREMENTAL LEGISLATIVE REFORM

British Columbia's *Adult Guardianship Act 1996* provides an example of how existing guardianship legislation could be amended to establish a system for adult protection. However, this approach was not supported by the project participants, who were strongly in favour of the adoption of comprehensive legislation. Were South Australia to insert a new Part into the *Guardianship and Administration Act 1993 (SA)*, it should include all of the elements, referred to above, that would appear in comprehensive legislation. However, a review of the underlying premises of the Act would be needed, to ensure that a human rights based approach was adopted. Thus, considerable amendments of the existing legislation would be required. In addition, incremental reform is likely to be just as complex and time-consuming as the development and adoption of comprehensive legislation. Hence, the advantages of pursuing incremental reform would be minimal.

4.3. A NEW POLICY FRAMEWORK FOR ADULT PROTECTION

The New South Wales Interagency Protocol provides an example of how the abuse of older people and its indicators can be better promoted across agencies. However, the NSW Protocol lacks a number of important features that the project participants thought were essential: information sharing guidelines; a clearly mandated response framework; and the embedding of human rights based approach within the response framework. Such a document can be very positive in promoting awareness of abuse and the roles of the key agencies involved, but without a number of innovative strategies designed to promote better interagency responses in cases of abuse, a protocol or policy will do little to improve the current framework. Thus, resources would be needed to support and underpin innovative practices which can actually enhance the current system. What is needed within the context of a policy framework is the following:

- The adoption of clear definition of abuse, its signs and what makes an older person 'vulnerable'.
- The adoption of information sharing guidelines that are premised on a consent based system and do not include a Cabinet exemption, at least until clients and other stakeholders are properly consulted.
- The establishment of an Adult Protection Unit, perhaps best located within the Department of Families and Communities, which would assume responsibility for receiving reports or notifications of abuse and for convening case conferences involving key agencies and organisations.
- The development of an Adult Protection Response Framework (APRF) which set out clearly how a coordinated interagency response would operate. The APRF would need to rely on the powers of SAPOL to intervene in serious cases or where consent was not given, as no agency would have authority to respond to cases of abuse (given the absence of legislative reform). However, interagency responses based on the consent of the older person could enhance the current system, but would not cover every case.

- The policy should be adopted as a whole-of-government policy so that it applied across government, and should be included in all agreements made between government and organisations involved in the delivery of services to older persons. Memorandums of Understanding could be developed between Local Governments and the State government, for the purposes of extending the policy's reach and for the establishment of Community Networks for Adult Protection. These networks should act as a critical component of the government strategy to promote education and awareness of abuse and the APRF.

A whole-of-government policy could represent an important first stage in the government's strategy for protecting vulnerable adults. However, the policy should not be adopted at the expense of comprehensive legislation, but merely represent an interim measure designed to improve systems in the lead up to the enactment of legislation.

4.4. ADDITIONAL ELEMENTS OF A LEGAL OR POLICY FRAMEWORK

4.4.1. ADULT PROTECTION CALL CENTRE

At the Centre of Practice Workshop, there was considerable support for a 1800 number to be developed, providing a point of entry for older persons, service providers or members of the community to bring queries, concerns or complaints regarding actual or potential abuse of older persons. Comparisons were drawn with the Domestic Violence and Aboriginal Family Violence Gateway services currently operating in South Australia, and with the Child Abuse Report Line (CARL).

One of the key aims of developing a new approach to adult protection is to inform and empower older persons as well as to disseminate more information about elder abuse and its indicators within the wider community. Providing a 1800 number would ensure that, as people become better informed about abuse of older persons, the community is provided with a central contact point within government where concerns can be referred and recorded.

Project participants were of the view that the service should be located within a Government Department and an Adult Protection Unit established to support the Call Centre. To ensure the success of a central call centre or Older Persons Gateway, measures would need to be put in place for ensuring that cases were managed appropriately and in a timely manner, that liaison between agencies was facilitated and supported for that purpose, and that systems were in place for quality assurance and regular tracking of cases. Information sharing guidelines would also facilitate that process.

A central call centre could operate almost immediately, without the augmentation of existing authority given to any agency. However, without a central body legally mandated to manage and respond in cases of abuse, the Gateway would have considerable inherent weaknesses. Ideally, the 1800 number or 'gateway' proposal would be most likely to succeed if formal legislation or policy required agencies to collaborate with other agencies under the scheme, and conferred authority on the Unit to respond. A call centre would also be most effective if it was part of a broader scheme which included strategies for community education, interagency collaboration, investigation and quality assurance. There is no impediment to establishing such a portal as a complementary measure to a policy

framework. The weaknesses would reside in the capacity to respond effectively, in the absence of legislation, when cases of abuse were referred to the call centre.

4.4.2. COMMUNITY NETWORKS FOR ADULT PROTECTION

Irrespective of the reform measures adopted by government, there would be considerable value in the adoption of community networks for adult support and protection. Community based approaches have the benefit of activating local community groups in promoting awareness and education as well as enhancing a community's capacity to identify instances of abuse. In the absence of a legislative framework which authorises specific agencies to investigate and formally respond to abuse, a community network model in South Australia would have to be based on strengthening measures for education and awareness, and ensuring that communities know how to respond in cases of suspected, reported or actual abuse – not by investigating the case themselves, but through referring individuals to the key agencies who can take a more active role.

South Australia's strategies for safeguarding vulnerable adults would be enhanced by the development of similar community networks along similar lines to the CRNs operating in British Columbia. The primary role of such networks would be to promote education and awareness about abuse and its signs, develop programs for raising community awareness, coordinate training or information seminars to various community groups on abuse and to provide a local contact point for individuals seeking advice or assistance about key agencies and service providers. Community networks could also be led by a small group of community-based organisations in each region or council area, each of which was contracted to provide support services on behalf of the State Government to vulnerable adults not eligible for services delivered by agencies such as ARAS or Domiciliary Care Metropolitan.

ARAS could potentially play an instrumental role in the development of community networks and localised strategies for promoting education and awareness. Local Governments could also be encouraged to ensure that a member of council staff had responsibility for adult protection and to assume an active role in community networks.

4.4.3. WORKING WITH VULNERABLE PEOPLE CHECKING SYSTEMS

The Australian Capital Territory and Tasmania have taken steps to introduce 'A Working with Vulnerable People Checking System'. The *Working with Vulnerable People (Background Checking) Bill 2010* (ACT) is currently before the ACT Legislative Assembly. The Tasmanian checking system is modelled on the system developed by the ACT.

The aim of the ACT checking system is to reduce the incidence of sexual, physical, emotional or financial harm or neglect of vulnerable people by screening individuals who work with or volunteer services with children and vulnerable adults. The registration based checking system established in the *Working with Vulnerable People (Background Checking) Bill 2010* (ACT) requires employees and volunteers to undertake periodic background checking and risk assessment. Individuals that pose an unacceptable risk are not permitted to work with vulnerable adults. It establishes a mandatory minimum checking standard to apply across all regulated activities.

For the purposes of the ACT bill, ‘vulnerable person’ is defined as ‘a child or adult who is disadvantaged and accessing a regulated activity in relation to the disadvantage’.

In South Australia, the Department for Families and Communities enforces a policy of screening and assessing criminal history information for applicants working or volunteering with children, vulnerable adults or aged care recipients. In this context, vulnerable adult means a person with a disability and recipients of aged care services not subsidised under the *Aged Care Act 1997* (Cth). This policy is a position-based system, meaning an applicant is assessed in relation to a specific position. It does not create a system of mandatory minimum checking comparable with the ACT and Tasmanian system.

If South Australia were to adopt a comprehensive legislative framework for adult protection, it could use that opportunity to ensure consistency across the sector by extending a checking system to all persons working with vulnerable adults.

4.4.4. EDUCATIONS PROGRAMS AND FURTHER CONSULTATION

Any measures adopted to support and protect vulnerable adults living within the community will need to be supported through a State-wide education program – at the consumer level, the wider community level and at the service provider level. Bodies such as ARAS could provide a leading role in delivering such education programs, but adequate resourcing would need to be allocated.

The current project has engaged the expertise of key agencies and service providers, but has so far had no direct engagement with older persons and only limited involvement with sections of the wider community. Further consultations will therefore be necessary to ensure that these groups are provided with the opportunity to comment on any proposed reforms.

5. INNOVATIONS IN ADULT PROTECTION FOR SOUTH AUSTRALIA

Combining a human rights based approach with a system for coordinated interagency responses in cases of abuse, would be an innovative approach to adult protection in Australia. Indeed, if these measures were embodied in comprehensive adult protection legislation, drawing on the best practice from overseas but tailored to an Australian constitutional setting, South Australia would lead the nation in responding to what is emerging as a major policy concern for all communities with an ageing population.

While New South Wales lead the nation in developing an interagency protocol for responding to the abuse of older persons,⁷² their framework is not premised, in a significant way, on respect for the rights and freedoms of older persons. Were South Australia to adopt a Charter of Rights and Freedoms of Older Persons that instrument could underpin any legal or policy framework developed, and form the basis of programs for widespread community education. The absence of the latter reflects a weakness of the New South Wales Protocol that can prevent community ownership of and engagement with an adult protection framework.

As is the case in the majority of Australian jurisdictions, South Australia lacks a charter of human rights, which would almost certainly have required the consideration of human rights factors when developing new legislation or policy around adult protection. The absence of such a charter is no impediment to using human rights principles when developing law and policy, however. Indeed, governments are frequently better placed to adapt human rights principles in more targeted ways through using human rights to guide the development of specific laws and policies. In doing so, decision-makers and service providers in particular sectors are better able to understand and apply human rights when they have the benefit of detailed protocols and policies that are specifically tailored to their own work. While general human rights Charters can have many positive benefits, their practical realisation is often most keenly felt through the development of detailed policies and procedures which can promote changes in attitudes, organisational culture and practice in a way that general legislative instruments cannot.

5.1. THE RIGHTS AND FREEDOMS OF OLDER PERSONS

The rights of older persons are not specifically captured in any binding international instrument to which Australia is a party. Australia is, however, a party to each of the major human rights treaties, including the following:

- International Convention on Civil and Political Rights 1966 (ICCPR)
- International Convention on Economic, Social and Cultural Rights 1966 (ICESCR)
- Convention on the Elimination of All Forms of Racial Discrimination 1964 (CERD)
- Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW)
- Convention Against Torture and Other Cruel, Inhuman or Other Forms of Degrading Treatment 1984 (CAT)
- Convention on the Rights of the Child 1989 (CRC)

⁷² New South Wales Government, *Interagency Protocol for Responding to Abuse of Older People*, 2007.

- Convention on the Rights of Persons with Disabilities 2006 (CRPD)

The rights contained in the above treaties do apply to all persons, including older persons. In addition, there is a non-binding instrument dealing with the rights of older persons, and an international plan of action on ageing: the United Nations Principles for Older Persons;⁷³ and the Madrid International Plan of Action on Ageing.⁷⁴ The UN Principles for Older Persons are based on five core objectives:

- Independence
- Participation
- Care
- Self-fulfilment
- Dignity

These Principles are not framed in terms which were intended to create legal obligations on the part of nation-states. Nonetheless, they are simply framed and easily comprehended. From a legal perspective, however, when attempting to identify the human rights of older persons, it is advisable that one combine the Principles for Older Persons with the binding human rights obligations contained in treaties to which Australia is a party. The latter represent human rights which Australia is bound to promote and protect under international law and each right is expressed in positive terms. The Principles, by way of contrast, are not framed in positive terms as legal 'rights'. Instead they are cast as aspirational goals and speak to others as opposed to older persons: 'Older persons should be able to reside at home for as long as possible'.

5.1.1. CONSTITUTIONAL ISSUES SURROUNDING THE RECOGNITION OF OLDER PERSONS' RIGHTS IN AUSTRALIAN LAW

Under international law, Australia's ratification⁷⁵ of the seven human rights treaties above means that Australia, as a nation, is bound to comply with their terms. That includes the laws, policies and decisions made at the State and Territory level, which, if found to be inconsistent with such treaties, can leave Australia in breach of its international legal obligations.

The federal government's capacity to bind Australia as a nation without consulting the States and Territories was, throughout the 1980s and 1990s, one of the most contested areas in federal-State relations. Indeed, some of Australia's landmark constitutional battles have involved the ratification of treaties by the federal government and their subsequent implementation into domestic law using the external affairs power conferred on the federal parliament under s 51(xxix) of the Constitution.⁷⁶ However, High Court decisions have made clear the scope of the Commonwealth's power with respect to international treaties, but the Court has also articulated certain requirements associated with the use of the external

⁷³ Adopted by General Assembly Resolution 46/91 of 16 December 1991; available at: <http://www2.ohchr.org/english/law/>.

⁷⁴ Adopted at a Conference from 8-12 April 2002; available at: http://www.un.org/ageing/madrid_intlplanaction.html.

⁷⁵ 'Ratification' is a term which describes one of the processes whereby nation-states become legally bound by treaties (also known as conventions) under international law. Another form of adopting a treaty is via its subsequent 'accession'.

⁷⁶ *Commonwealth v Tasmania* (1983) 158 CLR 1 (*Tasmanian Dam Case*) is perhaps the most famous example.

affairs power. One requirement for the power to be enlivened is that a treaty not be written in 'aspirational' terms, but set out a clear course of conduct for nation-states to follow. Another aspect of the power which would logically be affected by the requirement regarding aspirational treaties, is that instruments of less than treaty status (such as the UN Principles for Older Persons) can be used to assist in the interpretation of relevant treaties, or guide their implementation into domestic law. However, the High Court has never decided by a majority that such instruments can themselves enliven the external affairs power.

These constitutional issues raise questions about the ability of the federal parliament to implement the UN Principles for Older Persons into domestic law. Because of the nature of the principles as non-binding principles rather than rights, it is unlikely that the federal parliament could adopt them in domestic law without approaching them as principles related to the rights contained in binding human rights treaties to which Australia is a party.⁷⁷ Thus, constitutional limits mean that federal parliament would need to implement the human rights of older persons as expressed in major human rights treaties if it wished to also incorporate the Principles into domestic law.

These federal constitutional issues do not limit the power of State parliaments and governments to use the Principles as the basis for policy or legislation (given the different constitutional issues at the State and Territory level), but they do support the notion that blending the UN Principles with binding human rights treaties strengthens the legal basis upon which any domestic framework is based. It would also assist with potential harmonisation across Australian jurisdictions, in the event that adult protection frameworks are adopted elsewhere and are based on a human rights approach.

With the above in mind, it is recommended that any proposed South Australian framework be informed by both the binding human rights treaties to which Australia is a party as well as the UN Principles. It is also recommended that the human rights of older persons be expressed as individual rights rather than merely as aspirational goals designed to influence the behaviour of others, particularly aged care workers. Statements of rights should both inform and empower the holders of those rights, as well as condition the behaviour of others who interact with the older person. A statement of rights should also spell out the fact that older persons bear an obligation to respect and protect the rights of others and that very few rights are absolute.

5.1.2. A CHARTER OF RIGHTS AND FREEDOMS OF OLDER PERSONS

In adopting a human rights based approach to adult protection in South Australia, it is recommended that any legislation or policy which is adopted include a basic Charter of Rights and Freedoms of Older Persons. That Charter should be based on the major treaties to which Australia is a party, in particular, the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR), which represent the two core human rights treaties. The UN Principles for Older

⁷⁷ See for example, *Victoria v Commonwealth* (1996) 187 CLR 416 (*The Industrial Relations Act Case*), [33], where Brennan CJ, Toohey, Gaudron, McHugh and Gummow JJ stated: 'There may be some treaties which do not enliven the legislative power conferred by s 51(xxix) even though their subject-matter is of international concern ... When a treaty is relied on under s 51(xxix) to support a law, it is not sufficient that the law prescribes one of a variety of means that might be thought appropriate and adapted to the achievement of an ideal. The law must prescribe a regime that the treaty has itself defined with sufficient specificity to direct the general course to be taken by the signatory states.'

Persons can then be combined with those two treaties to articulate the basic rights and freedoms of older persons. The following represents an example of how that could be achieved:

Older persons are entitled to respect and protection of their basic rights and freedoms, and bear a corresponding obligation to respect and protect the rights and freedoms of others. All older persons have the following rights and freedoms:

Dignity & Self-Determination

1. Older persons have the right to be treated with dignity and humanity and to be free to exercise personal self-determination.⁷⁸
2. Older persons have the right to freedom of movement and to choose their place of residence. These rights shall only be restricted in accordance with law, where such restriction is necessary to protect public health, public order or morals, and the rights and freedoms of others.⁷⁹

Liberty & Security of The Person

3. Older persons have the right to be free from torture or other forms of cruel, inhuman or degrading treatment.⁸⁰
4. Older persons have the right to liberty and security of the person and to be free from exploitation and physical, social, psychological and sexual abuse. No person shall be deprived of their liberty except in accordance with procedures established by law.⁸¹

Equality & Non-Discrimination

5. Older persons have the right to exercise their rights free from all forms of discrimination, whether on the basis of age, sex, colour, sexual orientation, religion, political opinion, educational qualification, national origin or ethnicity.⁸²
6. Older have the right to recognition as a person before the law and to be treated equally before the law.⁸³

Minimum Standards of Living & Care

7. Older persons have the right to life, to adequate food, clothing and shelter and to enjoy the highest attainable standards of physical and mental health.⁸⁴

Privacy & Family

8. Older persons have the right to be free from arbitrary or unlawful interferences with his/her privacy, family, home or correspondence.⁸⁵

⁷⁸ Articles 1 & 10, ICCPR; Article 1, ICESCR; Principles 3, 14, 15, UN Principles for Older Persons.

⁷⁹ Article 12, ICCPR; Principle 6, UN Principles for Older Persons.

⁸⁰ Article 7, ICCPR; CAT; Principle 17, UN Principles for Older Persons.

⁸¹ Article 9, ICCPR; Article 12, ICESCR; Principle 17, UN Principles for Older Persons.

⁸² Article 2, ICCPR; Article 2, ICESCR; Principle 18, UN Principles for Older Persons.

⁸³ Articles 16 & 26, ICCPR; Principle 12, UN Principles for Older Persons.

⁸⁴ Article 6, ICCPR; Articles 11 & 12, ICESCR; Principles 1, 10-13, UN Principles for Older Persons.

9. Older persons have the right to a family life and to have their family unit respected by others, including government agencies and officials.⁸⁶

Social Participation

10. Older persons have the right to freely associate with others and to participate fully in the social and cultural life of their community.⁸⁷

Freedom of Thought, Conscience & Expression

11. Older persons have the right to exercise freedom of thought, conscience and religion.⁸⁸
12. Older persons have the right to freedom of opinion and expression and to seek, receive and impart information and ideas. Adult persons have the right to seek, and be provided with, personal information about him/herself held by government agencies of officials.⁸⁹

Human rights are not absolute, but may only be subject to reasonable limits in accordance with law as can be demonstrably justified in a free and democratic society.

...

Whilst it is important to ensure consistency with international law when framing a Charter, a simpler way of capturing these rights in documents which are to be used for educational purposes, is to list them in the following way:

Older persons are entitled to respect and protection of their basic rights and freedoms, and bear a corresponding obligation to respect and protect the rights and freedoms of others. All older persons have the following rights and freedoms:

- To be treated with dignity and humanity
- To exercise personal self-determination
- To freedom of movement, including the right to choose their place of residence
- To freedom from torture or other forms of cruel, inhuman or degrading treatment
- To liberty and security of the person
- To freedom from exploitation and physical, social, psychological and sexual abuse
- To freedom from discrimination of all kinds
- To recognition as a person before the law
- To equality before the law
- To life
- To adequate food, clothing and shelter
- To enjoy the highest attainable standards of physical and mental health
- To freedom from arbitrary or unlawful interferences with his/her privacy, family, home or correspondence
- To family life and to have their family unit respected by others, including governments

⁸⁵ Article 17, ICCPR; Principles 5, 10, 17, UN Principles for Older Persons.

⁸⁶ Article 23, ICCPR; Article 10, ICESCR; Principles 10, 5, UN Principles for Older Persons.

⁸⁷ Article 25, ICCPR; Article 15, ICESCR; Principles 7, 8, & 9, UN Principles for Older Persons.

⁸⁸ Article 18, ICCPR.

⁸⁹ Article 19, ICCPR; Principles 4, 15, 16, UN Principles for Older Persons. This right is also supported by Freedom of Information legislation throughout Australia.

- To freedom of association
- To participate in the social and cultural life of the community
- To freedom of thought, conscience and religion
- To freedom of opinion and expression

Human rights are not absolute, but may only be subject to reasonable limits in accordance with law as can be demonstrably justified in a free and democratic society.

Given the absence of human rights legislation in South Australia, any framework for adult protection would be best served through the express inclusion of these fundamental rights and freedoms. This could be achieved through their inclusion either in the body of a policy or statute, or as an appendix or schedule. They could also be adopted in a stand-alone but non-binding Charter (itself adopted as a policy instrument) which would be separate from any protocol, law or policy.

5.1.3. THE LEGAL EFFECT OF A CHARTER

Articulating the rights of older persons would ensure that those rights condition the policies and practices of service providers and government bodies, as well as empower older persons through the list's dissemination. However, it is important to note that, even if such rights were included in the context of legislation, the effect would not be to create a new cause of action that could form the basis of litigation. The principal effect would be to make such rights a relevant consideration in decisions of government officers or agencies affecting older persons, and any law or policy should be made that expressly clear, as the *Aged Care Act 1997* (Cth) does with respect to the aged care service providers which it funds. However, the effect of including a Charter in either a law or policy can have different consequences on different agencies and organisations:

- For public sector agencies there would be possible consequences under administrative law, whether the obligation to act consistently with a Charter is contained in an Act or a policy;
- For organisations which are bound via agreements with government the obligation to apply the Charter would be included as a contractual term, where the consequences of failing to take the Charter into account will depend on the terms of the agreement;
- For organisations which agree to act consistently with the policy through the adoption of a Memorandum of Understanding with government, a failure to refer to the Charter can have only minimal consequences.

The most significant implications would, therefore, extend to public sector agencies, though, even there, it would be an exceptional case where legal remedies would be open against the agency for a failure to take account of the Charter. Judicial review of administrative decisions made by public sector agencies is possible in the Supreme Court of South Australia, which has an inherent jurisdiction to review the decisions of public officers.⁹⁰ Remedies are, however, limited in cases where the decision of an individual government officer is the subject of judicial review and the Court has a general discretion over whether to hear an application or not.⁹¹

⁹⁰ *Supreme Court Act 1935* (SA), s 17.

⁹¹ *Supreme Court Civil Rules 2006* (SA), Rules 199 and 200.

The possible legal effect of a Charter of Rights and Freedoms of Older Persons would also depend on the scope and effect of the *Administrative Decisions (Effect of International Instruments) Act 1995* (SA). This Act was adopted in the wake of the High Court's decision in *Minister for Immigration and Ethnic Affairs v Teoh*.⁹² In that case, the High Court accepted, for the first time and not without controversy, that the mere ratification of a treaty without the implementation of that treaty into domestic law could create a legitimate expectation that the federal executive (which includes all government officers exercising public authority) would act consistently with that treaty.⁹³ The effect was to ensure that, in cases where a treaty was not intended to be followed in a substantive sense by a government decision-maker, the individual affected by the decision was to be given an opportunity to present submissions on that issue. The decision therefore introduced an additional procedural fairness requirement as a consequence of the mere act of ratification (which was treated as a considered statement of government policy).

South Australia's decision to enact what is known as 'anti-*Teoh* legislation' was premature and unnecessary;⁹⁴ the judgment of the High Court only extended to the federal executive and not to State governments. Nonetheless, the legislation has not been repealed and needs to be considered in the context of a Charter's adoption. While the Act is unlikely to prevent the intended legal effect of recognising the rights and freedoms of older persons within the context of an adult protection framework, the impact of its operative provision – section 3 – needs to be clarified.

Section 3 of the *Administrative Decisions (Effect of International Instruments) Act 1995* (SA) provides that international instruments which do not have the force of domestic law under an Act of the Commonwealth or State parliaments cannot give rise to a legitimate expectation that administrative decisions will conform to the terms of the instrument, or that procedural fairness will be afforded in a case where a proposed administrative decision does not conform to the terms of the instrument. The section does not extend to instances where a human rights treaty has the force of law (ie, is incorporated into a statute).

Whether comprehensive adult protection legislation which included a Charter as a Schedule or as part of the Act itself would be viewed as having 'the force of law' is open to debate. The intended effect of its inclusion would be to make it a relevant consideration for those responsible for delivering aged care services, but it would not be possible to use its inclusion as the basis for seeking remedies where the Charter had been breached, other than those which are already possible under administrative law where an application for judicial review can be made to the Supreme Court. To that extent, the rights and freedoms would arguably have 'the force of law', but only as a relevant consideration in administrative law and not through the provision of a separate cause of action.

There is another reason why the Act should not affect or limit the intended operation of a Charter contained in an adult protection framework. By applying ordinary principles of statutory

⁹² (1995) 183 CLR 273.

⁹³ For further information, see, W Lacey, 'In the Wake of *Teoh*: Finding an Appropriate Government Response', (2001) 29 *Federal Law Review* 219; W Lacey, *Implementing Human Rights Norms: Judicial Discretion and Use of Unincorporated Conventions*, Presidian Legal Publications, 2008, Chapter 3.

⁹⁴ For this reason the Act should be repealed, in order to avoid any confusion regarding future developments in law and policy.

interpretation, section 3 of the Act should not be construed as preventing the South Australian Government from developing specific laws or policies (including a Charter of Rights and Freedoms of Older Persons) that are intended to give effect to the principles of international instruments, other than through the creation of legitimate expectations (in the sense described in *Teoh's Case*). While the Act certainly prevents legitimate expectations arising where a treaty was not yet incorporated into domestic law, it arguably would not apply where the government had adopted its own specific law or policy that was influenced by, or even modelled on, international human rights treaties. In the case of the Charter of Rights and Freedoms of Older Persons, it would be the Charter, rather than the 'international instrument' upon which it was based, that would be the relevant instrument. Section 3 is concerned with the consequences of ratification of a treaty, not with the consequences of the development of a subsequent and specific policy developed by government to give some effect to a treaty. Thus, using accepted principles of statutory construction, the terms of section 3 would not apply to the proposed Charter.

However, there is an argument that the Charter could well form the basis of its own legitimate expectation in certain circumstances, based on both a literal and purposive reading⁹⁵ of section 3. Assuming the Charter is distinct from and separate to the international instrument upon which it was based, section 3 would arguably not prevent a legitimate expectation from arising on the basis of the Charter, as opposed to the treaty. However, the intended effect of the Charter as a component of an adult protection framework is to make the rights and freedoms of older persons a *relevant consideration*, not the basis upon which a *legitimate expectation* might arise. In administrative law terms, the intended effect of the Charter concerns an entirely separate ground of judicial review to that which was the focus of the anti-*Teoh* legislation. Accordingly, the Act would not prevent the intended effect of the Charter (either as part of legislation or a whole-of-government policy) on public sector agencies subject to administrative law or organisations which were contractually obliged to comply with its terms.

Ideally, any legal and policy framework that is adopted should make the intended effect of a Charter of Rights and Freedoms of Older Persons absolutely clear. Its purpose is to promote awareness of the basic rights of all older persons and to condition the way that workers in the aged care service industry interact with and treat older persons. Its purpose is largely educational and designed to promote cultural change within agencies regarding the manner in which older persons are to be treated and the manner in which statutory mandates and contractual obligations are met. By making the Charter a relevant consideration that all agencies and organisations are required to consider, respect and uphold, the Charter would be able to achieve those aims. There is, therefore, no need to confer additional legal consequences in cases where a worker fails to comply with the Charter (ie, by conferring a right to seek damages from a Court), although that would certainly be within the power of parliament to do so.

⁹⁵ *Acts Interpretation Act 1915 (SA)*, s 22.

5.2. STRATEGIES FOR EARLY INTERVENTION AND COORDINATED INTERAGENCY RESPONSE

One of the key themes which emerged from this project is the absence of a coordinated framework for responding to cases of abuse against older persons and the absence of a framework which can support early intervention before abuse escalates to a dangerous level. In this respect, the safety of vulnerable adults is not protected in the same way, or nearly to the same extent, as vulnerable children or victims of domestic violence. In South Australia, other than SAPOL, no agency is conferred legislative power to investigate or respond to cases of suspected or actual abuse.

Given that abuse will not always constitute a crime and evidence may not always be sufficient to substantiate a prosecution, the role of SAPOL is generally going to be limited to the most serious cases of abuse. In many other instances, the presence of SAPOL may possibly inflame a situation or cause individuals to be reticent to report cases of abuse in the future. What is needed is the capacity for multiple agencies to collaborate when responding to abuse in order to ensure that the appropriate support can be provided. However, in the absence of an agency with powers to lead an investigation, existing agencies must respond within the limits of their mandate.

Another barrier to interagency cooperation is the need to protect the privacy of personal information. Under the Information Privacy Principles, personal information cannot be used for purposes other than the purpose for which it was obtained unless:

- *the individual concerned has consented to use of the information for that other purpose;*
- *the person who holds the information believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person;*
- *use of the information for that other purpose is required or authorised by or under law;*
- *use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or a law attracting a pecuniary penalty; or*
- *the purpose for which the information is used is directly related to the purpose for which the information was obtained [emphasis added].*

South Australia's *Information Sharing Guidelines for Promoting the Safety and Wellbeing of Children, Young People and their Families*, are supported by a cabinet exemption with respect to the second exception above. An 'imminent threat' is not needed before information sharing can take place, meaning that early intervention can occur before a case becomes really serious. However, despite the exemption, the Guidelines operate by default as a consent-based system; the obligation is on every official who is subject to the Guidelines to seek the consent of the person concerned before sharing information.

An adult protection framework could also seek a similar exemption from Cabinet, as well as operate as a consent-based system. However, there are significant differences between the system for protecting vulnerable children and current mechanisms (or proposed mechanisms) for protecting vulnerable adults that need to be considered. It may well be the case that a Cabinet exemption is unnecessary for adults, and that a consent based system is appropriate in all but the most serious cases of abuse.

One of the major differences to note is the fact that there is no adult equivalent of the *Children's Protection Act 1993 (SA)* and no agency with authority to investigate or formally respond to cases of abuse. Another difference is the current absence of legal protections for the rights of older persons, compared with those afforded children under section 4 of the *Children's Protection Act 1993 (SA)*. That section sets out fundamental principles upon which the Act must be complied with and provides (in part) as follows:

- (1) Every child has a right to be safe from harm.
- (2) Every child has a right to care in a safe and stable family environment or, if such a family environment cannot for some reason be provided, in some alternative form of care in which the child has every opportunity that can be reasonably provided to develop to his or her full potential.
- (3) In the exercise of powers under this Act, the above principles and the child's wellbeing and best interests are to be the paramount considerations.
- (4) In determining a child's best interests, consideration must be given to the following:
 - (a) the desirability of keeping the child within the child's own family and the undesirability of withdrawing the child unnecessarily from a neighbourhood or environment with which the child has an established sense of connection;
 - (b) the need to preserve and strengthen relationships between the child the child's parents and grandparents and other members of the child's family (whether or not the child is to reside with those parents, grandparents or other family members);
 - (c) the need to encourage, preserve and enhance the child's sense of racial, ethnic, religious, spiritual and cultural identity and to respect traditions and values of the community into which the child was born;
 - (d) if the child is able to form and express his or her own views as to his or her best interests--those views;
 - (e) the undesirability of interrupting the child's education or employment unnecessarily.
- (5) In relation to an Aboriginal or Torres Strait Islander child, the Aboriginal and Torres Strait Islander Child Placement Principle is to be observed.

- (6) A child who is placed or about to be placed in alternative care—
 - (a) must be provided with--
 - (i) a nurturing, safe and stable living environment; and
 - (ii) care that is, as far as practicable, appropriate to the child's needs and culturally appropriate; and
 - (b) must be allowed to maintain relationships with the child's family (including the child's grandparents) and community, to the extent that such relationships can be maintained without serious risk of harm; and
 - (c) must be consulted about, and (if the child is reasonably able to do so) take part in making, decisions affecting the child's life, particularly

- decisions about the child's ongoing care, where the child is to live, contact with the child's family and the child's health and schooling; and
- (d) must be given information that is appropriate, having regard to the child's age and ability to understand, about plans and decisions concerning the child's future; and
 - (e) is entitled to have his or her privacy respected; and
 - (f) if the child is in alternative care and under the guardianship, or in the custody, of the Minister--is entitled to regular review of the child's circumstances and the arrangements for the child's care.
- (7) All proceedings under this Act must be dealt with expeditiously, with due regard to the degree of urgency of each particular case.

Section 4 highlights the current gap between the legal protection of adults and children in South Australia. That gap can only really be filled through the adoption of new legislation aimed at providing safeguards for vulnerable adults who are unable to protect themselves and who are vulnerable to abuse. While a policy framework coupled with information sharing guidelines would represent a significant step forward, in the absence of legislation SAPOL would remain the only agency with effective power to intervene in cases of abuse. A policy framework would have to include this inherent weakness, until such time as legislation was adopted and included the statutory conferral of authority on a new agency or departmental unit to exercise interventionist and protective powers for the benefit of vulnerable adults. That agency or unit should ideally be multidisciplinary and include responsibility for leading and coordinating interagency responses to reports of abuse. Until then, SAPOL would need to lead interventions, whereas it would be preferable if SAPOL's role was limited to coordinating responses in only the most serious of cases (a role which it assumes for serious cases of domestic violence under the Family Safety Framework).

In order to establish a framework for early intervention in cases of abuse, two issues need to be addressed:

- barriers to information sharing between agencies and service providers need to be removed or reduced;
- a framework for responding to abuse in a coordinated manner needs to be developed and needs to facilitate interagency collaboration for that purpose. Within that framework, a government agency ideally needs the authority to be able intervene in order to effectively safeguard a vulnerable adult who has experienced or is experiencing abuse.

There are clearly ways in which information sharing can be promoted without formal legislation, but there are significant limits to the value of any coordinated response without the existence of an agency (other than SAPOL) with power to lead a response or investigation. Legislation is therefore needed to confer authority to enter a private residence and examine or interview a person and such authority is generally only given by way of court order. Thus, in cases where consent is not given under a policy framework, SAPOL would need to be involved.

Without legislation, early intervention would primarily be limited to cases where consent of the older person had been given. In other cases, where consent was limited or not given, but where abuse was still suspected, agencies would be limited to providing information to the older person about abuse, its signs and the contact details of key agencies such as ARAS. This type of model would leave many vulnerable adults without support until abuse had escalated to a critical level, but it would promote interagency cooperation in cases where consent had been obtained.

Without legislative reform, such a model probably reflects the best of what is achievable. During the project, participating agencies gave careful consideration to the limitations of a framework that did not include legislative change to confer coordination and investigative powers upon a particular agency. Their unanimous view was that a legislative framework is essential, but that a policy framework was an important interim measure for enhancing the current practices within and across agencies. A policy framework that included information sharing guidelines, operated largely on a consent based model, and acknowledged the necessity for SAPOL to assume a lead role, would certainly promote a coordinated interagency response in a significant number of, but certainly not all, cases.

Project participants were strongly of the view that a central agency or unit should have the responsibility for coordinating responses and interagency collaboration, even where it was necessary for SAPOL to lead a response. Several ideas were floated, but there was no agreement or settled opinion, other than that any unit should be located within government. Whether that new adult protection team or unit should be located within the Department of Families and Communities (DFC), within SAPOL, or elsewhere, was not resolved by the project participants. However, the roles of that adult protection unit would include managing notifications and reports of abuse through a central portal (ie, a 1800 number), coordinating interagency collaboration and information sharing, convening adult protection case conferences involving relevant agencies, recording and managing data related to cases of abuse, and ensuring that cases are monitored and evaluated on an ongoing basis. The project participants were of the view that 1.5 FTE staff would be required to support the framework, including the employment of a full-time manager.

In practical terms, a policy based adult protection framework would require an Adult Protection Interagency Team as well as an Adult Protection Unit. The latter would provide coordination, case management and administrative support under the framework, whereas the Adult Protection Interagency Team would comprise an alliance of key agencies and organisations which would participate in adult protection case conferences. The purpose of conferences would be to develop a collaborative and coordinated response to a report or notification of abuse of an older person, ensuring that appropriate strategies were developed for safeguarding vulnerable adults. The Interagency Team should comprise the core agencies on a permanent basis, but also include specialist agencies where required.

The permanent members of the Adult Protection Interagency Team should include the following agencies and organisations:

- South Australia Police
- Office of the Public Advocate
- Legal Services Commission
- Public Trustee

- Aged Rights Advocacy Service
- Domiciliary Care Metropolitan
- Adelaide Health Services
- Country Health SA
- Royal District Nursing Service SA Inc

Agencies and organisations which could be called upon to participate in case conferences, where required, should include the following:

- Disability Services
- Housing SA
- Indigenous Services
- Multicultural SA (Interpreting and Translating Centre)
- Aboriginal Health
- Local Councils

For the framework to work effectively, each of the permanent members of the Interagency Team should be required to appoint an Adult Protection Officer to act as the agency's contact person and representative at case conferences. For other agencies and organisations not required to attend regular case conferences, the appointment of an adult protection liaison officer would be appropriate.

6. DATA COLLECTION

During the project it was found that South Australian organisations and agencies do not have consistent data collection systems that provide a clear picture of the incidence of abuse to older people, those perpetrating the abuse or contributing factors. Attributes of data collection programmes, definitional variations and perceived lack of need to collect this data are some of the issues preventing accurate collection.

For instance, if SAPOL are called to an incident of physical abuse involving an older person and a family member, Officers are likely to record this as an assault rather than abuse of an older person. Financial abuse of an older person by a family member is likely to be recorded as fraud. This does not give an accurate measure of the incidence of abuse against older people or a profile of the alleged perpetrators.

The data information that is most specifically focussed on abuse of older people in South Australia is collected by Aged Rights Advocacy Service about people who use their service. This information can be analysed to reveal a picture in relation to demographic information; risk factors; types of abuse perpetrated; the alleged abuser (gender and relationship to the client) and the types of abuse perpetrated. Similar information is not collected over the wider system.

There needs to be a state wide approach to data collection across government and non government agencies if accurate data about abuse of older people is to be collected. This would necessitate agreed definitions of abuse and risk factors. Robust data collection could be quite complex as it would need to capture factors such as whether the abuse was intentional or unintentional or whether the abuse was suspected or substantiated. Data collection about abuse to older people would rely on the cooperation not just of agencies but the workers within those agencies. Some workers have voiced a reluctance to report any concerns, fearing their suspicions may be wrong or that they could have legal action taken against them by the client or suspected perpetrator.

Without reliable data, the incidence, causes and contributors to the abuse of vulnerable older people across South Australia will remain unclear. Importantly, a comprehensive data collection system would also provide a profile of those who perpetrate abuse and the relationship between them and the older person.

Therefore, it is necessary to engage with all agencies working with older people to assess current data collection methods and to develop a system that would effectively capture relevant data that could be analysed to assist both the prevention of and timely response to abuse of older people.

The Policy Framework proposed includes an exemplar for a referral form which could create the foundation for minimum data requirements. Due to time restrictions, the Strategic Advisory Group was not able to consider this in any detail but does make a recommendation for ongoing work to be undertaken to enable the collection of consistent data.

7. PROJECT LIMITATIONS

7.1. SOCIETAL AND SYSTEMS ISSUES

During the consultation process, participants highlighted the importance of societal attitudes and systemic disadvantages faced by older people, particularly those who are isolated, physically or mentally frail and vulnerable.

This project has not explored some of the inherent issues faced by older people other than to recognise the importance for providing information and education which encourages older people and other community members to recognise and exercise their equal rights before the law.

Some of the issues raised during consultancies which an Adult Protection Program might incorporate in its advocacy were:-

- A service system that is more willing and able to meet the older person where they live to compensate for difficulties in travel etc (e.g. legal and financial advice)
- A justice system that has greater flexibility to adapt to the physical and mental frailty of older people who are victims of crime
- A coronial system which gives judicious consideration to deaths of older people and not just presume natural causes or lack of adverse events because the person is “old” and death is “expected”
- A service industry which allows for the formation of longer term client/consumer relationships on which trust can be built and personally tailored help can be provided.
- Engage the community to indicate how they can be effective in promoting positive attitudes of older people.

7.2. ABORIGINAL, TORRES STRAIT ISLANDERS AND CULTURALLY AND LINGUISTICALLY DIVERSE COMMUNITIES

This project advocates a non tolerance of abuse irrespective of culture, religion and personal life experience. However, consultations with service providers who work with older South Australians of different cultural backgrounds highlighted the need to adapt information, education and intervention strategies to provide positive, palatable and appropriate opportunities for assistance.

This project did not explore in detail how this might happen however the implementation of the Framework will require good linkages with Aboriginal Communities and CaLD communities through their representative groups and service providers to provide culturally appropriate education campaigns that target all community members.

It is important to note that any help line / report line should be accessible to members of non English speaking communities and so would need to consider the inclusion of interpreter services.

7.3. CONSUMER CONSULTATION

Although the voice of older people informed this project via previous research and reports from practitioners and other service providers, tight time-frames did not enable direct consultation with older people. The Project Team acknowledge that any policy about older people should be informed by their thoughts and views, particularly in the development of a rights based model. To ensure a respectful and inclusive process, it would be necessary to consult with older people from various

socio- economic backgrounds and cultural groups to ascertain their opinions about the proposed strategies. The Strategic Advisory Group thought consultation was particularly necessary to gain the views of older people about the Projects' recommendations in regard to information sharing.

7.4. MAPPING COMMUNITY NETWORKS

Community networks are fundamental in helping older people to safeguard their lives as they age. Local groups can bring communities together and assist to empower people with information and appropriate service response.

While the project time frame did not enable a mapping of community networks the Project Team suggest that this would be a valuable exercise. During practitioner consultations it became evident that a number of community groups could be instrumental in early recognition of harm to older people. Community houses, communities of faith, special interest and service groups and the like, all have the potential to support and protect vulnerable older people. Mapping of community networks (including those offered by local government) would identify any overlap or gaps in the services to older people.

The development and coordination of good community networks has the potential to bring communities together, promote positive attitudes toward older people and develop community based systems that will foster safer environments for people as they age.

7.5. RISK ASSESSMENT TOOLS

Consultation with health and service provision agencies indicated the lack of risk assessment tools in relation to vulnerable older adults. It was established that there were existing risk assessment tools to assess risk in relation to domestic violence or child abuse, but that these were not easily adaptable to establish the risk to a vulnerable older person. Risk assessment and risk management are significant components of adult protection work to ensure that the individual circumstances of vulnerable older adults are considered in order to produce outcomes that respect self determination and choice to the fullest extent of the older person's abilities.

Assessment of risk to a vulnerable older person can be a complex matter, needing to consider issues such as the older person's wishes, lifestyle, physical environment, any physical dependence, mental ability and any power and influence being exerted upon them from another individual.

The time frame for the project did not allow for in depth research into this complex area.

8. SUMMARY OF RECOMMENDATIONS

LEGISLATION

South Australia should consider enacting comprehensive legislation for the protection of vulnerable adults. Features of an Adult Protection Act should include the following:

- Clear definitions of abuse and vulnerability;
- The adoption of a human rights based approach, supported by a Charter of Rights and Freedoms of Older Persons and be accompanied by a set of guiding principles;
- Stepped powers of investigation and intervention conferred upon a new Adult Protection Unit, which has responsibility for receiving referrals, collating data, monitoring agency responses to reported cases, convening multi-agency adult protection case conferences and coordinating an interagency response in cases of reported abuse;
- A system of voluntary reporting of abuse, but a mandatory response system which is triggered by a report or notification of abuse;
- An obligation on key agencies to assist with the investigation of abuse and with any plan developed for the support and protection of vulnerable adults in accordance with the Act;
- An obligation on agencies and organisations to apply newly developed Information Sharing Guidelines, which should be based on consent and operate together with a Cabinet Exemption from the test of imminence of harm. (The Exemption should not to be sought until community consultation, particularly with older people, takes place.)
- Provision for the establishment of Community Networks for Adult Protection to promote education and awareness of abuse and the framework for responding to abuse;

Further consultation is required to examine South Australian support for legislation which encompasses protection of all vulnerable adults.

New legislation should be accompanied by a practically focused Code of Practice that can be used to support the Act's implementation.

Government should also consider the need and desirability for including a working with vulnerable people checking system as part of the proposed Act. (This issue was not the subject of detailed discussion throughout the project and would require further examination).

INTERIM MEASURE – POLICY DEVELOPMENT

As an interim measure, and pending legislative reform, the South Australian Government should adopt a whole-of-government policy for safeguarding vulnerable adults, as well as new Information Sharing Guidelines modelled on those which apply in South Australia with respect to children, young people and their families.

The Guidelines should operate on a consent based system, and no Cabinet exemption should be sought until further consultation with relevant stakeholders, particularly clients, had been carried out.

A Draft Policy and Draft Information Sharing Guidelines are attached to this Report.

FURTHER CONSULTATION

As part of the process leading to reform, government should conduct a process of consultation with the wider community and key stakeholders prior to the implementation of any reform measures.

This project has only involved consultation with key agencies and service providers, but not with all providers or older persons.

REVIEW OF EXISTING LEGISLATION

If legislative reform is pursued, a review of related existing legislation will be necessary. In particular, the *Guardianship and Administration Act 1993 (SA)*, the *Criminal Law Consolidation Act 1935 (SA)* and the *Intervention Orders (Prevention of Abuse) Act 2009 (SA)* will need to be reviewed and consequential amendments considered.

COMMUNITY EDUCATION / COMMUNITY ENGAGEMENT

Reform measures should be accompanied by a detailed plan for community education and awareness, and training programs devised and delivered across government agencies and to relevant organisations within the aged care sector.

In addition, there is a need for a creative strategy to engage the various and diverse community groups to provide contact points and support to older people in the community.

SERVICE RESPONSE, LEADERSHIP AND COORDINATION

The current government response needs leadership and coordination. Central to moving forward to provide a coordinated response to vulnerable older people at risk, is the identification of a clear point of accountability within the government. Service providers and community members need to know where to go if they have a concern about a vulnerable older people and to have confidence that a response will be offered. A central body would provide the point of accountability and carry responsibility for leadership in these reforms both at a policy and a practical level.

DATA COLLECTION

There needs to be a State wide data collection system across government and non-government agencies to collect accurate data about abuse of older people. The data system should enable the measurement of the incidence, causes and contributors to abuse of vulnerable older people.

This work should assist in developing a profile for those who perpetrate abuse and their relationship to the older person. Such data could be analysed to assist the prevention of, and timely response to, the abuse of older people.

RISK ASSESSMENT TOOLS

Risk assessment and risk management are significant components of adult protection work to ensure that the individual circumstances of vulnerable older adults are considered in order to produce outcomes that respect self determination and choice to the fullest extent of the older person's abilities. Assessment of risk to a vulnerable older person can be a complex matter, needing to consider the older person's wishes, lifestyle, physical environment, any physical dependence, mental ability and any power and influence being exerted upon them from another individual.

The development of a risk assessment model to enable a rights - based, coordinated, interagency response is likely to be a complex task, but one which needs to be undertaken to enable consistency throughout the system.

APPENDIX 1 PROJECT PROCESS

1. PROJECT TEAM

Following background preparation in 2010, this project commenced in January 2011.

Responsibility for project set up and management, convening the Strategic Advisory Group (Project Steering Committee) supervision of project staff and funding and contract management was undertaken by;

- John Brayley, Public Advocate
- Margaret Farr, Assistant Public Advocate
- Diane Chartres, Attorney General's Department (until April 2011)

Ms Elly Nitschke, an OPA Senior Advocate Guardian, was assigned to the project as Senior Project Officer with the brief to act as a hub for the Centre of Practice (local policy & practice advisory group) gathering and sharing information, collecting baseline data and for managing stakeholder relations and engagement at this operational level. This included ensuring the Strategic Advisory Group and other senior officers were kept abreast of the views, activities and recommendations arising from this local forum.

University Of South Australia (UniSA Team)

The OPA Team contracted assistance from the University of South Australia. The UniSA Project Team comprised of;

Dr Wendy Lacey, Associate Professor, School of Law, University of South Australia
Dr Nicholas Proctor, Professor, Chair, Mental Health Nursing, University of South Australia
Dr Kay Price, Associate Professor, School of Nursing, University of South Australia

2. KEY DELIVERABLES FOR UNI SA PARTICIPATION⁹⁶ WERE:

- deliver project coordination (including a project plan to be signed off by the Steering Group and ensuring shared understanding of the project objectives, responsibilities and timelines);
- undertake policy research and analysis;
- assist with liaison with stakeholders (and if required, act as an independent facilitator of workshops and service mapping sessions);
- provide advice and support to the Senior Project Officer in undertaking project tasks; and
- be responsible for quality assurance of project documentation and regular reporting on all aspects of the projects progress.

⁹⁶ Services Agreement between the Attorney General and University of South Australia

3 KEY STRATEGIES FOR THE PROJECT

- To conduct policy research and analysis of existing State frameworks, that is informed by an understanding of international standards and comparative practice in other jurisdictions, and
- To engage with practitioners in the field to explore what are the current issues and using the research findings and their experience, examine how adult protection practices and policies might be better harmonised across government and the community.

The project aimed to develop a rights based framework that provided a consistent, coordinated, joined – up response across all relevant agencies to prevent and address the issues of abuse and harm to vulnerable older people. The envisaged framework would promote and preserve the rights of older people, enabling them to live as autonomously as possible while delivering a respectful intervention to assist where the older person was not able to safeguard themselves.

There are numerous organisations and service providers in South Australia who play important roles in the support and protection of vulnerable older adults. Therefore, it was vital to consult widely with these key organisations and agencies to inform the project and therefore ensure that the developed framework would reflect the experience and knowledge of those who have significant input into the lives of vulnerable older people.

3.1 KEY STRATEGY 1 – POLICY RESEARCH AND ANALYSIS

The UniSA Team conducted policy research and analysis of existing State frameworks, and national and international best practice in adult protection law and policy⁹⁷. This provided an overview of the adult protection frameworks in a number of jurisdictions where best practice is adopted. The overview was largely limited to frameworks in the United Kingdom where the *Human Rights Act, 1998* (U.K.) has had considerable influence on the debate surrounding adult protection; in some Canadian Provinces and in New South Wales where a new policy framework has been adopted to promote better interagency cooperation with regard to adult protection.

This overview revealed the enhanced effectiveness of adult protection services that were underpinned by Human Rights legislation and indicated how a South Australian Framework could be positively influenced by the adoption of such rights, resulting in their practical realisation through law and policy. This information, together with that gathered in key strategy 2, led to the development of the proposed Framework.

3.2 KEY STRATEGY 2 – ENGAGE WITH PRACTITIONERS IN THE FIELD TO EXPLORE CURRENT ISSUES

To achieve results for Key Strategy 2 the OPA Project Team engaged with one hundred and fifteen practitioners, Principal Officers and relevant others (individually or in a group setting) either employed in, or associated with, the field of practice. This was conducted to gain

⁹⁷ Briefing Paper: International and National Best Practice in Adult Protection Law and Policy. Lacey, Proctor and Price, 2011.

their views and establish the current issues, including barriers to an effective response and to expose any gaps in the present system.

The research findings resulting from both key strategies were used to;

- examine how legislation, policies and practices from other jurisdictions along with the information gained from the practitioners' experience of current adult protection practices could enable a rights based framework *and*
- ensure a coordinated response to the prevention of abuse of vulnerable older adults that was consistent across all of government and the community.

4. STRATEGIC ADVISORY GROUP

The first stage in the process was for the Public Advocate to write to senior officers from key government and non – government stakeholders advising them of the project, the project aims and inviting their participation. The letter clearly identified the purpose of the project saying that the OPA was promoting a universal first response to vulnerable older people rather than one directed solely at people with a mental incapacity and that this is consistent with the new UN Convention on the Rights of Persons with Disabilities which applies to people of all ages.

Participation was invited in a number of ways:

- The Public Advocate and the OPA Project Officer offered to meet with the senior officers to discuss the project and what was sought to be achieved.
- The Senior Officers were asked to nominate up to three key people from their organisation to have contact with the Senior Project Officer during the length of the project.

The Senior Officers or their nominated representative were invited to sit on a Strategic Advisory Group to oversee and have input into, the project. The Public Advocate extended this invitation to;

- Disability and Ageing Branch of Families and Communities (formerly Office of the Ageing), the funding body for the project.
- Aged Rights Advocacy Service (ARAS)
- Council of the Ageing (COTA)
- Guardianship Board
- Legal Services Commission (LSC)
- Local Government Association (LCA)
- Aged and Community services NT and SA
- Disability and Domiciliary Care (Dom Care)
- Royal District Nursing Service (RDNS)
- Public Trustee (PT)
- South Australian Police
- Aged and Community Services NT & SA

Each of the above agreed to meet with the OPA Project Team to discuss the aims of the project and their own and their staff members' involvement in the project, including membership of the Strategic Advisory Group.

The following agencies and nominated representatives accepted the invitation to form the Strategic Advisory Group

- Mr Robert Dempsey, General Manager, Council of the Ageing
- Ms Marilyn Crabtree, Chief Executive Office, Aged Rights Advocacy Service
- Ms Debra Contala, Public Trustee
- Ms Lee – Anne Clark, Senior Social Work Clinician, Metropolitan Domiciliary Care
- Mr Dale Cleaver, Royal District Nursing Service
- Mr Ashley Lange, Superintendent, State Crime Prevention Branch, South Australian Police
- Mr Christopher Boundy, Manager, Access Services, Legal Services Commission
- Mr David Flett, Senior Project Officer, Disability and Ageing Branch in Department of Families and Communities.

The Strategic Advisory Group met three times during the project. At the first meeting, the Group agreed the following Terms of Reference;

1. Provide advice on the work and undertakings of the project and act as a sounding board.
2. Keep under review the project's progress and assist in the resolution of issues arising as a consequence of the project's conduct.
3. Contribute specific knowledge and experience either as individual committee members or through direction to other resources and personnel
4. Consider and provide input on possible improvement strategies
5. Advise on and assist in identifying implementation issues arising from proposed strategies
6. Critique the final report (s) and documents arising from the project, principally
 - A report on the current status of relevant contemporary approaches and reforms in adult protection in Australia and internationally as per 3 above
 - Documentation of a service and response mapping exercise and a comparison of the status of responses in South Australia with those identified in the above study.
 - A proposal for an adult protection strategy

At each meeting, the Group considered the information from the Centre of Practice, in regard to the current system and recommendations for future directions.

5. INTERESTED PARTIES

In addition to those approached to become members of the Strategic Advisory Group, the Public Advocate wrote to a number of Senior Officers from other significant agencies in the lives of vulnerable older people. He invited them and / or nominated staff members to speak with the OPA Project Team so that they could identify issues and suggest potential improvements that they thought were necessary to include in a rights based framework that would better support and safeguard vulnerable older people.

Letters were sent to the following organisations

- ACH Group
- Aged and Community services NT and SA
- Alzheimer's Australia (SA)
- Anglicare SA
- Commissioner for Victims Rights
- Commonwealth Dept of Health and Ageing
- Eastern Health Authority
- Equal Opportunity Commissioner
- Guardianship Board Members
- Health Consumer Alliance
- Local Government Authority
- Mental Health Services
- Migrant Resource Centre
- Multicultural Resource Centre
- Multicultural SA
- Office of Liquor and Gambling
- Office of the Guardian for Children and Young People
- Pharmacy Guild
- Royal Society of Justices
- SA Council of Social Service
- Salvation Army
- Uniting Care Wesley

6. PRACTITIONER CONSULTATIONS

In recognition of their knowledge and experience, consultations with practitioners from a wide range of agencies was undertaken to ensure that their opinions and views informed the project. It was very important to capture the 'on the ground' practical experience of service providers, those who had significant experience in working with vulnerable older people and thus able to reliably comment on the strengths and weaknesses of the current system.

Organisations and stakeholders nominated key personnel to act as a point of contact and provide input into this work. The Senior Project Officer met with one hundred and twenty practitioners either individually or in groups, depending on their availability and preferred mode of participation. At each consultation the participants were informed about the background and aim of the study and what the project team wanted to achieve. Prior to the consultations, background information and a briefing document were sent to the

participants. The consultations were conducted using an open format providing an opportunity for the practitioners to freely convey any concerns and insights that they had about issues that confront vulnerable older adults living in the community. It was important to elicit the practitioners' opinions about current gaps in the wider service provision for vulnerable older people and for them to proffer their ideas as to what would assist in addressing these gaps.

Each person consulted was given the details of the Senior Project Officer and invited to make contact if they had further information that they wanted to convey to inform the project. The OPA project team consulted with one hundred and thirty practitioners during the project.

Consultations took place with staff from the following agencies;

- Aged Rights Advocacy Service
- Domiciliary Care
- Royal District Nursing Service
- Legal Services Commission
- Office of the Public Advocacy Community Enquiry Service
- South Australian Police, State Crime Prevention Branch (including Victim Policy)
- Public Trustee, Personal Estates Branch
- Onkaparinga Council
- Marion Council
- Eastern Health Authority
- Royal Adelaide Hospital
- Modbury Hospital
- Repatriation General Hospital
- Older People's Mental Health Service
- Commissioner for Victims Rights
- Office of Women
- Equal Opportunity Commissioner
- Office of the Guardian for Children and Young People
- Meals on Wheels
- Alzheimer's Association (SA)
- Professor Jennifer Abbey, Guardianship Board Member
- Ms Euginia Koussidis, Guardianship Board Member
- Ms Margaret Brown Adjunct Research Fellow, University of South Australia
- Mr John Chesterman, Manager Policy and Education, Office of the Public Advocate, Victoria.
- Aged and Community services NT and SA, Community Care Committee
- Carers SA
- Royal Society of Justices
- Pharmacy Guild
- Aged and Community services NT and SA
- Office of the Guardian for Children and Young People
- Practice Nurses of the Northern General Division of Practice
- Mitcham Council
- Salvation Army
- Community Care
- Health Link (Allied Health)

- Companion Club Volunteers
- Adult Protection Office, South Lanarkshire, Scotland
- Professor Jill Manthorpe, Social Care Workshop Unit, Kings College, London

7. PRESENTATIONS

The OPA team presented information at two forums during the project and were able to receive feedback on both occasions from the audiences which consisted mainly of practitioners but also a number of community members.

The Public Advocate presented at the ARAS Conference, *The Legal Link*⁹⁸ where he was able to outline the project; outline overseas adult protection systems that were underpinned by Human Rights legislation; support systems such as supported decision making models, conveyed the practitioner's views of the gaps in the current system and initial recommendations for the way forward. Comments from the floor following the presentation as well as informal feedback in the break immediately afterwards, indicated strong support for the project and the development of a more responsive system to protect vulnerable adults. In particular, the feedback was that the system needed to provide a mandatory response to concerns raised about abuse to vulnerable older people.

The Senior Project Officer presented at the Flinders University's Elder Abuse Research Seminar⁹⁹ which was open to professional and community members. Again, feedback indicated not only strong support for the project but agreement that there should be a system where 'someone' had the authority to investigate concerns that were raised in relation to an older person being in 'difficult' situations where abuse or self neglect may be occurring.

8. CENTRE OF PRACTICE

The membership of the Centre of Practice was made up of senior practitioners from the members of the Strategic Advisory Group's staffs and other key organisations. This group acted as a local policy and practice advisory group. These practitioners were brought together to share information on the project's progress and to contribute to the mapping of services, pathways and responses in regard to vulnerable older adults. They were asked to identify the barriers that they experience in preventing and dealing with abuse of vulnerable older adults and to use 'free and open thinking' to workshop thoughts of ways forward in dealing with this important issue. The practitioners were in a good position to test the practicalities of suggested implementation and through this engagement, promote knowledge sharing about the issues and the cultural, policy and operational shifts required for contemporary practice

Members of the Centre of Practice were senior practitioners from the following agencies and organisations:

- Aged Rights Advocacy Service
- Domiciliary Care
- Royal District Nursing Service

⁹⁸ ARAS Conference for World Elder Awareness Day, Adelaide, June 2011

⁹⁹ Flinders University Elder Abuse Research Seminar, Adelaide, May 2011

- Legal Services Commission
- Office of the Public Advocacy Community Enquiry Service
- South Australian Police Crime Prevention Branch, including Victim Policy Section
- Public Trustee, Personal Estates Branch
- Onkaparinga Council
- Marion Council
- Eastern Health Authority
- Royal Adelaide Hospital
- Modbury Hospital
- Repatriation General Hospital
- Older People's Mental Health Service

The majority of the Centre of Practice members took part in consultations (described above) prior to coming together as the practitioner group. The few members who had not been involved in the consultations had received the background and briefing papers and so were informed about the project.

The Centre of Practice meetings were conducted in a workshop format to enable and encourage the involvement of all practitioners. There were two workshops during the project, each lasting three hours in duration.

8.1 WORKSHOP 1 HAD THE FOLLOWING AGENDA

1. The presentation of three papers (sent to the members prior to the workshop)
 - Initial themes emerging from discussions with stakeholders and preliminary research
 - Briefing Paper: A Human Rights Framework for Older Australians
 - Briefing Paper: International and National Best Practice in Adult Protection Law and Policy.
2. Facilitated discussion, responding to scenarios describing situations that highlighted issues of abuse and harm to vulnerable older people. During this session practitioners described their agencies role in the current system, the barriers to the agencies' ability to respond to suspected and actual abuse of vulnerable older people and the practitioners views on what issues the system had to address to enable it to be appropriate to deal with the abuse of vulnerable older people.

8.2 WORKSHOP 2 HAD THE FOLLOWING AGENDA:

1. The presentation of three papers (sent to the members prior to the workshop).
 - Let's close the Gaps: summary of gaps, issues and recommendations identified by Centre of Practice and from additional consultations.
 - Definitions for the project
 - Discussion Paper: The Support and Protection of Vulnerable Adults in South Australia: Current Practices and Strategies for Improvement
2. Open, facilitated discussion in response to the three papers presented. During this discussion, the Centre of Practice members made recommendations to inform the

After each workshop the Centre of Practice recommendations were referred to the Strategic Advisory Group and the Project Team for further discussion and development.

In addition to the Centre of Practice workshops and consultations, the practitioners gave on-going input into the project via telephone calls and emails. This prevented the practitioners input from being static and ensured that the project was interactive and responsive to the thoughts and views of the wider agency audience.

APPENDIX 2 CENTRE OF PRACTICE

1. SUPPORT FOR THE PROJECT

Consultations with practitioners from a wide range of agencies demonstrated excellent support for the project with significant contributions being made by the members of the Strategic Advisory Group's staffs and other interested parties. Those consulted agreed that there is a need for a system that enables the working together of lead agencies and practitioners to develop strategies that more effectively prevent and respond to abuse and harm of older people. The time, energy and expertise offered to inform this project has been most generous and inspiring, particularly in a resource stretched industry, and indicates the level of commitment that service providers have to developing a more responsive system for the vulnerable older people in our community.

'We welcome this project because each day we live with the frustration that we are restricted in our response to assisting older people who are being harmed and abused while living in the community.'

It is known that abuse occurs, often perpetrated by those closest to and trusted by vulnerable older people and that it deeply affects their well being. We also know that many older people experience isolation and self neglect with devastating consequences. Practitioners welcome this project due to their desire to have a coordinated, 'joined up' approach to dealing effectively and appropriately with the issues of harm and abuse to older people whilst ensuring that the rights of older people are upheld. This is something that practitioners have wanted and say that they have requested for a number of years.

'I went away from the meeting (Centre Of Practice Workshop) really inspired that something may actually happen out of all the conversations that have been had over the past I don't know how many years.'

Individual agencies have developed strategies that can go 'so far' in responding to the abuse of older people but practitioners believe that the current system has compartmentalised responses causing a 'silo effect' with agencies each having authority to respond to concerns and allegations of abuse to a certain stage, but hampered from going further by the funded functions of their agencies, privacy rules and lack of interagency protocols. During discussions with service providers it is evident that there is a willingness and desire to work together to establish collaborative partnerships between a range of services to prevent and respond more appropriately to abuse of older people.

Centre of Practice (CoP) members indicated that it is vital to develop a collaborative approach that addresses the gaps in the current system if there is to be an adequate and appropriate response to the issues of abuse of our vulnerable older adults. They emphasise that vulnerable older adults need this to happen if they are to be offered greater support and protection.

'We've known for years that older people are being abused and we need to develop a system that has a flexible approach - to have a system that enables practitioners to think outside of the square to provide a coordinated the best service to the older person. This project gives me hope that this will be achieved'.

It should be acknowledged that the practitioners involved in this project overwhelmingly advocated for the development of a model that would provide a mandatory response to a concern raised about a vulnerable older person who was at risk and needed assistance. They also stressed that intervention should be least restrictive and of benefit to the older person. Any intervention should promote the participation of the older person in the process and be respectful of their views and rights.

The following information captures the themes, thoughts and recommendations of the Centre of Practice members, gathered during consultations and at the workshop.

2. EMPOWERMENT OF OLDER PEOPLE

'Elder abuse is a hidden problem. It needs to be brought into the light, condemned and every effort made to empower older people, and indeed all citizens, to stop and prevent this hideous happening.'

The Centre of Practice and practitioners consulted agree that abuse of vulnerable older adults is 'everybody's business'. They state that a first step in developing any model of response is to engage the community and challenge negative attitudes to ageing by vigorously promoting strategies for active and positive ageing.

"We need to, somehow, encourage people to care about and look out for older people in their communities"

The practitioners acknowledge that while many older Australians do continue to live healthy lives as they age, others experience a vulnerability to poorer health and disability. In line with increasing longevity, the numbers of older people in the community, who at some stage of their life may need assistance to make decisions for themselves, also continue to rise¹⁰⁰. Older people are often challenged by complex situations and life decisions that result from varying levels of increasing frailty and disability.

The Centre of Practice members state that there is a clear need to ensure that older people are empowered with knowledge of their rights and of the agencies that can offer them support and protection if and when they require it. The practitioners agreed that the rights statement for older people developed by Associate Professor Wendy Lacey (see Part B), captured the rights that should be afforded to older people and if adopted in South Australia would firmly underpin a rights based service delivery to all aspects of an older person's life. These Principles have been listed previously in the Human Rights Perspective.

Resources, such as those developed by Aged Rights Advocacy Service assist older people to know and understand their rights and where support can be obtained to exercise these rights. The rights of older people are articulated in brochures which are freely available to older people and the general community, on a web site, orally at seminars and in response to telephone calls to the service. All members of the Alliance for the Prevention of Elder Abuse¹⁰¹ provide information to community and professional members and encourage older people to develop ways to retain control of their lives as they age.

¹⁰⁰ Cockrill, J 2004, AGAC Conference, Sydney, NSW

¹⁰¹ The Alliance for the Prevention of Elder Abuse (APEA) membership consists of Aged Rights Advocacy, Office of the Public Advocate, Public Trustee, Legal Services Commission and South Australian Police

Service providers are of the opinion that this information is very useful, but although there has been significant work undertaken in this area, the information needs to reach many more community members.

The Centre of Practice recommended ways to close the gaps in regard to information dissemination.

- Further development of information packages informing older people, community members about the rights of older people to be delivered in a variety of mediums (brochures, direct service information, television and radio advertising, internet etc).
- Wider involvement of community groups (especially by peer educators) to deliver and explain the information.
- Development and delivery of information about what constitutes abuse/ harm to an older person
- Further development of information to older people and community members about how to recognise abuse of vulnerable older people and how assistance can be sourced and delivered.
- Further development of resources to inform about Enduring Powers / advance directives, including rights and responsibilities of donor and donee/s.
- Dissemination of information about safeguards that can be included in Enduring Powers / advance directives.
- “Beef up” and strongly promote the role of ARAS in providing information to older people, community members and professionals.
- Ensure that information is displayed and available from a range of community sources such as pharmacies, general practitioners, allied health care providers, community health centres, local councils, seniors’ clubs and the like. It was agreed that information about the rights of older people and how to respond if it was thought that an older person was not able to safeguard their health and well being should be displayed and available ‘everywhere’.

The Centre of Practice members emphasised that the information delivered should result in older people being empowered, feeling safer and being better protected and respected in the community.

3. FAMILY CONFLICTS AND THE PRIVACY OF ABUSE

Family members are said to be the largest source of emotional, practical and financial support for older persons and as such they are often called to support their older relatives and participate in the decision making process about various areas of their lives. However, confronted by the need to become involved in support and decision making it is not unusual for families to become embroiled in conflict that can be detrimental to the health and well being of the older person and also to ongoing family relationships. Furthermore, family disputes can deteriorate to the point of division and this can then result in family support being severely depleted and thus inadequate to meet the needs of the older person. The conflict that arises in such cases can cause family members to become positional, lose focus of the older person’s needs and wishes and attempt to exert pressure on the older person to comply with a certain position. Family members may not recognise that this conflict is harmful or abusive to an older person but in fact, it can be, leading the older person to be fearful, depressed, lose confidence in their own abilities and become unsure and distrustful of family members .

While many families support their older relatives well and appropriately, research indicates that family members can often be the cause of abuse to their older relatives. This abuse may be deliberate or the result of a lack of knowledge and understanding on the effect of the family members' attitude and behaviour towards the older person. Many older people are reluctant to report concerns due to fear that family support (such as it may be) could be withdrawn, leaving them isolated from family relationships.

In many cases, older people who have been abused or mistreated by family members don't want to think of this as a crime and don't want to proceed with charges against the abuser that would lead to court action or to the abuser getting into trouble. Older people often want to keep the situation private, feeling a sense of shame and not wanting to 'wash their dirty linen in public'.

'We need some sort of system where perpetrators don't necessarily get prosecuted'.

Although some older people do want to take the matter further, including going to court, many others are extremely reluctant to take any form of legal action against family members even if they thought they had abused them in some way, for instance financially. The older people generally want the behaviour or the conflict to stop without any sanctions being imposed on their family members.

Empowerment of older people does sometimes result in individuals wanting to report the matter to the Police. Organisations such as ARAS and Legal Services Commission can assist the older person to understand their legal rights and to report the matter to the Police who can investigate the matter and proceed to court if appropriate. However, there are barriers to the matter proceeding to court.

- Family pressure upon the older person not to report
- Reluctance of the older person to report because they don't want their family member to 'get into trouble'.
- Reluctance of older person to give evidence in court against the family member (or other person) who has perpetrated abuse.
- Department of Public Prosecutions considering that the matter should not go to court due to their assessment that there is insufficient reliable evidence, concern about the older person pursuing a family member at the time the matter goes to court or any other reason that the DPP consider that a conviction is unlikely if the matter goes to court.
- Difficulty in determining if a crime /offence has been committed. Less tangible abuse such as psychological abuse, is difficult to prove and it may not be seen as a 'crime'.

The Centre of Practice identified the following gaps in the current system in relation to these issues.

- Currently, responses to assist older people to confront their family members about issues that are adversely affecting them largely rely on the older person being able to take an active part in the response.
- While some older people would welcome this assistance and find it effective for them, others would need more support to speak with their families, such as a service provider contacting family members and inviting them to a family meeting where the practitioner could assist the older person to discuss their issues with the family.

- The response to an older person may depend on a judgement about the service provider's view of mental capacity. A more appropriate response could be given if the older person's vulnerability could be assessed.
- Older people are often not considered to be reliable witnesses
- More support needs to be given to vulnerable older people to enable them to give evidence in relation to court matters, such as not having to be present but give evidence 'in camera'.
- Fraud is difficult to prove and can be an expensive process. At times there is no real basis for complaint – mainly complaint from one family member against another.

The Centre of Practice recommended ways to close the gaps in the current system

- Assist older people to build natural networks of support by providing information and education (as described earlier).
- Non - legal remedies have been suggested as a way that such situations can be solved. For example, alternative dispute resolution models such as family conferences facilitated by practitioners experienced in issues of vulnerable older adults
- Provide assistance to the older person to talk with family members about their wishes and concerns around the conflict using appropriate methods of ADR, both informal (such as family meetings) and formal methods (such as case conferencing, mediation) depending on the situation and the wishes of the older person.
- Specialised legal services that can visit an older people in their homes such as the
- Queensland model where social workers and lawyers work together to provide a service to older people.
- Public prosecutors should be included in research in regard to finding better ways to support and assist older people who have been the victims of abuse and want to take the matter through the court process.
- Development of a model of restorative justice which is said to empower 'victims' could be explored as a non - legal remedy to situations where abuse or misuse has taken place. Restorative justice is an approach to justice that focuses on the needs of victims and offenders. Victims take an active role in the process, while offenders are encouraged to take responsibility for their actions, 'to repair the harm they've done ' by apologising, returning stolen money etc. It is based on a theory of justice that considers crime and wrongdoing to be an offense against an individual or community rather than the state. Restorative justice that fosters dialogue between victim and offender has been said to show the highest rates of victim satisfaction and offender accountability.
- Give information on and assist older people to make advance directives to ensure that a person (or the people) that the older person wishes to assist with decision making is clearly identified.

4. ADVANCE DIRECTIVES

Older people can be empowered to retain control of their lives as they age by making advance directives, appointing people that they think are appropriate to make decisions on their behalf if/when they are no longer able to do so. An advance directive is a legally binding document that expresses a person's wishes or direction in advance, in the event that mental capacity is lost in the future. For an advance directive to be legally valid, the person making it must be able to understand its nature and effect. He or she must

understand the consequences of completing and signing the document and must do so without any coercion, pressure or influence by others.

- Enduring Power of Attorney - financial decisions
- Enduring Power of Guardianship - accommodation, lifestyle and health decisions
- Medical Power of Attorney - medical decisions only
- Anticipatory Directions - end of life medical decisions.

The Centre of Practice identified the following gaps in the current system in relation to these issues.

- Advance directives, particularly EPAs can be used as an instrument of abuse / misuse
- Older people can be coerced or tricked into signing documents without understanding the powers that they are donating.
- Family members may be suspicious of siblings (and others) who are appointed and do not share information and this may lead to conflict between family members, resulting in harm to the older person.
- Donees often do not know their responsibilities in relation to the advance directives that they have agreed to be party to.
- Professional and community members are often confused about the extent of authority different advance directives bestow on the donee.
- If a JP or authorised witness has doubts about the capacity of the donor, or that s/he is being coerced or influenced to donate the powers they can refuse to witness the document. There is currently no way or recording the decision to decline, or for the witness to raise the concerns to ensure that, if another witness is approached, they are aware of the issues.

The Centre of Practice recommended ways to close the gaps in the current system

- Increased information for the community about Advance Directives, including where to get assistance about documents and how to complete these.
- Information about how safeguards can be incorporated into the documents.
- Support for older people to discuss Enduring Powers with their family members. This is to assist the rehearsal of decisions that may need to be made to ensure that potential donees understand the responsibilities that they would be accepting and the older person's wishes for future decision making.
- Registration of Enduring Powers to ensure that the most current document is being used and to track changes such as revocations.
- Development of process to highlight concerns of witnesses if it is thought that the older person does not understand the document he or she is signing or is being coerced to sign and may be taken to another authorised witness in attempt to have the document witnessed.
- Development of conflict resolution assistance for disputes involving the use of Enduring Powers, by skilled practitioners who have experience in working with vulnerable older people and family members in conflict.

'Sometimes older people need some help to rehearse decisions with family members and those close to them about situations that may occur in the future.. These decisions can be about very personal areas in an older person's life and those supporting the older person need to know they are getting it right and doing what he or she would have wanted'.

5. ENGAGING THE COMMUNITY

Family members, neighbours and other private citizens are well placed to make observations about self neglect and abuse in regard to vulnerable older people but it is thought that they are discouraged from doing so for several reasons. The changing dynamics of our neighbourhoods with reduced social connection of neighbours can deter community members from raising concerns. They may feel that this is someone else's issue and not 'their business'. Community members may be concerned about 'sticking their nose in' and be reticent to intrude into the life of a neighbour.

The Centre of Practice Members highlighted the following gaps in the current system:

- Community members are not likely to know to whom they could raise concerns about abuse or harm to an older person and so could be discouraged from reporting if they had to make more than one phone call to obtain assistance.
- During the Centre of Practice workshop practitioners informed the group that concerns about a vulnerable older person at risk of harm could be raised in a number of places, including SAPOL, ARAS and the local council. However, it was thought that there were barriers to community members doing so, for example community members may not contact SAPOL if they are not certain that abuse has taken place, thinking that to do so would be 'extreme' and so should only be done if they think the situation is extreme.
- Local councils do not all offer the same service and responses can vary between councils and indeed may depend on the skill and knowledge of available council services of the person who answers the phone.

There is also a dilemma for community service providers (such as Pharmacists, GPs Nurse Practitioners, and providers of community activities about how to raise concerns about vulnerable older people who may come to their attention. Pharmacists and Nurse Practitioners are unclear where to raise a concern if they recognised that there was an issue for an older person. They are mandatory reporters for child protection and so have to follow a process made clear by legislation. They suggested that a clear process (not necessary legislation) would be helpful for their professions to raise concerns about abuse of vulnerable older people without the fear of breaching privacy laws, and so being open to legal action if they divulge information.

'We need to have a system that identifies a problem and for someone to have authority to look into the problem and find a solution.'

'Someone has to have the authority to go out and knock on the door and ask the older person if they are okay - do they need any help.'

The Centre of Practice recommended ways to close the gaps in the current system

- Providing a single point of contact (such as a 1800 number) where concerns could be received and acted upon (this could mean giving advice or making referrals in the first instance and /or linking in with an appropriate service provider).
- For agencies to develop partnerships with others to assist in responding to needs of vulnerable older adults (such as the partnership between Onkaparinga Council and Anglicare)
- For a coordinated, mandatory response to be activated by a central body – we need to have a system where a problem can be identified and for someone to have the authority to respond to concerns about the safety of older people and/or coordinate a response from a partner agency.
- A liaison person to work across all agencies to ensure ‘quality control’ of responses and to ensure consistency of practice in relation to response to abuse of older people.
- Need to have dedicated resources in all agencies to be able to respond to requests from a coordinator of a central system.
- Response should be to vulnerable older persons, not limited by definitions of mental capacity / incapacity.
- Ensure that concerns would be tracked to ensure that they were followed up appropriately.
- Ensure that a system of monitoring a vulnerable adult is in place if there is a decision not to act at this time. This could be ‘low key’.
- An agency to be authorised to undertake investigations if a vulnerable older person is thought to be at significant risk.
- Concerns raised need be tracked to ensure that they were followed up appropriately.
- An authorised central body could also act as a ‘specialist with authority’. That is, that agencies could call upon the assistance of this central body in cases where the primary provider is unable to proceed due to lack of authority (such as calling a case/family conference that would insist upon the attendance of certain parties) and have authority to set up contractual agreements with various members of support networks. This could be drawing up an agreement between service provision agencies or between the older person’s family members about more appropriate ways to support (not abuse) the older person.
- Raising community awareness about the vulnerabilities of some older people and the need to be observant.

6. RIGHTS BASED MODELS AND RISK MANAGEMENT ISSUES

*‘We want a service delivery model that respects the rights of older people.
We don’t need a system that is more protective than the one we have now.
We don’t want people wrapped up in cotton wool’.*

A rights based model must respect the right of the older person to make their own decisions and this can present service providers with a dilemma when an older person may wish to stay within a situation that is assessed as being abusive or causing an element of harm to them. Kurrle and Sadler (1994) recommend referring to the principles of *beneficence* (acting in a manner that will do good and remove or prevent harm) and *autonomy* (self

determination) when making decisions about intervention. The Scottish system states that the principle underpinning intervention is that it must provide benefit to the adult and that this benefit could not have reasonably be achieved without intervention is the least restrictive option to the adult's freedom.

Members of the COP and other service providers voiced their concern about establishing a system that would be 'protectionist' and therefore erode the rights of older people. Practitioners advise that a system offering support and protection to older people could not be designed as a 'one size fits all' approach, and although a framework for intervention should enable a consistent service delivery across agencies, it should also be flexible in order to provide the best response to the older person's individual circumstances.

Self determination can involve risk and the level of risk must be recognised and understood. This again is an area that can create dilemmas for service providers with the following providing some illustration of this point;

- An older person may be aware that a family member is financial abusing them but wants to maintain the relationship and tells the service provider that they do not want any action taken as this may mean that they lose the relationship, which may include support, of that family member.
- An older person may be living in conditions assessed by some others as unhygienic, unsafe and even squalor. However, the older person is adamant that they want to remain in their home. There may be evidence that they have successfully lived in this manner for many years. The service provider, with a high level of expertise in working with older people, may realise the realities of the situation (i.e. risk due to condition of the home) but may assess that it would be more harmful to the wellbeing of the older person to remove them from that home, especially if the alternative is supported residential accommodation.

The Centre of Practice highlighted the following gaps in the current system:

- Service providers work at minimising the risk for older people, but a decision to leave an older person in a situation of risk causes concern and conflict both within and outside of the agency providing the service provision.
- Tensions arise due to value judgements of the service providers and some of the issues that they grapple with include;
 - There can be disagreements between service providers as to what risk is acceptable and what is not;
 - criticism of an agency for allowing the older person to continue to live in what is considered an 'at risk' situation
 - fear that the agency will be portrayed as negligent to the public are some of the concerns that service provision agencies consistently grapple with.
- Service providers spoke about being accused of 'waiting for a crisis to occur before they intervene'. However, they may be supporting an older person's by following his/her wishes to remain in a situation considered as 'at – risk'. Practitioners stress that this decision would follow a thorough assessment of the situation by an experienced worker.
- Risk minimisation strategies are put in place by providing a support and monitoring role knowing that a crisis situation is likely to occur. In the current system a

- Criticisms of neglect or deficient practice can be levelled at the service provision agency but the question asked is, isn't this supporting an older person's self determination for as long as possible?

The Centre of Practice members made the following recommendations for closing the gaps in the current system

- The development of a rights based framework that guarantees a mandatory response to concerns raised would ensure that vulnerable older people who are thought to be at risk of harm would have the offer of professional assistance.
- The framework should outline protocols for assessing the nature of the risk and the urgency of the situation to ensure a consistent approach.
- Making a decision not to act may be appropriate once an assessment has been made and should be backed up with reasons why further action has not been taken. This shouldn't mean that a service provider walks away from the older person, but should take on a monitoring role, rather than an interventionist one.
- Cases that may be contentious, such as when no action is taken; where there is disagreement of the level of risk; or highly complex should be escalated to a 'senior body' or a monitoring group to ensure a quality of practice is ensured.

7 ISSUES FOR SERVICE PROVIDERS

Service provision may be removed from some older people due to an OH&S risk to the providers. For example, while the older person may want to remain in a home where there is risk, it may be considered too great an OH&S risk for workers to enter. For example, the home may be considered to be environmentally unsafe or the worker may be threatened or intimidated by the abuser. This often results in services being withdrawn which can then leave the older person exposed to greater risk and in an unmonitored situation. This situation also creates conflict within and between service provision agencies and service providers report that what is an acceptable working condition for one provider may not be so for another.

'We need a specialised squalor squad made up of people who are able to understand and respond to older people living in these situations.'

In relation to squalor situations, a service provider thought that there should be a 'squalor squad' consisting of workers who understood the views and needs of the older person, accepted the risk of the older person remaining in their homes and were willing to cope with such adverse working conditions while acknowledging that there were limits to the 'degree of squalor' that is acceptable. Many service providers are encouraged that squalor is now attracting a significant amount of attention from researchers in an effort to understand the phenomenon more and so develop respectful and appropriate models of intervention. They say that withdrawing a service is simply not the answer as this will leave the older person without any assistance, exacerbating the environmental situation and causing the older person emotional harm by being 'dumped' by the system. Practitioners are concerned that they often have to search for a diagnosis of mental illness or mental incapacity to

justifying an intervention before the situation becomes one of crisis which can result in the older person being forced to leave their home.

The Centre of Practice also raised concerns about bushfire policies in relation to the withdrawal of services during times when bushfire warnings are 'extreme'. Services such as basic personal support, meals on wheels and medication delivery have to be withdrawn if the older person chooses (or has to) remain in the bushfire area, rendering the vulnerable older person exposed to considerable health risks.

The Centre of Practice identified the following gaps in the current system:

- Withdrawal of services due to an unsafe environment will leave the vulnerable older person unsupported and unmonitored.
- Service response and level of intervention can depend on whether an older person has mental capacity or not. This definition is not helpful in many situations as there can be reasons other than mental illness or incapacity affecting an older person's ability to deal with situations that lead to squalor.

The Centre of Practice did not offer recommendations to close the gaps in relation to OH&S issues preventing a service to a vulnerable older person, realising that this was an extremely complex situation. On the one hand, employers have an obligation to be keep their workers safe, and indeed workers have the right to safe working conditions. However, the Practitioners wanted to raise these issues as they do impact upon the safety of vulnerable older people.

8 DOMESTIC VIOLENCE & ABUSE OF OLDER PEOPLE

Service providers agreed that this project may be able to be informed by responses to, and the prevention of, domestic and family violence. New legislation in this area is due to be in place by December 2011 and is expected to provide some relevant guidance for service providers.

However, while organisations working with older people agree that there are similarities between domestic and family violence and abuse of older people they add that there are also differences rendering these responses inappropriate to work effectively with older people. The abuse may be an enduring gender based experience of domestic violence and thus fit well with the domestic violence responses. There is continuing debate amongst service providers for older people as to whether the domestic violence model can be enhanced to include appropriate responses to older people or if there needs to be a 'stand alone' model. The rights are the same, but interventions may be different for older people.

The Family Safety Framework has been developed to ensure that services to families most at risk of violence are dealt with in a more structured and systematic way. The Framework includes Family Safety Meetings, common risk assessment processes to ensure consistency and information sharing protocols. At the heart of the Family Safety Meetings is the assumption that no single agency or individual can see the complete picture about the life of a person who has been abused but that all agencies have information and insights that are crucial to their safety.¹⁰² These are all elements that service providers would welcome

¹⁰² Family Safety Framework, DVD, SAPOL & Office for Women 2011

to assist vulnerable older people who are at risk of, or are being, abused. However, this Framework is particularly structured to assist women and children in domestic and family violence situations and at this time does not enable the identification of older people who are at risk or provide an appropriate response to them.

Service providers (in particular Domiciliary Care, ARAS and RDNS) have provided thoughts on what they see as some differences in domestic /family violence situations and abuse of vulnerable older people.

- Older men experience abuse
- Older couples experience abuse
- Financial and psychological abuse are the most reported forms of abuse
- Abuse of older people does not necessarily involve a long term intimate relationship with the abuser, nor is it usually a sexually intimate relationship
- Abusers of older people are both men and women
- Abusers can be family members, friends, neighbours and people in a position of trust, such as a paid carer, a spiritual leader, a financial assistant
- Older people are reluctant to report abuse and/or want their family member to have a legal consequence for perpetrating the abuse
- Ageism resulting in people being treated differently because they are older, such is not being included appropriately in decisions that affect their lives
- Financial abuse due to ageism and entitlement attitudes where the abuser thinks that the older person does not need their money as they are older, and that they (the abuser) has an entitlement to the money (especially if they are to be a beneficiary of the older person's Will)
- An older person who has a cognitive issue, physical frailty, or socially isolated can be a target for abuse
- Older people may have a partial or total dependency on the abuser for assistance with personal care and basic needs.
- Vulnerable older people may be abused by a carer who is experiencing a high level of stress and/or who has a mental health issue or an addiction such as substance abuse or gambling issue.
- Older people are less likely to name or identify their experience as domestic violence or abuse

The Centre of Practice identified the following gaps in regard to the current system:

- Domestic violence/family violence risk assessments are often not appropriate to recognise the risk of abuse to an older person and therefore abuse of older people can be missed.
- This is a significant issue in an acute hospital setting where the older person is medically recovered and so thought suitable for discharge. The lack of recognition of risk using the DV risk assessment can mean that the older person is discharged into a situation of abuse without anyone being alerted to his/her situation.
- Aged care agencies such as Domiciliary Care have significant capacity to respond to older people who are abused due to their ability to provide in-home services and /or case management connected to or apart from the occurrence of alleged or actual abuse. However, to provide this service the vulnerable older person must be assessed as fitting the criteria to receive a service from that agency.

The Centre of Practice made the following recommendations to close the gaps in the current system

- Lessons can be learnt from the domestic and family violence frameworks, in particular information sharing and Family Safety Meetings. However, it is likely that a separate response will be needed to more appropriately address the specific characteristics of abuse of older people.
- Domestic Violence responses and the Family Violence Gateway has been implemented in South Australia. The Centre of Practice members indicated that while there needed to be further exploration into whether these responses can be further developed to include older people it was their opinion that an 'Older Persons Gateway' would need to be developed to respond to the specific issues for vulnerable older people .
- Risk assessment tools designed to consider the issues specific to the abuse of vulnerable older people (especially useful for acute hospital settings) to ensure discharge with appropriate services/ assistance.

9 TRACKING OF 'GROOMERS' & WORKERS WHO MAY BE ABUSING / TAKING ADVANTAGE OF OLDER PEOPLE.

The Centre of Practice members raised the following question: If someone is being taken advantage of financially, is thought to have capacity but has vulnerability due to frailty, social isolation and reduced mobility, can the offender be tagged somehow to assist in the protection of others? For example:

- a financial institution has noticed that an older person's patterns of withdrawing money has changed.
- She is drawing larger amounts, more often than she usually does.
- The appearance of a woman assisting the older person has coincided with this change of pattern.
- The bank teller is concerned, especially when she recognises the helper as a woman who assisted another (now deceased) older person whose patterns of withdrawing money also changed when the helper came on the scene.
- The bank teller attempts to talk to the older person on her own but this is difficult due to the presence of the helper.
- The older person tells the bank teller that she is 'so happy' that she has such a helpful new friend.

The Centre of Practice identified the following gaps in the current system.

- If there does not appear to be enough evidence to call SAPOL Who is able to assist?
- Who can the bank teller inform of their concerns?
- who has the authority to respond if the older person appears 'happy' with the new friend but others have suspicions about them?
- What prevents the new friend from targeting other vulnerable older people?

There can also be questions about care providers who may have been suspected of or found to have been, abusing an older person in some way but is either a private provider or someone who goes moves from one agency to another before they are dismissed or have action taken against them. People such as these must be able to be identified and prevented

from working with other vulnerable adults. The practitioners were of the opinion that Police Checks only went so far in this area, because often the matter has not been reported as a crime and so the person has not been charged or convicted. Hence they do not have a recordable offence that would come to light in a police check.

The Centre of Practice made the following recommendations to close the gaps in the current system

- Develop links with Banks / financial institutions to recognise financial abuse
- Establishment of central body that banks can raise concerns with, to provide a coordinated response and assistance to the older person, including the authority to investigate the situation.
- Develop a data base to register people of concern who are thought to prey on vulnerable older adults

10 INFORMATION SHARING

Issues around information sharing between agencies is a salient issue. There have been some guidelines developed in regard to child protection and family violence models that may be useful in developing protocols for vulnerable adults.

Service providers speak of their frustration in this area, indicating that lack of appropriate information sharing can impede an effective service delivery. An indication of this is where a service provider arranged for a geriatrician to conduct a capacity assessment for a frail older person so that the appropriate care and support decisions could be put in place. The assessment was undertaken, but the geriatrician was unable to share the outcome with the service provider due to privacy concerns.

‘Sometimes sharing information between agencies could mean that you could head off a potential crisis’.

‘We need a better picture of the person that we are helping. Various agencies might have bits of information that on its own doesn’t mean much, but put it all together and we could see all the issues for the older person. We could see how best to help, who is involved and what would keep them (the older person) safer - what would make their home a safer place to be.’

While consent forms giving ‘broad consent’ to a service provider may assist information sharing, the Centre of Practice members strongly promoted the development of guidelines that would give clear direction in this area. Practitioners stressed that in a rights based framework there would have to be a defined purpose for information sharing and sensitivity around what information should be shared.

‘There has to be a balance between giving away private information and ensuring support for the older person.’

The Centre of Practice made the following recommendations to close the gaps in the current system

The Office of the Guardian for Children and Young People have developed information sharing guidelines that promote safety and well being of children, young people and their families¹⁰³. The Centre of Practice agreed that it would be worthwhile to consider if this document could be adapted to provide information sharing guidelines for vulnerable adults.

11 CRITERIA TO RECEIVE SERVICES

Organisations have criteria for services (such as age, capacity, level of care required) and it is thought that some vulnerable older people may not fit easily into this. Practitioners are concerned that the criteria for entry into services is becoming quite restrictive and excludes 'able bodied' people who may have vulnerabilities beyond physical impairment. This leaves a gap which older people may fall into without an appropriate service being able to respond.

The Centre of Practice identified the following gaps in the current system:

- Funding changes to service provision has restricted the service delivery available from agencies. The consequence of this is that resources are restricted resulting in the loss of service delivery and reduction of case management.
- Strict criteria for services often mean that vulnerable older people don't receive a service or are referred to a service that is not appropriate. For example, Older People's Mental Health Service often have referrals about vulnerable older people who do not easily fit into any other service. These clients may have worrying behaviour that is putting them at risk or they may living in squalor. These clients do not actually have a mental health issue but are referred to OPMHS because '*nobody else will take them*'. The mental health 'label' wrongly given, adds another layer of complexity to the issues of the older person as they now have the stigma of being thought of as mentally ill.

'If a model is constructed so that an agency can respond, it needs to be resourced to do so'

The Centre of Practice made the following recommendations to close the gaps in the current system

- The Centre of Practice members advocate for more flexibility of criteria, incorporating a notion of vulnerability that goes beyond physical impairment and does not rely on the older person having a significant cognitive decline.
- The Centre of Practice members also voiced strong support for 'low key' service delivery that comes along side an older person in a non threatening way, to offer support and assistance.
- Funding restrictions must be relieved within agencies if a more flexible approach service delivery is to be taken. For example, it may be necessary to provide a monitoring role in some situations of concern and to take time to build up rapport with the older person rather than deliver a time specific service.

¹⁰³ Information Sharing Guidelines, Office of the Guardian for Children and Young People, 2008.

12 COMMUNITY / PROFESSIONAL EDUCATION & AWARENESS TRAINING

There has been significant work done to raise awareness of abuse of older people both how to recognise it and how to respond. However it appears that there are a significant number of professionals who would not be able to recognise abuse, especially in complex situations. This was raised as an issue, especially in some community care services where basic but important support is being given by a non - government organisation. Service providers may not have the confidence to report. Supervisors may not know how to respond as there may not be an appropriate procedure to do so within the organisation.

‘Workers may not have the confidence to take the matter further or to deal with it. They may not know who to take the matter to’.

Another issue raised is the time restraints placed upon support workers who may not have sufficient time to spend with a client to ascertain if abuse or neglect is occurring. Also if the agency is brokered for a specific service and specific number of visits, the provider may not be able to follow up concerns that something is ‘not quite right’ for the older person.

The Centre of Practice made the following recommendations to close the gaps in the current system

- Initial and then follow up training for work places who provide a service to older people in how to recognise abuse.
- Support to workers who provide in - home care services, including regular debriefing and support to deal with situations where a carer, family member or someone close to the older person is suspected of abuse.
- Development of clear policies and procedures within all agencies who provide a service to older people about how to respond appropriately to abuse, including referral process.
- The development of risk assessment and screening tools to ensure consistency across all agencies.

13 MENTAL CAPACITY, MENTAL INCAPACITY & VULNERABILITY

There has been a great deal of debate about the issue of mental capacity and decision making. In recent years empowerment models of practice have strongly promoted that a diagnosis of mental incapacity does not automatically signify that the older person lacks total ability to indicate his/her needs and whom he/she wants to become involved in the current situation and future decisions. Darzins, Malloy & Stang¹⁰⁴ acknowledge that there are older people who experience an extreme ‘global incapacity’ that renders them unable to make any decisions in any area of their lives. do state however, that there are various levels of capacity. They convey that some older people may have ‘domain specific’ capacity where they have capacity in one area, for example health, whilst experiencing an incapacity in another area, for example finances. Therefore in cases where an older person lacks the capacity to manage their own finances, he or she may well be able to make decisions about their health, accommodation and care needs.

¹⁰⁴ Darzins, Malloy and Stang, *Who Decides*, 2000

'We always start with the presumption that the client has mental capacity, even if we find them in a situation (such as squalor) that is far from ideal'.

Service providers are in agreement that an older person's mental capacity should be assumed unless there is significant evidence to suggest that it is impaired. Even then, attention must be given to the areas of decision making that the older person does have and for assistance to be given to enhance those areas. Domiciliary Care social workers espouse that capacity, and hence intervention, must be considered to be domain specific and time specific. This means that time must be taken to ensure that older people has the appropriate information that he or she needs to make decisions, presented in a way that is understandable and relevant to the older person. There are often certain times in the day when an older person is more alert and thought process more clearly demonstrated. An older person's capacity should be considered during these times.

Discussions about mental incapacity and how this is determined can bring about vigorous debate amongst service providers who insist that issues of capacity can not be solely determined by a medical model but should include considerations of 'knowledge impairment', undeveloped social skills, learning difficulties and the like. A question to be asked is 'capacity to do what'?

Models of supported decision making may be useful in such cases. Supported decision-making can take many forms. Those assisting (supporters) a person may communicate the individual's intentions to others or help him/her understand the choices at hand. They may help others to realise that a person with significant disabilities is also a person with a history, interests and aims in life, and is someone capable of exercising his/her legal capacity.¹⁰⁵

There is evidence that pathways to assist older people are often formed according to a fairly black and white concept of capacity. If an older person has a diagnosis of mental incapacity and is being abused, it is likely that an application is made to the Guardianship Board, which if successful, takes decision making authority away from the older person. While this can be necessary, appropriate and even liberating for the older person, a rights based focus should have a system that assists a vulnerable older person whose mental capacity is in question, to deal with the issue of abuse without removing their decision making rights.

14 MOVING FORWARD WITH A LAW AND POLICY FRAMEWORK

At the final Centre of Practice workshop, the members considered and discussed the options paper: Strategies for Safeguarding Vulnerable Adults in South Australia, presented by Wendy Lacey.

As a strategy for the way forward, the Centre of Practice members were unanimous in their support for legislative reform. They considered this the only way to close all the gaps in the current system and thus enable a consistent, coordinated response to prevent and respond to the abuse and harm of vulnerable older people in the community.

'It could be leading legislation for South Australia and I think it will do justice to the type of work that we've done. My support is behind strongly

¹⁰⁵ Implementation of Article 12 Document

campaigning for new Act, not meddling with other Acts. We need to start talking about aged rights in a way that is meaningful.'

'If I had a wish at the moment, it would be for a group like this, through our various connections with professional bodies of one sort or another and through our links with the press, to start mounting a campaign for an Act.'

However, the practitioners realised that legislative change would take some time to occur and that in the meantime a policy framework would assist to close some of the gaps and thus afford a higher level of safety to vulnerable older adults than that which currently exists. The practitioners strongly emphasised that the development of a policy framework should be go alongside the development of adult protection legislation. They emphasised that the latter should *'not wait to see how the policy framework goes'*. This would mean that in the short term, the policy framework would improve the current system as much as possible. In the medium term, Legislation should be developed and passed by parliament to ensure that the most excellent rights based system possible, with protocols guiding best practice, should be in place to safeguard our vulnerable older people from harm and abuse. The practitioners thought that 'long term' was too long to wait for legislative reform.

'This is the third review (on elder abuse) that I've been part of where the government has been asked to review the law. (To date) nothing has happened. My frustration is at its highest level and I'm hoping the momentum this group is creating (that) maybe its third time lucky'

The Centre of Practice members agreed to the Project Team taking these views to the Strategic Advisory group for their consideration, urging them to consider 'real change' to address the issues of abuse to our vulnerable older citizens.

APPENDIX 3 DEFINITIONS

TERMINOLOGY & DEFINITIONS

For the purpose of creating a framework to guide responses to abuse of vulnerable older adults, it is important to clarify how we define ‘abuse’, ‘vulnerable adult’ and ‘older person’ for the project.

1. ‘OLDER PERSON’

In South Australia the age which defines an ‘older person’ varies from 45 to 65 years of age. For example, domestic violence services consider an older woman to be 45 years and older whilst aged care service providers need to be sixty – five years and older to receive their services. Indigenous people can be considered eligible for aged care services from 45 years – 50 years depending on the service. The Migrant Resource Centre report that people from communities such as those from some African countries consider themselves ‘old’ at 50 years.

The Community of Practice members agreed to define ‘older person’ as:

Someone sixty - five years and over and fifty years and over for Aboriginal clients

In doing so, the members acknowledge that the majority of vulnerable older adults they work can be considered ‘older old’ and would be in excess of seventy – five years old. By adopting 65 years as the threshold for the policy’s application, the framework recognises that awareness-raising and the empowerment of older persons at an early age can be an important measure for safeguarding adults before independence and capacity are affected. In addition, it recognises that early detention and intervention can play an important role in helping people to age well.

2. ‘VULNERABLE’

During consultations with service providers it has been found that confusion exists in regard to the definition of ‘vulnerability’. ‘Vulnerability’ can be difficult to define exhaustively, or without labelling older persons unnecessarily. However, there exist many determinants which can place a person in a more vulnerable position and each determinant can impair a person’s capacity to protect themselves in different ways and to different degrees. Thus, each determinant of vulnerability must be considered in context, by reference to the particular abilities and circumstances of an older person. An older person may for example need high levels of support from a carer but have very active and strong social networks within his/her community. The presence of one or more determinants should not automatically be treated as placing an older person at risk of abuse. The full circumstances of each case must be properly considered and assessed.

The Centre of Practice thought it important to have a definition of ‘vulnerable adult’ that was consistent across agencies to ensure a consistent service response.

'It is important to note that what we have at the moment allows too many people to opt out and not take any action.'

In developing a definition for 'vulnerable', the Centre of Practice gave consideration to definitions established in countries that have a coordinated and joined-up approach to the protection of vulnerable adults, particularly those of the United Kingdom. England, Northern Ireland and Wales¹⁰⁶ use the term 'vulnerable adult' while in Scotland the phrase 'adult at risk' has been adopted. While the terminology used by the countries may differ, the aim of safeguarding adults who are at risk of harm or abuse is consistent.

England, Northern Ireland and Wales define a vulnerable adult as;

- A person who is or may be in need of community care services by reason of mental or other disability, age or illness, **and**
- who is or may be unable to take care of him or herself **or**
- who is unable to protect him or herself against significant harm or exploitation

In Scotland, 'adults at risk' are those who;

- Are unable to safeguard their own well-being, property, rights or other interests;
- are at risk of harm; and
- because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.

In these definitions, it is important to note that the existence alone of a particular condition does not mean that an adult is at risk. For example, a person may have a disability and be able to safeguard themselves. Interventions are guided not only by the definitions and perceived need, but also by principles that seek to ensure that the least restriction and intrusion possible is imposed on the adult.

In discussion, the Centre of Practice members indicated their concern about formulating a narrow definition of vulnerability that could potentially exclude a section of the population from receiving an appropriate service response. The members agreed that the definition of 'vulnerable adult' should be kept broad and should sit alongside a protocol that used key indicators of vulnerability to define an individual's situation and required assistance or intervention.

Debate was had about adopting a definition, such as used in 'No Secrets' in relation to '*A person who is or may be in need of community care services*' as it may be restrictive due to the difference between the definition of 'care' and service provision in South Australia and the UK. The members did not want the definition to depend on whether or not a vulnerable adult would fit a criteria for a particular service as this could ultimately prevent them from getting assistance, rendering them even more exposed to harm and abuse. On the other hand, if the phrase '*who is or may be in need of services*' was used, it may compel the further development of services, beyond those delivering functional support, and result in a more responsive, holistic service provision.

¹⁰⁶ "No Secrets' Department of Health, England

' if we have a definition based on people who may need services, then it becomes imperative that the services are there ready to respond.

The Centre of Practice suggested the following definitions, or components of each, should be considered as the accepted definition.

A vulnerable adult (or an adult at risk) is an adult who;

- Is unable to safeguard their own well - being, property, rights or other interests, *and*
- Another person's conduct is causing (or is likely to cause) the adult to be harmed, *or*
- The adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self - harm.

Or

- A person who is unable to take care of him or herself *and*
- Who is unable to protect him or herself against significant harm or exploitation *or*
- Who is or may be in need of community services by reason of mental or other disability, age or illness.

3. 'ABUSE'

During this project the term 'abuse' has been discussed with mixed thoughts on when it should be used in a rights based model of intervention. It should be noted that all practitioners agree that abuse does occur but it has become evident that while some practitioners are comfortable using the term 'abuse' others are hesitant to use it in some circumstances, preferring at those times to use the term 'harm'. There are various reasons for this, including the thought that the term 'abuse' is a harsh one to use if an older person is harmed unintentionally by a carer and could cause a carer on whom the older person relies, to disengage from care arrangements. Furthermore, 'abuse' is not appropriate for situations where there has been self neglect or other circumstances that have led to self harm. Practitioners speak about the need to use language sensitively when they are exploring concerns of harm/abuse to older people by their family members so as not to alienate either the older person or the family members. Other practitioners say that any harm is 'abuse' and should be named as such.

Perhaps the use of language is linked to the 'degree of abuse' (if indeed there is such a concept). For instance, the term 'harm' may be used by a practitioner who is providing an early intervention service to an older person who has complained that a family member shouts at her when she visits and that this is upsetting and frightening for her. The older person doesn't want to lose contact with the family member or the support that they provide but does want the shouting to stop. A practitioner, may be reluctant to use the term 'abuse' in this situation, but rather, in an early intervention, may speak about the 'harm' that the shouting causes to the older person and offer the family member some assistance in developing more appropriate ways of communicating with the older person.

The Centre of Practice members discussed the terminology of 'abuse' and 'harm' at length. Some members thought that the use of 'harm' would be helpful in discussing the situation with an older person and also confronting a carer or family member, especially in an early intervention.

'It is easier to confront a responsible party with 'harm'... I think 'harm' is a good anchor. It is easy to report and confront'

'It doesn't matter if it was intentional or unintentional. We want to be able to intervene and address the harm.... we want to know if there is a better remedy'

Other members thought that the term 'abuse' should be used as it clearly defines the action (or inaction) of the person causing the abuse and better attracts an intervention.

'I feel strongly to include abuse. it can be difficult to get a response otherwise, (you) need (the term) abuse to get it recognised'

'abuse is the action, harm is the consequence. It depends on who you are talking to. Internationally, abuse is well known. I agree in terms of intervention, it is how you use your language but I think that it is a matter of professional judgement. I would not walk away from the word 'abuse'.

The members agreed with the suggestion that the term 'abuse' should be used in the framework for educational benefits, but for intervention, the language used should be about 'harm' which is what practitioners know and understand. This would be particularly useful to justify early interventions when a practitioner (or community member) is concerned that the older person is a risk of harm and so there is a need to intervene to prevent the occurrence of abuse.

Although the terminology of 'abuse' or 'harm' may differ in the countries of the UK, the definition of these terms are the same. In relation to 'abuse' or 'harm' the Centre of Practice members had previously thought that the current accepted definition in use was the one adopted by the World Health Organisation (WHO) and the Australian Network for the Prevention of Elder Abuse (ANPEA) 1999.

'Elder abuse is any act occurring within a relationship where there is an implication of trust, which results in harm to an older person. Abuse can include physical, sexual, financial, psychological, social and neglect'.

This definition could be expanded to include the following (from the protocols developed by ARAS (SA); NSW; U.K. and New Brunswick).

Abuse is action or inaction (or omission) by one person that has an adverse effect on another person's health, wellbeing, personal integrity or dignity. Abuse is fundamentally a breach of the human rights of another person and should not be tolerated in a society which respects the rights of all people.

- Research has indicated that abuse of older persons generally occurs within relationships of trust - with carers, partners, children, relatives, friends, neighbours, spiritual leaders or financial advisers. In these relationships, there can often be a power imbalance that emerges as a person ages and becomes increasingly dependent on the support or assistance of others. As a person's independence and capacity decreases, their vulnerability to abuse correspondingly increases.

- Abuse can involve a single act or repeated acts, be short in duration or occur over many years. If left unaddressed, abuse can escalate in frequency and severity. Many forms of abuse constitute crimes in South Australia.

3.1 PHYSICAL ABUSE

Physical abuse is any intentional act which results in physical pain, injury or discomfort. Such behaviour can include any kind of physical assault such as slapping, pushing, pulling, hitting, burning, pinching, kicking, punching, forcible or inappropriate restraint or confinement (i.e. to a bed, chair or particular place), injury with a weapon or object, deliberate exposure to severe weather or conditions.

3.2 PSYCHOLOGICAL ABUSE

Psychological or emotional abuse is any language or actions designed to intimidate another person and cause fear of violence, isolation, deprivation, or feelings of powerlessness. Such acts or words are intended to diminish a person's identity, dignity or self-worth.

Many other forms of abuse are accompanied with elements of psychological abuse. Examples of psychological abuse include insults, intimidation, treating the older person like a child, threats of restricting access to others (eg grandchildren), or placing them in residential care, public or private humiliation, threatening harm to an older person, other people or pets.

3.3 FINANCIAL ABUSE

Financial abuse involves the illegal or improper use and/or mismanagement of a person's money, property or resources. It includes forgery, stealing, forced changes to a will, unusual transfer of money or property to another person, withholding of funds from the older person, incurring debts for which the older person is responsible, failure of others to repay monies loaned and lack of financial information provided to an older person by their Power of Attorney.

3.4 SEXUAL ABUSE

Sexual abuse included non-consensual sexual contact, language or exploitative behaviour including rape, indecent assault, sexual harassment or interference. It may also include viewing obscene material or making obscene phone calls in the presence of the older person without their consent.

3.5 NEGLECT

Neglect refers to the failure of the caregiver to provide necessities or meet basic needs of the older person. Neglect can be deliberate or unintended. If it is deliberate, it is considered to be a form of abuse. If it is unintentional, the response will be different and may include the introduction of community services to provide assistance (eg respite, personal care).

3.6 NEW CATEGORY - CHEMICAL ABUSE

In addition, the New Brunswick (Canada) protocols include the category of 'chemical abuse' and the Centre of Practice members were asked if they thought this should be defined separately or is it already appropriately included in the definition of physical abuse.

Chemical Abuse

Chemical abuse is any misuse of medications and prescriptions, including the withholding of medication and over-medication.

Signs of Chemical Abuse

Over - sedation, reduced physical or mental activity, grogginess, confusion, reduced or absent therapeutic response to prescribed treatment may be the result of under - medication, failure to fill a prescription.

Pills scattered about may be signs of inappropriate use of drugs, medications and /or alcohol, reduced or absent therapeutic response to prescribed treatment may be the result of under - medication, if the carer is a substance abuser, he/she may be giving drugs or alcohol to the adult person.

After discussion, the Centre of Practice members *agreed* that it was appropriate to define chemical abuse separately but it would be better named more broadly as '*substance abuse*' as this would include the misuse of alcohol and other illicit drugs.

The Centre of Practice were happy to progress these suggestions in regard to definitions to the Strategic Advisory Group for comment, urging that the final definitions are broad enough to enable an active service response whilst ensuring that intrusion into the lives of older people takes the path of least restriction.

4. THE STRATEGIC ADVISORY GROUP'S CONSIDERATIONS

4.1 SUBSTANCE ABUSE

The Strategic Advisory Group considered the views of the practitioners in regard to the definitions. The Group agreed that '*Substance Abuse*' should be included as a separate type of abuse within the definition.

4.2 SOCIAL ABUSE

In addition, the Strategic Advisory Group suggested that the definitions of abuse be expanded further to include 'social abuse'. Aged Rights Advocacy Service already includes social abuse as part of their definition of abuse and advocated for this to be included. The Strategic Advisory Group agreed that this was appropriate and necessary.

The definition for social abuse is as follows:

Social abuse is the deliberate interference with another person's rights to participate in social, religious or cultural activities, to access and share information with others, to freedom of expression and association, and to privacy of family, home and correspondence. Social abuse may involve acts of discrimination on grounds of race, gender, religion, language, sexual orientation or other ground.

Signs of Social Abuse

Confinement, isolation, restricting correspondence, phone calls and other forms of communication, restricting a person's access to media and information, preventing an older person from attending places of worship or community centres, removal of religious or symbolic items from a home, opening or reading a person's correspondence without consent, withdrawal, apathy or depression in the older person, cessation in correspondence or communication from an older person, cessation in attendance at places of worship or community centres, changes in dress, physical appearance or patterns of social interaction

4.3 THE STRATEGIC ADVISORY GROUP'S CONSIDERATIONS OF THE DEFINITION OF 'VULNERABLE'

The Strategic Advisory Group discussed the definition of 'vulnerable' at length to ensure that, as suggested by the Centre of Practice, the definition was broad enough to be inclusive vulnerable adults who required some assistance or intervention. The Group acknowledged that not every older person is vulnerable to abuse. This Policy would apply to older persons (defined as persons sixty-five and over and fifty years and over for Aboriginal clients) who are 'vulnerable' to harm or abuse. The following definition was the outcome of the Strategic Advisory Group and Project Team's discussion and recommended for the project.

For the purposes of this policy framework, an older person is considered 'vulnerable' if they are:

unable to safeguard their own well-being, property (including money, shares or other financial interests), legal rights or other interests;

and

1) either of the following applies:

- a) the older person is engaging (or is likely to engage) in conduct which causes or is likely to cause self-harm; **OR**
- b) another person's conduct is causing or is likely to cause the older person to be harmed or exploited.

According to this definition, an older person is vulnerable if two elements are present:

- an inability to self-protect;
- the presence or likelihood of experiencing harm (including self-harm) or exploitation.

Proposed Policy for

SAFEGUARDING VULNERABLE ADULTS

IN SOUTH AUSTRALIA:

A WHOLE-OF-GOVERNMENT POLICY FOR THE PROTECTION OF

OLDER PERSONS FROM ABUSE

Prepared by UniSA



University of
South Australia

HUMAN RIGHTS AND SECURITY
RESEARCH & INNOVATION CLUSTER

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- 7.11 Procuring Sexual Intercourse
- 7.12 Incest
- 7.13 Theft (and Receiving)
- 7.14 Deception
- 7.15 Dishonest Exploitation of Position of Advantage
- 7.16 Other Offences
 - 7.16.1 *Illtreatment or Neglect of Person with Mental Incapacity*
 - 7.16.2 *Improper Inducement to Appoint Enduring Guardian*
 - 7.16.3 *Improperly Procuring Detention or Treatment under the Mental Health Act 2009 (SA)*

8. When Intervention Orders May be Sought to Prevent Abuse

- 8.1 Abuse
- 8.2 Emotional or Psychological Harm
- 8.3 Denial of Financial, Personal or Social Autonomy
- 8.4 Content of Intervention Orders

9. Elder Abuse Response Framework

- 9.1 Stage 1 – Notification of Abuse
- 9.2 Stage 2 – Initial Assessment
- 9.3 Stage 3 – Response Assessment
- 9.4 Stage 4 – Implementation
- 9.5 Stage 5 – Monitoring and Evaluation
- 9.6 Using a Human Rights Based Approach Within the Response Framework
 - 9.6.1 *Case Study 1*
 - 9.6.2 *Case Study 2*
 - 9.6.3 *Case Study 3*
 - 9.6.4 *Case Study 4*

10. Community Networks for Adult Protection

11. Useful Contacts

Appendix A: Charter of Rights and Freedoms of Older Persons

Appendix B: Information Sharing Guidelines

Appendix C: Template: Memorandum of Understanding Between Community Organisations and the Adult Protection Unit

Appendix D: Template: Recording a Notification or Report of Abuse

FOREWARD (INCLUDING ACKNOWLEDGEMENTS)

The objective of this policy is the protection and support of older persons who are vulnerable and at risk of abuse. While the policy is not accompanied by new legislation, it represents an important first step in the strengthening of legal and policy mechanisms for the protection of older persons from abuse.

New instruments and initiatives forming part of the policy framework include the following:

- a new **Elder Abuse Response Framework**, providing a coordinated inter-agency response in all cases of actual or suspected abuse of older persons. The framework has been designed to apply to vulnerable adults over the age of 65 years, but could subsequently be extended to include all vulnerable persons over the age of 18 years.
- A new **Adult Protection Unit (APU)** located within government and with responsibility for coordinating a new call centre/report line ('Older Persons Gateway') and for convening adult protection case conferences. Case conferences will be attended by key agencies and organisations comprising the **Interagency Team for Safeguarding Adults (ITSA)**. Possible locations of the APU could be the State Crime Prevention Branch in SAPOL or Disability and Ageing in the Department of Families and Communities. The APU will require funding for 1.5 FTE (including a manager and administrative assistant) in order to provide coordination and administrative support of the new Adult Protection Response Framework.
- A new **Older Persons Gateway**, operating as a central call centre/report line to be managed and run by the APU;
- a **Charter of Rights and Freedoms of Older Persons** which includes a list of rights, freedoms and guiding principles to be used in the implementation of this policy, and to inform the review and development of internal policies and protocols of agencies and organisations;
- **Information Sharing Guidelines** to promote the protection of vulnerable adults and facilitate early intervention in cases of abuse;
- The development of **Community Networks for Adult Protection (CNAPs)** to provide localised community-based frameworks for supporting and safeguarding older persons, promoting community awareness and responsibility for responding to abuse of older persons. Funding will be required to support applications from Local Councils and/or the Aged Rights Advocacy Service (ARAS) to establish and coordinate local community networks.

This policy has drawn from the practices and experiences, policies and protocols of overseas and interstate jurisdictions. In some areas it has adopted or followed elements of those frameworks. Particular acknowledgement should be made of the frameworks adopted in New South Wales, Canada (particularly British Columbia and New Brunswick) and the United Kingdom (England, Scotland and Wales). The following instruments have had a direct effect on the scope and content of this policy:

- *Protocol for Responding to Abuse of Older People Living at Home in the Community*, Aged Rights Advocacy Service, South Australia, 2011;

- New South Wales Government, *Interagency Protocol for Responding to Abuse of Older People*, 2007;
- *Adult Victims of Abuse Protocols*, New Brunswick, Canada, 2005;
- *Adult Guardianship Act 1996* (British Columbia, Canada);
- *Adult Support and Protection Act 2007* (Scotland) and the *Adult Support and Protection Act 2007 Code of Practice: For Local Authorities and Practitioners Exercising Functions Under Part I of the Act*, October 2008 (amended 15 January 2009);
- *No Secrets: Guidance on Developing and Implementing Multi-Agency Policies and Procedures to Protect Vulnerable Adults From Abuse*, Department of Health, England, 2000;
- *In Safe Hands: The Role of Care and Social Services Inspectorate Wales*, Third Supplement, November 2009.

1. INTRODUCTION

Every individual has the right to be safe from harm. However, certain vulnerable groups within society are unable to safeguard themselves from harm or are particularly at risk from the exploitation of others. Many older persons living within our community fall into this category and are susceptible to abuse of all kinds - physical, substance, social, psychological, financial, sexual or neglect. With an ageing population, increasing reports of the abuse of vulnerable adults is a significant concern for both governments and communities.

Older South Australians living in Commonwealth funded residential care facilities, and those who continue to reside at home, and who access Commonwealth funded aged-care services, already have the benefit of some human rights protections, mandatory reporting schemes for abuse and complaints frameworks under the *Aged Care Act 1997* (Cth). However, not all older persons living in the community within South Australia are currently afforded the same legal protections, though they are protected by South Australia's criminal laws, the new legislation for intervention orders in cases of abuse¹ and (to eligible individuals) support services either delivered or funded by State and local governments. For older persons living in the community with little or no access to services, isolation and a lack of protective networks can combine with other factors to leave an older person particularly vulnerable to abuse – from family members, carers, neighbours, or so-called 'groomers'.

This policy framework is aimed directly at those older South Australians who still live within the community but who are particularly vulnerable to abuse. The primary objectives of the policy are to create a whole-of-government framework for supporting and safeguarding older persons who are at risk of abuse or harm, and for providing a coordinated response in cases of actual or suspected abuse. The policy is premised on a human rights based approach and the notion that responding to abuse is essential to safeguard vulnerable adults, but only where that response is respectful of that person's basic rights and freedoms. The policy therefore eschews a paternalistic approach to safeguarding vulnerable adults, but articulates strategies for harnessing the legal and administrative arrangements which already exist in a more collaborative and responsive manner.

South Australia is not alone in responding to the challenges of safeguarding an ageing population, but South Australia does face particular issues due to its demographic history. In the next 25 years, the number of persons who are aged 65 years and over in Australia will double. However, in South Australia these trends are even more marked: in the two post-war decades, the State's growth rate was faster than the national average but, in the past three decades, slowed to below the national average.² As the *State of Ageing in South Australia Report* pointed out, 'South Australia's population is more aged than the nation and this pattern will continue until 2051'.³ The fact that one in five

¹ *Intervention Orders (Prevention of Abuse) Act 2009* (SA).

² South Australian Office for the Ageing, Department for Families and Communities, *State of Ageing in South Australia*, October 2009, 40.

³ *Ibid*, 48.

older South Australians reside outside Adelaide⁴ presents additional challenges in providing support and services to older persons.

Almost a third of South Australians over the age of 65, and over 40 percent of those over the age of 75, live alone.⁵ Women are also more likely to live alone later in life, due to having longer life expectancy rates than men and the tendency of women to marry older men. Men, therefore, are more likely to age with the support of a carer whereas women are more likely to need formal support or supported accommodation in their old age.⁶ Immigration patterns since the Second World War also mean that South Australia has significant ethnic ageing populations who require access to services that are sensitive of their cultural and linguistic diversity.

South Australia's Strategic Plan includes as core objectives the promotion of a better quality of life and a more inclusive society. The 2006 Ageing Plan for South Australia⁷ was framed around five priority actions:

- **Enabling choice and independence** – in where we live, in getting around, connecting to our community and staying healthy.
- **Valuing and recognising contribution** – in our work, as grandparents, carers and volunteers.
- **Providing safety, security and protection** – in our homes, communities and as consumers.
- **Delivering the right services and the right information** – timely, responsive and tailored to the needs of individuals.
- **Staying in front** – through research, innovative practices and collaboration with others.

The South Australian Government has a clear policy objective of encouraging and supporting people to live independently and healthily into their old age.

In November 2007, the Office for the Ageing released a document outlining a series of strategies for preventing the abuse of older people, in *Our Actions to Prevent the Abuse of Older South Australians*.⁸ The initiatives proposed included:

- Providing safety and security by strengthening reporting mechanisms and accountability;
- Implementing strategies for education and training;
- Raising awareness of older people, the community and professionals;
- Working together to build strong relationships;
- Supporting research and innovation to develop effective prevention models.

The *Our Actions* document places the rights of older persons at the centre of its proposed initiatives. It also advocates the adoption of collaborative engagement across agencies. Arising out of *Our Actions*, the Aged Rights Advocacy Service was subsequently commissioned to develop a *Protocol for*

⁴ Ibid, 63.

⁵ Ibid, 111.

⁶ Ibid, 112.

⁷ Government of South Australia, *Improving With Age: Our Ageing Plan for South Australia*, February 2006.

⁸ Office for the Ageing, Department of Families and Communities, *Our Actions to Prevent the Abuse of Older South Australians*, November 2007.

Responding to Abuse of Older People Living at Home in the Community. This Protocol was formally adopted in June 2011.

This policy document builds upon those previous instruments, adopting a rights based approach to protecting vulnerable adults in South Australia through the development of a framework for interagency collaboration and community based networks across the State. The policy applies generally to all public sector agencies as defined under the *Public Sector Act 2009* (SA) and will apply, by way of agreement, to all organisations contracted by the State Government to provide services to older persons. By Memorandum of Understanding, the policy is also open to adoption by other community based organisations, peak representative bodies and local governments.

The framework for adult protection supported by this policy is premised on achieving practical responses that are:

- graduated and personalised;
- keep autonomy, rights, self-determination and choice paramount;
- focus on peoples' abilities; and
- build and maintain individual capacity, community inclusion and citizenship.

2. RESPONSIBILITIES OF KEY AGENCIES AND ORGANISATIONS

There are numerous organisations and service providers that play important roles in the support and protection of older persons in South Australia. Whereas the protection of older persons is the responsibility of every person and every community, across government there are many agencies which are more likely to provide services to older persons, or who are particularly well placed to facilitate the implementation of this policy. Those agencies are identified according to government department below.

2.1 Department of Families and Communities

- Domiciliary Care Metropolitan
- Disability Services
- Office for the Ageing
- Housing SA
- Office for Carers
- Indigenous Services

2.2 Department of Health

- Adelaide Health Services (includes public hospitals, regional health services and Drug and Alcohol Services SA)
- Children, Young and Women's Health Services
- Aboriginal Health
- SA Ambulance Service
- Repatriation General Hospital

2.3 Department of Justice

- Office of the Public Advocate (OPA)
- South Australia Police (SAPOL)
- Public Trustee (PT)
- Legal Services Commission (LSC)
- Guardianship Board
- Ombudsman's Office
- Office of the Director of Public Prosecutions

- Commissioner for Victim's Rights
- Multicultural SA (Interpreting and Translating Centre)

2.4 Department of Planning and Local Government

- Office for State/Local Government Relations

Public sector agencies are required to pursue whole-of-government objectives, including information sharing and collaboration required for that purpose, unless such policies would impede or affect an agency's performance of a quasi-judicial statutorily independent function.⁹ Thus, the Information Sharing Guidelines contained in Attachment B cannot extend to judicial bodies or information which is the subject of legal professional privilege. This will necessarily affect the extent to which the framework can apply to agencies like the Legal Services Commission and the Public Trustee. Subject to that exception, this policy applies to every public sector agency, though it will have particular relevance to the work of agencies such as Domiciliary Care Metropolitan, whose functions are specifically directed towards the delivery of support services to older persons.

2.5 Other Agencies

The policy framework will also be extended to significant non-government agencies, not through Cabinet direction and the *Public Sector Act 2009 (SA)*, but through the inclusion of an additional clause in funding agreements. Key agencies will include the following:

- Aged Rights Advocacy Service (ARAS)
- Royal District Nursing Service SA Inc (RDNS)

While local governments are not directly bound by the policy, they will be encouraged to sign Memorandums of Understanding (MOUs) with the State Government, facilitated through the Office for State/Local Government Relations and the Local Government Association. Under each MOU, councils can agree to adopt and implement the policy framework, and to engage in information sharing and collaboration where required to meet the policy's objectives. MOUs with local governments will also include provision for the establishment of Community Networks for Adult Protection in local council areas.

Organisations and associations not funded by the State Government to deliver services to older persons living in the community, but with an interest in preventing the abuse of older persons, are able to sign two types of MOU:

⁹ *Public Sector Act 2009 (SA)*, s 10.

- (i) With the Adult Protection Unit for the purposes of promoting early and effective responses to reported cases of abuse; and,
- (ii) With local governments responsible for Community Networks for Adult Protection, for the purposes of engaging in community education and awareness, as well as the development of localised systems for encouraging the reporting of abuse.

The latter type of MOU shall be open to a wide array of local community organisations, including church groups, sporting, social and cultural associations or clubs and schools.

2.5 Responsibilities Under This Policy

Agencies and organisations which are bound by this policy, or have agreed to act in accordance with its terms under a binding agreement with government, have the following responsibilities:

1. RIGHTS BASED APPROACH:

Agencies and organisations must act in a manner which respects the rights and freedoms of older persons, as outlined in the Charter of Rights and Freedoms of Older Persons contained in Attachment A, and must act in accordance with the guiding principles attached to those rights and freedoms. Agencies and organisations are encouraged to review and develop internal policies and protocols that are consistent with the Charter.

2. EDUCATION AND AWARENESS:

Agencies and organisations should ensure that staff and volunteers are made aware of abuse against older persons, understand the different types of abuse and are able to recognise signs of abuse.

3. TIMELY REPORTING:

Agencies and organisations shall report all cases of abuse (whether witnessed, suspected, disclosed or alleged) to the Adult Protection Unit, via the Older Persons Gateway in a timely manner. Urgent cases should also be reported directly to South Australia Police (SAPOL).

4. INFORMATION SHARING:

Public sector agencies and organisations bound by this policy by way of agreement must apply the Information Sharing Guidelines contained in Attachment B, when a request for information is made by another agency or organisation.

5. ACCURATE RECORDS:

Agencies and organisations, including the Adult Protection Unit and the Interagency Team for Safeguarding Adults, must keep secure and accurate records about all cases of alleged, disclosed, suspected or witnessed abuse, including any steps taken to respond to reports of abuse, whether legal action was taken and the outcome of any case. Unidentified records may be requested by a Minister for the purposes of research and analysis which can inform future policy and funding initiatives.

The Interagency Team for Safeguarding Adults will carry the responsibility of formally responding to reports of abuse, but will be supported by other government agencies, non-government service providers, local governments and community based organisations.



The original members of APEA included SAPOL, the Office of the Public Advocate (OPA), the Public Trustee (PT), the Legal Service Commission (LSC) and the Aged Rights Advocacy Service (ARAS). With the exception of ARAS, which is a publicly funded organisation but is not a 'public sector agency' within the meaning of the *Public Sector Act 2009 (SA)*, each of the members is located within the Department of Justice, though some agencies are statutorily independent. The Alliance previously had no presence within, or representation from, the Departments of Health and Families and Communities. Similarly, key service provider organisations were also not included as members of APEA.

Given APEA's limited membership and representation across government, the Interagency Team for Safeguarding Adults must include agencies in addition to the 5 members of APEA. Thus, the following agencies and organisations will form part of ITSA and will carry responsibility for implementing the Adult Protection Response Framework:

- South Australia Police
- Office of the Public Advocate
- Legal Services Commission
- Public Trustee
- Aged Rights Advocacy Service
- Domiciliary Care Metropolitan
- Adelaide Health Services
- Country Health SA

- Royal District Nursing Service SA Inc

These 9 agencies comprise the core agencies within the Interagency Team. Each agency/organisation will be required to appoint or nominate a person to act as the Adult Protection Officer (APO) within their agency. APOs will act as the designated contact person for their agency/organisation, attend Adult Protection Case Conferences, and (where required) manage the implementation within their agency/organisation of Investigation and Action Plans (IAPs) developed under the Adult Protection Response Framework.

The following agencies will occasionally be required to participate in Adult Protection Case Conferences convened under the Adult Protection Response Framework, where a case raises issues of relevance to their portfolio:

- Disability Services
- Housing SA
- Indigenous Services
- Multicultural SA (Interpreting and Translating Centre)
- Aboriginal Health
- Local Councils

3. THE RIGHTS AND FREEDOMS OF OLDER PERSONS

The ability to live a healthy and rewarding life into old age rests upon one's ability to exercise basic rights and freedoms. Recognition and respect for the human rights of older persons is therefore an essential precondition for people to be able to live healthy, rewarding and independent lives into old age. Meeting the core objectives laid out in South Australia's Ageing Plan thus requires that the rights and freedoms of older persons be properly recognised and respected. The Charter of Rights and Freedoms of Older Persons contained in Attachment A has been adopted for that purpose and should inform the delivery of aged care services throughout the State.

Australia is a party to the seven major human rights treaties and supports the United Nations Principles for Older Persons. Along with every person, older people are entitled to respect and protection of their basic rights and freedoms, and bear a corresponding obligation to respect and protect the rights and freedoms of others.

South Australia, along with the other Australian States and Territories, is able to give effect to international human rights law and principles through legislation and policy. Provided that its laws and policies do not conflict with federal law,¹⁰ South Australia is free to develop frameworks for human rights protection and to tailor those frameworks to suit local issues and needs. While the mere ratification of a human rights treaty by the Commonwealth Government cannot impose obligations on State public sector agencies,¹¹ a considered statement of State government policy can impose requirements on agencies to act in a manner consistent with that policy.

This policy is designed to guide and frame decision-making and is a mandatory relevant consideration when exercising public authority. It reflects a 'whole-of-government objective' within the meaning of s 10 of the *Public Sector Act 2009 (SA)*. With respect to the rights and freedoms contained in the Charter, the policy's legal effect is simply to condition the actions of public sector agencies and organisations contractually obliged to act in accordance with it. Agencies and organisations must ensure that:

¹⁰ Constitution of Australia, s 109.

¹¹ The *Administrative Decisions (Effect of International Instruments) Act 1995 (SA)* provides that international instruments which do not have the force of domestic law under an Act of the Commonwealth or State parliaments, cannot give rise to a legitimate expectation that administrative decisions will conform to the terms of the instrument, or that procedural fairness will be afforded in a case where a proposed administrative decision does not conform to the terms of the instrument (s 3). Using ordinary principles of statutory interpretation, this Act should not be construed as preventing the South Australian Government from developing specific laws or policies (including a Charter of Rights and Freedoms of Older Persons) intended to give effect to the principles of international instruments, other than through the creation of such legitimate expectations. Thus, the Act does not prevent the intended effect of this policy on public sector agencies or organisations who are contractually obliged to comply with its terms.

- staff are made aware of the Charter and are provided with appropriate training on its importance and effect on agency and organisational practices;
- the rights and freedoms set out in the Charter are respected and promoted in all actions affecting older persons;
- the Charter informs the review and development of internal policies and protocols.

The Charter does not provide an independent cause of action or legal remedy in addition to those which may already be available through judicial review of government decisions.¹² However, if a decision-maker within a government agency fails to take the Charter into account when making a decision, and where it was relevant to do so, the decision could potentially be open to challenge on that basis in the Supreme Court.¹³ The Charter itself does not, however, legally bind a decision-maker in terms of the substantive outcome of a decision-making process. The effect of the policy is to require a decision-maker within government to treat the rights and freedoms set out in the Charter as a relevant consideration that must be taken into account. If a decision is made that one of the rights and freedoms must be infringed in order to safeguard a vulnerable person, the decision-maker bears an obligation to justify why that was considered necessary. An example would involve a decision to place the physical safety of a vulnerable person ahead of their right to privacy in serious and urgent cases.

Very few human rights are absolute and most are able to be infringed where that is necessary to pursue a legitimate purpose, such as promoting public health or safety, or protecting lives. Any infringement upon rights and freedoms must, however, be proportionate to achieving the legitimate purpose that is being pursued. A decision to safeguard a vulnerable person in a manner which involves some restriction or erosion of their rights and freedoms is a significant decision and one that should not be taken lightly. In all situations, such decisions must be properly justified and an approach which is least restrictive of a person's rights and freedoms must always be preferred.

3.1 Rights and Freedoms

Drawing from the international human rights instruments to which Australia is a party, all older persons in South Australia have the rights and freedoms set out in the Charter of Rights and Freedoms of Older Persons contained in Appendix A. In summary, those rights and freedoms include the following:

- To be treated with dignity and humanity
- To exercise personal self-determination
- To freedom of movement, including the right to choose their place of residence
- To freedom from torture or other forms of cruel, inhuman or degrading treatment
- To liberty and security of the person

¹² Government decisions are generally subject to the possibility of judicial review in the Supreme Court of South Australia.

¹³ *Supreme Court Civil Rules 2006 (SA)*, Rules 199-200.

- To freedom from exploitation and physical, social, psychological and sexual abuse
- To freedom from discrimination of all kinds
- To recognition as a person before the law
- To equality before the law
- To life
- To adequate food, clothing and shelter
- To enjoy the highest attainable standards of physical and mental health
- To freedom from arbitrary or unlawful interferences with his/her privacy, family, home or correspondence
- To family life and to have their family unit respected by others, including governments
- To freedom of association
- To participate in the social and cultural life of the community
- To freedom of thought, conscience and religion
- To freedom of opinion and expression

Human rights are not absolute, but may only be subject to reasonable limits in accordance with law as can be demonstrably justified in a free and democratic society.

The abuse or neglect of a vulnerable adult can involve an interference with that person's rights and freedoms. This is so, whether or not the abuse or neglect amounts to a crime under law. Where a community is aware of and alert to the signs of abuse in vulnerable adults, that community is better placed to prevent and respond to abuse at a much earlier stage. In order to build awareness among the community and the capacity of communities to safeguard the rights of vulnerable adults, people need to be educated about the rights of older persons as well as the forms and indicators of abuse.

How others respond to actual, suspected or reported abuse can also have significant implications for a person's human rights and freedoms. The victim of actual or suspected abuse must always be central to that response and supported to exercise their rights to self-determination, privacy and personal liberty – even where some of their other rights may be seen to be impaired.

3.2 Guiding Principles

This policy promotes a human rights based approach to adult protection. Such an approach is premised on a number of principles:

1. A person's capacity to make decisions affecting themselves is to be presumed unless that person is formally assessed as having mental incapacity.
2. A person has the right to make decisions about their own life, the way in which they live and the people they choose to live and associate with, provided that such decisions are voluntary, are not contrary to law and do not infringe the rights of others.
3. A person has the right to seek, receive and impart information which can assist in their capacity to exercise their rights. This includes the right to an interpreter and assisted communication methods, where necessary.

4. A person has the right to maintain relations with family and friends, and interferences with those relationships should be in a manner which is least restrictive of the adult person's rights and for the purpose of safeguarding the physical safety and wellbeing of the adult person.
5. A person capable of making decisions for him/herself has the right to accept or reject assistance, treatment or intervention.
6. A person has the right to the basic necessities of life including food, water, shelter, heating/cooling, clothing, hygiene and safety. However, a person has the right to live in conditions that others may perceive as unhealthy or substandard, provided that the health and safety of others is not affected.
7. The abuse of adults, particularly vulnerable adults, is not merely an individual or personal problem, but a social issue that requires a whole-of government and community response.
8. Adults are entitled to seek and receive appropriate support and intervention by relevant service providers and members of the community, but the provision of support should be appropriate to the adult person's particular needs and respectful of the person's individual rights.
9. Even where a person lacks capacity to make decisions for him/herself every effort should be made to ensure that their views are taken into account and that communication with the adult is conducted in a manner which is appropriate to their skills and abilities.
10. Competent adults have the right to provide their own instructions (advance directives) and make decisions about managing their affairs. Such directives shall be taken from the adult person, rather than a person who purports to be acting for the adult.
11. Adults should be assisted to tell their own story to whatever extent possible, rather than allowing others who purport to act for the adult to take control of that process.
12. All interactions with adults should be conducted in a non-discriminatory manner and with due sensitivity given to the race, gender, religion, cultural or ethnic background, sexual orientation or ability of the adult person.

The human rights of older persons can provide a normative framework for the empowerment of all older persons and the safeguarding of vulnerable adults. The provision of timely, widespread and (where necessary) culturally appropriate information to all older persons about their rights, the different forms of abuse, key agencies and service providers is therefore required.

The adoption of a human rights based approach can also make important differences in the way in which services are delivered, helping to support and promote older persons to live lives independently for as long as possible and to maintain their dignity and self-determination. Making respect for the rights of older persons a paramount consideration when working with older people ensures that the onus lies on agencies to justify intervention on behalf of vulnerable adults. In doing so, it moves away from a system that requires older persons to demonstrate mental capacity in order to avoid protectionist intervention and, ultimately, the erosion of the basic human rights. By adopting a human rights based approach to the protection of older persons, the safety and wellbeing of vulnerable adults is not thereby undermined; strategies designed to protect vulnerable adults are simply not implemented at the expense of a person's rights and freedoms.

3.3 How Human Rights Can Help to Achieve Better Outcomes

3.3.1 Case Scenario 1 – Injured woman prevented from attending church

An elderly woman who had broken her leg in a fall and was using a wheelchair during her recovery was unable to take the bus to church as she had normally done. Her son, who lived with her, refused to drive her to church as he preferred to sleep in on weekends. When a Domiciliary Care Metropolitan worker asked why she had stopped attending church, the woman explained the situation but was adamant that she not impose upon her son, who was a very busy executive.

The worker, who was aware of the woman's rights to social participation and the importance of being able to exercise her religious freedom, informed her that the community bus run by the local council could possibly be arranged to get her to and from church. The Domiciliary Care worker provided the woman with the relevant local council phone number and the woman was able to make arrangements for the community bus to collect her on Sundays, enabling her to continue to exercise her rights and, importantly, to maintain her social contacts through the church.

3.3.2 Case Scenario 2 – Man subject to cruel treatment by daughter

An elderly man cared for by his daughter had problems with incontinence and would occasionally soil himself. When this occurred, the daughter would force her father to sit on the toilet for extensive periods and take away his walking aid. On one occasion the man fell after attempting to get up off the toilet and was left with a gash on his forehead.

When the father presented at the local medical centre, taken there by his daughter, the doctor was able to get the man to explain what had happened. The man admitted to being embarrassed about being a burden on his daughter and made excuses for her behaviour. The doctor explained to the man that his daughter's treatment of him amounted to breach of his right to be treated with dignity. The doctor was able to give the man some information provided by the Aged Rights Advocacy Service (ARAS) and a copy of the Charter of Rights and Freedoms of Older Persons and recommended the use of incontinence products to help restore the man's independence and dignity in the home.

3.3.3 Case Scenario 3 – Woman with history of anxiety given sedatives

A woman living with her son's family had a history of anxiety and depression. Her behaviour had recently become erratic and unpredictable and was scaring her two grandchildren. Her daughter-in-law had started giving the woman sedatives in the afternoon, in an effort to calm her mother-in-law and prevent distress to the children when they returned from school. After visiting one afternoon, a neighbour reported the matter to the Office of the Public Advocate (OPA). When questioned further by the OPA officer, the neighbour revealed that the woman received physiotherapy once a week from Domiciliary Care Metropolitan.

A strategy was developed for the physiotherapist to be accompanied on her next visit by a staff member from OPA. The visit revealed that the woman displayed signs of heightened anxiety but was

clearly mentally alert and capable of making decisions for herself. She expressed a clear desire to remain living with family. A family meeting was then arranged between the woman, her son and daughter-in-law, an ARAS staff member and a case worker from Domiciliary Care Metropolitan. At the meeting, the use of sedatives was discussed as a form of abuse against the mother and as a breach of her rights to personal liberty and to be treated humanely. However, the right of the children to live without fear of their grandmother was also discussed. Strategies were made for enabling the mother to see a doctor and psychologist in an effort to better treat her anxiety. The mother was placed on medication and began counselling with a psychologist. As a result, she was able to remain living with her son and daughter-in-law.

4. ABUSE AND ITS SIGNS

Abuse is action or inaction (or omission) by one person that has an adverse effect on another person's health, wellbeing, personal integrity or dignity. Abuse is fundamentally a breach of the human rights of another person and should not be tolerated in a society which respects the rights of all people.

The abuse of older persons generally occurs within relationships of trust - with carers, partners, children, relatives, friends, neighbours, spiritual leaders of financial advisers. In these relationships, there can often be a power imbalance that emerges as a person ages and becomes increasingly dependent on the support or assistance of others. As a person's independence and capacity decreases, their vulnerability to abuse correspondingly increases.

Abuse can involve a single act or repeated acts, be short in duration or occur over many years. If left unaddressed, abuse can escalate in frequency and severity. Many forms of abuse constitute crimes in South Australia. A vulnerable older person may also self-abuse or self-neglect.

4.1 Physical Abuse

Physical abuse is any intentional act which results in physical pain, injury or discomfort. Such behaviour can include any kind of physical assault such as slapping, pushing, pulling, hitting, burning, pinching, kicking, punching, forcible or inappropriate restraint or confinement (ie. to a bed, chair or particular place), injury with a weapon or object, deliberate exposure to severe weather or conditions.

4.1.1 *Signs of Physical Abuse*

Injury or bruises in different stages of healing, abrasions, welts, rashes, swelling, tenderness or pain, skin ulcers, lacerations, bites, haematomas, grip marks, unexplained injury or hair loss, unusual patterns of bruises, muscle weakness or immobility, pushing, pulling or rough handling by another person, unusual markings on furniture potentially indicating the use of restraints.

Discrepancies may exist between the injury and the explanation provided, the older person may attend different hospitals or doctors for treatment, there may be a history of falls, accidents or injuries who do not fit the explanations provided, when attending medical appointments the alleged abuser may accompany the older person at all times preventing the opportunity to speak with the older person in private.

4.2 Psychological Abuse

Psychological or emotional abuse is any language or actions designed to intimidate another person and cause fear of violence, isolation, deprivation, or feelings of powerlessness. Such acts or words are intended to diminish a person's identity, dignity or self-worth.

Many other forms of abuse are accompanied with elements of psychological abuse. Examples of psychological abuse include insults, intimidation, treating the older person like a child, threats of restricting access to others (eg grandchildren), or placing them in residential care, public or private humiliation, threatening harm to an older person, other people or pets.

4.2.1 *Signs of Psychological Abuse*

Withdrawal, fearfulness, helplessness, resignation, marked passivity or anger, reluctance to make decisions or talk openly, huddling or rocking behaviour, nervousness, anxiety or ambivalence towards the alleged abuser and/or insomnia, shame, guilt, child-like behaviour, caregiver speaks for the adult, apathy, depression, withdrawal.

Caregiver blames the adult for physical problems such as incontinence, caregivers are passive, withdrawn or uninterested in the person, adult seeks frequent medical attention with vague or unsubstantiated complaints, adult is excluded from family gatherings, is not permitted to have friends visit, go to church, are denied access to children or grandchildren, inappropriate control by others of the activities engaged in by the adult.

4.3 Social Abuse

Social abuse is the deliberate interference with another person's rights to participate in social, religious or cultural activities, to access and share information with others, to freedom of expression and association, and to privacy of family, home and correspondence. Social abuse may involve acts of discrimination on grounds of race, gender, religion, language, sexual orientation or other ground.

4.3.1 *Signs of Social Abuse*

Confinement, isolation, restricting correspondence, phone calls and other forms of communication, restricting a person's access to media and information, cessation or prevention of an older person from attending places of worship or community centres, removal of religious or symbolic items from a house, opening or reading a person's correspondence without consent, withdrawal, apathy or depression in the older person, cessation in correspondence or communication from an older person, changes in dress, physical appearance or patterns of social interaction.

4.4 Financial Abuse

Financial abuse involves the illegal or improper use and/or mismanagement of a person's money, property or resources. It includes forgery, stealing, forced changes to a will, unusual transfer of money or property to another person, withholding of funds from the older person, incurring debts for which the older person is responsible, failure of others to repay monies loaned and lack of financial information provided to an older person by their Power of Attorney.

4.4.1 *Signs of Financial Abuse*

Unpaid bills, inability of the older person to pay for necessities, defaulting on payments (eg rent, service fees), missing documents, credit cards or personal belongings and unusual activity in bank accounts, changes to a will or other documents when appearing incapable or subject to possible coercion, confusion regarding assets, property and income, being accompanied by another person when attending financial institutions or using ATMs and the other person is reluctant to allow a conversation with the older person regarding transactions, being overcharged for repairs or services, overdrawn or depleted accounts.

4.5 Sexual Abuse

Sexual abuse included non-consensual sexual contact, language or exploitative behaviour including rape, indecent assault, sexual harassment or interference. It may also include viewing obscene material or making obscene phone calls in the presence of the older person without their consent.

4.5.1 *Signs of Sexual Abuse*

Fear and agitation, disturbed sleep, withdrawal, unexplained bruising or bleeding, infections, internal injuries, recent incontinence, difficulty in walking, torn or stained clothing or bedding, explanations for injury may not adequately explain the actual injury, the alleged abuser may attend appointments with the older person preventing staff from having a private conversation with the older person.

4.6 Substance Abuse

Substance (or chemical) abuse is any misuse of drugs, alcohol, medications and prescriptions, including the withholding of medication and over-medication.

4.6.1 *Signs of Substance Abuse*

Over-sedation, reduced physical or mental activity, grogginess, confusion, reduced or absent therapeutic response to prescribed treatment may be the result of under-medication, failure to fill prescription.,

Pills scattered about may be signs of inappropriate use of drugs, medications and/or alcohol, reduced or absent therapeutic response to prescribed treatment may be the result of under-medication, if the carer is a substance abuser, he/she may be giving drugs or alcohol to the adult person.

4.7 Neglect

Neglect refers to the failure of the caregiver to provide necessities or meet basic needs of the older person. Neglect can be deliberate or unintended. If it is deliberate, it is considered to be a form of abuse. If it is unintentional, the response will be different and may include the introduction of community services to provide assistance (eg respite, personal care).

4.7.1 *Signs of Neglect*

Poor hygiene or personal care, exposure to unsafe or unsanitary conditions, absence of health aids (eg dentures, hearing aids, glasses, mobility equipment, continence products), injuries that have not been properly cared for, unkempt appearance, weight loss, secretiveness or agitation, lack of groceries or nutritional variety, lack of social activities, and/or lack of personal items (eg photos, ornaments), malnourishment, dehydration, impaired skin integrity, bed sores, soiled linen, inappropriate or insufficient clothing, lack of attention to health care needs.

Deliberate neglect by a carer might include failure to provide suitable accommodation, nutrition, clothing or personal items, unwillingness to allow adequate medical, dental or personal care, inappropriate use of medication, and/or refusal to permit other people or services to provide care and support, receiving carer's allowance or payment but failing to provide care.

5

MYTHS AND REALITIES ABOUT ABUSE

There are several myths surrounding abuse against older people, many of which are common across societies.¹⁴

5.1

Older men do not experience abuse

A common misconception is that men, who are (generally speaking) physically stronger than women, do not experience abuse. Even where that misconception is not held, people may still be less aware of the prevalence of abuse in men, be less alert to the signs of abuse in men, and be less likely to feel the imperative to respond when a man is abused, believing men to be stronger or more resilient.

The reality is that men also experience abuse. Men may, however, feel less able to communicate the experience of abuse because of the common misconceptions about abuse of men, or because they feel shame or that the experience of having being abused is not consistent with the masculine role.

5.2

The abuse of older persons is rare

Research indicates that older persons are much less likely to be the victims of crime; in 2001, the victimisation rate for people over 65 years in South Australia was 0.8%.¹⁵ However, there is a difference between crime rates and the prevalence of abuse. Various studies have researched the latter, with estimates varying between 1% and 5%, depending on the method or definitions used.¹⁶

Many instances of abuse, and many possible crimes, are not formally reported to police. Furthermore, not all abuse amounts to a crime under South Australian law, although abuse does constitute breach of the human rights and personal integrity of the victim.

The reality is that older persons are victims of all forms of abuse and accurate figures of the rates of abuse are very difficult to obtain. Under-reporting is perhaps the most significant reason why this is the case, explained by a range of factors: older persons are not as active or in public as frequently as younger people; victims often wish to protect the abuser because he/she is a relative or person upon whom the victim is dependent; feelings of shame or embarrassment; fear of the consequences of reporting abuse, including the loss of support services or support and reprisals from the

¹⁴ Many of these examples are drawn from other instruments including, in particular, the *Protocol for Responding to Abuse of Older People Living at Home in the Community*, Aged Rights Advocacy Service, South Australia, 2011, and the *Adult Victims of Abuse Protocols*, New Brunswick, Canada, 2005.

¹⁵ *Household, Income and Labour Dynamics in Australia (HILDA) longitudinal data survey and ABS Census 2001*.

¹⁶ *Improving With Age: Our Ageing Plan for South Australia*, Government of South Australia, February 2006.

perpetrator; a lack of professional and community awareness and knowledge regarding the abuse of older persons; cultural barriers to disclosure.

5.3 Certain cultural communities and high socio-economic groups are immune to abuse and neglect

Public perceptions of particular ethnic or religious communities often involve assumptions that they are formed on very close family and community networks, have very strong ethical and religious traditions and that abuse and neglect are consequently rare. Similarly, there can be assumptions about older persons from high socio-economic groups; that they have sufficient or heightened capacity to care for themselves (or pay for others to do so) and prepare for old age.

The reality is that abuse and neglect occurs across all cultural and socio-economic groups. Research indicates, however, that older people from Culturally and Linguistically Diverse (CALD) communities may be at an increased risk of abuse due to a range of factors: reduced language skills, particularly with respect to understanding legal and financial documents; social isolation, resulting on dependence on family members; limited understanding of what abuse is and what services are available; unwillingness to report abuse due to feelings of shame and the possibility of stigma within their community; the terminology of abuse may be inappropriate and require adaptation with respect to certain cultural communities. Research also indicates that cross-generational conflict resulting from different expectations of family members about roles and care may also result in abusive practices

Aboriginal communities may require additional support that is both sensitive and culturally appropriate. A Report of the Western Australian Office of the Public Advocate in 2005 identified a series of factors which indicate that the community may be at greater risk of abuse including, high levels of family violence, historical factors (including involvement with authorities) discouraging disclosure, reduced levels of respect for elders, premature ageing and lower life expectancy.

5.4 Most abuse is the result of caregivers being overly stressed

Caring for an older person can, at times, be a very demanding and stressful role, particularly if the relationship between a caregiver and the older person is based on a long historical or familial relationship that may involve old resentments or dysfunctional patterns of interaction. Such relationships can be strained by the changing behaviour of the older person as underlying illnesses or conditions become progressively worse.

The reality is that no amount of stress on the part of a caregiver can excuse the abuse or neglect of an older person. Under the law, such factors may be taken into account as mitigating factors relevant to a sentence, but they do not displace the carer's responsibility for the commission of a crime (where abuse constitutes a crime). Being alert to caregiver stress can assist in recognising possible or potential vulnerability to abuse, but it cannot be used as a justification for ignoring or overlooking abuse itself.

5.5 Other myths associated with elder abuse

The following are additional myths associated with the abuse of older persons:

- **Older persons are unlikely to be the victims of sexual abuse because they are either asexual or not sexually attractive**
 - **Reality:** sexual abuse is about power and control over the victim, not about sexual arousal or attraction; attractiveness has nothing to do with the age of a person; sexual abuse is physical violence, not an act of sexual intimacy; a person's sexuality along with sexual activity does not end once a person reaches the age of 65.
- **Spousal abuse stops in old age**
 - **Reality:** domestic violence does not stop as a couple reaches old age, though the capacity of the perpetrator to physically abuse his/her partner may reduce as his/her physical ability deteriorates.
- **Most abuse is perpetrated by strangers**
 - **Reality:** Abuse is normally carried out by a person known to the older person – a caregiver or family member. The abuser is often a person who is dependent on the older person for housing or financial assistance.
- **Victims are somehow responsible for abuse or neglect done to them**
 - **Reality:** the prior relationships between an abuser and the victim can often provide a partial explanation or additional context in which the abusive behaviour should be viewed. However, abusive behaviour is solely the responsibility of the perpetrator and every person has the right not to be abused or subject to deliberate neglect.

Section 10 of the *Intervention Orders (Prevention of Abuse) Act 2009* (SA) sets out a number of principles which must be taken into account when determining whether to issue an intervention order as well as the terms of any order issued. While an issuing authority may take into account any other factor they consider relevant, the authority must consider the following:

- that abuse occurs in all areas of society, regardless of socio-economic status, health, age, culture, gender, sexuality, ability, ethnicity and religion;
- that abuse may involve overt or subtle exploitation of power imbalances and may consist of isolated incidents or patterns of behaviour;
- that it is of primary importance to prevent abuse and to prevent children from being exposed to the effects of abuse.

Provisions such as these are aimed at directing the decision-making processes of police and judges and can assist to avoid stereotypes when dealing with abuse. However, ill-informed assumptions can persist within the community and education programs should aim to dispel the myths associated with the abuse of older persons.

6. ASSESSING VULNERABILITY AND THE RISK OF ABUSE

Not every older person is vulnerable to abuse. This policy only applies to older persons (defined as persons over the age of 65 years, or aboriginal persons over the age of 45 years) who are 'vulnerable' to harm or abuse.

For the purposes of this policy framework, an older person is considered 'vulnerable' if they are:

- (1) unable to safeguard their own well-being, property (including money, shares or other financial interests), legal rights or other interests;
AND
- (2) either of the following applies:
 - (b) the older person is engaging (or is likely to engage) in conduct which causes or is likely to cause self-harm; OR
 - (c) another person's conduct is causing or is likely to cause the older person to be harmed or exploited.

According to this definition, an older person is vulnerable if two elements are present:

- an inability to self-protect;
- the presence or likelihood of experiencing harm (including self-harm) or exploitation.

6.1 The Language of 'Harm' and 'Abuse'

Harm and abuse are terms which are interchangeable. From a legal perspective, both the criminal law and legislation which authorises the making of intervention orders use the language of abuse. It is important to label abuse as 'abuse' and to recognise that its prevention may warrant an intervention order, and its most serious forms constitute crimes under South Australian law.

However, when communicating with older persons who are, or are likely to be, victims of abuse, it will often be more appropriate to use the language of 'harm', 'rights' and 'safeguarding against harm'. Particularly where the perpetrators of abuse are close family members of the victim, such language can assist in securing a positive outcome for older persons by recognising the frequent desire of victims to retain their relationships with family.

There exist many determinants which can place a person in a more vulnerable position and each determinant can impair a person's capacity to protect themselves in different ways and to different degrees. Thus, each determinant of vulnerability must be considered in context, by reference to the particular abilities and circumstances of an older person. An older person may for example need

high levels of support from a carer but have very active and strong social networks within his/her community. The presence of one or more determinant should not automatically be treated as placing an older person at risk of abuse and the full circumstances of each case must be properly considered and assessed.

Common determinants of or contributors to 'vulnerability' include, but are not limited to, the following:

- The older person is dependent on others for care (personal, health, financial);
- The older person's ability to safeguard their own wellbeing, rights and interests is limited due to some underlying issue, which might include (but is not necessarily limited to):
 - Advanced age;
 - Serious illness or physical health issue;
 - Physical disability;
 - Cognitive impairment;
 - Significant mental health problems;
 - Adverse psychological effects of destitution;
- The older person has suffered from years of domestic violence;
- The older person is isolated from family or social and community networks;
- The older person experiences personality and behaviour changes, including possible violent or aggressive outbursts, due to the progressive worsening of underlying illnesses or conditions;
- The older person is powerless to modify their environment or circumstances due to a diminished ability to advocate effectively for themselves;
- The older person's carer is experiencing high levels of stress or financial problems, has a mental health issue or has addiction or substance abuse problems.

Age can thus be an indicator of risk or vulnerability, but only when combined with dependency on others for care or an inability to safeguard and protect oneself. Multiple factors, of which advanced age might be one, combine therefore to place an individual in a situation of risk or vulnerability.

Older persons are at risk of experiencing abuse where their vulnerability is open to exploitation from persons who stand in a position of trust or power. This might be carers, family members, persons who exercise powers of attorney or others who are in a position to control aspects of the older person's life. The personal dynamics of abuse against older persons can often mean that the victim is reticent to disclose or report abuse to another. A woman might be very upset that her adult son is verbally abusive towards her and would prefer that it stop, but does not wish to ruin her relationship with her son, get him into trouble or do something that would see him avoiding contact with her. The woman in this scenario has a right to ask that the abuse stop, but she also has the right to maintain her relationship with her son. How people respond to abuse when it is committed in a family or personal setting is therefore very important to the longer term interests and wellbeing of the victim. For this reason, a graduated approach is required for responding to abuse and the level of intervention must be reflective of the following factors:

- the severity of the abuse
- the immediate safety of the older person or others; and

- the degree of vulnerability and incapacity of the older person to protect their own safety, wellbeing and interests.

A decision-making tool to assist agencies and service providers in assessing vulnerability and risk of abuse is provided in Attachment E.

7. WHEN ABUSE CONSTITUTES A CRIME

Abuse in all its forms may constitute a crime under South Australian law. While it is not the responsibility of workers and the community to know the elements of every relevant crime, nor to make a considered assessments as to whether a crime has taken place, or is likely to take place in the future, it is important for all service providers to be aware of when the South Australian Police (SAPOL) should be contacted.

The most serious forms of abuse are likely to involve criminal behaviour that will be investigated and possibly prosecuted by the police. If a person witnesses or suspects that a crime may have been committed or is being committed, that person should contact SAPOL and report the incident or the facts upon which their suspicion is based. Where serious abuse is reported or disclosed to a person, SAPOL should also be contacted.

In all cases, if an older person's life or physical safety is, or appears to be, under imminent threat, or the safety of a worker or other person in the vicinity of the older person is under imminent threat, SAPOL (and other emergency services) should be contacted immediately. In cases where a person is not facing immediate danger, it can sometimes be difficult to assess whether SAPOL should be contacted. However, where a person is in doubt it is best to contact SAPOL and report the situation; the police can then make an informed decision about the appropriate response. For workers who are in doubt, they should seek the guidance of their supervisor in the first instance, but contact SAPOL directly if they are unable to obtain that guidance in a timely manner.

For the purposes of maintaining accurate information about reported, witnessed or suspected abuse, workers should ensure that detailed records are kept in all cases. Issues of privacy and confidentiality are dealt with below and under the Information Sharing Guidelines (Attachment B), but confidentiality cannot be preserved in cases where a crime has, or appears to have, been committed. Below are listed the major crimes of particular relevance to the abuse of older persons.

7.1 Homicide

Sections 11-13A, *Criminal Law Consolidation Act 1935 (SA)*

Murder, conspiring or soliciting to commit murder, causing death by an intentional act of violence, manslaughter, failing to prevent the commission or completion of an act of suicide in certain circumstances.

7.2 Unlawful Threats

Section 19, *Criminal Law Consolidation Act 1935 (SA)*

Threatening to kill or endanger the life of another, or to cause harm to another, with intent to arouse a fear that the threat will be carried out, or with reckless indifference as to whether such fear will be aroused.

7.3 Assault

Section 20, *Criminal Law Consolidation Act 1935 (SA)*

Includes: intentionally applying force to a victim; making physical contact knowing that the victim might object; threatening to apply force where it is reasonable for the victim to believe that the threat will be carried out; or accosts or impedes another in a threatening manner.

7.4 Causing Harm and Serious Harm

Sections 21-24, *Criminal Law Consolidation Act 1935 (SA)*

Harm means physical or mental harm (whether temporary or permanent). Mental harm means psychological harm and does not include emotional reactions such as distress, grief, fear or anger unless they result in psychological harm. Physical harm includes unconsciousness, pain, disfigurement, infection with a disease. Serious harm is the result of multiple acts of harm constituting a single course of conduct or the same incident. Harm can be the result of both intentional and reckless behaviour. Harm caused by one person with the lawful consent of the victim is not a crime under the Act (s 22), unless the victim was a child and consent was not given by a parent or guardian, or the harm is outside the limits generally accepted in the community.

7.5 Acts Endangering Life or Creating Risk of Serious Harm

Section 29, *Criminal Law Consolidation Act 1935 (SA)*

Acts or omissions carried out, knowing it is likely to endanger the life of another, or intending to endanger the life of another, or being recklessly indifferent as to whether the life of another is endangered. Acts or omissions carried out, knowing it is likely to cause harm or serious harm to another, or intending to cause harm or serious harm to another, or being recklessly indifferent as to whether such harm is caused.

7.6 Failing to Provide Food etc in Certain Circumstances

Section 30, *Criminal Law Consolidation Act 1935 (SA)*

Failing, without lawful excuse, to provide food, clothing or accommodation to a minor, a person suffering from an illness, or a disabled person, where the person is liable to provide food, clothing or accommodation.

7.7 Spiking of Food or Beverages

Section 32C, *Criminal Law Consolidation Act 1935 (SA)*

Adding a substance, or causing a substance to be added, to any food or beverage intending to cause (or being recklessly indifferent as to causing), impairment of the consciousness or bodily function of another who will or might consume the food or beverage without knowledge of the presence of the substance.

7.8 Rape

Section 48, *Criminal Law Consolidation Act 1935 (SA)*

Engaging, or continuing to engage in, sexual intercourse with another person who does not consent to engaging in the sexual intercourse, or has withdrawn consent to the sexual intercourse, and the offender knows, or is recklessly indifferent to, the fact that the other person does not so consent or has so withdrawn consent.

Compelling a person to engage in sexual intercourse with a person other than the offender, an act of sexual self-penetration, or an act of bestiality, where the person compelled does not consent or has withdrawn consent to the act, and the offender knows, or is recklessly indifferent to, the fact that the person does not so consent or has so withdrawn consent.

A person compels another person if he or she controls or influences the other person's conduct by means that effectively prevent the other person from exercising freedom of choice.

'Sexual self-penetration' means the penetration by a person of the person's vagina, labia majora or anus by any part of the body of the person or by any object.

7.9 Compelled Sexual Manipulation

Section 48A, *Criminal Law Consolidation Act 1935 (SA)*

Compelling a person for a prurient purpose to engage, or to continue to engage, in, an act of sexual manipulation of the offender or an act of sexual manipulation of a person other than the offender, or an act of sexual self-manipulation, when the person so compelled does not consent to engaging in the act, or has withdrawn consent to the act, and the offender knows, or is recklessly indifferent to, the fact that the person does not so consent or has so withdrawn consent.

'Prurient purpose' means a person acts for a prurient purpose if the person acts with the intention of satisfying his or her own desire for sexual arousal or gratification or of providing sexual arousal or gratification for someone else.

'Sexual manipulation' means the manipulation by a person of another person's genitals or anus (whether or not including sexual intercourse).

7.10 Indecent Assault

Section 56, *Criminal Law Consolidation Act 1935 (SA)*

Assault, which is considered 'indecent'. Assault is defined under section 20. Indecent assault can be an alternative charge to rape.

7.11 Procuring Sexual Intercourse

Section 60, *Criminal Law Consolidation Act 1935 (SA)*

Using threats or intimidation, false pretences, false representations or other fraudulent means, to procure any person to have sexual intercourse.

7.12 Incest

Section 72, *Criminal Law Consolidation Act 1935 (SA)*

Sexual intercourse with a close family member. 'Close family member' means, a parent, child, sibling (including half-brother or half-sister), grandparent or grandchild. It does not include a family member related to the person by marriage or adoption alone.

7.13 Theft (and Receiving)

Section 134, *Criminal Law Consolidation Act 1935 (SA)*

Dealing with property dishonestly and without the owner's consent, and intending to deprive the owner permanently of the property or to make a serious encroachment on the owner's proprietary rights.

A person intends to make a serious encroachment on an owner's proprietary rights if the person intends to treat the property as his or her own to dispose of regardless of the owner's rights or to deal with the property in a way that creates a substantial risk (of which the person is aware), that the owner will not get it back, or that, when the owner gets it back, its value will be substantially impaired.

A person may commit theft of property that has come lawfully into his or her possession, and by the misuse of powers that are vested in the person as agent or trustee or in some other capacity that allows the person to deal with the property.

7.14 Deception

Section 139, *Criminal Law Consolidation Act 1935 (SA)*

Deceives another and, by doing so, dishonestly benefits him/herself or a third person, or dishonestly causes a detriment to the person subjected to the deception or a third person, is guilty of an offence.

7.15 Dishonest Exploitation of Position of Advantage

Section 142, *Criminal Law Consolidation Act 1935 (SA)*

Dishonestly exploiting an advantage to benefit him/herself or to cause a detriment to another. This section applies to the following advantages: the advantage that a person who has no disability or is not so severely disabled has over a person who is subject to a mental or physical disability; the advantage that one person has over another where they are both in a particular situation and one is familiar with local conditions while the other is not.

7.16 Other Offences

7.16.1 *ILLTREATMENT OF NEGLECT OF PERSON WITH MENTAL INCAPACITY*

Section 76, *Guardianship and Administration Act 1993 (SA)*

Where a person having oversight, care or control of a person with a mental incapacity illtreats or wilfully neglects that person, they are guilty of an offence, carrying a maximum penalty of \$10,000 or imprisonment for 2 years.

7.16.2 *IMPROPER INDUCEMENT TO APPOINT ENDURING GUARDIAN*

Section 79, *Guardianship and Administration Act 1993 (SA)*

Where a person, by dishonesty or under influence, induces another to execute an instrument appointing an enduring guardian they are guilty of an offence and forfeit any rights to the other person's estate. The penalty for this offence is a maximum term of imprisonment of 10 years.

7.16.3 *IMPROPERLY PROCURING DETENTION OR TREATMENT UNDER THE MENTAL HEALTH ACT 2009 (SA)*

Section 102(5) *Mental Health Act 2009 (SA)*

A person who, by fraudulent means, procures or attempts to procure any person who does not have a mental illness to be received into, or detained in, a treatment centre, or to be treated as a person to whom an order under the Act applies is guilty of an offence. The maximum penalty is \$25,000 or a term of imprisonment of 2 years.

8. WHEN INTERVENTION ORDERS MAY BE SOUGHT TO PREVENT ABUSE

New legislation entering into force in December 2011 enables both the police and the courts to issue intervention orders for the prevention of abuse. Although drafted with the aim of protecting victims of domestic violence, including children, the Act applies generally and can be used to protect older persons in certain circumstances. Orders issued under the Act are entirely directed towards the perpetrator, rather than the victim. Thus, unlike in some overseas jurisdictions, where authorities have the power to issue orders to remove a victim for medical assessment or other protective purposes, South Australia's *Intervention Orders (Prevention of Abuse) Act 2009* (SA) does not confer such extensive powers.

Applications for intervention orders must be treated as a matter of priority,¹⁷ and a number of principles (previously referred to above) must be taken into consideration when determining whether to issue an intervention order, and what the content of an order will be. Those principles include the following:¹⁸

- abuse occurs in all areas of society, regardless of socio-economic status, health, age, culture, gender, sexuality, ability, ethnicity and religion;
- abuse may involve overt or subtle exploitation of power imbalances and may consist of isolated incidents or patterns of behaviour;
- it is of primary importance to prevent abuse and to prevent children from being exposed to the effects of abuse;
- as far as is practicable, intervention should be designed to encourage defendants who it is suspected will, without intervention, commit abuse to accept responsibility and take steps to avoid committing abuse, and to minimise disruption to protected persons and any child living with a protected person and to maintain social connections and support for protected person;
- any other factor the authority considers relevant in the circumstances.

Subject to certain requirements, the police are entitled to issue interim intervention orders, though the defendant must be required to come before a court of law within a specified time.¹⁹ In cases not requiring the imposition of interim orders (ie, cases that do not have a degree of immediacy or urgency), an application will need to be made to the Court for an intervention order. Applications can be made by:

- a police officer
- a person against whom it is alleged the perpetrator may commit an act of abuse (or a suitable representative of that person with permission to apply to the court), or

¹⁷ *Intervention Orders (Prevention of Abuse) Act 2009* (SA), Section 9.

¹⁸ *Intervention Orders (Prevention of Abuse) Act 2009* (SA), Section 10.

¹⁹ *Intervention Orders (Prevention of Abuse) Act 2009* (SA), Section 18.

- a child who may be exposed to the abuse.²⁰

Intervention orders can only be issued where it is reasonable to suspect that the perpetrator (known as the defendant) will, without intervention, commit an act of abuse against a person and, the issuing of such an order is appropriate in the circumstances.²¹ Intervention orders can be issued to protect any person against whom it is suspected the defendant will commit an act of abuse, and any child who might be exposed to such abuse.²² According to section 7(2) of the Act, it does not matter that the person who is the likely victim of the abuse is not an applicant in the proceedings where an intervention order is sought.

8.1 Abuse

The Act provides definitions of ‘abuse’ which, if met, may warrant the issuing of an intervention order. These definitions do not strictly correlate with the definitions of abuse contained in this policy, as the Act is designed to deal with abuse against a range of victims. However, the Act does provide very important legal remedies for safeguarding vulnerable adults.

Under the Act abuse includes ‘physical, sexual, emotional, psychological or economic abuse’ (s 8(1)). Physical abuse arguably includes chemical or substance abuse and, arguably, aspects of social abuse are captured within the definition of psychological abuse. Section 8 states that, ‘[a]n act is an act of abuse against a person if it results in or is intended to result in -

- (a) physical injury; or
- (b) emotional or psychological harm; or
- (c) an unreasonable and non-consensual denial of financial, social or personal autonomy; or
- (d) damage to property in the ownership or possession of the person or used or otherwise enjoyed by the person.

8.2 Emotional or Psychological Harm

‘Emotional or psychological harm’ includes -

- (a) mental illness; and
- (b) nervous shock; and
- (c) distress, anxiety, or fear, that is more than trivial.

Examples of emotional or psychological harm include the following:²³

- sexually assaulting the person or engaging in behaviour designed to coerce the person to engage in sexual activity;

²⁰ *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*, Section 20.

²¹ *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*, Section 6.

²² *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*, Section 7.

²³ *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*, Section 8(4).

- unlawfully depriving the person of his or her liberty;
- driving a vehicle in a reckless or dangerous manner while the person is a passenger in the vehicle;
- causing the death of, or injury to, an animal;
- following the person;
- loitering outside the place of residence of the person or some other place frequented by the person;
- entering or interfering with property in the possession of the person;
- giving or sending offensive material to the person, or leaving offensive material where it will be found by, given to or brought to the attention of the person;
- publishing or transmitting offensive material by means of the Internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, the person;
- communicating with the person, or to others about the person, by way of mail, telephone (including associated technology), fax or the Internet or some other form of electronic communication in a manner that could reasonably be expected to cause emotional or psychological harm to the person;
- keeping the person under surveillance;
- directing racial or other derogatory taunts at the person;
- threatening to withhold the person's medication or prevent the person accessing necessary medical equipment or treatment;
- threatening to institutionalise the person;
- threatening to withdraw care on which the person is dependent;
- otherwise threatening to cause the person physical injury, emotional or psychological harm or an unreasonable and non-consensual denial of financial, social or domestic autonomy or to cause damage to property in the ownership or possession of the person or used or otherwise enjoyed by the person.

8.3 Denial of Financial, Social or Personal Autonomy

Significantly, the new legislation covers financial abuse, the most common form of abuse perpetrated against older persons. Examples of 'unreasonable and non-consensual denial of financial, social or personal autonomy' under s 8(2)(c) are set out under sub-section 8(5). They include:

- denying the person the financial autonomy that the person would have had but for the act of abuse;
- withholding the financial support necessary for meeting the reasonable living expenses of the person (or any other person living with, or dependent on, the person) in circumstances in which the person is dependent on the financial support to meet those living expenses;
- without lawful excuse, preventing the person from having access to joint financial assets for the purposes of meeting normal household expenses;

- preventing the person from seeking or keeping employment;
- causing the person through coercion or deception to –
 - relinquish control over assets or income; or
 - claim social security payments; or
 - sign a power of attorney enabling the person's finances to be managed by another person; or
 - sign a contract for the purchase of goods or services; or
 - sign a contract for the provision of finance; or
 - sign a contract of guarantee; or
 - sign any legal document for the establishment or operation of a business;
- without permission, removing or keeping property that is in the ownership or possession of the person or used or otherwise enjoyed by the person;
- disposing of property owned by the person, or owned jointly with the person, against the person's wishes and without lawful excuse;
- preventing the person from making or keeping connections with the person's family, friends or cultural group, from participating in cultural or spiritual ceremonies or practices, or from expressing the person's cultural identity;
- exercising an unreasonable level of control and domination over the daily life of the person.

8.4 The Content of Intervention Orders

An intervention order may do any one of the following:²⁴

- prohibit the defendant from being on premises at which a protected person resides or works;
- prohibit the defendant from being on specified premises frequented by a protected person;
- prohibit the defendant from being in a specified locality;
- prohibit the defendant from approaching within a specified distance of a protected person;
- prohibit the defendant from contacting, harassing, threatening or intimidating a protected person or any other person at a place where the protected person resides or works;
- prohibit the defendant from damaging specified property;
- prohibit the defendant from taking possession of specified personal property reasonably needed by a protected person;
- prohibit the defendant from causing or allowing another person to engage in the conduct referred to in any of paragraphs (e) to (g);

²⁴ *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*, Section 12.

- require the defendant to surrender specified weapons or articles that have been used, or that there is some reason to believe might be used, by the defendant to commit an act of abuse against a protected person;
- require the defendant to return specified personal property to a protected person;
- require the defendant to allow a protected person to recover or have access to or make use of specified personal property and to allow the person to be accompanied by a police officer or other specified person while doing so;
- impose any other requirement on the defendant to take, or to refrain from taking, specified action.

Importantly, the Act provides that an intervention order can be issued in respect of property, even where a defendant might have a legal or equitable interest in the premises or property.²⁵ A protected person is able to change the locks on external doors and windows, and a defendant may not terminate any lease on the property before the determination of the proceedings.²⁶ Intervention orders may also require a defendant to undertake intervention programs.²⁷

The Act makes it an offence to contravene an intervention order, makes it an offence for a landlord to give access to a defendant to premises covered by an intervention order and prohibits publication of reports about proceedings under the Act.²⁸

²⁵ *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*, Section 12(5).

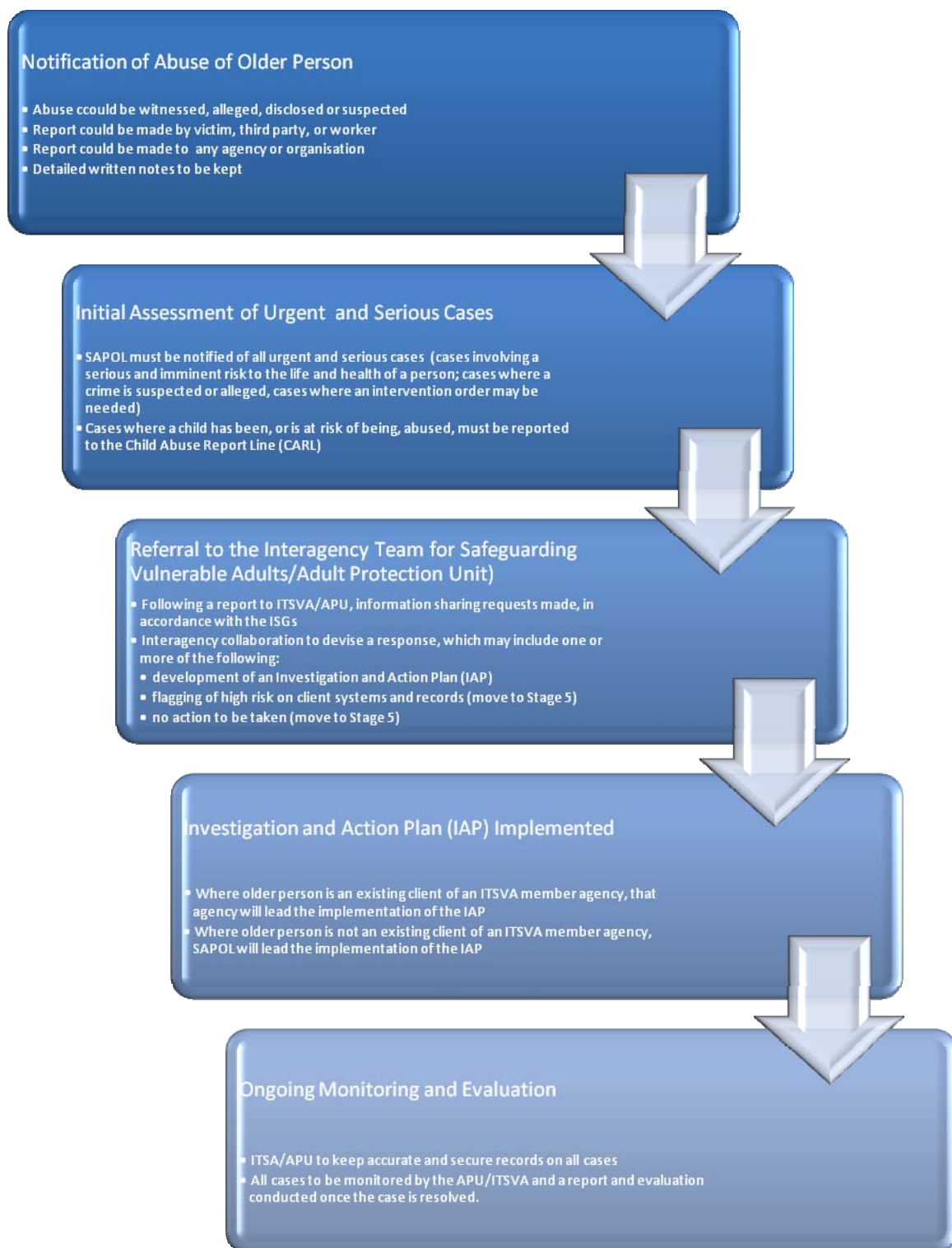
²⁶ *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*, Section 12(6).

²⁷ *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*, Section 13.

²⁸ *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*, Sections 31-33 respectively.

9. ADULT PROTECTION RESPONSE FRAMEWORK

Five stages comprise the Elder Abuse Response Framework. The first two stages must be completed by every agency which is notified of, or alerted to, a case of suspected, actual, disclosed or alleged abuse. The remaining stages apply to the Interagency Team for Safeguarding Vulnerable Adults, once a report has been made to the Adult Protection Unit, via the Older Persons Gateway.



Responsibility for recording all notifications of abuse, as well as an initial assessment of the seriousness of the case, falls upon every agency or organisation to which this policy applies. However, responding to cases of abuse is primarily shared by the member agencies which comprise the new Interagency Team for Safeguarding Vulnerable Adults.



The response framework’s five phases each contain important elements for managing reports of abuse and for safeguarding vulnerable adults in a manner which is respectful of their rights, but which also enables strategies for early intervention.

9.1 Stage 1 - Notification of Abuse

‘Notification’ refers to the process whereby an agency or organisation subject to the terms of this policy, is notified of, or is in some way alerted to, a case of possible abuse against an older person living in the community.

Notifications of cases of actual (witnessed), suspected, disclosed or alleged abuse will come from a variety of sources:

- the victim
- another person
- an agency worker

Notifications may be made orally, via telephone or in person, or in writing, via letter or email. Where a worker becomes aware of actual or suspect abuse, whether through their own observations or through a notification by another person, the agency in which he or she works will be considered to have notice of the abuse, and their responsibilities under this policy will have been triggered.

A notification can be made to different agencies, including:

- the Adult Protection Unit
- to a member agency of the Interagency Team for Safeguarding Vulnerable Adults
- to another agency or organisation

However, only where a notification is made to an agency or organisation subject to this policy is a response required, though it is anticipated that the development of Community Networks for Adult Protection will prompt concerned members of the community to make notifications to the Adult Protection Unit, via the Older Persons Gateway.

A template form for recording notifications is contained in Appendix D. It includes a section on consent and confidentiality which must be completed. All agencies and organisations subject to this policy should endeavour to complete the form as accurately and comprehensively as possible.

9.2 Stage 2 - Initial Assessment

With every notification received, an initial assessment must be made of the seriousness and urgency of the situation. In cases where there exists a serious and immediate risk to the life and health of another person, including the alleged victim and perpetrator, the police must be contacted immediately. Similarly, if a crime has been committed, is continuing, or a crime is likely to take place, the police should be called immediately. Even where the person making the notification does not give their consent to share information, the law requires that SAPOL be notified in such cases. Thus, the person receiving the notification of abuse should explain the reasons why confidentiality cannot be maintained in some circumstances.

In other cases the facts as disclosed may give cause to contemplate an intervention order. In such cases, the police should be notified in an attempt to protect the safety, rights and interests of victims. Unless the case is serious and the older person faces an imminent risk, or the action is to prevent the continuing commission of criminal activity, the consent of the person making the notification should be sought – for the purposes of sharing details of the notification with relevant agencies and organisations. Where the notification is given by a person other than the alleged victim, confidentiality of that person can be maintained in many circumstances.

All determinations made at this initial assessment phase must be properly documented, and the reasons for making determinations should be noted. Where a worker is uncertain of the appropriate decision, they should consult with their supervisor or a senior colleague, or follow their agency's internal protocol.

All cases, whether serious, urgent or otherwise, should be referred to the Adult Protection Unit via the Older Persons Gateway. However, where the case is not serious (ie, there is not a serious and imminent threat to the life or health of the vulnerable adult or other person), the adult's consent will be required. Where consent is not given, an agency must retain accurate and comprehensive records on file and collate de-identified information for the purposes of sharing with the Adult Protection Unit.

9.3 Stage 3 - Response Assessment

Response assessment is the responsibility of the Interagency Team for Safeguarding Vulnerable Adults (ITSVA), coordinated through the Adult Protection Unit (APU). Upon receiving a notification or referred notification – if the former is the case then Stage 2 must first be completed by the APU – a request for information sharing must be made to each of the members of ITSVA. If the older person who is the subject of the notification is already a client of an agency or organisation, that agency should (in most circumstances) assume the lead role in Phase 4 – the Implementation Phase. If the person is a client of more than one agency, the relevant agencies will decide to either share the lead role, or have one agency only assume leadership. If the subject of the notification is not a client of any agency, then SAPOL should assume the lead role in the event that an Investigation and Action Plan (IAP) is developed.

The assessment of a case shall take place through an Adult Protection Case Conference, which can be conducted in two ways:

- via telephone calls between member agencies, or via a tele-conference where conversations need to take place simultaneously between multiple agencies;
- at a face-to-face inter-agency meeting.

Complex cases should, in most circumstances, be assessed at an inter-agency meeting. Less complex cases should, in most circumstances, be able to be considered via tele-conference or through a series of telephone conversations. Any email communication which occurs as part of the assessment and monitoring of cases should only contain information or notes that do not reveal, or cannot be used to reveal, the identity of the older person.

While the majority of cases should be able to effectively considered at a meeting of the 9 members of ITSVA, there will on occasion be a need to invite other agencies or organisations to attend, including, but not necessarily limited to:

- Disability Services
- Housing SA
- Indigenous Services
- Multicultural SA (Interpreting and Translating Centre)
- Aboriginal Health
- Local Councils

Responses to a notification may involve one or more of the following strategies:

- taking no action (the notification is vexatious, frivolous and cannot be substantiated);
- flagging the subject of a notification as high risk or vulnerable (or possibly high risk or vulnerable) on client systems and records of key agencies and organisations;
- the development of an Investigation and Action Plan (IAP).

An IAP can involve a number of elements, including, but not necessarily limited to, the following:

- recommending that action be considered by SAPOL (warrants, intervention orders, criminal charges etc);
- making further requests for information from additional agencies and organisations;
- seeking consent from an older person if consent has not previously been given, or has only been given for limited purposes;
- planned multi-agency visits to the older person for the purposes of investigation and monitoring;
- planned follow-up phone calls to the older person for the purposes of investigation and monitoring;
- making requests and arranging for various assessments and services (housing needs, bond assistance, financial assistance for security screens and duress alarms, access to legal services and advice regarding powers of attorney etc, mental health assessments);
- flagging the subject of a notification as high risk or vulnerable (or possibly high risk or vulnerable) on client systems and records of key agencies and organisations;
- providing the older person with information and access to resources.

An IAP should make it expressly clear which agency or agencies will assume responsibility for the implementation phase, and for implementing each element of the IAP. The various objectives and elements of an IAP may be implemented and met by different agencies, either acting alone or in collaboration with other agencies. However, an IAP must ensure that agencies act in a coordinated manner to support and protect an older person who is vulnerable to abuse.

When assessing a case of reported abuse, ITSVA must ensure that their response is framed in accordance with the Charter of Rights and Freedoms of Older Persons and follows the Guiding Principles which support a human rights based approach to the support and protection of vulnerable adults. The Alliance must also ensure that strategies for implementation within an IAP have been developed consistently with a human rights based approach to intervention.

9.4 Stage 4 - Implementation

This stage is only relevant where an IAP has been developed under Stage 3. In cases where the assessment under Stage 3 resulted in a decision to flag on client systems and records the fact that a person is vulnerable to risk, members of ITSVA will need to ensure that that decision is followed through within their own agencies and organisations.

Where an IAP involves planned multi-agency visits to an older person, and no agency has an existing relationship with the older person, SAPOL is required to assume the lead role in implementing an IAP. Thus, SAPOL will need to be in attendance at any planned visits to the older person's home.

When implementing an IAP, it is essential that actions are governed by a conscious awareness of and respect for the rights and freedoms of the older person, and that the Guiding Principles contained in the Charter are followed. Strategies for supporting and protecting an older person may not be accepted by the older person and, unless the life or health of the older person is subject to a serious and imminent risk, or there are grounds for the police to impose or seek intervention orders and lay charges against a perpetrator, the IAP may not be able to be fully implemented. In such cases, where

assistance is resisted by the person - and that person has mental capacity - a strategy for ongoing communication with the older person and monitoring should be developed. Attempts to implement the IAP should be fully recorded by the APU on the case file notes.

9.5 Stage 4 - Monitoring and Evaluation

In all cases, a strategy for monitoring, on an ongoing basis, of a person's safety and wellbeing will need to be developed. Where a specific agency is allocated this task, updates will need to be forwarded to the APU to ensure that a central record is maintained.

ITSVA, together with the APU, will also need to develop strategies for the collection and collation of accurate records and statistics, and conduct periodic reviews of the data stored for the purposes of reporting to the relevant Minister and for informing future policy and strategic initiatives.

9.6 Using a Human Rights Based Approach Within the Response Framework

9.6.1 Case Study 1

Margaret is an 83 year old woman with dementia who lives alone. Domiciliary Care Metropolitan (Dom Care) provides Margaret with weekly cleaning support and she occasionally accesses respite care. She has been ACAT assessed as high level care. Margaret has a 58 year old son who visits her frequently, but Dom Care have witnessed the son be verbally abusive towards his mother and demonstrate overly controlling behaviour. Margaret has expressed a desire to move to an aged care facility, but her son is strongly opposed as he controls Margaret's finances and does not wish to sell the house.

Margaret has disclosed to Dom Care staff that she is fearful of her son, but still loves him and does not wish to upset him or push him away. Staff believe that Margaret has the capacity to make decisions about her living arrangements, but not about day-to-day financial matters.

Using a rights based approach to support Margaret

Margaret has a right to live in safety, to choose her place of residence, to access care and support services and to live without fear of being abused. She also has the right to maintain her relationship with her son and to have that familial relationship respected. These rights appear to be in conflict in Margaret's case, however, there are ways to support Margaret without ignoring her rights or further eroding certain rights.

Dom Care staff can support Margaret by:

- talking and listening to Margaret about her situation, enabling her to express her thoughts and feelings in respect of her son.
- explaining to Margaret that she has the right to live in safety and that her son's behaviour is harmful and could be viewed as abuse.

- letting Margaret know that she has the right to refuse support services, but that there are agencies and service providers that could provide her with support in achieving a positive outcome (Office of the Public Advocate, Aged Rights Advocacy Service, Public Trustee).
- seeking Margaret's consent to notify the APU of her cases, and reassuring her that the agencies can work together to support her by providing different but complementary services.
- where Margaret does not give her consent, Dom Care staff would need to explain that, because they have witnessed her son be abusive towards her, that her case is one where they still have an obligation to notify the Adult Protection Unit of the circumstances of her case, but are not permitted to disclose her identity.
- staff could identify other ways to support Margaret, by suggesting day centre visits etc.

9.6.2 Case Study 2

Gerry is a 95 year old veteran who lives in his house along with his grand-daughter, her boyfriend and their 2 young children. Gerry recently made the boyfriend a joint signatory on his bank accounts and, shortly thereafter, a series of unusually large withdrawals were made from Gerry's account. The bank had tried calling Gerry's home, but was refused permission to speak with him by the grand-daughter. Concerned, the bank contacted the police.

Both the boyfriend and the grand-daughter are drug users and are well known to police; the boyfriend was very recently remanded in custody for a series of alleged drug offences. When visiting Gerry at home, police noticed that the house was in disrepair, with evidence of termites, there appeared to be very little food in the house and the home had no air conditioning. Gerry, who demonstrated no evidence of mental incapacity, refused suggestions that he access services such as Meals on Wheels or Veterans' Affairs. When asked if he had any other relatives who might be able to offer support, Gerry indicated that he had a daughter whom he did not trust.

Using a rights based approach to support Gerry

Gerry is potentially vulnerable to financial abuse and may well have already been the victim of abuse and undue influence. There are also indications that his right to adequate food and shelter may not be being met by the grand-daughter. However, Gerry is capable of making decisions for himself and is able to refuse support services. That he is able to exercise his right to self-determination does not mean, however, that there is nothing that can be done to better support Gerry to protect his rights and interests. The police could respond as follows:

- Explain to Gerry that he has the right to make decisions about his financial affairs, which includes the right to add signatories to his bank account, but that decisions affected by undue influence can amount to abuse; raise with Gerry concerns about the boyfriend's role as a signatory and encourage him to consider his banking arrangements while the boyfriend is detained on remand; police could suggest speaking with the Public Trustee about an Enduring Power of Attorney for the short-medium term and assist to facilitate access to the Public Trustee.
- Remind Gerry that he, along with every member of the household, has the right to adequate food and shelter; in this context, raise the needs of the children, who are likely to also be experiencing the adverse effects of inadequate food or shelter, as this might provide a better way of encouraging Gerry to consider accessing services such as Veteran's Affairs.

- Police could ask the bank to notify them if they again suspect that financial abuse is taking place, even if Gerry continues to refuse offers of additional support.

Because Gerry's case was reported to the police, there is the potential for SAPOL to unilaterally respond in order to safeguard Gerry's interests, and those of the children. Police could consider issuing an intervention order against the boyfriend, for example. Had this case come to the attention of another agency, a report to the APU would have been justified. However, in the absence of consent, an agency would only be permitted to provide de-identified information to APU. Because of the presence of children in the home, the Information Sharing Guidelines for Promoting the Safety and Wellbeing of Children, Young People and Their Families will apply, where a lower threshold applies before sharing of information can lawfully occur.

This case highlights the unique position of SAPOL to act unilaterally to safeguard vulnerable adults, although, in many cases, a report to the APU will be considered by police to be a better option for supporting and protecting older persons. In such circumstances, police will need to exercise professional judgment. Nonetheless, the case also demonstrates the limitations of the system in cases where formal police intervention may not yet be clearly required, and where a possible victim of abuse refuses to give consent for his case to be referred to ITSVA and the APU.

9.6.3 Case Study 3

Jenny calls the Office of the Public Advocate seeking advice about guardianship arrangements for her mother Anna, who is 78 and in the early stages of dementia. Jenny's father, Anna's husband, is very controlling and subjected Anna to years of bullying and abuse (both financially and verbally). Anna does not have access to any of her money and has recently moved in with Jenny; Anna has expressed on several occasions that she no longer wishes to reside with her husband.

When Anna is not under pressure or stress, she is able to make decisions for herself. However, when pressured, Anna is prone to confusion. Jenny's father has threatened to come and collect Anna from Jenny's home. A support worker told Jenny that her only option for protecting her mother was to seek a guardianship order.

Using a rights based approach to support Anna (and Jenny)

Jenny's concern for Anna's wellbeing and safety is very important in helping Anna to protect her rights and interest; it is presently ensuring that Anna is residing in a safe environment. In this regard, Jenny is enabling her mother to exercise her rights to safety and to choose her place of residence. However, by seeking a guardianship order, Anna's right to self-determination will be taken away – an excessive measure for securing Anna's physical safety. Anna clearly conveyed to her daughter that she no longer wished to reside with her abusive husband. In doing so, she was able to demonstrate an ability to make decisions for herself when not subjected to pressure. That capacity is relevant in considering whether a guardianship order is appropriate for Anna.

Because the call to the OPA was made by Jenny and not Anna, OPA should give advice accordingly. Information should thus be provided in a way which can assist Jenny to understand how she might best help her mother to safeguard her own rights. That advice might include the following:

- Informing Jenny of relevant services that could assist Anna to safeguard herself and protect her rights, without the need for a guardianship order; encouraging Jenny to inform Anna of key support services, such as ARAS, the Legal Services Commission, the Public Trustee and domestic violence support services; offering to make appointments and to take Anna to access those services.
- Discussing with Anna – at an appropriate moment and taking care not to pressure her for an answer – what her long-term wishes are with respect to accommodation; they might include moving into a nursing home rather than continuing to reside with Jenny.
- Encouraging Jenny to seek guidance from domestic violence support services, which can offer information on the effects of long-term abuse and assist Jenny in developing strategies for dealing with both of her parents.

As well as assisting Jenny to be better placed to support her mother, OPA staff will need to inform Jenny of their obligation to report the case to the APU and, possibly, SAPOL, given the seriousness of the risk to Anna (and possibly to Jenny also). However, staff should seek to obtain Jenny's consent to do so, while at the same time explaining the nature of their responsibilities to make certain reports under law and policy. Explaining to Jenny the benefits of reporting the case to the APU, including the ability to ensure a coordinated interagency response to support Anna, as well as protecting her immediate safety, might help to secure Jenny's consent in this instance. OPA may also need to consider the need to inform SAPOL at the same time as referring the case to the APU; depending on the seriousness of the threat posed by Anna's husband, an interim intervention order may be considered by the police.

9.6.4 Case Study 4

A butcher in a suburban shopping centre noticed a frail elderly woman (Josie) walking up and down the food hall. She would occasionally ask for food, but had no purse and was regularly unkempt and confused.

What the butcher could not have known was that Josie had migrated to Australia over 60 years ago and came from a non-English speaking background. She had lived in a nearby suburb for over 50 years, but in an area where all of her elderly neighbours had either died or moved away. Josie was socially isolated and her only remaining relative, a son, lived over an hour's drive away. He had enduring power of attorney and had drained all of her savings from Josie's accounts. Josie's only asset was her house, which had fallen into complete disrepair and was unsafe to live in.

Using a rights based approach to support Josie

Irrespective of Josie's appearance and circumstances, she is, like all people, entitled to be treated with dignity and respect. She has the right to be presumed to have mental capacity until it has been determined otherwise. She has the right to access services that will enable her to attain the highest standard of physical and mental health and to obtain adequate food, clothing and shelter. To ignore Josie in the shopping centre would be to ignore her basic and fundamental human rights. However, unless a member of the community takes action to intervene and support someone like Josie, many vulnerable adults will not be safeguarded.

Josie's case demonstrates the importance of the community in recognising and responding to elder abuse and of being aware of the basic rights of older persons. Her behaviour and appearance could indicate a number of things, including homelessness, neglect, dementia, mental illness, or destitution. However, irrespective of the cause of Josie's circumstance and behaviour, she bears all of the rights that are held by every person in the community. Thus, one would hope that the butcher – along with others in the shopping centre – would stop to offer assistance to Josie by:

- asking her to sit down and arranging for her to have something to eat and drink.
- asking her details about herself in a manner which is respectful (where she lives, if she has any relatives, why she is at the shopping centre etc).
- offering to call someone to collect Josie or calling emergency services to assist if there are no relatives or carers.
- if Josie is unable to communicate in English, calling emergency services to provide assistance in the first instance.

Once service providers are called in to assist, the priority should be to secure Josie's immediate safety and wellbeing – ideally, by seeking her consent to take her to a doctor or emergency department for examination – but also in exploring options for support services. At all times, Josie's consent and opinion should be sought and, in order to do so, it may be necessary to seek the assistance of an interpreter.

Although Josie's case did not involve abuse, her vulnerability should have been self-evident to a member of the public who was informed about abuse and its signs. Thus, the butcher in this case would have been justified in contacting the APU, who could have arranged for both the OPA and/or ARAS to attend along with SAPOL officers. Cases like this one demonstrate the importance of community awareness of vulnerability in older persons and the signs of elder abuse.

10. A COMMUNITY BASED FRAMEWORK FOR SAFEGUARDING VULNERABLE ADULTS

Principle 7 of the Guiding Principles contained in the Charter of Rights and Freedoms of Older Persons states that, '[t]he abuse of adults, particularly vulnerable adults, is not merely an individual or personal problem, but a social issue that requires a whole-of-government and community response.' Building safe communities in which vulnerable groups are supported and protected requires the existence, not only of well established institutions of government that are able to ensure the safety and wellbeing of individuals, but the development of strong community networks in which individuals are supported on a local and personalised level. For a multitude of reasons, personal and community-based networks and associations generally decrease as people age. The weakening or disbursement of support networks can often leave older people vulnerable and isolated.

Adult protection frameworks adopted in other countries demonstrate the benefits of strong community based programs in safeguarding vulnerable adults.²⁹ Such programs complement legal and policy mechanisms designed to ensure that service providers can adequately respond to cases of elder abuse.

New Community Networks for Adult Protection (CNAPs) shall be established, on a voluntary basis, in South Australia, and will be coordinated at the Local Government level. Local councils should assume a lead role in establishing a network of interested community members, working closely with the Aged Rights Advocacy Service (ARAS). The purposes of establishing Community Networks will be several:

- to promote education and awareness about abuse of older persons and its signs, the Older Persons Gateway, and the Adult Protection Response Framework (including the roles of the APU and ITSVA);
- to develop programs for raising awareness of elder abuse within the local community;
- to assist local community organisations to develop protocols consistent with this policy, helping them to respond in a timely and appropriate manner when actual or suspected abuse is identified;
- coordinate training or information seminars within the community;
- to provide a local contact point for people to seek advice and information about key agencies and service providers and the framework for responding to abuse in South Australia.

²⁹ In Canada, British Columbia has one of the most advanced community based models. See further: *Adult Guardianship Act 1996*, Part 3; *B.C.'s Adult Guardianship laws: Supporting Self-Determination for Adults in British Columbia – Protecting Adults From Abuse, Neglect and Self-Neglect*, Public Guardian and Trustee of British Columbia.

A key feature of Community Networks will be their membership. Members may come from any individual or organisation within the community concerned about the abuse and neglect of vulnerable older persons. This may include church groups, local schools, financial institutions, Neighbourhood Watch, Health and Community Care (HACC) providers, non-profit associations, sporting associations, faith communities and local retailers.

Local Governments interested in the development of a Community Networks for Adult Protection within their council area may enter into a Memorandum of Understanding (MOU) with the Adult Protection Unit (or relevant Department within which the APU is located). The Aged Rights Advocacy Service (ARAS) will play a lead role in facilitating the establishment of CNAPs.

11. USEFUL CONTACTS

ADULT PROTECTION RESPONSE FRAMEWORK

ADULT PROTECTION UNIT

Department of Families and Communities

Ph: (08)

AGED RIGHTS ADVOCACY SERVICE

Ph: (08) 8232 5377 or 1800 700 600 (Toll Free)

www.sa.agedrights.asn.au

LEGAL SERVICES COMMISSION

Ph: 1300 366 4242 (Legal Help Line, Monday to Friday 9.00am – 4.30pm)

Ph: (08) 8463 3555 for free personal 30 minute appointments in Wakefield St, Adelaide. Other offices located at Elizabeth, Holden Hill, Mount barker, Noarlunga, Port Adelaide, Port Augusta, Whyalla.

www.lsc.sa.gov.au

OFFICE OF THE PUBLIC ADVOCATE

Ph: (08) 8342 8200 or 1800 066 969 (Toll Free)

www.opa.sa.gov.au

PUBLIC TRUSTEE

Ph: (08) 8226 9200 or 1800 673 119 (Toll Free)

www.publictrustee.sa.gov.au

SOUTH AUSTRALIA POLICE

Ph: 131 444 (to report a crime or for police assistance)

Ph: 000 (for emergencies)

www.police.sa.gov.au

[Further contacts to be added from the ARAS *Protocol for Responding to Abuse of Older People Living at Home in the Community*, 2011.]

APPENDIX A

CHARTER OF RIGHTS AND FREEDOMS OF OLDER PERSONS

Older persons are entitled to respect and protection of their basic rights and freedoms, and bear a corresponding obligation to respect and protect the rights and freedoms of others. All older persons in South Australia have the following rights and freedoms.

Dignity and Self-Determination

1. Older persons have the right to be treated with dignity and humanity and to be free to exercise personal self-determination.³⁰
2. Older persons have the right to freedom of movement and to choose their place of residence. These rights shall only be restricted in accordance with law, where such restriction is necessary to protect public health, public order or morals, and the rights and freedoms of others.³¹

Liberty and Security of the Person

3. Older persons have the right to be free from torture or other forms of cruel, inhuman or degrading treatment.³²
4. Older persons have the right to liberty and security of the person and to be free from exploitation and physical, social, psychological and sexual abuse. No person shall be deprived of their liberty except in accordance with procedures established by law.³³

Equality and Non-Discrimination

5. Older persons have the right to exercise their rights free from all forms of discrimination, whether on the basis of age, sex, colour, sexual orientation, religion, political opinion, educational qualification, national origin or ethnicity.³⁴

³⁰ Articles 1 & 10, International Covenant on Civil and Political Rights (ICCPR); Article 1, International Covenant on Economic, Social and Cultural Rights (ICESCR); Principles 3, 14, 15, UN Principles for Older Persons.

³¹ Article 12, ICCPR; Principle 6, UN Principles for Older Persons.

³² Article 7, ICCPR; CAT; Principle 17, UN Principles for Older Persons.

³³ Article 9, ICCPR; Article 12, ICESCR; Principle 17, UN Principles for Older Persons.

³⁴ Article 2, ICCPR; Article 2, ICESCR; Principle 18, UN Principles for Older Persons.

6. Older have the right to recognition as a person before the law and to be treated equally before the law.³⁵

Minimum Standards of Living and Care

7. Older persons have the right to life, to adequate food, clothing and shelter and to enjoy the highest attainable standards of physical and mental health.³⁶

Privacy and Family

8. Older persons have the right to be free from arbitrary or unlawful interferences with his/her privacy, family, home or correspondence.³⁷
9. Older persons have the right to a family life and to have their family unit respected by others, including government agencies and officials.³⁸

Social Participation

10. Older persons have the right to freely associate with others and to participate fully in the social and cultural life of their community.³⁹

Freedom of Thought, Conscience, Religion and Expression

11. Older persons have the right to exercise freedom of thought, conscience and religion.⁴⁰
12. Older persons have the right to freedom of opinion and expression and to seek, receive and impart information and ideas. Adult persons have the right to seek, and be provided with, personal information about him/herself held by government agencies of officials.⁴¹

Human rights are not absolute, but may only be subject to reasonable limits in accordance with law as can be demonstrably justified in a free and democratic society.

³⁵ Articles 16 & 26, ICCPR; Principle 12, UN Principles for Older Persons.

³⁶ Article 6, ICCPR; Articles 11 & 12, ICESCR; Principles 1, 10-13, UN Principles for Older Persons.

³⁷ Article 17, ICCPR; Principles 5, 10, 17, UN Principles for Older Persons.

³⁸ Article 23, ICCPR; Article 10, ICESCR; Principles 10, 5, UN Principles for Older Persons.

³⁹ Article 25, ICCPR; Article 15, ICESCR; Principles 7, 8, & 9, UN Principles for Older Persons.

⁴⁰ Article 18, ICCPR.

⁴¹ Article 19, ICCPR; Principles 4, 15, 16, UN Principles for Older Persons. This right is also supported by Freedom of Information legislation throughout Australia.

In all actions and decisions affecting older persons, including those designed to support, protect and safeguard vulnerable adults, the rights and freedoms of older persons must be taken into account and the Guiding Principles of Intervention must be applied.

Guiding Principles of Intervention

1. A person's capacity to make decisions affecting themselves is to be presumed unless that person is formally assessed as having mental incapacity.
2. A person has the right to make decisions about their own life, the way in which they live and the people they choose to live and associate with, provided that such decisions are voluntary, are not contrary to law and do not infringe the rights of others.
3. A person has the right to seek, receive and impart information which can assist in their capacity to exercise their rights and freedoms. This includes the right to an interpreter and assisted communication methods.
4. A person has the right to maintain relations with family and friends, and interferences with those relationships should be in a manner which is least restrictive of the adult person's rights and only for the purpose of safeguarding the physical safety and wellbeing of the adult person.
5. A person has the right to accept or reject assistance, treatment or intervention.
6. A person has the right to access the basic necessities of life including food, water, shelter, heating/cooling, clothing, hygiene and safety. However, a person has the right to live in conditions that others may perceive as unhealthy or substandard, provided that the person is competent to make decisions for themselves and the health and safety of others is not adversely threatened or affected.
7. The abuse of adults, particularly vulnerable adults, is not merely an individual or personal problem, but a social issue that requires a whole-of government and community response.
8. Adults are entitled to seek and receive appropriate support and intervention by relevant service providers and members of the community, but the provision of support should be appropriate to the adult person's particular needs and respectful of the person's individual rights.

9. Even where a person lacks capacity to make decisions for him/herself every effort should be made to ensure that their views are taken into account and that communication with the adult is conducted in a manner which is appropriate to their skills and abilities.
10. Competent adults have the right to provide their own instructions (advance directives) and make decisions about managing their affairs. Such directives shall be taken from the adult person, rather than a person who purports to be acting for the adult.
11. Adults should be assisted to tell their own story to whatever extent possible, rather than allowing others who purport to act for the adult to take control of that process.
12. All interactions with adults should be conducted in a non-discriminatory manner and with due sensitivity given to the race, gender, religion, cultural or ethnic background, sexual orientation or ability of the adult person.

APPENDIX B

INFORMATION SHARING GUIDELINES FOR PROMOTING THE SAFETY OF VULNERABLE ADULTS

These Guidelines are based on the Information Sharing Guidelines for Promoting the Safety and Wellbeing of Children, Young People and Their Families, but have been adapted to circumstances where the client is a vulnerable adult, as described under the Safeguarding Vulnerable Adults in South Australia: A Whole-of-Government Policy for the Protection of Older Persons From Abuse. Like the existing guidelines for children and their families, these Guidelines also follow the 9 steps for decision making where a request for information is made to an agency or provider.

These guidelines do not apply in circumstances where disclosure is legally required. They should be considered together with other complementary frameworks for information sharing, including the Information Sharing Guidelines for Promoting the Safety and Wellbeing of Children, Young People and Their Families. However, unlike the Information Sharing Guidelines which apply in respect of Children, Young People and their Families,⁴² these Guidelines are not supported by a Cabinet exemption from the test of 'imminence' in respect of Information Privacy Principle IPP) 10(b). Thus, these Guidelines must be applied consistently with the IPPs⁴³ and impose a higher threshold than the ISGs for Children and Young People before information can be shared between agencies and providers.

In accordance with IPP 10(b), personal information cannot be used for purposes other than the purpose for which it was obtained *unless*:

- the individual concerned has consented to use of the information for that other purpose;
- the person who holds the information believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person;
- use of the information for that other purpose is required or authorised by or under law;
- use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or offence provisions imposing a pecuniary penalty; or
- the purpose for which the information is used is directly related to the purpose for which the information was obtained.

⁴² Terry Ryan, Presiding Member, Privacy Committee of South Australia, 2 May 2008; Government of South Australia, *Information Sharing Guidelines for Promoting the Safety and Wellbeing of Children, Young People and Their Families*, 2008, 11.

⁴³ The IPPs form a Cabinet Instruction and apply to all South Australian government agencies, regulating the way they collect, use, store and disclose personal information. See, Government of South Australia (1989, amended 1992), *Cabinet Administration Instruction No 1 of 1989*, Premier and Cabinet Circular 12, Government of South Australia.

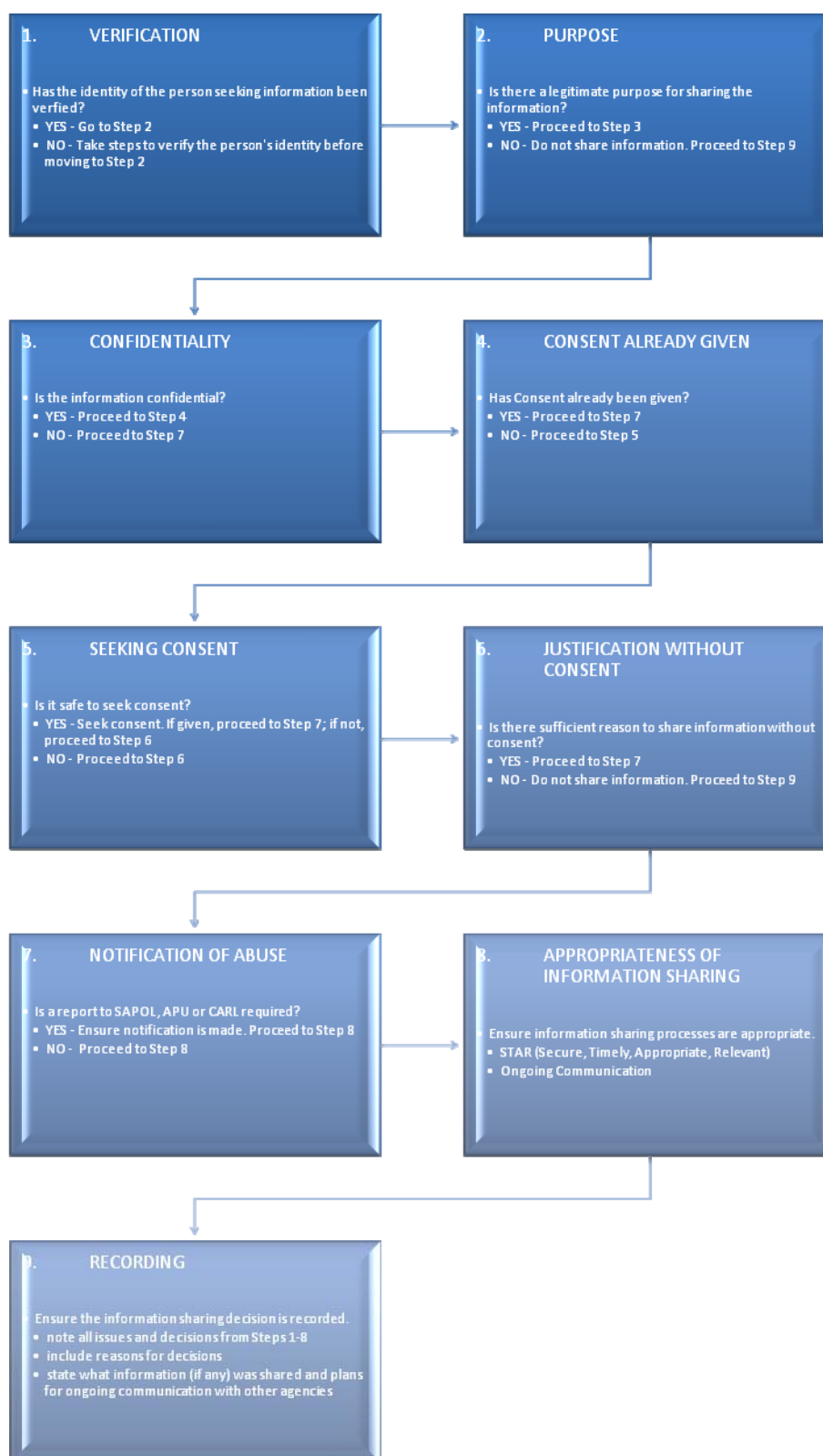
In most cases of actual or suspected abuse against an older person, information sharing between agencies and providers should be based on the consent of the client. Where consent has not been obtained, information sharing will be appropriate in the following circumstances:

- where the client's life or health is under serious and imminent threat;
- where a judgment is made that police should be notified of suspected or actual criminal behaviour or abuse; or
- where the police are investigating criminal behaviour or the need to take action under the *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*.

Even in circumstances where the client's consent has been obtained, information should only be shared between agencies where there exists a legitimate purpose for doing so and where the information shared is appropriate for that purpose. The following 9 steps should be followed when a request to share information is made.

- STEP 1 VERIFICATION**
Verify the identity of the person seeking information
- STEP 2 PURPOSE**
Ensure there is a legitimate purpose for sharing information
- STEP 3 CONFIDENTIALITY**
Consider whether the information is confidential
- STEP 4 CONSENT ALREADY GIVEN**
Consider whether consent has already been given by the subject of the information
- STEP 5 SEEKING CONSENT**
If consent has not already been given, seek consent if it is safe to do so
- STEP 6 JUSTIFICATION WITHOUT CONSENT**
If consent is still not provided, consider whether there is a justification for sharing information in any case
- STEP 7 NOTIFICATION OF ABUSE**
If it has not already been considered and reported decide whether abuse needs to be reported to the South Australia Police (SAPOL), the Adult Protection Unit, or the Child Abuse Report Line (CARL)
- STEP 8 APPROPRIATENESS OF INFORMATION SHARING**
Ensure that information shared is secure, timely, appropriate and relevant and make arrangements for ongoing communication with agency with which information is shared
- STEP 9 RECORDING**
Ensure that all aspects of the information sharing decision are recorded

The following flowchart shows how the 9 steps should be approached:



STEP 1 Verification

It is vitally important that the identity and affiliation of the person who is seeking information is verified. All service providers should take steps to ensure that they do not share information with a person who does not have authority to seek and receive the information sought, or with a person who is not bound to comply with the Information Sharing Guidelines.

If the individual who is seeking information is not known to the provider, verification of who they are and for whom they work will be needed. Providers should use the methods for identity verification recommended in their agency or organisation, some of which might include using government staff listings or global e-mail lists, official fax forms, calling the individual back at the organisation's number in the telephone directory and/or ringing a senior person in the organisation to verify the individual's role.

If someone's identity needs to be verified, a record of how it is done must be kept. If a provider believes someone has deliberately misrepresented himself/herself in seeking information, the police should be contacted because the action may constitute an offence.⁴⁴

STEP 2 Purpose

The aim of information sharing under these guidelines is to help protect vulnerable adults from immediate or anticipated serious threats to their wellbeing or safety and to do so with the client's consent, wherever it is safe and possible to do so. To decide if the purpose is legitimate, providers should ask themselves if it will help:

- To give a more effective service
- Alert a provider to an individual's need for a service
- Avoid duplication or compromising of services
- Divert a person from harming themselves
- Protect a vulnerable adult from abuse or harm
- Protect others from harm
- Protect providers in situations of danger
- Protect a child or young person from being abused or harmed.

If the answer is 'yes' to any of these questions then the purpose can be seen to be legitimate.

⁴⁴ *Criminal Law Consolidation Act 1935 (SA)*, Division 5 – Deception.

STEP 3 Confidentiality

Generally, the term 'confidential' applies to information that is provided by an individual who believes it will not be shared with others.

The assumption of confidentiality underlies all professional/client relationships, including doctor and patient, social worker and client, mental health worker and client etc.

Workers should always assume that clients will view most information about themselves, their families and friends as confidential unless otherwise indicated during discussion. An agency or provider should provide specific information to staff about confidentiality and the importance of explaining its limitations to clients.

It is very important that providers respect a client's trust regarding confidentiality. Trust is very important to the success of all relationships, so the overriding of a person's confidentiality wishes must occur only when the client or another person, including a child or young person residing with a vulnerable adult, is considered to be at serious and imminent risk. That risk may be to a person's life or health, or where the person has been, or continues to be, a victim of a crime, or where the risk of abuse may warrant seeking an intervention order.

Best practice is for a provider to:

- Be clear at the start that some circumstances necessitate sharing confidential information with other people and, wherever it is safe, to seek a client's consent to do so;
- Work hard to help clients appreciate why the provider's actions are necessary;
- Act promptly when the provider first has concerns, so that the client is more likely to feel supported by the actions;
- Keep clients informed of and involved in everything the provider is trying to achieve, unless that information will place the clients or others at risk of harm.

Identifying what circumstances might place people at risk of harm and where information may be shared without consent is discussed under Steps 5 and 6.

STEP 4 Consent Already Given

Consent under these Guidelines relates to consent to information sharing, not consent to medical treatment. Consent can be 'explicit', meaning agreement is given verbally or in writing, or it can be 'implied', meaning information sharing is inherent to the nature of the service sought. An example of implied consent is agreeing to be hospitalised where personal health information will need to be shared with many different staff. Once providers have informed consent, they may share information with all parties to whom the consent relates.

These Guidelines promote and advocate the value of gaining informed consent for information sharing at the earliest possible point in an individual's engagement with a service and on an ongoing basis. Informed consent means that the individual understands the purpose of the request and the likely outcomes of giving consent. Ideally, this will be in written form. Respectful ways of gaining and monitoring informed consent are to:

- Help clients understand why information sharing is important, whom it is designed to support and the intended outcomes;
- Explain what circumstances may arise where information may be shared without the client's consent;
- Be honest and explain that acting without consent is almost always to protect the client from harm (the more trust that exists in the relationship, the easier it will be for the client to have faith in the provider's judgment about this);
- Revisit a client's consent if the information sharing under consideration differs from the original examples discussed or if a significant amount of time has passed since consent was first given;
- Tailor the approach for clients with compromised intellectual capacity and clients from culturally and linguistically diverse backgrounds.

If a client is unable to give informed consent, a provider should consider information sharing without consent under Step 6.

STEP 5 Seeking Consent

The following guidance assists providers when making decisions about when it is unsafe to seek consent. Providers should not seek consent if to do so would place an adult, or child or young person residing with the adult, at increased risk of harm. If this is the case in respect of children and young people residing with the vulnerable adult, providers need to consider whether a mandatory notification to the Child Abuse Report Line is appropriate, as well as proceeding with information sharing with other relevant providers.

Below are examples of situations where individuals may be placed at increased risk of harm if seeking consent is pursued:

- The client may be moved out of the agency's view;
- The client may cease to access a service, or may be pressured by others to cease accessing a service, despite the fact that the service is necessary for their health, wellbeing and care;
- The client may be coached or coerced to cover up harmful behaviour;
- The client may attempt suicide or carry out acts of self harm;
- The client may be at increased risk of abuse;
- The client, a carer or other person may destroy incriminating evidence relevant to the abusive or harmful behaviour perpetrated against the client.

Recognising that these risks are present does not necessarily mean that a provider will feel comfortable about not seeking a client's consent. This dilemma for providers is lessened if they have already discussed with their client the possibility that they may need to share information without consent for the protection of the client, or any children or young people residing with the client.

STEP 6 Justification Without Consent

Where a client has not given consent, providers will need to consider whether there is sufficient justification for sharing information despite the lack of consent. Generally speaking, there will be sufficient justification for sharing information where the provider believes, on reasonable grounds, that the client is at risk of serious or imminent threat to their life or health, where the police need to be notified of a suspected or alleged crime or of circumstances where an intervention order may be required.

A provider will generally be justified in sharing information with the police in all situations and, in respect of other providers, in cases where there is a serious and imminent threat to a client's life or health. Providers should also be aware that a lower threshold applies to children and young people, where an 'imminent' threat to life or health is not required before information sharing is justified.

A serious and imminent risk to the life and health of a vulnerable adult may be caused by all forms of abuse, though 'imminence' may often be more difficult to establish in cases of financial or social abuse. In these situations, providers may feel unable to share information until the circumstances become acute and the situation becomes hopeless. In these cases, a crime may have already been committed or be continuing, or there may be grounds upon which an intervention order could be sought. Thus, even in cases where 'imminence' cannot be established, a provider will be justified in sharing information with the police. Providers should also continue to seek consent from a client where it is safe and possible to do so; a client may change their mind and provide consent at a later stage.

Where information has been shared without the client's consent, there are some circumstances where the client should be informed of that fact. Provided that no further risk is posed to the client, there may be good reasons why the client should be informed of the fact that information was shared without their consent. Providers should exercise their professional judgement in each circumstance and use the expertise of senior colleagues.

Scenario 1 - Information sharing is not justified

Domiciliary Care Metropolitan (Dom Care) provides daily showering support to an 82 year old lady living with her 40 year old son. The lady uses a wheelchair but is capable of walking short distances on her own. In recent months, light bruising and abrasions on the lady's wrists and forearms have been noticed by the Dom Care worker, who is concerned that the woman may have been restrained in her wheelchair for extended periods. The woman is reluctant to discuss the injuries and refuses suggestions that she be visited by ARAS. The worker had never previously discussed issues around information sharing with the lady, nor sought her consent.

Dom Care is contacted by a community worker from the Local Council, who is concerned about the fact that the lady has stopped catching the community bus to visit the library, which she had previously been doing every Tuesday for the past 7 years. The community worker was aware that the woman was receiving support from Dom Care and wanted to discuss her case.

Dom Care do not have consent to share information with the Council worker, but the information provided to Dom Care should be given to the relevant support workers who visits the woman daily and strategies developed for raising the cessation of the library visits with the woman in an appropriate manner. Dom Care workers can also leave information at the woman's home about the services provided by ARAS, continue to carefully monitor the woman's physical and mental wellbeing and revisit the question of consent with the woman, if and when appropriate.

Scenario 2 – Information sharing is justified

Police receive a report from the neighbour of the 82 year old woman in Scenario 1. The neighbours have been concerned about the safety of the woman since her son moved in with her after his marriage broke down. The neighbours have repeatedly heard the son be verbally abusive towards the mother and, on one occasion, when they knocked on the front door to see if everything was okay, the son answered, stating that everything was fine, but trying to block their view down the hallway. The neighbours briefly saw the woman lying on the floor and her wheelchair lying on its side. They called the police immediately afterwards to report the incident. The woman was admitted to hospital with a fracture to the skull.

The police are now investigating an alleged assault against the son and contact Dom Care, asking if they have been providing services to the woman. Because the matter is now a criminal investigation, Dom Care workers have an obligation to cooperate with police and to share information about the concerns associated with the bruising and abrasions on the woman's forearms. However, professional judgment will need to be exercised in respect of information which is not relevant to the alleged assault. For example, the fact that the woman had ceased to catch the community bus to visit the library may be irrelevant to the criminal investigation and, in the absence of consent from the woman, Dom Care may not be justified in disclosing that information to the police.

STEP 7 Notification of Abuse

These Guidelines encourage providers to coordinate their work so that adverse outcomes for vulnerable adults are prevented or lessened. However, if, at any stage of information sharing and service coordination, a provider's concern for a vulnerable adult changes to a belief on reasonable grounds that a crime has been or is being committed, that an intervention order may need to be considered in order to safeguard the adult, or that a child or young person has been or is being abused or neglected, the relevant authorities must be notified.

For children and young people, the provider must make a report to the Child Abuse Report Line (CARL) on 13 1478. Where abuse against an older person has occurred and the abuse is serious enough to warrant consideration of a formal intervention order, or where the abuse may amount to a crime, the police should be notified.

Notification to an authority does not mean that information sharing between other agencies should cease, unless CARL staff or the police recommend otherwise.

STEP 8 Appropriateness of Information Sharing

The following advice about best practice in sharing information is applicable to all situations, irrespective of whether the client has given consent or not. The first step for providers is to ensure they follow their agency's or organisation's approval requirements developed in accordance with these Guidelines.

The STAR Method

When information is shared it should be:

- Secure
- Timely
- Accurate
- Relevant

Secure

Files, records, emails, faxes, transcripts and notes must be shared and stored securely according to each agency's or organisation's requirements. Generally, e-mail should not be used for disclosing sensitive information. This is because each server that an e-mail passes through will retain a copy of the e-mail (this could include several servers). Instead, providers should consider ringing the agency or organisation first to establish the identity of the client and then e-mailing unidentified information or using initials only.

Timely

It is clearly not appropriate to delay the sharing of information that has been sought with the purpose of preventing or limiting serious threats to people's wellbeing and/or safety. Agencies and organisations must work to remove cultural or logistical barriers to timely information sharing. Providers will be clear with each other when their information sharing request has an emergency status and it can be assumed that such situations will also have been recorded with the police and, where relevant, the Child Abuse Report Line.

Accurate

Accuracy of information is vital and is one of the ways providers show respect for their clients. Providers are responsible for making all efforts to ensure that the information they share is up to date and accurate. If they cannot provide up to date information they must declare this and make very clear the limitations on the usefulness of historic information. Where this is the case, it should be done in writing (which does not include e-mail) so the limitations to the information are not lost over time.

Relevant

‘Relevant’ information means that it is only what is needed in order for the purpose of the information sharing to be met. Depending on the purpose, this can range from a yes/no response, to whether someone is accessing a particular service, to detailed verbal advice about how providers can complement their services for a common client, to receiving hard copies of personal confidential records. Whatever is shared must be proportionate to the purpose and not provide unnecessary detail. Providers are more likely to give and receive what is purposeful, and thus avoid wasting time in repeat requests, if they talk about exactly what is needed at the start. Providers should guard against the temptation to share more than is necessary simply because they have developed familiar inter-agency relationships.

Continuing Communication

In most processes of information sharing, a continuing communication should occur between the providers concerned so that judgments can be made about whether the purpose for the sharing has been achieved. If further discussion is not planned and acted on, the purpose of information sharing may not be met.

STEP 9 Recording

It is very important to record information sharing decisions at all significant steps in the process. This includes:

- Whether consent was received or even sought
- Reasons for overriding the client’s wishes or for not seeking consent
- Advice received from others, including supervisors or senior colleagues, police or staff from the Child Abuse Report Line
- Reasons for not agreeing to an information sharing request
- What information was shared
- What plans were made for ongoing communication

Agencies and organisations should provide detailed guidance on the recording and documentation requirements for their agency/organisation, consistent with these Guidelines.

APPENDIX C
TEMPLATE: MEMORANDUM OF UNDERSTANDING
BETWEEN COMMUNITY ORGANISATIONS AND THE
ADULT PROTECTION UNIT

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE ADULT PROTECTION UNIT,

[DEPARTMENT OF FAMILIES AND COMMUNITIES OR OTHER DEPARTMENT - TBC]

AND

[INSERT ORGANISATION NAME, ABN]

[INSERT DATE]

PARTIES

The DEPARTMENT OF FAMILIES AND COMMUNITIES [or other department in which the Adult Protection is ultimately located],

AND

[insert name of organisation].

AGREED TERMS

1. DEFINITIONS

'Abuse' has the same meaning as it has under the Safeguarding Vulnerable Adults in South Australia:

A Whole of Government Policy for the Protection of Older Persons From Abuse (hereinafter referred to as 'the Policy'), but includes physical, psychological, financial, social, sexual and substance abuse, as well as neglect;

'Adult Protection Case Conference' means a conference convened in accordance with the policy;

'Adult Protection Liaison Officer' means a person referred to in clause 6.1 of this MOU;

'Adult Protection Response Framework' means the framework establish under the Policy;

'Adult Protection Unit' means the Unit conferred responsibility for coordinating the Adult Protection Response Framework;

'Charter' means the Charter of Rights and Freedoms of Older Persons contained in Appendix A of the Policy;

'Community Networks for Adult Protection' are networks established in accordance with the Policy;

'Guiding principles' means the Guiding Principles of Intervention contained in both the Charter and the policy;

'Information sharing guidelines' means the Information Sharing Guidelines for promoting the safety of vulnerable adults;

'Interagency Team for Safeguarding Vulnerable Adults' is the alliance of key agencies and organisations responsible for assessing and responding to reports of abuse referred to the Adult Protection Unit, in accordance with the Policy;

'Investigation and Action Plan' means a plan developed through an Adult Protection Case Conference by the Interagency Team for Safeguarding Vulnerable Adults;

'Older person' has the same meaning given to that term under the Policy;

'Policy' means the Safeguarding Vulnerable Adults in South Australia: A Whole of Government Policy for the Protection of Older Persons From Abuse;

‘Vulnerable adult’ or ‘vulnerable older person’ has the same meaning given to those terms under the Policy;

2. PURPOSE OF THE MEMORANDUM OF UNDERSTANDING

- 2.1 The purpose of this Memorandum of Understanding is to support and facilitate the implementation of the Safeguarding Vulnerable Adults in South Australia: A Whole of Government Policy for the Protection of Older Persons From Abuse.
- 2.2 The Parties agree that only clauses 5, 6 and 7 are binding as between the Parties and no clauses impose any legal liability or further obligation upon the parties.

3. TERMS OF THE MOU

- 3.1 This MOU is valid for a period commencing on the date of execution and ending at the expiration of:
 - 3.1.1 the initial term being a term commencing on the date of execution and expiring at midnight on the day immediately preceding the fifth anniversary of the date of execution; or
 - 3.1.2 any extension of the initial term agreed in writing between the Parties, unless terminated by a Party in accordance with clause 8 of this MOU.
- 3.2 The Parties acknowledge that changes to legislation dealing with adult protection and/or relevant criminal laws may occur, and in such a way as to impact on this MOU and the Parties agree to review the terms of this MOU in such event.
- 3.3 Irrespective of the provisions of clause 3.2 of this MOU the Parties agree to review the terms and the operation of this MOU within three (3) calendar months of the second anniversary of the date of execution.

4. STATEMENT OF MUTUAL AIMS AND BENEFITS

- 4.1 The Parties agree that the objectives underpinning the Policy are best achieved through the involvement of community organisations in the Policy’s implementation, in addition to those which are expressly bound by the Policy’s terms.
- 4.2 The Parties agree that it is the responsibility of whole communities, as well as agencies and organisations responsible for the delivery of aged care services, to work collaboratively towards supporting and safeguarding vulnerable older persons living within the community.
- 4.3 The functions of the Adult Protection Unit, working together with the Interagency Team for Safeguarding Vulnerable Adults, are able to be more effectively performed if organisations such as [insert organisation’s name] are able to refer cases of abuse to the Adult Protection Unit at the earliest opportunity.
- 4.4 Clients of the [insert organisation’s name] can be more effectively safeguarded if reports of abuse are able to be made to the Adult Protection Unit at the earliest opportunity.
- 4.5 The cooperation of the [organisation] with the implementation of the Adult Protection Response Framework, when based on respect for the rights and freedoms of older persons, common guiding principles and information sharing guidelines, can assist in the development of a consistent state-wide approach for the safeguarding of vulnerable older persons.

5. ADULT PROTECTION UNIT INTENTIONS

The Adult Protection Unit agrees to:

- 5.1 receive reports of abuse referred to it by the [organisation];
- 5.2 confirm receipt of the report of abuse with the [organisation] within one working day and consider the report in a timely manner;
- 5.3 where requested, permit the attendance of the [organisation's] adult protection liaison officer to attend any adult protection case conference convened by it in respect of a report referred by the [organisation];
- 5.4 in cases referred to the Adult Protection Unit by the [organisation], and where an Investigation and Action Plan is developed by the Interagency Team for Safeguarding Vulnerable Adults, consider the potential for the [organisation] to assist in the Plan's implementation.
- 5.5 maintain regular communication with the [organisation] in respect of any case which has been referred to it by the [organisation] and to report on all outcomes.

6. [ORGANISATION NAME] INTENTIONS

The [organisation] agrees to:

- 6.1 nominally appoint an employee of the [organisation] to act as the Adult Protection Liaison Officer, with responsibility for communicating with the Adult Protection Unit, attend Adult Protection Case Conferences where required or permitted and assume leadership within the [organisation] for reporting cases of abuse and for assisting with the implementation of an Investigation and Action Plan, where required;
- 6.2 ensure that cases of actual, suspected, witnessed or disclosed abuse are referred in a timely manner to the Adult Protection Unit, but in a manner consistent with the Information Sharing Guidelines;
- 6.3 develop internal policies and protocols which are consistent with the Policy, Charter and Information Sharing Guidelines;
- 6.4 educate their employees and volunteers about abuse of older persons, its signs and what factors may contribute to vulnerability in older persons.

7. CONFIDENTIALITY

- 7.1 The [organisation] shall treat as confidential all information obtained in connection with this MOU and must not divulge such information to any other person except to employees of the [organisation] who need to know that information or to Parliament, the Governor, Cabinet, a Parliamentary or Cabinet committee or sub-committee or any other Minister of the South Australian Government.
- 7.2 The Adult Protection Unit shall treat as confidential all information obtained in connection with this MOU and must not divulge such information to any other person other than employees of the Unit, members of the Interagency Team for Safeguarding Vulnerable Adults, or other such agency or organisation which needs to know that information to perform functions under the Adult Protection Response Framework, or to Parliament, the

7.3 The obligations as to confidentiality under this clause 7 of this MOU shall survive any expiry or earlier termination of this MOU.

8. TERMINATION

8.1 Either the Lead Agency or the Council may terminate this MOU at any time prior to the end of the term by giving not less than twenty one (21) days notice in writing of its intention to terminate this MOU to the other Party.

9. MODIFICATION

9.1 Any modification of this MOU must be in writing and signed by all Parties.

EXECUTED AS A MEMORANDUM

SIGNED by and on behalf of

ADULT PROTECTION UNIT

DEPARTMENT OF FAMILIES AND COMMUNITIES

.....

.....

[INSERT FULL NAME]

Witnessed by:

.....

[INSERT FULL NAME]

SIGNED by and on behalf of

[INSERT ORGANISATION NAME]

.....

.....

[INSERT FULL NAME]

Witnessed by:

.....

[INSERT FULL NAME]

APPENDIX D

TEMPLATE: RECORDING A NOTIFICATION OR REPORT OF ABUSE

REPORT AND NOTIFICATION OF ABUSE RECORD

1. PERSON RECORDING NOTIFICATION

AGENCY/ORGANISATION:

AGENCY WORKER NAME:

TELEPHONE NUMBER:

EMAIL:

2. DETAILS OF VULNERABLE ADULT

NAME:

AGENCY REFERENCE NUMBER:

DATE OF BIRTH:

ADDRESS:

GENDER:

ETHNIC ORIGIN:

RELIGION:

COMMUNICATION DIFFICULTIES:

(If YES, record what communication aids are required)

LIVING SITUATION:

(eg, lives alone, with spouse etc, type of accommodation, caregiver details, known supports etc)

3. DETAILS OF PERSON REPORTING ABUSE (IF OTHER THAN THE VULNERABLE ADULT):
NAME:
ADDRESS:
TELEPHONE NUMBER:
EMAIL:
RELATIONSHIP TO VULNERABLE ADULT:
DETAILS OF ANY COMMUNICATION OR CONTACT WITH THE VULNERABLE ADULT BY THE AGENCY WORKER FOLLOWING A REPORT BY A THIRD PARTY:
4. DETAILS OF THE CIRCUMSTANCES AND EVENTS LEADING TO THE REPORT/NOTIFICATION:

5. DETAILS OF OTHER AGENCY WORKERS/SUPERVISORS INFORMED OF THIS REPORT

6. DETAILS OF THE ALLEGED ABUSER

NAME:

RELATIONSHIP TO ADULT AT RISK:

ADDRESS (IF KNOWN):

TELEPHONE NUMBER (IF KNOWN):

DETAILS OF ANY PREVIOUS CONCERNS REGARDING ALLEGED ABUSER:

7. KNOWN HEALTH PROFESSIONALS

GENERAL PRACTITIONER:

TELEPHONE NUMBER:

ADDRESS:

OTHER HEALTH PRACTITIONERS:

(Include contact numbers)

8. CAPACITY OF VULNERABLE ADULT

ARE YOU AWARE OF ANY ENDURING POWER OF ATTORNEY/GUARDIANSHIP ARRANGEMENTS?

(Provide details)

DO YOU BELIEVE THE VULNERABLE ADULT IS CAPABLE OF UNDERSTANDING WHAT HAS HAPPENED TO THEM?

(If NO, have you contacted the Office of the Public Guardian? Provide details of OPA case worker)

9. REPORTS TO SAPOL

DO YOU SUSPECT THAT A CRIME HAS BEEN COMMITTED, AND HAS SAPOL BEEN NOTIFIED?

(Provide details of date and time SAPOL contacted, and any action known to have been taken)

DO YOU BELIEVE THERE ARE REASONABLE GROUNDS UPON WHICH SAPOL MAY WISH TO CONSIDER AN INTERIM INTERVENTION ORDER AND HAS SAPOL BEEN CONTACTED?

(Provide details of date and time SAPOL contacted)

10. CONSENT

HAS THE VULNERABLE ADULT GIVEN CONSENT TO THE SHARING OF INFORMATION ABOUT THE ABUSE?

(Specify the nature of consent provided, including whether the Adult Protection Unit may be notified, or any other agency the adult has given permission for information to be shared with (and for what purposes); provide details of any action taken consistent with the consent provided)

IS THERE ANY REASON WHY A REPORT SHOULD BE MADE TO THE CHILD ABUSE REPORT LINE (CARL), OR INFORMATION SHARED IN ACCORDANCE WITH THE INFORMATION SHARING GUIDELINES FOR PROMOTING THE SAFETY AND WELLBEING OF CHILDREN, YOUNG PEOPLE AND THEIR FAMILIES?

(If YES, provide details of the grounds upon which information was shared, with whom and what information was shared, and/or the basis upon which a report was made to CARL)

IF THE ADULT HAS NOT PROVIDED CONSENT FOR INFORMATION TO BE SHARED, DO YOU BELIEVE ON REASONABLE GROUNDS THAT SHARING INFORMATION WOULD PREVENT OR LESSEN A SERIOUS OR IMMINENT THREAT TO LIFE OR THE HEALTH OF THE VULNERABLE ADULT?

(If YES, specify the grounds upon which that judgement was made and forward a copy of this form (once completed) to the Adult Protection Unit within one normal working day; provide details of date and time when action was taken)

IN CASES WHERE CONSENT IS NOT PROVIDED, AND WHERE THERE ARE NO GROUNDS UPON WHICH INFORMATION CAN BE SHARED (INCLUDING WITH APU), SPECIFY WHAT PLANS HAVE BEEN PUT IN PLACE WITHIN YOUR AGENCY FOR ONGOING SUPPORT AND MONITORING OF THE VULNERABLE ADULT; PREPARE A DE-IDENTIFIED REPORT OF THE CASE FOR APU:

AGENCY WORKER'S SIGNATURE	
PRINT NAME	
DATE	

ADULT PROTECTION RESPONSE ASSESSMENT
11. ADULT PROTECTION UNIT NOTIFICATION DETAILS
DATE NOTIFICATION RECEIVED:
LETTER OF ACKNOWLEDGEMENT SENT (DATE):
INVITATIONS TO PARTICIPATE IN ADULT PROTECTION CASE CONFERENCE, AND INFORMATION SHARING REQUESTS SENT TO PERMANENT ITSVA MEMBERS (DATE):
INVITATIONS TO PARTICIPATE IN ADULT PROTECTION CASE CONFERENCE, AND INFORMATION SHARING REQUESTS SENT TO NON-PERMANENT ITSVA MEMBERS: (Specify which agencies/organisations were sent requests and date requests were made)
12. ADULT PROTECTION CASE CONFERENCE
DATE:
LEAD AGENCY/AGENCIES:

ACTIONS DECIDED:

- NO ACTION
- VULNERABLE ADULT TO BE FLAGGED AS HIGH RISK/VULNERABLE ON CLIENT SYSTEMS
- INVESTIGATION AND ACTION PLAN DEVELOPED

WHERE AN IAP IS NOT DEVELOPED, DETAILED REASONS MUST BE PROVIDED AND A PLAN FOR ONGOING MONITORING AND REVIEW BY LEAD AGENCY/AGENCIES DEVELOPED (Provide details):

13. INVESTIGATION AND ACTION PLAN

- SAPOL ACTION RECOMMENDED
 - ARREST/CHARGES LAID
 - INTERVENTION ORDER SOUGHT
- FURTHER REQUESTS FOR INFORMATION SOUGHT
- SEEKING EXTENDED OR ADDITIONAL CONSENT FROM VULNERABLE ADULT
- MULTI-AGENCY VISIT(S) TO VULNERABLE ADULT
- FOLLOW-UP PHONE CALLS TO VULNERABLE ADULT FOR FURTHER INVESTIGATION AND MONITORING
- REQUESTS OR ARRANGEMENTS MADE FOR VARIOUS ASSESSMENTS AND SERVICES (HOUSING NEEDS, LEGAL ADVICE, FINANCIAL ASSISTANCE ETC) (Provide details below)
- FLAGGING ADULT AS HIGH RISK/VULNERABLE ON CLIENT SYSTEMS
- PROVIDING ADULT WITH INFORMATION AND ACCESS TO RESOURCES
- OTHER (Provide details below)

COMMENTS ON ACTION(S) TO BE TAKEN AND AGENCY RESPONSIBILITY FOR ALL ACTIONS:

14. ONGOING MONITORING AND EVALUATION

PLANS FOR ONGOING MONITORING AND EVALUATION:
(Specify which agency is to be involved and relative timelines)

RECOMMENDATIONS/FEEDBACK TO AGENCY/AGENCIES?
(Positive and constructive feedback should be provided in writing)

CATEGORY OF ABUSE RECORDED:

- PHYSICAL
- PSYCHOLOGICAL
- SOCIAL
- FINANCIAL
- SEXUAL
- SUBSTANCE
- NEGLECT

CATEGORY OF PERSON REPORTING ABUSE:

- VICTIM/VULNERABLE ADULT
- CARER/FAMILY MEMBER/GUARDIAN
- NEIGHBOUR/FRIEND
- SOUTH AUSTRALIA POLICE
- DOMICILIARY CARE METROPOLITAN
- AGED RIGHTS ADVOCACY SERVICE
- OFFICE OF THE PUBLIC ADVOCATE

<ul style="list-style-type: none"><input type="checkbox"/> LEGAL SERVICES COMMISSION<input type="checkbox"/> PUBLIC TRUSTEE<input type="checkbox"/> ROYAL DISTRICT NURSING SERVICE (SA) INC<input type="checkbox"/> GP/PRIMARY CARE TEAM MEMBER<input type="checkbox"/> CLINICAL PSYCHOLOGIST/PSYCHIATRIST<input type="checkbox"/> SA HOUSING<input type="checkbox"/> LOCAL GOVERNMENT<input type="checkbox"/> DISABILITY SERVICES<input type="checkbox"/> HACC PROVIDER<input type="checkbox"/> MEMBER OF THE PUBLIC<input type="checkbox"/> MENTAL HEALTH<input type="checkbox"/> OTHER (Please specify)
APU MANAGER'S SIGNATURE:
PRINT NAME:
DATE:

