

29 January 2026

Via email: officeforageingwell@sa.gov.au

Feedback on the Adult Safeguarding Unit *Code of Practice* and *Charter of Rights and Freedoms*.

Thank you for the opportunity to provide feedback on the Adult Safeguarding Unit *Code of Practice* and *Charter of Rights and Freedoms*.

I provide this response in my capacity as the South Australian Public Advocate.

The South Australian Civil and Administrative Tribunal (SACAT) has appointed me to make decisions in relation to accommodation, lifestyle, services, access, and/or health matters for over 2400 adults with impaired decision-making ability. These decisions must be least restrictive of the person's rights, and must also ensure their proper care and protection, including from abuse, mistreatment, and exploitation by others.

The Office of the Public Advocate works collaboratively with the Adult Safeguarding Unit (ASU). It has a Memorandum of Administrative Arrangement (MOAA) with the ASU to refer potential cases.

Adult Safeguarding *Charter of Rights and Freedoms*

The Adult Safeguarding *Charter of Rights and Freedoms* is written in clear, plain English and is informed by a range of international human rights principles, including the United Nations Convention on the Rights of Persons with Disabilities and the United Nations Principles for Older Persons. I commend the ASU on the new Charter.

Adult Safeguarding Unit *Code of Practice*

The "Purpose" section of the Adult Safeguarding Unit *Code of Practice* explains how the Unit will conduct its functions and provides practical guidance on how the Unit operates.

For ease of review, my feedback/suggestions are listed in the following table (with the page and section of the *Code of Practice*):

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Page number	Document section	Feedback/Suggestions
6 - 10	What is abuse?	<p>The distinct types of abuse are described from page 6 to 10. While the brief descriptions are intended to make the document easy to read, it is not clear exactly what certain forms of abuse involve. For example, on page 7, the term “risk of homelessness” is followed by an asterisk, but no further explanation is provided. In addition, some terminology may not be easily understood by people with limited experience in the safeguarding field.</p> <p>These descriptions will benefit from feedback from a broad range of stakeholders through the consultation process.</p>
14	What not to report	<p>“Self-neglect” is included in the list of abuse types <i>not</i> to report. While pathways for addressing other areas of concern are provided, no guidance is offered for self-neglect. Information on how to respond to and support a person experiencing self-neglect would be beneficial. “Self-neglect” is not specifically excluded in the definition of “abuse” in s4 of the Ageing and Adult Safeguarding Act 1995 (AASA).</p>
18	Actions the Unit may take	<p>The ASU “<i>may ...undertake an investigation to make or support an application to the South Australian Civil and Administrative Tribunal,</i>” presumably for a guardianship order.</p> <p>This is relevant when a person has decision-making incapacity and may need a guardian appointed, but if the guardianship order is purely to expedite the removal of a person from an abusive situation, then this overreaches the purpose of the Guardianship and Administration Act 1993 (GAA). The Disability Royal Commission recommended that taking people under guardianship should be an absolute last resort (Recommendation 6.9).</p> <p>From experience, the ASU has collateral information about an abusive situation and therefore may be better placed to act. Under the GAA, the Public Advocate has legislative responsibilities to initiate own enquiries in order the act on a situation, which can create delays. The ASU can, under s31 of the AASA seek a court order and gain powers under s33(1)(c) <i>...“to take specified action where the vulnerable adult has refused consent to the taking of that action”</i>.</p>

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19	Taking no further action	<p><i>“After assessing a report, the Unit may decide to take no further action in respect of a matter if: the relevant adult does not consent to a safeguarding response being taken and no exception to obtaining consent applies.”</i></p> <p>The most vulnerable adults are those who have a decision-making impairment and have difficulty engaging and giving consent. The provisions of s24(1)(4)(iii) allow for the ASU to act when a person has decision-making incapacity and cannot give consent. This needs to be emphasised.</p>
24	Conducting an Investigation	<p><i>“The Unit may investigate a matter if it considers further information or evidence may be required to:</i></p> <ul style="list-style-type: none"> • <i>make an application to the South Australian Civil and Administrative Tribunal (SACAT) under the Ageing and Adult Safeguarding Act, or</i> • <i>assist SACAT in proceedings under complementary legislation (such as Guardianship and Administration Act 1993 (SA) GAA)”.</i> <p>While investigations may lead to an application to SACAT for guardianship, an alternative course of action short of guardianship is laid out in s33(1)(c) of the AASA whereby the ASU can obtain a court order to expedite action by the ASU to safeguard a vulnerable adult. Following this it may be appropriate to seek a guardianship order under the GAA.</p>
26	Safeguarding responses	<p><i>“The Unit will seek the adult’s consent to undertake a safeguarding response (unless an exception to consent applies).”</i></p> <p>This emphasises “consent” by the adult which often does not pertain for the most vulnerable people who have decision-making impairment and need a more assertive response from the ASU.</p> <p><i>“...seeking an order of SACAT under the Ageing and Adult Safeguarding Act.”</i></p> <p>The AASA requires Court orders from the Magistrates Court. It is not clear why SACAT is mentioned in this context.</p>

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In recent times, the Adult Safeguarding Unit has adopted a practice of applying to SACAT for guardianship orders appointing the Public Advocate, when the ASU are seeking to remove an adult with impaired decision-making capacity from care environments that are unsafe. In such circumstances the ASU applies to SACAT for an accommodation order appointing the Public Advocate to enact an accommodation decision. The ASU may also apply for other elements of a guardianship order such as health decisions and access decisions, subject to the circumstances.

I am concerned that guardianship orders are being sought for the sole purpose of facilitating the urgent removal of a vulnerable person. This has the deleterious dual effects of:

- (a) unnecessarily placing a person under guardianship (with an accompanying loss of agency in important decision-making), and
- (b) requiring my staff to act with limited information. Under these circumstances the ASU would be better placed to use powers under s33 and s34 of the AASA to act on their investigations and recommendations for action. Subsequently, guardianship orders could be sought if appropriate for ongoing decision-making.

Overall, I support the revised Adult Safeguarding Unit *Code of Practice* and *Charter of Rights and Freedoms*, which are framed to safeguard and uphold the rights of people with impaired decision-making ability. I value the collaborative working relationship with the Adult Safeguarding Unit and share the strong commitment to safeguarding and the wellbeing of vulnerable South Australians.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Anne Gale', written in a cursive style.

Anne Gale
Public Advocate