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Attorney-General's Department  
Australian Government  
4 National Circuit BARTON ACT 2600

Via email: [nationalplan@ag.gov.au](mailto:nationalplan@ag.gov.au)

## **Consultation on the draft National Plan to End the Abuse and Mistreatment of Older People 2024-2034**

Thank you for the opportunity to provide feedback on the Consultation Draft of the National Plan to End the Abuse and Mistreatment of Older People 2024-2034 (The Plan).

I provide this response in my capacity as the South Australian Public Advocate (PA) and member of the South Australian Alliance for the Prevention of Elder Abuse (APEA).

In South Australia, the Public Advocate is appointed by the South Australian Civil and Administrative Tribunal (SACAT) to make decisions in relation to accommodation, lifestyle, services, access and/or health matters for over 790 (37% of OPA clients) older people 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 SA Office of the Public Advocate (SA OPA) is pleased to see that the Plan deals sensitively and thoughtfully with the concepts of presumed, fluctuating and decision-specific capacity. The Plan appropriately highlights the importance of a person's involvement in decisions that affect them, and their right to take risks and make their own decisions to the fullest extent possible. It also calls attention to the responsibility of health care professionals to provide full informed consent, no matter the age of the patient.

### **Principles and Priority Groups**

The overarching human rights principles are properly underscored as the standard for building towards a culture where older people are valued and respected. The SA OPA supports this human rights approach and the Plan's focus on individual decision-making, autonomy, and dignity.

The SA OPA notes that people with a disability are included in the Priority Groups, and the increased risk of abuse and mistreatment is acknowledged.

### **Potential Gaps**

The SA OPA supports the inclusion of a vision for an Australia which values the time, wisdom, experience and skills of older generations, and welcomes the positive change that generational connection can bring. The SA OPA encourages the inclusion of a detailed

picture of a preferred future in the Plan, which would guide actions and build the desired culture.

For example, the following suggested text could be included:

*In Australia we value our elders and their contribution to our lives and communities. We make time to build relationships with our elders and include them in our families and communities.*

*In Australia we support the dignity, freedom, and autonomy of our elders by involving them in decisions that affect their lives.*

*In Australia we make sure that people understand their rights, and we support and uphold them when they are unable to stand up for themselves.*

*In Australia we make sure that older people understand their options and possible outcomes of any medical treatment, and are as involved as possible in their own medical decisions.*

*In Australia we create opportunities for rich connection, shared experiences, and generational learning.*

Along these lines, the SA OPA suggests that there be specific language in the Plan that describes what an older-person-friendly service looks like, and how agencies and services can address systemic issues that contribute to the abuse and mistreatment of older people. The cover-all term of 'education' requires both an evidence-base and practical strategy, to ensure that the Plan is not simply repeating **what** we know about abuse, without providing guidance as to **how** to move our services, and our culture, in a new direction.

### **Guardianship and supported decision-making**

The SA OPA acknowledges that with the right level of support, people with impaired decision-making capacity can be involved in decisions that affect their lives, and that applying contemporary supported decision-making principles when working with clients can ensure they have input into decisions that affect them. This Office promotes the current shift in the principles of decision-making, including engaging in projects to determine the wishes and preferences of our clients, while, in SA, observing the principles detailed in section 5 of the [Guardianship and Administration Act 1993 \(SA\)](#).

Whilst the SA OPA fully supports this movement towards supported decision-making, our work has consistently demonstrated the significant additional resources required to implement 'best practice' in this area. The plan presents an opportunity to both strive for an ideal, and acknowledge and address the realistic demands of its effective implementation.

### **Addressing gaps through research**

With reference to Focus Area 4, the SA OPA supports the Plan's commitment to increasing the body of knowledge around the experience and needs of priority groups. Specifically, in our culturally and linguistically diverse (CALD) population, evidence-based practices are

required in providing guardianship, offering advance care planning resources and holding end-of-life conversations which are culturally appropriate and accessible in CALD contexts.

### **Safeguarding and Dignity of Risk**

In the SA OPA safeguarding role, the Office carefully navigates the intersection of clients' dignity of risk and duty of care. Sometimes, a hospitalised client may wish to be discharged home, but it is not safe to do so because their needs do not match their funding or available home care package. To ensure the safety of the person, a decision that is against their wishes may be made.

Current service systems often do not adequately meet the unique needs of older people with multiple complex disabilities, many of whom are Public Advocate clients. These people often have more than one condition; have challenging behaviours; have poor social connections; enter into risky situations; and are unwilling to engage with services. The system needs to intervene effectively for these people and assertive responses from a range of sectors are often required to keep them safe. This is often difficult due to uncoordinated or lacking service systems across a person's life domains.

The resolve to obtain the necessary assessments, so that a decision maker (including appointed guardians) can ensure a client's safety and meet their needs while also upholding their freedom and wishes, is often at the centre of the debate between safeguarding and dignity of risk. Decision-making needs to be well informed, and this effort can be hampered by external pressures such as time, hospital discharge requirements and bed pressures.

It is appropriate to acknowledge the complexity of the responsibility which guardianship and advocacy agencies hold, and it is recommended that this is a key area of research under Focus Area 4. The development of a standard approach to assessing risk, and guidance on where safeguarding should be employed, could help to address the difficulty and nuance of respecting clients' decisions that have poor outcomes while also upholding duty of care, managing external perceptions, and meeting the requirements of the law.

### **What we are doing and propose to do**

You may also be interested to know about the work the SA OPA is currently undertaking, and propose to undertake, to end elder abuse and mistreatment in South Australia.

- Information about elder abuse is provided by the SA OPA Information Service along with targeted education in Aged Care settings. This includes education and upskilling in advance care planning, legal instruments, decision-making capacity, medical consent, and dispute resolution.
- The SA OPA provides specific information and consultation in relation to SA Advance Care Directives and this is pivotal in preventing the abuse and mistreatment of older people and safeguarding their rights (see [Substitute Decision-Maker Toolkit | Office of the Public Advocate](#)).
- The SA OPA provides dispute resolution services for people who have made an Advance Care Directive to assist with decision-making; uphold the rights of older

people with limited decision-making capacity; involve them in decisions that impact them; and avoid restrictions such as guardianship where possible.

- The SA OPA provides education and undertakes extensive project work, innovation and expansion of supported decision-making practices in South Australia, including with First Nations clients and clients in residential aged care (see [Supported decision-making | Office of the Public Advocate](#)).
- The SA OPA with the Adult Safeguarding Unit and the Alliance for the Prevention of Elder Abuse, through well established and open communication, under information sharing guidelines and adhering to privacy principles, work together to prevent and respond to the abuse of older people.

The SA OPA is also monitoring the potential changes to restrictive practices under the new Aged Care Act, to take effect in July 2025, and considering any possible impacts to policies and procedures.

In closing, the Plan is supported and provides a good foundation for driving effective cultural and national change. However, implementation is critical, and the Plan would be enhanced with supporting documentation that describes goals and actions that will be undertaken by respective Commonwealth, State and Territory and Local Governments, and other parties to ensure implementation and evaluation of effectiveness.

## **Conclusion**

Thank you again for the opportunity to provide feedback on the draft National Plan.

Should you wish to discuss any of the matters I have raised in this submission further, please do not hesitate to contact my office via email ([opamailbox@sa.gov.au](mailto:opamailbox@sa.gov.au)) or phone (1800 066 969).

Yours sincerely

**Anne Gale**

Public Advocate