



Response to “Safeguarding Adults: Options for Legislative Reform”

Introduction

COTA Tasmania welcomes this opportunity to respond to the draft options paper “Safeguarding Adults: Options for Legislative Reform” (the draft options paper).

The draft options paper was prepared by the Department of Justice (the Department) as part of Key Action 5 of *Protect and Respect Older Tasmanians: Tasmania’s Elder Abuse Prevention Strategy (the Strategy) 2019 – 2022* (the Elder Abuse Strategy). The options it outlines were informed by a review of arrangements in other jurisdictions and an extensive gap analysis. The Department has made the draft options paper available to members of the Statewide Elder Abuse Prevention Advisory Committee (SEAPAC) for comment prior to releasing a final options paper for public comment. The concluding part of Key Action 5 will be for recommendations to be made for changes to the current legislative and oversight system for safeguarding older Tasmanians.

COTA Tasmania’s response to the draft options paper has been guided by our mission, which is to advance the rights, interests and futures of Tasmanians as we age.

In the course of preparing its response, COTA Tasmania conferred with several other community organisations that are members of SEAPAC. Until the Department releases a final options paper, COTA Tasmania will not share this response beyond SEAPAC members and the Department. When the Department calls for public submissions, COTA Tasmania will share this response, or an adjusted final submission, on its website.

COTA Tasmania endorses TasCOSS’s feedback on the draft options paper¹

When writing its comprehensive response to the draft options paper, TasCOSS sought the views of COTA Tasmania. We have read the TasCOSS response and are very pleased to endorse it. Below we also elaborate on several of the points made in the TasCOSS response.

Safeguarding “adults in circumstances of vulnerability”

A crucial commitment of the current iteration of Tasmania’s Elder Abuse Strategy is to “review and *improve* safeguarding arrangements, including legislature and official oversight, acknowledging that *people can become vulnerable at any time and may not necessarily*

¹ TasCOSS, “Safeguarding Adults”, Hobart, 2023.

remain vulnerable".² Terminology and institutional arrangements that conflate ageing and vulnerability contribute to ageist assumptions that drive elder abuse. For this reason, and also from a human rights perspective, COTA Tasmania agrees with TasCOSS that an adult safeguarding entity should focus its attention on all adults in circumstances of vulnerability.

In addition, COTA Tasmania agrees with TasCOSS that referring to "adults in circumstances of vulnerability" is preferable to using the term "vulnerable adults". This is because the latter may too easily be perceived to imply that adults experiencing or at risk of abuse are permanently vulnerable. Such a perception risks at least two negative consequences:

1. it may lead to older people who experience abuse choosing not to engage with the safeguarding entity, or denying consent for investigation, for fear of the potential consequences for themselves.
2. it may, conceivably, contribute to tipping the balance of acceptable responses *away* from those that seek to respect, and also preserve or restore, the person's autonomy and independence *towards* protective measures that may restrict their autonomy and independence.

In COTA Tasmania's view, the term "people in circumstances of vulnerability" also acknowledges that people who experience elder abuse often wish to preserve their relationship with the perpetrator (see TasCOSS submission,³ which references the findings of the Australian Law Reform Commission's (ALRC's) elder abuse report of 2017⁴). In such cases, older people who have been abused, or are at risk of abuse, by a family member or other trusted person may choose resolutions that address the circumstances of their vulnerability rather than seek retribution. For example, they may choose to take actions that seek to:

- improve the relationship between the person experiencing or at risk of abuse and the perpetrator through conciliation and/or mediation;
- empower the person to express their true wishes or have other difficult conversations with family members through the provision of counselling;
- empower the person through the provision of expert supported decision-making (see below);

² Department of Communities Tasmania 2019, *Protect and Respect Older Tasmanians: Tasmania's Elder Abuse Prevention Strategy (the Strategy) 2019 – 2022*, Government of Tasmania, p. 4, emphasis added.

³ TasCOSS, "Safeguarding Adults", Hobart, 2023.

⁴ Australian Law Reform Commission, *Elder Abuse – A National Legal Response*, 2017, p. 392.



- reduce the risk factor of carer stress, should it be present, through the provision of aged care services and carer support; and/or
- reduce the risk factor of social isolation, where it exists, by connecting up specialised services but also, or alternatively, linking the person with housing services, community transport, social activities, IT support, financial services and/or literacy services.

Tasmania's safeguarding entity must be committed to reducing ageism

Australia's national elder abuse strategy acknowledges that ageism:

can contribute to an environment in which individuals who abuse older people fail to recognise that their behaviour constitutes abuse; other members of society fail to notice these negative behaviours or take action to stop them; and older people experiencing elder abuse blame themselves and are too ashamed to seek assistance.⁵

Consequently, the Tasmanian elder abuse strategy makes a commitment to reducing ageism⁶ – a commitment that must be incorporated into the establishment, functions, processes and language of an adult safeguarding entity.

Tasmania's safeguarding entity should be embedded in a human-rights framework

COTA Tasmania believes the most effective way to safeguard older adults in circumstances of vulnerability *without* contributing to ageist stereotypes of older people as vulnerable is to embed Tasmania's safeguarding entity in a human-rights framework.

COTA Tasmania already advocates for a Tasmanian charter of human rights to ensure the human rights of older Tasmanians are protected as assiduously and effectively as the human rights of people of any other age demographic. Embedding a safeguarding entity within a human-rights framework also acknowledges the intersectional nature of much abuse, because such an arrangement would, by design, enable multiple forms of abuse of an adult in circumstances of vulnerability to be addressed by a single entity.

Tasmania's safeguarding entity must be independent

Public trust will be crucial to the success of any new adult safeguarding arrangements. There has been extensive media coverage and public advocacy recently aimed at exposing situations in which people experience institutional abuse and/or neglect. Arguments have been made

⁵ Council of Attorneys General, *National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019-2023*, 2019, p. 5.

⁶ Department of Communities Tasmania 2019, *Protect and Respect Older Tasmanians: Tasmania's Elder Abuse Prevention Strategy (the Strategy) 2019 – 2022*, p. 2.



that existing entities have sometimes failed to uphold the rights of adults in circumstances of vulnerability. In addition, separate reviews of the Public Trustee⁷ and the Roy Fagin Centre⁸ found evidence of significant failings. For this reason, COTA Tasmania is firmly of the view that an adult safeguarding entity must be independent. We believe that such an arrangement would be the best way to ensure a properly funded adult safeguarding entity could investigate reports of abuse without any conflict of interest and earn the trust of older Tasmanians.

Powers of the adult safeguarding entity must include an investigative function

COTA Tasmania fully concurs with TasCOSS that an adult safeguarding entity should have a broad range of powers, as outlined in the following list from the TasCOSS submission, adapted from the 2017 ALRC report:

- A duty to make enquiries in relation to ‘vulnerable adults’, either upon receipt of a complaint or as an ‘own-motion’ investigation;
- A ‘triaging and assessment’ function to assess and respond to the needs of adults in circumstances of vulnerability and refer where necessary to other services;
- Coercive information-gathering powers, to be exercised only in situations where such powers are justified (such as instances where there are reasonable grounds to suspect ‘serious abuse’ of a vulnerable adult);
- Ability to take action (with the relevant person’s consent – discussed further below) to coordinate services, meet/communicate with relevant organisations and professionals, and report (if needed) to police; and
- Public information and awareness raising role, allowing people to contact the safeguarding entity for information and advice and also providing education to the wider community in relation to issues such as elder abuse.⁹

Consent must be obtained before intervention or investigation, with some exceptions

TasCOSS and COTA Tasmania agree that the consent of an adult in circumstances of vulnerability must be obtained before intervention or investigation except in clearly defined extreme circumstances. Should intervention occur in such cases, it must be “necessary, reasonable and proportionate”.¹⁰

⁷ Bugg, D, independent Review of the Public Trustee Tasmania, 2021.

⁸ Office of the Chief Psychiatrist, Review of Roy Fagan Centre Older Persons Mental Health Services, Department of Health, 2021.

⁹ TasCOSS, “Safeguarding Adults”, Hobart, 2023, p. 6.

¹⁰ Plater et al., ‘Autonomy and Safeguarding are not Mutually Inconsistent’: A Review of the Operation of the Ageing and Adult Safeguarding Act 1995 (SA), South Australian Law Reform Institute, Adelaide, 2022, p. 224.



In reaching this view, TasCOSS and COTA Tasmania considered the findings of the recent South Australian Law Reform Institute (SALRI) review of South Australia’s safeguarding legislation.¹¹ Importantly, the SALRI review noted that the consent of a person who might otherwise be considered to have decision-making capacity can be compromised by, for example, coercion. In such circumstances, if the abuse is extreme, it may be possible for an argument to be made for intervention without consent. In SALRI’s view:

[t]he request to intervene and act without the consent of an adult with decision-making capacity should not be taken lightly. It must be carefully considered, with regard to the adult’s wishes, ability to appreciate the nature of abuse and its extent, the harm caused and their ability to weigh up the advantages and disadvantages of refusal or consenting to intervention. Further, where this lack of consent is overridden in the case of an adult with decision-making capacity, intervention must be *necessary, reasonable and proportionate*.¹²

COTA Tasmania believes the circumstances in which intervention and/or investigation can be permitted without consent must be clearly defined and that the adult safeguarding entity must be funded and obliged to train direct-care workers and clinical staff about how and when such interventions may be enacted.

An adult safeguarding entity must provide expert supported decision-making

Except in the most urgent situations, COTA Tasmania believes intervention without the consent of the person in circumstances of vulnerability, whether or not that person has a diagnosed cognitive impairment, should only be contemplated after that person has been offered supported decision-making and, if accepted, after that support has been provided. To this end, the new adult safeguarding entity must be adequately funded to provide expert, extensive and timely decision-making support.

COTA Tasmania should be added to the options paper’s Table 1

COTA Tasmania asks that its contributions over many years to raising awareness of elder abuse be recognised by its inclusion in Table 1 of the Department’s options paper. COTA Tasmania’s elder abuse awareness and prevention activities funded by the Tasmanian Government include:

- an extensive peer education program that visits community organisations statewide to alert older Tasmanians to the existence and signs of elder abuse, inform them about

¹¹ Plater et al., ‘Autonomy and Safeguarding are not Mutually Inconsistent’: A Review of the Operation of the Ageing and Adult Safeguarding Act 1995 (SA), South Australian Law Reform Institute, Adelaide, 2022.

¹² *ibid.*, p. 224, emphasis added.



how to respond if they experience it themselves or are concerned about someone else; and promote available services such as the Tasmanian Elder Abuse Helpline;

- elder abuse information sessions provided to community organisations, TAFE students, aged-care workers, high-school students, health-care workers and many other staff and volunteers;
- the organisation of well-attended annual Walks Against Elder Abuse in Hobart, Launceston and Burnie on World Elder Abuse Awareness Day – walks that regularly attract extensive Tasmanian media coverage;
- in 2022-2023, development and delivery of a trial elder abuse survivor-advocates program in collaboration with Engender Equality.

An adult safeguarding entity should be funded to provide increase public awareness of elder abuse by providing additional and complementary programs to those the Tasmanian Government already funds to raise awareness

While recognising that several community organisations (e.g. COTA Tasmania, Legal Aid’s Senior Assist, Advocacy Tasmania, and Relationships Australia Tasmania) and the Tasmanian government already work hard to raise awareness of elder abuse, far more work is urgently required. COTA Tasmania has developed expertise, networks, relationships, credibility and trust that are vital to its ability to raise awareness of elder abuse. While COTA Tasmania agrees that an adult safeguarding entity should be tasked and adequately funded to undertake the comprehensive awareness raising activities outlined in the TasCOSS submission, the awareness-raising activities of the safeguarding entity should be complementary to the Government-funded activities already provided by community organisations such as COTA Tasmania and should operate alongside their programs.

As partners in adult safeguarding, community organisations require long-term funding

Improving the safeguarding of adults in circumstances of vulnerability will require an adult safeguarding entity of the kind outlined by TasCOSS and COTA Tasmania to work in partnership with community organisations. To do their vital part of this work effectively, community organisations require the certainty that comes with long-term funding to support elder abuse awareness-raising activities, operational sustainability, and the retention of skilled staff. For further information, we refer the Department to COTA Tasmania’s and TasCOSS’s 2023-2024 Budget submissions.¹³

¹³ https://www.cotatas.org.au/wp-content/uploads/sites/3/2022/12/COTA-State-Budget-Submission-2022_Final.pdf
[TasCOSS-2023-24-Budget-Priorities-Statement---Sustainable-Investment-in-an-Essential-Industry-FINAL-v1.pdf](#)