

Legislative Council—No 18A

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South Australia

**Office for the Ageing (Adult Safeguarding)
Amendment Bill 2018**

A BILL FOR

An Act to amend the *Office for the Ageing Act 1995*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Office for the Ageing (Adult Safeguarding) Amendment Act 2018*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Office for the Ageing Act 1995*

4—Amendment of section 1—Short title

Section 1—delete "Office for the Ageing" and substitute:

Ageing and Adult Safeguarding

5—Insertion of sections 2 to 6

After section 1 insert:

2—Interpretation

(1) In this Act, unless the contrary intention appears—

abuse, in relation to a vulnerable adult—see section 4;

Adult Safeguarding Unit means the Adult Safeguarding Unit established in accordance with section 13;

authorised officer means an authorised officer under section 18;

Charter of the Rights and Freedoms of Vulnerable Adults or *Charter* means the Charter of the Rights and Freedoms of Vulnerable Adults prepared by the Minister under Part 4 Division 1, as in force from time to time;

Chief Executive means the person for the time being holding or acting in the office of Chief Executive of the Department;

code of practice means a code of practice published under Part 4 Division 2, as in force from time to time;

Court means the Magistrates Court of South Australia;

Department means the administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act;

Director means the person for the time being holding or acting in the office of Director of the Office for Ageing Well;

impaired decision-making capacity—see section 5;

member of the Adult Safeguarding Unit—see subsection (2);

State authority means—

- (a) a person who holds an office established by an Act; or
- (b) a public sector agency; or
- (c) South Australia Police; or
- (d) a local council constituted under the *Local Government Act 1999*; or
- (e) an incorporated or unincorporated body—

- 5
- (i) established for a public purpose by an Act; or
 - (ii) established for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, cooperatives, societies or other voluntary organisations); or
 - (iii) established, or subject to control or direction, by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown or a local council (whether or not established by or under an Act or an enactment); or
- 10

- (f) any other person or body declared by the regulations to be a State authority,

but does not include a person or body declared by the regulations not to be a State authority for the purposes of this Act;

15 ***vulnerable adult***—see section 3.

- (2) For the purposes of this Act, a reference to a ***member of the Adult Safeguarding Unit*** will be taken to be a reference to a person assigned or appointed to the Adult Safeguarding Unit and includes a reference to the Director.
 - (3) For the purposes of this Act, a reference to a ***report under this Act*** will be taken to be a reference to a report made in accordance with section 22, but does not include a report taken not to be a report under this Act pursuant to section 22(3).
- 20

3—Meaning of ***vulnerable adult***

25

For the purposes of this Act, a reference to a ***vulnerable adult*** will be taken to be a reference to an adult person who, by reason of age, ill health, disability, social isolation, dependence on others or other disadvantage, is vulnerable to abuse.

4—Meaning of ***abuse***

30

- (1) For the purposes of this Act, a reference to ***abuse*** of a vulnerable adult means—
 - (a) physical, sexual, emotional or psychological abuse of the vulnerable adult; and
 - (b) financial abuse or exploitation of the vulnerable adult; and
 - (c) neglect of the vulnerable adult; and
 - (d) abuse, exploitation or neglect consisting of a person's omission to act in circumstances where the person owes a duty of care to the vulnerable adult; and
 - (e) the abuse or exploitation of a position of trust or authority existing between the vulnerable adult and another person; and
- 35
- 40

(f) a denial, without reasonable excuse, of the basic rights of the vulnerable adult; and

(g) any other act or omission of a kind declared by the regulations to be included in the ambit of this section,

5 but does not include an act or omission of a kind declared by the regulations to be excluded from the ambit of this section.

(2) For the purposes of this section, a reference to the *basic rights* of a vulnerable adult will be taken to be a reference to the rights of vulnerable adults as set out from time to time in the Charter.

10 (3) For the purposes of this section, a reference to the *physical abuse* of a vulnerable adult will be taken to include a reference to the unlawful physical or chemical restraint of a vulnerable adult.

15 (4) For the purposes of this section, a reference to the *physical or chemical restraint* of a vulnerable adult will be taken to include a reference to the over-medication or under-medication of the vulnerable adult.

5—Decision-making capacity

20 (1) For the purposes of this Act, a person will be taken to have *decision-making capacity* in respect of a particular decision unless the person has impaired decision-making capacity in respect of the decision.

(2) For the purposes of this Act, a person will be taken to have *impaired decision-making capacity* in respect of a particular decision if—

(a) the person is not capable of—

25 (i) understanding any information that may be relevant to the decision (including information relating to the consequences of making a particular decision);
or

(ii) retaining such information; or

30 (iii) using such information in the course of making the decision; or

(iv) communicating his or her decision in any manner;
or

35 (b) if the person has given an advance care directive in which the person sets out when they are to be considered to have impaired decision-making capacity (however described) in respect of a decision of the relevant kind—if the person has impaired decision-making capacity as so set out.

(3) For the purposes of this Act—

40 (a) a person will not be taken to be incapable of understanding information merely because the person is not able to understand matters of a technical or trivial nature; and

- (b) a person will not be taken to be incapable of retaining information merely because the person can only retain the information for a limited time; and
- (c) a person may fluctuate between having impaired decision-making capacity and full decision-making capacity; and
- (d) a person's decision-making capacity will not be taken to be impaired merely because a decision made by the person results, or may result, in an adverse outcome for the person.

6—Interaction with *Independent Commissioner Against Corruption Act 2012*

Nothing in this Act limits the operation of the *Independent Commissioner Against Corruption Act 2012*.

6—Substitution of Part 2

Part 2—delete the Part and substitute:

Part 2—Office for Ageing Well

7—Office for Ageing Well

- (1) The *Office for the Ageing* established under this Act continues as the *Office for Ageing Well*.
- (2) The Office for Ageing Well consists of—
- (a) the Director of the Office for Ageing Well (who is to be a Public Service employee); and
- (b) such other Public Service employees as may be assigned or appointed to assist the Director.
- (3) A person cannot be appointed as Director, nor can the employment of the Director be terminated, except with the approval of the Minister.

8—Objectives of Office for Ageing Well

The objectives of the Office for Ageing Well include—

- (a) supporting South Australians of all ages to age well, unencumbered by stigma and discrimination; and
- (b) achieving proper integration of ageing persons within the community thus ensuring that the skills and experience of the ageing are not lost to the community through social alienation; and
- (c) creating social structures in which ageing persons are able to realise their full potential as individuals and as members of the community; and

- 5
- (d) creating a social ethos in which ageing persons are accorded the dignity, appreciation and respect that properly belong to them; and
- (e) ensuring that the multicultural nature of the community is reflected in the planning and implementation of programs and services relevant to ageing persons; and
- 10
- (f) achieving a proper understanding within the community of the problems affecting ageing persons and other vulnerable adults and ameliorating those problems so far as it is practicable to do so by modification of social structures and attitudes.

9—Functions of Office for Ageing Well

The functions of the Office for Ageing Well are—

- 15
- (a) to assist in the development and coordination of State Government policies and strategies affecting the ageing and for that purpose to consult with the ageing, providers of services to the ageing and organisations for the benefit of or representing the interests of the ageing and other relevant persons;
- 20
- (b) to advise on the development and implementation of programs and services for the ageing and to actively foster and seek the involvement of the ageing, wherever practicable, in the development and implementation of programs or services that are intended for their benefit or that will have a special effect on them;
- 25
- (c) to monitor the effect on the ageing of—
- (i) practices of the Government of the State, as well as the Commonwealth and local government; and
- (ii) Commonwealth and State law (including local government by-laws),
- and to make appropriate representations in the interests of the ageing;
- 35
- (d) to ensure as far as practicable that the interests of the ageing are considered when programs or services that may affect them are being developed or implemented;
- (e) to undertake or commission research into matters affecting the ageing;
- (f) to compile data relating to the ageing;
- (g) to disseminate information for the assistance of the ageing;
- 40
- (h) to ensure as far as practicable that financial and investment advice is available to the ageing;

- 5
- (i) to keep social attitudes towards the ageing under review and to promote a better understanding of the ageing within the community;
- (j) to assess the incidence of discrimination against the ageing in employment and to promote action to overcome such discrimination;
- 10
- (k) to keep under review the special needs of individual groups of the ageing (including Aboriginal peoples, those who suffer from physical or mental disabilities and those who are economically disadvantaged), and to promote various methods by which those needs may be satisfied;
- (l) to consult and cooperate with other bodies and persons that assist the ageing;
- 15
- (m) to plan, coordinate or administer, or assist in the planning, coordination or administration of, programs and services that may assist the ageing;
- (n) to consult with the ageing in relation to the means of promoting their interests and, as the Director considers appropriate, to represent the views of the ageing to the Minister;
- 20
- (o) to report to the Minister on any matter relating to the ageing referred by the Minister;
- (p) to support the Adult Safeguarding Unit in exercising their functions and powers under this Act;
- 25
- (q) to carry out such other functions as may be assigned to the Office by the Minister or under this or any other Act.

10—Delegation

- 30
- (1) The Director may delegate a function or power under this Part (other than a prescribed function or power) to any person or body that is, in the Director's opinion, competent to perform or exercise the relevant function or power.
- (2) A delegation under this section—
- 35
- (a) must be in writing; and
- (b) may be conditional or unconditional; and
- (c) is revocable at will; and
- (d) does not prevent the delegator from acting in any matter.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

11—Annual report

- 40
- (1) The Director must, on or before 31 October in each year, report to the Minister on the operations of the Office for Ageing Well during the preceding financial year.

- (2) The Minister must, within 6 sitting days after receiving a report from the Director, have copies of the report laid before both Houses of Parliament.

Part 3—Adult Safeguarding Unit

Division 1—Principles

12—Principles

The following principles apply in relation to the operation of this Act to the extent that it relates to vulnerable adults:

- (a) all vulnerable adults are entitled to be treated with respect for their dignity, autonomy and right to self-determination;
- (b) it is presumed that a vulnerable adult has decision-making capacity, unless there is evidence to the contrary;
- (c) except in those cases involving serious and imminent harm, the primary consideration in the operation of this Act is to ensure that a vulnerable adult’s autonomy is respected and maintained rather than safeguarding the person from abuse;
- (d) vulnerable adults must be allowed to make their own decisions about their health care, residential and accommodation arrangements, financial affairs and other personal affairs to the extent that they are able, and be supported to enable them to make such decisions for as long as they can;
- (e) dignity in risk must be observed through acknowledging the right of all vulnerable adults to take informed risks and to make decisions that others (no matter their experience or background) may regard as wrong, reckless or inappropriate;
- (f) a vulnerable adult with decision-making capacity who is experiencing abuse has the right to decline support, assistance or other measures designed to safeguard them from abuse;
- (g) vulnerable adults must be involved in, and their wishes must directly inform, decisions made or actions taken to support and safeguard them;
- (h) the best approach to safeguarding vulnerable adults from abuse is through coordinating a multi-agency and multi-disciplinary response, drawing on the expertise of relevant persons and bodies in order to effectively support and empower vulnerable adults to safeguard their rights and mitigate against abuse;

- 5
- (i) subject to the laws of the State and Commonwealth, the will, preferences (including sexual preferences and sexual orientation), cultural and heritage beliefs, religious beliefs, racial origin, ethnicity, background and other beliefs or rights of a vulnerable adult must always be respected;
- (j) safeguarding measures should consist of those which are the least interventionist and the least intrusive to the vulnerable adult, thus ensuring that any consequential erosion of that person's rights is kept to a minimum;
- 10
- (k) safeguarding vulnerable adults from abuse is ultimately achieved through preventing abuse in the first place, and therefore awareness raising and community education programs must be a priority in the administration and operation of this Part.

15

Division 2—Adult Safeguarding Unit

13—Separate Adult Safeguarding Unit to be established

- (1) The Chief Executive must ensure that a separate unit (the *Adult Safeguarding Unit*) is established within the Department to carry out functions under this Act.
- 20
- (2) To avoid doubt, the Adult Safeguarding Unit may be established within the Office for Ageing Well.
- (3) Where this or any other Act confers a power on the Adult Safeguarding Unit or requires that the Adult Safeguarding Unit perform any function (including requiring that the Adult Safeguarding Unit make a determination, or form an opinion, as to any matter)—
- 25
- (a) the power or function may only be exercised or performed by a person who is authorised to do so on behalf of the Adult Safeguarding Unit by the Director; and
- 30
- (b) the exercise of that power or the performance of that function by a person so authorised will be taken to be the exercise of that power or the performance of that function by the Adult Safeguarding Unit.

14—Composition of Adult Safeguarding Unit

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The Adult Safeguarding Unit is to consist of—

- (a) the Director of the Office for Ageing Well; and
- (b) other Public Service employees assigned or appointed to assist the Director.

15—Functions of Adult Safeguarding Unit

- (1) The functions of the Adult Safeguarding Unit are—
- (a) promoting and advocating for the rights and interests of vulnerable adults in South Australia; and
 - 5 (b) promoting participation by vulnerable adults in the making of decisions that affect their lives; and
 - (c) promoting and assisting in the development of coordinated strategies for prevention and early intervention of abuse of vulnerable adults; and
 - 10 (d) to receive reports relating to the suspected abuse of vulnerable adults; and
 - (e) to assess reports relating to the suspected abuse of vulnerable adults; and
 - 15 (f) to investigate reports relating to the suspected abuse of vulnerable adults; and
 - (g) to coordinate responses to reports relating to the suspected abuse of a vulnerable adult with State authorities and other persons and bodies; and
 - 20 (h) to refer reports relating to the suspected abuse of a vulnerable adult to appropriate persons and bodies; and
 - (i) to follow up on reports that have been assessed or investigated where it is appropriate to do so; and
 - 25 (j) to collate data on matters relating to the abuse of vulnerable adults; and
 - (k) to advise Ministers, State authorities and other bodies (including non-Government bodies) on matters relating to the abuse of vulnerable adults at a systemic level; and
 - 30 (l) to prepare and publish reports on matters relating to the abuse of vulnerable adults at a systemic level; and
 - (m) to prepare and publish reports on issues relating to vulnerable adults that are of public importance; and
 - 35 (n) to perform such other functions as may be assigned to the Adult Safeguarding Unit by the Minister or under this or any other Act.
- (2) The Adult Safeguarding Unit must, in carrying out its functions, have regard to, and seek to give effect to, the Charter of the Rights and Freedoms of Vulnerable Adults.

16—Delegation

- (1) The Director may delegate a function or power of the Adult Safeguarding Unit under this Act (other than a prescribed function or power) to any person or body that is, in the Director's opinion, competent to perform or exercise the relevant function or power.

- (2) A delegation under this section—
- (a) must be in writing; and
 - (b) may be conditional or unconditional; and
 - (c) is revocable at will; and
 - (d) does not prevent the delegator from acting in any matter.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

17—Annual report

- (1) The Director must, on or before 31 October in each year, report to the Minister on the operations of the Adult Safeguarding Unit during the preceding financial year.
- (2) The Minister must, within 6 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.
- (3) A report under this section may be combined with the annual report of the Office for Ageing Well under section 11.

Division 3—Authorised officers

18—Authorised officers

- (1) The following persons are authorised officers for the purposes of this Act:
- (a) the Director;
 - (b) a member of the Adult Safeguarding Unit who is authorised by the Director by instrument in writing for the purposes of this paragraph.
- (2) An authorisation under subsection (1)(b) may be made subject to conditions or limitations specified in the instrument of authorisation.
- (3) An officer authorised under subsection (1)(b) must be issued with an identity card—
- (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is an authorised officer under this Act; and
 - (c) if the powers of the authorised officer have been limited by conditions—stating those limitations.
- (4) An authorised officer must, at the request of a person in relation to whom the officer intends to exercise powers under this Act, produce for inspection their identity card or other evidence of their authority.

- (5) The Director may, by notice in writing to an authorised officer, vary or revoke the authorisation of the officer, or a condition or limitation of the authorisation, on any grounds the Director thinks fit.

19—Powers of authorised officers

- 5 (1) Without limiting any other powers conferred under this Act, an authorised officer may, in the course of an investigation under section 26 relating to a vulnerable adult who is, or is suspected of being, at risk of serious abuse, exercise 1 or more of the following powers:
- 10 (a) enter and remain on any premises, place, vehicle or vessel (and for that purpose require a vehicle or vessel to stop);
- (b) inspect any premises, place, vehicle or vessel;
- (c) use reasonable force to break into or open any part of, or anything in or on, any premises, place, vehicle or vessel;
- 15 (d) require any person (whether on particular premises or otherwise) who has possession of books of account or any other records relevant to a vulnerable adult to produce those books of account or records for inspection;
- (e) examine, copy or take extracts from such books of account or records;
- 20 (f) remove and retain such books of account or records for so long as is reasonably necessary for the purpose of making a copy of the book of account or record;
- (g) take photographs, films, audio, video or other recordings;
- 25 (h) require any person who is in a position to provide information relating to a vulnerable adult to answer any question put by the authorised officer on that subject;
- (i) require any such person to state their full name, address and date of birth.
- 30 (j) give such directions as may be reasonably required in connection with the exercise of a power conferred by a preceding paragraph or otherwise for a purpose related to the administration, operation or enforcement of this Act.
- (2) However, an authorised officer may only use force to enter any premises, place, vehicle or vessel, or to break into or open any part of, or anything in or on, any premises, place, vehicle or vessel—
- 35 (a) on the authority of a warrant issued by a magistrate; or
- (b) if—
- 40 (i) entry to the premises, place, vehicle or vessel has been refused or cannot be gained; and

- 5
- (ii) the authorised officer believes on reasonable grounds that the delay that would ensue as a result of applying for a warrant would significantly increase the risk of harm, or further harm, being caused to a vulnerable adult; and
- (iii) the Director has approved the use of force to enter the premises, place, vehicle or vessel.
- 10
- (3) A magistrate must not issue a warrant under this section unless satisfied on information given on oath, personally or by affidavit, that there are reasonable grounds for the issue of a warrant.
- (4) An application for the issue of a warrant under this section—
- (a) may be made either personally or by telephone; and
- (b) must be made in accordance with the rules of the Court.
- 15
- (5) A magistrate by whom a warrant is issued under this section must file the warrant, or a copy of it, and any supporting affidavit in the Court.
- (6) An authorised officer may, in exercising powers under this Act, be accompanied by such assistants as are reasonably required in the circumstances.
- 20
- (7) A person must not, without reasonable excuse, refuse or fail to comply with a requirement or direction under this section.
Maximum penalty: Imprisonment for 1 year.
- (8) To avoid doubt, this section does not limit any other powers conferred by any other provision of this Act, or any other Act.

25 **Part 4—Safeguarding vulnerable adults**

Division 1—Charter of the Rights and Freedoms of Vulnerable Adults

20—Charter of the Rights and Freedoms of Vulnerable Adults

- 30
- (1) There is to be a *Charter of the Rights and Freedoms of Vulnerable Adults*.
- (2) The Charter is to be prepared by the Minister with the support of the Office for Ageing Well.
- (3) The Minister and Office for Ageing Well must, in preparing the Charter—
- 35
- (a) consult with the persons and bodies prescribed by the regulations for the purposes of this paragraph (and may consult with any other person or body that the Minister or Office for Ageing Well thinks appropriate); and
- (b) engage vulnerable adults, and their carers and families; and

- 5
- (c) ensure an appropriate focus on the needs of priority population groups.
- (4) The regulations may make further provisions with regard to the Charter including, without limiting the generality of this subsection, provisions relating to—
- 10
- (a) the form of the Charter and any variation of the Charter; and
- (b) the kinds of information to be included in the Charter; and
- (c) consultation requirements relating to the Charter; and
- (d) requirements as to the ongoing review of the Charter.
- (5) The Minister must cause the Charter, as varied from time to time, to be published—
- 15
- (a) in the Gazette; and
- (b) on a website determined by the Minister.
- (6) A prescribed State authority must, in carrying out functions or exercising powers under this Act, have regard to, and seek to give effect to, the Charter.
- (7) The Charter does not create legally enforceable rights or entitlements.

Division 2—Code of practice

21—Minister may publish codes of practice

- 20
- (1) The Minister may, by notice in the Gazette, publish codes of practice for the purposes of this Act.
- 25
- (2) The Minister may, by subsequent notice in the Gazette, vary, substitute or revoke a code of practice published under subsection (1).
- (3) The Minister must cause each code of practice published under subsection (1), as varied from time to time, to be published on a website determined by the Minister.
- 30
- (4) A code of practice published under subsection (1) must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified by the Minister.
- 35
- (5) A prescribed State authority must, in the administration, operation or enforcement of this Act, to the extent that it is reasonably practicable to do so, comply with any relevant code of practice published under subsection (1).

Division 3—Reporting suspected risk of abuse of vulnerable adults

22—Reporting suspected risks of abuse of vulnerable adults

- 5 (1) A person may, in accordance with this section, report to the Adult Safeguarding Unit a suspicion that a vulnerable adult is at risk of abuse.
- (2) A report under this section is to be made to the Adult Safeguarding Unit in accordance with any requirements determined by the Director.
- 10 (3) However, a report will be taken not to be a *report under this Act* if—
- (a) the report relates only to alleged abuse or suspected abuse of a vulnerable adult that occurred before the commencement of this section; and
 - 15 (b) there is no ongoing risk of abuse in respect of the vulnerable adult to whom the report relates (whether because the vulnerable adult no longer resides in particular premises or for any other reason).
- (4) To avoid doubt—
- 20 (a) nothing in this section requires a person to report a suspicion that a vulnerable adult has been abused, or may be at risk of abuse; and
 - (b) nothing in this section prevents a person from reporting a suspicion that a vulnerable adult has been abused, or may be at risk of abuse, in any other manner or to any other person or body that the person thinks fit.
- 25

Division 4—Assessment and investigation of reports

23—Assessment

- (1) The Director must cause each report under this Act to be assessed in accordance with any requirements set out in the regulations.
- 30 (2) The Director may, in the course of an assessment under this section, make use of or rely on such systems of information gathering, collating or reporting as the Director thinks fit (whether or not the system is operated or provided by a State authority).
- (3) Without limiting any other action that may be taken by the Director or the Adult Safeguarding Unit, but subject to section 24, the Director must, on completion of an assessment under this section, cause at least 1 of the following actions to be taken:
- 35
- (a) an investigation into the matter must be carried out under section 26;
 - 40 (b) the matter must be referred to an appropriate State authority or other person or body under section 25;

(c) if the Director is satisfied that—

(i) the matter has previously been dealt with under this or any other Act and there is no reason to reexamine the matter; or

(ii) the matter is trivial, vexatious or frivolous; or

(iii) there is good reason why no action should be taken in respect of the matter,

the Director may decline to take further action.

(4) The Director must, in accordance with any requirements set out in the regulations—

(a) cause a record of each action taken under this section, and the reasons for the action, to be kept in relation to each report under this Act; and

(b) include statistical information relating to action taken under this section to be included in the annual report of the Adult Safeguarding Unit.

(5) The regulations may make further provision in relation to an assessment under this section (including provisions relating to a system referred to in subsection (2) and the disclosure and confidentiality of information gathered, collated or provided under the system).

(6) The Director may, for the purpose of an assessment under this section, by written notice, require a specified person or body to produce a written statement of information about a specified matter, or to answer specified questions, within a specified period and in a specified form, verified if the written notice so requires by statutory declaration.

(7) A person must not refuse or fail to comply with a requirement of a notice under subsection (6).

Maximum penalty: \$10 000.

24—Consent of vulnerable adult should be obtained before certain action taken

(1) Subject to this section, the Adult Safeguarding Unit should not take action in respect of a report under this Act unless the vulnerable adult to whom the report or notification relates consents to the action being taken.

(2) Subsection (1) does not apply in relation to the assessment of a report under section 23.

(3) The Adult Safeguarding Unit may take action of a specified kind in respect of a report under this Act without first obtaining the consent of the vulnerable adult if the taking of such action is authorised by an order of the Court under this Act.

(4) The Adult Safeguarding Unit may take action in respect of a report under this Act without first obtaining the consent of the vulnerable adult if—

(a) —

- 5 (i) the vulnerable adult's life or physical safety is at immediate risk; or
- 10 (ii) the risk of abuse to which the report relates consists of an allegation that a serious criminal offence has been, or is likely to be, committed against the vulnerable person; or
- 15 (iii) the vulnerable adult has impaired decision-making capacity in respect of a decision to consent to action of the relevant kind being taken; or
- (iv) the Adult Safeguarding Unit has not, after reasonable inquiries, been able to contact the vulnerable adult; or
- 20 (v) in any other circumstances declared by the regulations to be included in the ambit of this paragraph; and

(b) the Director approves the taking of the action.

(5) The regulations may make further provision in relation to obtaining consent for the purposes of this section (including by allowing another person to consent on behalf of a vulnerable adult in specified circumstances).

25—Director may refer matter

(1) If, following an assessment of a report under section 23, the Director determines that it is more appropriate that the matter, or a particular part of the matter, be dealt with by—

(a) a State authority other than the Adult Safeguarding Unit; or

(b) a specified person or body other than a State authority,

the Director may refer the matter, or part of the matter, to that State authority or that person or body.

(2) To avoid doubt—

(a) a matter may be referred to more than 1 State authority, or person or body, or a combination of State authorities and persons or bodies; and

(b) the Adult Safeguarding Unit may take action in relation to the matter even if it is referred to a State authority, or other person or body, under another Act.

(3) Without limiting this section or any other Act or law, a matter that is referred under this section must be dealt with within a reasonable timeframe, having regard to the need to ensure that vulnerable adults are protected from abuse.

(4) A person or body to whom a matter is referred under subsection (1)(b) must, as soon as is reasonably practicable after dealing with the matter, provide a report in relation to the matter to the Director.

(5) The regulations may make further provision in relation to referrals under this section (including, to avoid doubt, by providing that a person or body may refuse a referral).

26—Director may cause circumstances of vulnerable adult to be investigated

(1) Subject to this Act, the Director may cause an investigation into the circumstances of a vulnerable adult to be carried out—

(a) if a report is made under section 22 and the Director suspects on reasonable grounds that the vulnerable adult may be at risk of abuse; or

(b) in any other circumstances that the Director thinks appropriate.

(2) An investigation under this section must be carried out by the Adult Safeguarding Unit in accordance with any requirements set out in the regulations.

Division 5—Further referral of matters

27—Director may report certain matters to appropriate professional body

(1) If, in the course of performing functions under this Act, the Director becomes aware of a matter that raises the possibility of professional misconduct or unprofessional conduct, the Director may report the matter to the relevant regulatory body for that profession.

(2) The Director must comply with any reasonable request of the relevant regulatory body for further information in relation to the subject matter of a report under subsection (1).

28—Director may make complaints to Ombudsman

(1) Despite a provision of the *Ombudsman Act 1972*, the Director may, on behalf of a vulnerable adult, or a class of vulnerable adults, make a complaint to the Ombudsman in respect of an administrative act and, for the purposes of the *Ombudsman Act 1972*, such a complaint will be taken to be a complaint made under that Act.

(2) In this section—

administrative act has the same meaning as in the *Ombudsman Act 1972*.

29—Director may make complaints to Health and Community Services Complaints Commissioner

5 Despite a provision of the *Health and Community Services Complaints Act 2004*, the Director may make a complaint to the Health and Community Services Complaints Commissioner on behalf of a vulnerable adult, or a class of vulnerable adults, in respect of a ground referred to in section 25 of that Act (and such a complaint will be taken to be a complaint made under that Act).

30—Referral of matters to inquiry agencies etc not affected

- 10 (1) Nothing in this Act prevents a matter from being referred to an appropriate person or body at any time (whether or not an investigation or other action is being or has been undertaken under this Act).
- 15 (2) The referral of a matter does not prevent the Director or the Adult Safeguarding Unit from performing functions or exercising powers in respect of the matter (but in such a case the Director and Adult Safeguarding Unit must endeavour to avoid, as far as practicable, prejudice to any person affected by the referral).

Division 6—Court orders

31—Director may apply for Court orders

- 20 (1) The Director may apply for an order of the Court under this Division—
- (a) if the Director—
- 25 (i) reasonably suspects that a vulnerable adult is at risk of abuse; and
- (ii) is of the opinion that the making of such orders is necessary or appropriate to—
- 30 (A) protect the vulnerable adult from such abuse; or
- (B) to properly assess whether the vulnerable adult has been abused, or is at risk of being abused; or
- 35 (C) to allow the exercise of powers or the performance of functions under this Act in respect of the vulnerable adult; or
- (b) in any other circumstances with the permission of the Court.
- 40 (2) The regulations may make further provision in relation to an application under this section (including by limiting the circumstances in which an application, or application of a class, can be made).

32—Parties to proceedings

- (1) The following persons are parties to an application for an order under this Division, or for the variation, extension or revocation of such an order:
- 5 (a) the Director;
- (b) the vulnerable adult to whom the application relates.
- (2) If the Court is satisfied in any proceedings that it should make an order under this Division binding on a person who is not a party to the proceedings, the Court—
- 10 (a) may join that person as a party to the proceedings; and
- (b) must allow the person a reasonable opportunity to make representations to the Court as to why such an order should not be made.

33—Orders that may be made

- 15 (1) If, on an application under this Act, the Court is satisfied that it is appropriate to do so, the Court may make 1 or more of the following orders in relation to a vulnerable adult:
- (a) an order authorising or requiring an examination or assessment of a specified kind of the vulnerable adult;
- 20 (b) an order requiring a specified person to do a specified thing, or to refrain from doing a specified thing, in respect of the vulnerable adult;
- (c) an order authorising the Adult Safeguarding Unit, the Director or an authorised officer to take specified action where the vulnerable adult has refused to consent to the taking of that action;
- 25 (d) such other orders as may be necessary or appropriate to enable the functions conferred on the Adult Safeguarding Unit under this Act to be performed in respect of the vulnerable adult;
- 30 (e) such consequential or ancillary orders as the Court thinks fit.
- (2) The Court may make such interim orders in relation to an application under this Act as the Court thinks fit.
- (3) The Court may, on an application by a party to the proceedings, vary or revoke an order under this section.
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34—Court not bound by rules of evidence

- (1) Subject to this section, in any proceedings under this Division, the Court—
- 40 (a) is not bound by the rules of evidence but may inform itself as it thinks fit; and

(b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

(2) A fact to be proved in proceedings under this Division is to be proved on the balance of probabilities.

35—Views of vulnerable adult to be heard

(1) In any proceedings under this Act, a vulnerable adult to whom the proceedings relate must, unless the Court is satisfied that the vulnerable adult is not capable of doing so, be given a reasonable opportunity to personally present to the Court their views relating to the proceedings.

(2) This section applies whether or not the vulnerable adult is represented by a legal practitioner in the proceedings.

36—Right of other interested persons to be heard

In proceedings under this Division relating to a vulnerable adult, the Court may, on the application of—

- (a) a member of the vulnerable adult's family; or
- (b) a person who has at any time been responsible for or otherwise had care of the vulnerable adult (including, to avoid doubt, a guardian of the vulnerable adult); or
- (c) any other person who, in the opinion of the Court, has a proper interest in the matter,

hear submissions the applicant wishes to make in respect of the vulnerable adult, despite the fact that the applicant is not a party to the proceedings.

37—Contravention of Court order

(1) A person who contravenes a term of an order of the Court imposed under this Division is guilty of an offence.

Maximum penalty: \$10 000.

(2) A person is not guilty of an offence of aiding, abetting, counselling or procuring the commission of an offence against this section if the person is a vulnerable adult protected by the order that has been contravened.

Part 5—Reviews of certain decisions

Division 1—Internal review

38—Internal review

(1) A person who is aggrieved by a decision of the Adult Safeguarding Unit or the Director under Part 4 of this Act is entitled to a review of the decision under this section.

- (2) An application for review—
- (a) must be made in a manner and form determined by the Chief Executive; and
 - (b) must be made within 30 days after the day on which notice of the decision was given to the applicant (or such longer time as the Chief Executive may allow).
- (3) On an application for review under this section the Chief Executive may confirm, vary or reverse the decision under review.
- (4) The Chief Executive must, on completing a review under this section, give written notice to the applicant of the Chief Executive's determination in respect of the decision under review.
- (5) The regulations may make further provision in respect of a review under this section (including, to avoid doubt, by limiting the kinds of decisions that may be the subject of an application for review).

39—Delegation

- (1) The Chief Executive may delegate a function or power under this Division to any person or body that is, in the Chief Executive's opinion, competent to perform or exercise the relevant function or power.
- (2) A delegation under this section—
- (a) must be in writing; and
 - (b) may be conditional or unconditional; and
 - (c) is revocable at will; and
 - (d) does not prevent the delegator from acting in any matter.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

Division 2—External review by Ombudsman

40—External review by Ombudsman

- (1) If—
- (a) a person is dissatisfied with a determination of the Chief Executive following an internal review under section 38; and
 - (b) that determination relates to circumstances in which a vulnerable adult is, or is suspected of being, at risk of serious abuse,

the person may apply to the Ombudsman for a review of the determination.

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- (2) An application for a review of a determination under this section—
 - (a) must be made in a manner and form determined by the Ombudsman; and
 - (b) must be made within 30 days after notice of the determination is given to the applicant (or such longer period as may be allowed by the Ombudsman).
 - (3) The Ombudsman may refuse to conduct a review under this section if the Ombudsman is of the opinion that the application is unreasonable, trivial or vexatious.
 - (4) In conducting a review under this section, the Ombudsman—
 - (a) may carry out an investigation into the subject matter of the application (and for the purposes of such an investigation may exercise such of the investigative powers as are conferred on the Ombudsman by the *Ombudsman Act 1972* in relation to an investigation duly initiated under that Act as the Ombudsman considers appropriate); and
 - (b) may—
 - (i) try to effect a settlement between the persons to whom the review relates at any time during the review; and
 - (ii) at the request of a person to whom the review relates, suspend a review under this section at any time to allow an opportunity for a settlement to be negotiated.
 - (5) The Chief Executive, the Adult Safeguarding Unit and the Director (as the case requires), any relevant State authority and the applicant must cooperate in any process proposed by the Ombudsman for the purposes of a review under this section (including any attempt of the relevant review authority to effect a settlement between the participants), and must do all such things as are reasonably required to expedite the process.
 - (6) The Ombudsman may dismiss an application if the Ombudsman considers that the applicant has failed to comply with subsection (5).
 - (7) On completion of a review under this section, the Ombudsman may (based on the circumstances existing at the time of the review) confirm, vary or reverse the determination the subject of the review.
 - (8) On making a determination on a review under this section, the relevant review authority must notify each of the following persons of the determination and the reasons for the determination:
 - (a) the applicant;
 - (b) the Chief Executive;
 - (c) the Adult Safeguarding Unit.

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- (9) If the Ombudsman considers it to be in the public interest or the interests of a State authority to do so, the Ombudsman may publish, in such manner as the Ombudsman thinks fit, the reasons for a determination made on a review under this section (however the Ombudsman must not include information in the reasons any information from the which the identity of the vulnerable adult can be determined).
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- (10) In publishing reasons for a determination, the Ombudsman may comment on any unreasonable, frivolous or vexatious conduct by the applicant, the Chief Executive, the Adult Safeguarding Unit or any relevant State authority.
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- (11) If, following a review under this section, the Ombudsman is of the opinion—
- (a) that the practice in accordance with which a specified act was done, or specified decision made, should be varied; or
- (b) that the reasons for any act or decision to which the review relates should be given to a specified person; or
- (c) that any other steps should be taken,
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- the Ombudsman may report that opinion and the reasons for it to the Minister, and to the responsible Minister for any relevant State authority, and may make such recommendations as the Ombudsman thinks fit.
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- (12) If it appears to the Ombudsman that appropriate steps have not been taken to give effect to a recommendation made under this section, the Ombudsman may make a report on the matter (containing a copy of the earlier report and the recommendation) to the Minister.
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- (13) If the Ombudsman reports to the Minister under subsection (12), the Ombudsman may forward copies of the report to the Speaker of the House of Assembly and the President of the Legislative Council with a request that they be laid before their respective Houses.
- (14) In this section—
- responsible Minister* for a State authority means—
- (a) if the State authority is a public sector agency—the Minister responsible for the public sector agency;
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- (b) if the State authority is a local council—the Minister responsible for the administration of the *Local Government Act 1999*;
- (c) if the State authority is a body established by or under an Act—the Minister responsible for the administration of that Act;
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- (d) in any other case—the Minister responsible for the administration of this Act.

41—Views of vulnerable adult to be heard

In any review under this Division, the vulnerable adult to whom the review relates must, unless the Ombudsman is satisfied that the vulnerable adult is not capable of doing so, be given a reasonable opportunity to personally present to the Ombudsman their views in relation to the review.

Part 6—Information gathering

42—Authorised officer may require information

- (1) An authorised officer may, by notice in writing, require a specified person (whether or not the person is a State authority, or an officer or employee of a State authority) to provide to them such information, or such documents, as may be specified in the notice (being information or documents in the possession of the person that the authorised officer, the Director or the Adult Safeguarding Unit reasonably requires for the performance of functions under this Act).
- (2) A person required to provide information or documents under subsection (1) must give the specified information or documents to the authorised officer, or in any other manner specified by the authorised officer, within the period specified in the notice.
- (3) A person who refuses or fails to comply with a notice under subsection (1) is guilty of an offence.
Maximum penalty: \$10 000.
- (4) If a State authority refuses or fails to comply with a notice under subsection (1), the Director may, after consultation with the State authority—
 - (a) report the refusal or failure to the Minister and to the Minister responsible for the State authority (if any); and
 - (b) include details of the refusal or failure in the annual report of the Director.
- (5) The Minister may, by notice in writing, exempt a specified person or body, or persons or bodies of a specified class, from the operation of this section.
- (6) An exemption—
 - (a) may be conditional or unconditional; and
 - (b) may be varied or revoked by the Minister by further notice in writing.

43—Sharing of information between certain persons and bodies

- (1) This section applies to the following persons and bodies:
 - (a) the Adult Safeguarding Unit;
 - (b) a State authority;

(c) any other person or body declared by the regulations to be included in the ambit of this subsection.

5 (2) Despite any other Act or law, a person or body to whom this section applies (the *provider*) may, in accordance with any requirement set out in the regulations, provide prescribed information and documents to another person or body to whom this section applies (the *recipient*) if the provider reasonably believes that the provision of the information or documents would assist the recipient—

10 (a) to perform official functions relating to the health, safety, welfare or wellbeing of a vulnerable adult or class of vulnerable adults; or

(b) to manage any risk to a vulnerable adult or class of vulnerable adults that might arise in the recipient's capacity as an employer or provider of services.

15 (3) Despite any other Act or law, information or documents that do not directly or indirectly disclose the identity of any person may be provided by one person or body to whom this section applies to another without restriction.

(4) Subsection (3) applies—

20 (a) whether or not the information or documents consist of or include prescribed information and documents; and

(b) whether the information or documents ever disclosed the identity of a person, or has been redacted so as to de-identify a person.

25 (5) Information may be provided under this section regardless of whether the provider has been requested to provide the information.

(6) In this section—

prescribed information and documents means—

30 (a) information or documents relating to the health, safety, welfare or wellbeing of a vulnerable adult; or

(b) information or documents relating to the financial affairs of a vulnerable adult; or

(c) any other information or document of a kind prescribed by the regulations for the purposes of this definition.

35 **44—No obligation to maintain secrecy**

No obligation to maintain secrecy or other restriction on the disclosure of information applies in relation to the disclosure of information to the Director, the Adult Safeguarding Unit or an authorised officer under this Act.

40 **45—Interaction with *Public Sector (Data Sharing) Act 2016***

Nothing in this Part affects the operation of the *Public Sector (Data Sharing) Act 2016*.

Part 7—Miscellaneous

46—Obstruction of person reporting suspected abuse of vulnerable adults

A person must not, without reasonable excuse—

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- (a) prevent another person from making a report under this Act relating to a suspicion that a vulnerable adult may be at risk of abuse; or
 - (b) hinder or obstruct another person in making such a report.

Maximum penalty: \$10 000 or imprisonment for 2 years.

10 47—Obstruction of Director etc

A person must not, without reasonable excuse, hinder or obstruct the Director, an authorised officer or a member of the Adult Safeguarding Unit, in the performance or exercise of a function or power under this Act.

15 Maximum penalty: \$10 000.

48—False or misleading statements

20 A person must not make a statement knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided under this Act.

Maximum penalty: \$10 000.

49—Confidentiality

25 (1) A person engaged or formerly engaged in the administration of this Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

- (a) as required or authorised by or under this Act or any other Act or law; or
- 30 (b) with the consent of the person to whom the information relates; or
- (c) in connection with the administration or enforcement of this or any other Act; or
- (d) for the purposes of referring the matter to a law enforcement agency, or a person or agency exercising official duties under an Act relating to the care or protection of vulnerable adults; or
- 35 (e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions; or
- 40

- (f) if the disclosure is reasonably necessary for the protection of the lawful interests of that person.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.

- (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—

- (a) the person to whom the information was disclosed; or
(b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

- (4) The regulations may make further provision in respect of the disclosure of information obtained in the course of the administration of this Act.

50—Victimisation

- (1) A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has provided, or intends to provide, information under this Act commits an act of victimisation.

- (2) Causing detriment on the ground that a person—

- (a) has made a false allegation; or
(b) has not acted in good faith,

does not constitute an act of victimisation.

- (3) An act of victimisation under this Act may be dealt with—

- (a) as a tort; or
(b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,

but, if the victim commences proceedings in a court seeking a remedy in tort, the victim cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, the victim cannot subsequently commence proceedings in a court seeking a remedy in tort.

- (4) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.

5 (5) In proceedings against a person seeking a remedy in tort for an act of victimisation committed by an employee or agent of the person, it is a defence to prove that the person exercised all reasonable diligence to ensure that the employee or agent would not commit an act of victimisation.

(6) A person who personally commits an act of victimisation under this Act is guilty of an offence.

Maximum penalty: \$10 000.

10 (7) Proceedings for an offence against subsection (6) may only be commenced by a police officer or a person approved by either the Commissioner of Police or the Director of Public Prosecutions.

(8) In this section—

detriment includes—

15 (a) injury, damage or loss; or

(b) intimidation or harassment; or

(c) discrimination, disadvantage or adverse treatment in relation to a person's employment; or

(d) threats of reprisal.

51—Protections, privileges and immunities

20 (1) No liability attaches to the Director or any other person for any act or omission in good faith in the exercise or purported exercise of powers or functions under this or any other Act.

25 (2) Nothing in this Act affects the privileges, immunities or powers of the Legislative Council or House of Assembly or their committees or members.

(3) Nothing in this Act affects any rule or principle of law relating to—

(a) legal professional privilege; or

(b) "without prejudice" privilege; or

(c) public interest immunity.

30 (4) A person is excused from answering a question or producing a document or other material if the person could not be compelled to answer the question or produce the document or material in proceedings in the Supreme Court.

35 (5) A person who provides information or a document under this Act has the same protection, privileges and immunities as a witness in proceedings before the Supreme Court.

40 (6) A person who does anything in accordance with this Act, or as required or authorised by or under this Act, cannot by so doing be held to have breached any code of professional etiquette or ethics, or to have departed from any acceptable form of professional conduct.

52—Service

- (1) Subject to this Act, a notice or document required or authorised to be given to a person for the purposes of this Act may—
- (a) be given to the person personally; or
 - (b) be posted in an envelope addressed to the person at the person's last known residential, business or (in the case of a corporation) registered address; or
 - (c) be left for the person at the person's last known residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or
 - (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

53—Review of Act

- (1) The Minister must cause an independent review of the operation of this Act to be conducted, and a report on the review submitted to the Minister, before the third anniversary of the commencement of this section.
- (2) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

54—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for—
- (a) the exemption of a person, or a class of persons, from the operation of a specified provision or provisions of this Act; and
 - (b) fines, not exceeding \$10 000, for offences against the regulations; and
 - (c) facilitation of proof of the commission of offences against the regulations.
- (3) The regulations may—
- (a) be of general or limited application; and

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- (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
- (c) make provisions of a saving or transitional nature; and
- (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of a specified person or body; and
- (e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body.
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- (4) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
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- (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.
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7—Amendment of long title

Long title—delete "establish the Office for the Ageing;" and substitute:

25 establish the Office for Ageing Well, to safeguard the rights of ageing persons and other vulnerable adults, to provide for the establishment of the Adult Safeguarding Unit, to prevent abuse of ageing people and other vulnerable adults,

Schedule 1—Transitional provision

1—Application of certain provisions of Act limited during first 3 years of operation

- 30
- (1) The following provisions of the *Ageing and Adult Safeguarding Act 1995* (as amended or enacted by this Act) will, to the extent that the provision relates to the safeguarding of vulnerable adults, be taken only to apply to, or in relation to, prescribed vulnerable adults during the prescribed period:
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- (a) Part 3;
- (b) Part 4;
- (c) Part 5.
- (2) In this clause—
- 40 *prescribed period* means the period commencing on the day on which this clause comes into operation and ending on the third anniversary of that commencement;

prescribed vulnerable adult means—

- 5 (a) a vulnerable adult within the meaning of section 3 of the *Ageing and Adult Safeguarding Act 1995* (as enacted by this Act) who is, on the commencement of this clause, aged—
- (i) if the vulnerable adult is an Aboriginal or Torres Strait Islander Person—50 years or older; or
- (ii) in any other case—65 years or older; or
- (b) any other vulnerable adult, or vulnerable adult of a class, declared by the Minister by notice in the Gazette to be included in the ambit of this definition.