



Review of the *Ageing and Adult Safeguarding Act 1995 (SA)*

Fact Sheet 4 – Guiding Principles of the ASU Provisions

About the Principles in the *adult safeguarding provisions*

The *Ageing and Adult Safeguarding Act 1995* ('the Act') sets out Principles that guide the functions and operations of the Adult Safeguarding Unit ('ASU') (see Fact Sheets 5 and 8). These Principles reflect the United Nations Principles for Older Persons and other international human rights treaties Australia has ratified.¹

The Principles emphasise a rights-based approach to working with adults experiencing abuse or neglect, and makes clear the need to prioritise dignity, autonomy and right to self-determination above the requirement to safeguard from harm (except in cases involving serious or imminent harm).

For example under section 12 of the Act:

- (a) all vulnerable adults are entitled to be treated with respect for their dignity, autonomy and right to self-determination;
- (b) it is presumed a vulnerable adult has decision-making capacity, unless there is material to suggest otherwise;
- (c) except in those cases involving serious and imminent harm, the primary consideration 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, living arrangements, financial and other personal affairs to the extent they are able, and be supported to make such decisions for as long as they can;
- (e) vulnerable adults are entitled to take informed risks and make decisions others don't agree with, or that may be considered 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) safeguarding measures should be the least interventionist and least intrusive, to minimise further erosion of the person's rights.

Current Issues

The Principles make clear that the rights and wishes of the adult vulnerable to abuse should be prioritised over the requirement to safeguard them. In practice, this can mean that in situations where a client has decision-making capacity and declines the ASU's support, that person will remain in an abusive situation that others might not consider ideal. There is an active tension in this area.

¹ Such as the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.

Consultation Questions

1. Do the Principles reflect what is meaningful for a broad range of adults who may be vulnerable to abuse?
2. Should the Adult Safeguarding Unit retain the same rights-based approach or be more interventionist?

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