



Determination

External review - section 40 *Ageing and Adult Safeguarding Act 1995*

Applicant:	[REDACTED]
Vulnerable Adult	[REDACTED]
Ombudsman reference:	2022/01936
Adult Safeguarding Unit reference:	A497089
Determination:	The determination of the Chief Executive is confirmed.

Decisions under review (based on the applicant's perception of events):

1. The decision to accept the report under section 22 without the knowledge of the vulnerable adult
2. The decision, or lack thereof, to rely on systems of information gathering in accordance with section 23(2)
3. The decision to proceed with an unannounced visit as part of the assessment process
4. The decision to commence an investigation
5. The decision to continue an investigation after the concerns in the report were found not to be substantiated
6. The decision to cease the investigation without imposing additional care services for the vulnerable adult
7. The decision not to record each action taken under section 23
8. The decision not to declare the report as vexatious given that the concerns were not substantiated
9. The decision to proceed with an investigation without the consent of the vulnerable adult
10. The decision not to report the complainant to the Aged Care Quality and Safety Commission

REASONS

Background

1. By application under the *Ageing and Adult Safeguarding Act 1995 (AAS Act)* the applicant requested a review of the decisions of the Adult Safeguarding Unit (ASU) and the Director of the Office for Ageing Well (**the Director**) regarding a report of suspicion that the vulnerable adult was at risk of abuse.
2. For ease of reference, the procedural steps relating to the application are set out in the appendix.

Jurisdiction

3. Section 40 of the AAS Act allows a person who is dissatisfied with an internal review determination relating to circumstances in which a vulnerable adult is or is suspected of being at risk of serious abuse to apply to the Ombudsman for an external review.
4. I understand that in late 2021 the vulnerable adult passed away. In my provisional determination I observed that this raises the question of whether the determination under review can still be said to relate to a vulnerable adult who is or is suspected of being at risk of serious abuse. It is probable that provided that the determination under review was made at a time when the vulnerable adult is or is suspected of being at risk of serious abuse, I have jurisdiction to conduct an external review of that determination. While this interpretation is not free from doubt, I believe the public interest favours it.
5. I am mindful that the review provisions in the AAS Act are in their infancy, and thus the associated processes are still being established and refined. Additionally, it is difficult to conceive that it might not be in the public interest for me to conduct a review in instances where a vulnerable adult is or was, at any point in time, at risk of abuse.
6. In light of the above, it is my view that it is in the public interest to interpret section 40(1) liberally so as to provide me with jurisdiction to conduct this review where the determination was made when a vulnerable adult was suspected of being at risk of abuse even though the vulnerable adult is deceased at the time of my review.
7. In response to my provisional determination the ASU advised its views that section 40(1) of the AAS Act does not preclude my external review in circumstances where the vulnerable adult is now deceased. The ASU did however query whether the Chief Executive's determination relates to circumstances of 'serious abuse' noting that the term is not defined in the Act but should be interpreted as a grave, solemn or severe form of abuse.
8. The Chief Executive's determination reviewed decisions made in the context of a report received under section 22 of the AAS Act. Although I acknowledge that it was ultimately decided that no further action would be taken in regard to that report, I am satisfied that the abuse suspected in the report can be characterised as serious as it relates to medical treatment, and thus the health and wellbeing, of the vulnerable adult.
9. The applicant made no specific submissions regarding my jurisdiction to conduct this external review. Accordingly, I am satisfied that this external review is within the jurisdiction of the Ombudsman under section 40 of the AAS Act.

Provisional determination

10. I provided my tentative view about the Chief Executive's determination to the parties, by my provisional determination dated 11 May 2022. I informed the parties that subject to my receipt and consideration of submissions from the parties I proposed to confirm the Chief Executive's determination.
11. On 25 May 2022 both the applicant and ASU provided submissions in response. I have addressed the ASU's submissions regarding my jurisdiction above and will address the remainder of the ASU's submissions and the entirety of the ASU's submissions in the 'Consideration' and 'Recommendations' sections of this determination.
12. Whilst I have addressed each submission specifically, I advise the parties that I am not persuaded to alter the views expressed in my provisional determination.
13. In assessing whether to confirm, vary or reverse the Chief Executive's determination I have considered which outcomes would best serve the public interest, in particular I have had regard to the extent to which a meaningful outcome could be achieved by varying or reversing a decision of the ASU or the Director.
14. Given that the decisions under review relate to a finalised assessment of suspected risk of abuse to a now deceased vulnerable adult, the extent to which a meaningful outcome can be achieved is clearly restricted. Nevertheless, I remain satisfied in the circumstances that the decisions of the ASU were consistent with the provisions of the AAS Act and were not based on a flawed practice or contrary to the ASU's Code of Practice.

Relevant law

15. A person may report to the ASU a suspicion that a vulnerable adult is at risk of abuse.¹ Upon receipt of such a report the Director of the ASU must cause an assessment to be undertaken,² and may conclude to investigate the report, refer the matter to another authority or take no further action.³
16. A person who is aggrieved by a decision of the ASU or the Director may apply for an internal review.⁴ A person who is dissatisfied with an internal review determination may then apply to the Ombudsman for an external review.⁵
17. Section 40(7) provides that the Ombudsman may confirm, vary or reverse the internal review determination, based on the circumstances existing at the time of review.

Issues in this review

18. Having regard to the documentation and submissions provided to me by the ASU as well as the provisions of the AAS Act, it is for me to determine whether to confirm, vary or reverse the ASU's internal review determination.

Consideration

19. In his application for external review the applicant has listed 14 separate dot points under a heading of 'Specific decisions made by the ASU which require review'. Despite this heading, each item is in fact a separate question. Whilst I am able to discern a

¹ *Ageing and Adult Safeguarding Act 1995*, section 22(1).

² *Ageing and Adult Safeguarding Act 1995*, section 23(1).

³ *Ageing and Adult Safeguarding Act 1995*, section 23(3).

⁴ *Ageing and Adult Safeguarding Act 1995*, section 38.

⁵ *Ageing and Adult Safeguarding Act 1995*, section 40.

number of decisions from the entirety of the questions, I have not identified 14 decisions.

20. As has previously been explained to the applicant via email, my jurisdiction is limited to reviewing specific decisions of the ASU and/or Director; it is not the intention of section 40 of the AAS Act that I commence a full audit of the ASU and its dealings with the vulnerable adult. Additionally, although I acknowledge the applicant has sought additional information regarding the report received by the ASU through multiple avenues, it is also not the purpose of my review to furnish the applicant with information or provide answers to the questions posed.
21. To further clarify the scope of my review, I consider it appropriate to advise my view that a decision implies an element of discretion or choice. Accordingly, where the ASU has done no more than comply with legislated requirements, I do not consider that this would amount to a decision.
22. I am aware that the applicant has his suspicions as to who made the report to the ASU. It is my view that it is important to maintain the confidentiality of the identity of the reporter in order to safeguard the voluntary reporting processes under the AAS Act. Accordingly, I neither confirm nor deny the applicant's suspicions and will hereafter simply refer to this party as 'the reporter'.
23. In a previous correspondence, the applicant expressed his dissatisfaction that the internal review appeared to have only considered a decision to take no further action at the conclusion of the assessment of the report. The applicant appears to have formed this view based on the outcome letter provided by the ASU which states:

I can advise that an internal review has been undertaken and I have determined to *confirm* the decision made by the Director of the Office for Ageing Well, being to take no further action, as no abuse was identified.
24. Noting that this was the only response provided to the applicant, the applicant's dissatisfaction with the apparent limits of the internal review is understandable. I however advise the applicant that the Chief Executive did conduct a more thorough internal review than the outcome letter might indicate. This is evidenced by the Internal Review Observations and Recommendations Report which has been provided to me.
25. That said, regardless of the thoroughness of the internal review, I am satisfied that as my jurisdiction to conduct an external review is enlivened, I may review any decisions identified by the applicant.
26. Having reviewed each of the applicant's 14 questions, it appears to me that the decisions which the applicant seeks review of are as follows:
 1. the decision to accept the report under section 22 without the knowledge of the vulnerable adult
 2. the decision, or in the applicant's view lack thereof, to rely on systems of information gathering in accordance with section 23(2)
 3. the decision to proceed with an unannounced visit as part of the assessment process
 4. the decision to commence an investigation
 5. the decision to continue an investigation after the concerns in the report were found not to be substantiated
 6. the decision to cease the investigation without imposing additional care services for the vulnerable adult
 7. the decision not to record each action taken under section 23

8. the decision not to declare the report as vexatious given that the concerns were not substantiated
 9. the decision to proceed with an investigation without the consent of the vulnerable adult
 10. the decision not to report the complainant to the Aged Care Quality & Safety Commission.
27. I have numbered the decisions for ease of response.
28. It is relevant to note that the decisions above are identified based on the applicant's perception of events, a perception which I consider to be misguided on a number of matters. As an example, one of the decisions identified by the applicant is the decision to conduct and continue an investigation, however this never occurred. I have elaborated further on this below, and will now address each of the above in turn.
29. For ease of reference, and to ensure each of the applicant's submissions are appropriately addressed, I have included sub-headings for each of the 10 decisions above.

The decision to accept the report under section 22 without the knowledge of the vulnerable adult

30. The acceptance and assessment of a report by the ASU is a legislated requirement; the ASU must accept all reports made under section 22, not only reports which the relevant vulnerable adult has been made aware of. If the alternative were true I consider that this might in fact inhibit the ASU's prompt and efficient assessment of potential risks of abuse, as well as deter potential reporters.
31. Further, there are other provisions in the AAS Act to facilitate the involvement of the vulnerable adult in the event that a report progresses to investigation.
32. The applicant acknowledges that the Director must cause every report to be assessed but submits that the ASU's actions went beyond an 'assessment'. Regardless of how those actions were characterised, the applicant submits that their nature together with the length of time which the case remained open both indicate that the ASU did in fact proceed to an investigation and as such, the vulnerable adult should have been notified and her consent sought under section 24.
33. Although these submissions are said to relate to decision 1, I consider that they better relate to decision 4. When considering only the decision to accept the report under section 22 without the knowledge of the vulnerable adult, it appears that the applicant accepts that the Director was obliged to do so. Whether or not the report progressed to an investigation is a different matter.

The decision, or lack thereof, to rely on systems of information gathering in accordance with section 23(2)

34. As to decision 2, it is clear from the case notes before me that the ASU did in fact rely on systems of information gathering in order to assess the report. That said, I acknowledge that the applicant has not been granted access to all of the case notes and that the breadth of the ASU's information gathering may not have been evident to him.
35. I also consider it relevant to advise that the ASU's ability to obtain information does not, and should not, compel the ASU to obtain and review all available information about a

vulnerable adult. Clearly there will be a substantial amount of information not relevant to the assessment of a report.

36. In response the applicant submits that the case notes indicate that the report made under section 22 raised two potential risks and that the Director failed to rely upon documents directly relevant to the second matter.
37. Again acknowledging that the applicant does not have the benefit of having viewed the entirety of the case notes, I advise the applicant that the report in fact only focussed on the first potential risk. The paragraph relating to the Home Care Package 'not being fully used' appears to have been provided as context to the primary concern only; it is not itself a matter giving rise to a suspicion of abuse.
38. I remain satisfied that the Director made appropriate use of systems of information gathering to obtain information relevant to the primary concern raised by the report.

The decision to proceed with an unannounced visit as part of the assessment process

39. The ASU's ability to rely on any such systems of information gathering as it sees fit also addresses decision number three; the decision of the ASU to proceed with an unannounced home visit is one that was reasonably open to it to make and it would appear in the circumstances to have been appropriate⁶.
40. I understand that the applicant refused to permit the ASU officers entry to the vulnerable adult's home, however had entry been permitted I consider that a discussion with the vulnerable adult may have been sufficient to complete the assessment of the report. This is supported by the fact that the assessment concluded after the ASU had been able to speak to the vulnerable adult on another occasion.
41. Further, the importance of the home visit being unannounced ought to be evident. Announcing a home visit in advance could afford a perpetrator of abuse the opportunity to stage a misleading home environment. It therefore appears to me that the unannounced home visit was an appropriate preliminary step, again noting that s 23(2) of the AAS Act does not limit the means by which information may be obtained.
42. The applicant provided me with the following response:

The Applicant submits that there are several countervailing arguments against an unannounced home visit, including:

the distress that could be caused to a vulnerable adult by an unannounced visit from ASU representatives;

the impression that could be given by an unannounced visit (without explanation of its purpose) that a serious investigation was underway, rather than an assessment of whether an investigation should be undertaken at all; and

the inability of the ASU to know whether, on their knocking, there would be carers/visitors/nurses present that might skew their view of the vulnerable adult's home environment.

The Applicant also notes that the case notes of the Report state that the "*Caller recommended [an] unannounced visit*". The Applicant submits that it was entirely inappropriate for the ASU to follow the directions of the complainant.

⁶ *Ageing and Adult Safeguarding Act 1995*, section 23(2).

The unannounced home visit was not an information gathering exercise completed at the ASU's own initiative and was therefore an unreasonable course of action for the ASU to have taken.

43. I agree that there are numerous factors which ought to be taken into account before conducting an unannounced home visit however there is nothing before me to suggest that the ASU did not weigh each of those factors appropriately.
44. As to the impression that could be given by an unannounced home visit, I observe from the documentation provided to me that the ASU did in fact communicate the purpose of its visit clearly. Had the applicant engaged in a dialogue with the ASU attendees there should have been no confusion as to the purpose of the visit, or if there was some confusion the applicant would have had the opportunity ask questions and seek clarification as necessary.
45. It is difficult to see how an unexpected presence of carers, visitors or nurses would 'skew' the perception of a vulnerable adult's home environment in any way that would be problematic to the ASU's assessment of a report. Regardless of who may be present at the time of the visit, the environment will reflect a genuine snapshot of the vulnerable adult's circumstances rather than a potentially staged environment.
46. I acknowledge that the reporter did recommend that the ASU conduct an unannounced home visit, however I reject the applicant's submission that the ASU simply followed that recommendation without any independent consideration. The mere fact that the ASU concluded to pursue the course of action recommended by the reporter does not make the action unreasonable or inappropriate.
47. The applicant further submits that:

Further, the ASU's *Code of Practice*, with which the ASU must comply in the administration, operation and enforcement of the AAS Act pursuant to section 21(5), states that an assessment "*in most cases... will rely on the information provided by the caller*" and any requests for further information "*will be made in writing*". No mention is made of visits being made to the Vulnerable Adult in the course of an assessment.

The unannounced visit therefore clearly goes beyond the scope of what is permitted during an assessment and should not have occurred without reasonable attempts to seek the consent of the Vulnerable Adult pursuant to section 24 of the AAS Act.

48. I acknowledge that section 21(5) of the AAS Act is applicable to the ASU as it is a business unit within the Office for Ageing Well and the latter is prescribed as a State authority.⁷ However, the applicant's submissions give the impression that compliance with the relevant code of practice is absolute. To the contrary, section 21(5) requires compliance to the extent that it is reasonably practicable.
49. Based on the information available, it does not appear unreasonable for the ASU to form the view that a proper assessment of the report required direct input from the vulnerable adult. In the circumstances, I am also satisfied that it was not reasonably practicable for the ASU to attempt to obtain that information in writing.
50. In this matter the applicant is in an unusual situation, being both the vulnerable adult's primary caregiver and the alleged perpetrator of abuse. While the former role might necessitate a high level of involvement in the vulnerable adult's affairs, the latter clearly requires a level of separation.

⁷ *Ageing and Adult Safeguarding Regulations 2019*, regulation 7.

51. I consider that it was reasonable for the ASU to form the view that obtaining information from the vulnerable adult in writing was not appropriate given that the alleged perpetrator of abuse likely had significant involvement with the vulnerable adult's written correspondence.
52. Although I do not consider that the ASU acted contrary to the requirements of section 21(5), I am inclined to encourage the ASU to ensure its staff are familiar with both the requirements under section 21(5) to comply with the ASU Code of Conduct to the extent that it is reasonably practicable and the Code of Conduct itself.
53. Though perhaps unintentionally, the applicant's submissions have alerted me to a separate issue which I believe warrants my making a formal recommendation in accordance with 40(11) of the AAS Act. I have elaborated on this under 'Recommendations'.

The decision to commence an investigation

54. As to decisions 4, 5 and 6, I consider that this reflects a misunderstanding by the applicant of the events, albeit a misunderstanding which likely eventuated due to miscommunication by the ASU with the applicant. At no stage did the ASU commence an investigation into the report.
55. Section 23 of the AAS Act requires the ASU to assess each report received under section 22. Upon completion of the assessment, the matter may be progressed to an investigation, referred to another authority, or closed with no further action taken. I acknowledge that the distinction between an assessment and an investigation may be confusing given the powers that may be exercised by the ASU during an assessment, however it is clear to me from the case notes that the assessment was closed with no further action taken. Accordingly, there was no decision to commence an investigation for me to review.
56. In response to my provisional determination the applicant submitted that an 'assessment' is an incorrect characterisation of the actions taken by the ASU; although the Director communicated to the applicant that no further action would be taken, the applicant submits that the partially released case notes state 'Recommended Action: Safeguarding Investigation - Suspected Abuse'. The applicant submits that this is indicative of an investigation having been commenced.
57. I do not dispute that, at some stage, it appears that the ASU recommended that an investigation commence. However this excerpt cannot be viewed in isolation; when considered in the context of the entirety of the case notes it is clear that an investigation was never commenced.
58. The applicant further submits that the ASU having engaged in a section 24 process is also indicative of an investigation having commenced. I consider that I have already addressed this in my assessment of decision 9 and the Recommendations portion of my provisional determination but will nevertheless address this point here.
59. I accept that it was not necessary to comply with section 24 for the purposes of an assessment however there is also nothing to prevent the ASU from doing so. Additionally, it may have been the case that the ASU was acting proactively in anticipation of an investigation becoming necessary at the conclusion of the assessment. As indicated by the 'Recommended Action' noted by the applicant, clearly an investigation was considered at some stage.

60. The fact that the ASU was approved to take action without consent does not mean that any such action was actually taken.
61. Turning back now to the applicant's submissions in relation to decision 1, I acknowledge that the length of time which the case remained open might be generally more indicative of an investigation rather than an assessment, the latter often being a relatively short process. That said, it appears to me that the assessment process was delayed by the applicant's refusal to allow the ASU to speak to the vulnerable adult.
62. The first unannounced home visit occurred within two months of the report being received, however the ASU was unable to see or speak to the vulnerable adult and ultimately left due to the applicant's 'hostility'. The assessment concluded almost immediately after the ASU was able to speak directly to the vulnerable adult on another occasion.
63. In light of the above, I remain satisfied that an investigation was never commenced. Accordingly, it is not necessary for me to address the applicant's further comments that the investigation processes did not comply with the requirements of the AAS Act and ASU Code of Practice.

The decision to continue an investigation after the concerns in the report were found not to be substantiated

64. As outlined above, there was no decision to commence an investigation and therefore no subsequent decision to continue or cease an investigation, however in the context of decisions 5 and 6 I have taken 'investigation' to mean 'assessment'.
65. Having reviewed the case notes I do not accept that there was a decision to continue the assessment after the concerns in the report were assessed as 'nil abuse identified'. To the contrary, it is clear that the ASU notified the applicant that it would be taking no further action on the same day it concluded that there were good reasons not to take further action.⁸

The decision to cease the investigation without imposing additional care services for the vulnerable adult

66. As to the decision to cease the assessment without imposing additional care services, I am satisfied that this was not an outcome available to the ASU to impose. The possible outcomes at the conclusion of an assessment are outlined above. If the Director suspected on reasonable grounds that the vulnerable adult may have been at risk of abuse which could be mitigated by introducing additional care services, the appropriate next step would be to conduct an investigation in accordance with section 26 of the AAS Act. Given that the ASU concluded that no abuse had been identified, the decision to decline to take further action rather than commence an investigation and impose additional care services appears to be the most appropriate outcome.
67. Additionally, this outcome appears to be in line with the applicant's wishes and is also consistent with the applicant's submissions as to the vulnerable adult's wishes.
68. Even if I were to accept the applicant's submissions that the actions taken are more appropriately characterised as an investigation rather than an assessment, it is unclear to me why the applicant would be aggrieved by a decision not to impose additional care services when the ASU did not identify any abuse.

⁸ *Ageing and Adult Safeguarding Act 1995*, section 23(3)(c)(iii).

The decision not to record each action taken under section 23

69. I reject the assertion that a decision was made not to record each action taken under section 23. The case notes provided to me are comprehensive and there are no notable 'gaps' in the information, although I again acknowledge that this may not have been evident to the applicant who has not been granted full access to the case notes. Absent any evidence to the contrary, it appears to me that the ASU has complied with section 23(4).

The decision not to declare the report as vexatious given that the concerns were not substantiated

70. I accept that a decision was made to cease the assessment on the basis of being satisfied that there were good reasons as to why no action should be taken rather than being satisfied that the matter was trivial, vexatious or frivolous. In the circumstances this outcome appears the most appropriate to me.
71. The mere fact that the concerns raised in a report were not substantiated does not automatically make the report vexatious. Similarly, although I acknowledge the complicated relationship that the applicant has with the suspected reporter, even if that suspicion is correct, it would still be possible for the suspected reporter to hold genuine concern for the welfare of the vulnerable adult.
72. Having reviewed the report, the nature of the concerns raised and the basis for those concerns, I am not satisfied that the report made to the ASU was trivial, vexatious or frivolous, or that the ASU should have treated it as so.
73. In response to my provisional determination the applicant submitted that the ASU Code of Practice specifies examples of what constitutes a 'good reason' not to take further action, and that as none of those examples are directly applicable to this particular assessment, the Director had no basis to decide that there was good reason why no further action should be taken.
74. It is my view that the basis of this submission is flawed; the examples provided in the ASU Code of Practice is not an exhaustive list as indicated by the inclusion of 'may include'. Clearly the Director being satisfied that a vulnerable adult is not at risk of abuse would constitute a good reason not to take further action.
75. The applicant further submits that, if he is correct in his assumptions regarding the identity of the suspected reporter, it was unreasonable for a report to have been made when evidence was readily available to the suspected reporter which would quell any concerns for the vulnerable adult's welfare. I consider that to do so would require the suspected reporter to engage in the kind of assessment process which ought to sit with the ASU under the AAS Act. It would not be appropriate for the suspected reporter to take on that role.
76. I remain satisfied that the report was not made vexatiously and the Director's decision not to take further action was the most appropriate outcome.

The decision to proceed with an investigation without the consent of the vulnerable adult

77. As to decision 9, I reiterate that the ASU did not conduct an investigation.
78. Although section 24(2) stipulates that it is not necessary to obtain the consent of the vulnerable adult in relation to the assessment of a report, I acknowledge that the ASU did nevertheless conduct an assessment of whether action could be taken without the

vulnerable adult's consent in accordance with section 24(4). As outlined above, I do not consider that there was anything to prevent the ASU from complying with section 24 proactively.

79. The applicant submits that the Director granted approval for action to be taken without consent without

- Making reasonable attempts to contact the vulnerable adult
- Notifying the vulnerable adult that an investigation was taking place
- Giving priority to upholding the vulnerable adult's right to self-determination

80. In support of this the applicant submits:

With respect to whether reasonable inquiries were made to contact the Vulnerable Adult, the Applicant submits that it was not a reasonable inquiry for several representatives from the ASU to attend the Vulnerable Adult's home without any notice to the Vulnerable Adult or the Applicant and without any explanation for their attendance. Without any understanding of the reason for their visit, it was not unreasonable for the Applicant to refuse to grant the ASU representatives access to the Vulnerable Adult.

81. It appears to me that the above submission misrepresents what actually occurred. Firstly, the initial attendance at the vulnerable adult's home was not primarily an attempt to obtain the vulnerable adult's consent to take action; it was a part of the assessment process. As outlined above, the purpose of this visit was in fact explained to the applicant.

82. Secondly, it is evident from the case notes that several other attempts were made to arrange a face-to-face visit or speak to the vulnerable adult via phone call. The applicant repeatedly refused to facilitate contact with the vulnerable adult. It is clear to me that the ASU made reasonable effort to contact the vulnerable adult.

83. It is incongruous for the applicant to have repeatedly denied the ASU access to the vulnerable adult, only to subsequently claim that inadequate attempts were made to contact the vulnerable adult.

84. As has already been established, there was no investigation of which to notify the vulnerable adult. Finally, it stands to reason that if the ASU was unable to contact the vulnerable adult to gain consent, it would encounter the same difficulty in obtaining the vulnerable adult's views and thereby upholding her right to self-determination.

The decision not to report the complainant to the Aged Care Quality & Safety Commission

85. Finally, the applicant has enquired:

Why was a decision made not to report the complainant to the Aged Care Quality & Safety Commission after becoming aware of the possibility of professional misconduct and/or unprofessional conduct on their behalf?

86. There is no evidence before me that the reporter behaved unprofessionally or engaged in misconduct, nor is there any evidence that the ASU suspected as such.

87. The applicant has provided further submissions as to what he considers to be inappropriate and unprofessional behaviour by the suspected reporter. The applicant also asserts that the suspected reporter and the ASU were 'working together' without the consent or knowledge of the vulnerable adult.

88. Without confirming or denying the identity of the reporter I advise that I remain satisfied that the reporter did not behave in an inappropriate or unprofessional manner.

Views of the vulnerable adult

89. Section 41 of the AAS Act states that:

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.

90. In his application for external review the applicant has stated that:

Although [the vulnerable adult] has since passed her views can be presented, and should be considered by the Ombudsman in this matter. As a client of a home care provider [REDACTED] underwent annual reviews of her care which are well documented by the home care provider. I urge the Ombudsman to request these reviews and read of [the vulnerable adult's] wishes regarding her care.

...

Finally, the Ombudsman has the opportunity of listening to [the vulnerable adult's] own words regarding her care wishes as the annual review and community nursing assessment conducted on 5 May 2021 was recorded...

91. I acknowledge that there may be a number of avenues through which I could inform myself of the vulnerable adult's views about various things, in particular her wishes around her care. However, section 41 refers specifically to the vulnerable adults views 'in relation to the review'.
92. As my review did not commence until after the vulnerable adult's passing, very clearly she will not have expressed any views about my review, nor is she capable of now doing so.
93. I reject the assertion that it is necessary for me to review the vulnerable adult's annual reviews. As outlined above, my jurisdiction is limited to reviewing specific decisions of the ASU and/or Director and I am satisfied that the information before me is sufficient for the scope of my review.

Recommendations

94. Section 40(11) of the AAS Act states:

(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,
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.

95. In his application for external review the applicant submits that:

40(11) The Ombudsman should consider recommending that:

- Complaints from care providers be handled differently to other complaints.

- The complaints be held to a higher standard and be in accordance with the reporting requirements of the Aged Care Act, including the care provider discussing the concerns with the vulnerable adult prior to the complaint being made.
 - The ASU should utilise 23(2) to validate the complaint.
 - Care should be taken to ensure care providers are not using the ASU complaint process to harass the vulnerable adult and their families/carers for the care providers benefit whether financial or otherwise.
96. I consider that the first two suggestions from the applicant would be contrary to the AAS Act. There is nothing within the Act differentiating reports based on the identity of the reporter, nor is there any requirement for a reporter to approach the vulnerable adult before making a report. I acknowledge that reports from or about care providers may be dealt with differently in other contexts, for example under the *Aged Care Act 1997* (Cth), however I must consider my recommendations in the context of the AAS Act.
97. I consider that, if I were to recommend that care providers discuss concerns with a vulnerable adult prior to making a report under section 22(1), this would in fact undermine what ought to be a voluntary and confidential process. The ASU is able to dismiss any report as trivial, vexatious or frivolous if appropriate. I am satisfied that this provides a sufficient safeguard to ensure reports which progress to investigation are held to a 'high standard'.
98. As outlined above, I am satisfied that the ASU appropriately utilised its powers under section 23(2) of the AAS Act to assess the received report.
99. Finally, I do not consider that the final suggestion is a recommendation about a practice which led to a specific act or decision. I agree that the reporting process ought to be used in good faith, however there is no information before to indicate that the process currently is, or is at risk of, being abused.
100. Having reviewed the information provided to me, I have identified two possible areas for improvement in the ASU's report assessment processes which I believe warrant informal recommendations by me.
101. Firstly, I consider that when conducting future assessments, it would be appropriate for the ASU to more clearly explain the distinction between the assessment and investigation stages to the relevant parties involved. Had this been more thoroughly explained to the applicant in this matter, this may have avoided a substantial amount of confusion and may have avoided the need for my review, or at least reduced its scope.
102. That said, I note that in the Internal Review Observations and Recommendations report a recommendation was made to this effect. It was also recommended that this change be covered in the relevant ASU procedure. Given that the agency appears to have already committed to making this change, I do not consider it necessary to make the same recommendation.
103. In response to my provisional determination the ASU has confirmed that this recommendation has now been implemented.
104. The second potential area for improvement I have noted relates to section 24 of the AAS Act. As outlined above, the requirement to obtain the consent of the vulnerable adult prior to taking action in respect of a report does not apply in relation to the assessment of the report. Despite the fact that the report in issue in this matter never progressed to an investigation, I note that the ASU conducted a safeguarding assessment in accordance with section 24(4).

105. I have reviewed the relevant ASU Standard Operating Procedure and am satisfied that they are consistent with the AAS Act and do not require review or amendment.
106. Whilst the consent of the vulnerable adult is not required in order to conduct an assessment, I acknowledge that there is nothing to prevent the ASU from nevertheless attempting to obtain that consent in anticipation of a possible investigation. My only concern is that the prompt assessment of a report should not be delayed by the ASU unnecessarily complying with section 24. This is particularly important in instances where the risk of abuse to a vulnerable adult is high and/or severe.
107. As an example, the severe nature of a risk may not be apparent until an assessment is carried out but may also render it impractical to obtain consent from the vulnerable adult if for example the vulnerable adult is fearful of providing a candid response. In such a case, section 24(4)(a) would likely permit an investigation to proceed without the consent of the vulnerable adult, but this could not be known until the assessment is conducted.
108. In my provisional determination I observed that it does not appear that any act or decision was made pursuant to an erroneous practice, and so I was not inclined to make a formal recommendation in accordance with section 40(11). I did however urge the ASU to ensure that its staff are well informed as to when the requirements of section 24 must be complied with.
109. In response to my provisional determination the ASU has advised that it continually assessed the risk to the vulnerable adult throughout the assessment process and that, had the ASU had information to suggest a risk of serious abuse, the ASU would have proceeded to mitigate that risk, relying on section 24(4)(a)(i) or 24(4)(b) as necessary.
110. I am satisfied by this response that the ASU's current practices would not allow the prompt assessment of a report to be delayed by a proactive safeguarding assessment under section 24.
111. In response to my provisional determination the applicant requested that I consider making six separate recommendations. I advise the applicant that the proposed recommendations:
- have already been addressed in the application for external review; or
 - have already been implemented; or
 - are inconsistent with the provisions of the AAS Act; or
 - a kind which is beyond the ambit of my jurisdiction to make recommendations
112. I am therefore not inclined to make any of the recommendations proposed by the applicant. I am however prepared to make a recommendation that the ASU Code of Conduct be amended.
113. As canvassed in my assessment of decision 3, the applicant has alerted me to the following excerpt from the 'Assessment of a report' page of the ASU Code of Conduct:
- In some situations, the ASU may require other organisations or people who are involved with the person at risk of abuse to provide information to assist with the assessment. This may include seeking information about the existence of a Guardianship or Administration Order, or obtaining further information about potential safety issues. Where additional information is required, this request will be made in writing. On receiving this request, the organisation or person will be required to provide a written statement responding to the information that has been requested. The timeframe will be provided in the request or as negotiated by the parties.

114. The wording of 'in some situations' seems to imply that in most cases the ASU will not require any information to conduct an assessment other than that provided in the report. It is my view that, to the contrary, in most cases the ASU will require further information to properly assess a report. This seems to be supported by the fact that Parliament saw fit to grant the Director extensive information gathering powers under section 23(2).
115. My second concern is that the requirement for additional information to be sought in writing unless not reasonably practicable creates an unnecessary barrier to the prompt and efficient assessment of a report. A straightforward response or minor confirmation might be most appropriately sought via telephone call. Similarly, as can be seen from the current circumstances, obtaining information via other means such as a home visit or face-to-face discussion might also be appropriate.
116. Whilst I understand the importance of maintaining a written record of all actions taken during an assessment, I believe that this can be adequately achieved through documenting each interaction or communication as is required by section 23(4).
117. In light of the above, I make the following recommendation in accordance with section 40(11) of the AAS Act:

That pursuant to section 21(2) of the AAS Act the Minister vary the quoted paragraph on page 11 of the ASU Code of Conduct to reflect that:

- **An assessment process pursuant to section 23 will often involve the collection of material other than that provided in a report; and**
- **The ASU may obtain such material via any means it considers to be most appropriate having regard to the vulnerable adult's circumstances and the nature of the information sought.**

Confidentiality

118. Sections 49(1) and (3) of the AAS Act imposes confidentiality requirements around personal information obtained in the course of official duties under the AAS Act:

49—Confidentiality

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

Maximum penalty: \$10 000.

...

(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.

119. Section 40(8) requires that I must notify the relevant parties of the reasons for my determination. I therefore consider that the exception in section 49(1)(a) is applicable as divulging personal information which I have obtained in the course of official duties is required to fulfil my duties under the AAS Act.
120. As also required by section 40(8) I intend to divulge information which was disclosed under section 49(1) for a particular purpose. I therefore advise the recipients of this determination that it is an offence under section 49(3) to disclose the information contained in this determination for any other purpose.

Determination

121. In light of my views above, I confirm the Chief Executive's determination.

A handwritten signature in black ink, appearing to read 'W. Lines', is positioned above the typed name.

Wayne Lines
SA OMBUDSMAN

3 June 2022

APPENDIX 1

Procedural steps

Date	Event
20 October 2020	The ASU received a report of a suspicion that a vulnerable adult may be at risk of abuse. ¹
7 May 2021	The applicant and vulnerable adult were advised that the report to the ASU had been assessed and that no further action would be taken. ²
30 November 2021	The ASU received the applicant's internal review application dated 30 November 2021. ³
10 January 2022	The Ombudsman received the applicant's first request for an external review dated 10 January 2022.
23 February 2022	The applicant was advised that the Ombudsman did not have jurisdiction to conduct an external review as an internal review had not been completed. ⁴ The Ombudsman confirmed with the applicant
28 March 2022	The ASU advised the applicant of the internal review outcome.
11 April 2022	The Ombudsman received the applicant's current request for an external review dated 10 April 2022.
11 April 2022	The Ombudsman advised the ASU of the external review and requested submissions and documentation.
19 April 2022	The agency provided the Ombudsman with its initial submissions and documentation.
22 April 2022	The agency provided the Ombudsman with additional submissions and documentation.
11 May 2022	The Ombudsman issued his provisional determination and invited submissions from the parties.
25 May 2022	The ASU provided a response to the provisional determination.
25 May 2022	The applicant provided a response to the provisional determination.

¹ *Ageing and Adult Safeguarding Act 1995*, section 22(1).

² *Ageing and Adult Safeguarding Act 1995*, section 23(3).

³ *Ageing and Adult Safeguarding Act 1995*, section 38.

⁴ *Ageing and Adult Safeguarding Act 1995*, section 40(1).