



Joint Statement of Concern – Statutes Amendment (Health and Wellbeing) Bill 2025

Monday, 8 December 2025

Aged Rights Advocacy Service (ARAS), Dementia Australia and COTA SA jointly raise serious concerns about the Statutes Amendment (Health and Wellbeing) Bill 2025. While we understand the challenges SA Health is seeking to address through these reforms, we believe the proposed changes may lead to significant unintended consequences for older South Australians, particularly those living with dementia or impaired decision-making.

We are concerned by the lack of consultation undertaken with older people, peak bodies and advocacy organisations during the development of the Bill. Despite this, we remain committed to working constructively with government to ensure the best possible outcomes for older people and to safeguard their rights, autonomy and safety.

What the Bill changes

The Bill introduces new powers that would allow a Substitute Decision-Maker (SDM) often a family member, to:

- A. Decide that an older person must move into a Residential Aged Care Home (RACH) upon leaving hospital. Even if the older person wants to go home.
- B. Approve the older person being detained or held so they can be transported to the RACH. This could include restraining the person during transport or preventing them from leaving.
- C. Make this decision without independent review from the Tribunal before it happens. The Tribunal may only review the decision months later.
- D. Make these decisions unless the person's Advance Care Directive (ACD) says otherwise—But *currently, the ACD Act does not allow people to write such an exclusion*, meaning older people cannot protect themselves from this new power.
- E. Give guardians similar powers that may push decisions toward aged care placement rather than returning home.

1. Why we are concerned

- A. Older people may be moved into aged care against their wishes
 - a. An SDM could override what the older person wants—even when safe home supports exist.
 - b. These reforms take South Australia backwards to a “best interests” model. A “best interests” approach allows the decision-maker to choose what they believe

is best for the person—even when it contradicts the person’s known wishes or values.

This directly contrasts with the supported decision-making framework in the ACD Act, which prioritises the person’s own preferences and rights.

- c. This reverses SA’s national leadership through the ACD Act, which is based on wills and preferences, and is a significant backward step for human rights.
- d. It also clashes with the substitute decision-maker’s legal duty under section 35 of the ACD Act, which requires them to avoid making decisions that the person would not want.

B. Risk of increased financial abuse

- a. ARAS data shows that family members are the most common alleged abusers of older people.
- b. Giving SDMs more power — without oversight — may:
 - a. increase pressure to move older people into aged care
 - b. lead to sale of the older person’s home (and other assets)
 - c. create financial conflicts of interest (e.g., SDMs benefiting from a RAD refund)
 - d. reduce reporting of elder abuse

Older people may feel unsafe reporting abuse if their SDM controls major life decisions such as accommodation or access to finances.

Expanded SDM authority could also allow abusive behaviours to remain hidden, especially when older people are rapidly moved into aged care without independent review.

This creates real danger for vulnerable older people.

C. No independent checks before major decisions

- a. Under the Bill, SDMs and guardians could authorise:
 - aged care placement
 - detention
 - restrictive practices

without independent Tribunal approval beforehand.

A review months later cannot undo the trauma, loss of autonomy, or inappropriate placement.

D. Older people may be treated as “bed-blockers,” not individuals

- a. The Bill appears driven by hospital discharge pressures not the rights and dignity of older people.
- b. Older people risk becoming collateral damage in a system trying to free up beds, especially those living with dementia.

E. Conflicts with national aged care reforms The Commonwealth’s new Aged Care Act (2024) is built on:

- a. supported decision-making
- b. human rights
- c. person-centred care

The SA Bill contradicts this direction by shifting power *away* from older people and *toward* others.

F. No consultation with older people or peak bodies

- a. ARAS, Dementia Australia and COTA SA and other key organisations were not consulted before these changes were drafted.
- b. Older people — the group most affected — were also not consulted.

- c. This lack of engagement increases risk of unintended harm.

2. Examples of how this could affect an older person

Example 1

An older person with dementia is living safely at home with family and support services. After a fall, they are admitted to hospital. The older person wants to go home.

Under the new Bill:

- a. The SDM can decide the person must go into aged care
- b. The SDM can approve their detention for transport
- c. There is no Tribunal review beforehand
- d. By the time a review occurs, the person may have lost their home and independence

Example 2

A woman with mild dementia lives with her daughter, who benefits financially from her pension and assets. After a hospital stay, the daughter decides aged care is “best.” Under the Bill, she can authorise the move and detain her mother for transport without oversight. Harmful decisions may be implemented long before a Tribunal review is possible.

This is a major erosion of rights.

3. What we believe must happen

To ensure the rights, safety and preferences of older South Australians are upheld, we believe the following actions are essential:

- a) Independent oversight: No older person should be placed in aged care or detained without a Tribunal reviewing and approving the decision in advance.
- b) Strengthened Advance Care Directives: Older people must be able to protect their rights in their ACD, including the ability to explicitly exclude these new powers if they choose.
- c) Supported decision-making as the standard: Decisions about an older person’s care must reflect their will, preferences and values—not organisational or system convenience.
- d) Clear Policy Directive for SA Health: SA Health must develop a formal Policy Directive to guide implementation, including:
 - a. Minimising the use of restrictive practices
 - b. Prioritising supported decision-making
 - c. Investigating all other options that align with the person’s will and preferences (e.g., returning home with supports, rehabilitation, community-based care) before considering aged care placement
 - d. Oversight of restrictive practices in aged care: Any restrictive practices used once a person enters RACH must be subject to immediate review, with all care compliant with the Aged Care Act’s safeguards and requirements.
- e) Genuine consultation: Older people, families, advocates and sector organisations must be involved in shaping legislation and policy that affects them.
- f) Education for the community: A comprehensive public education campaign is needed so older people, families and substitute decision-makers understand the changes and their implications.

4. Final message

The Bill, as currently written, risks:

- Increasing financial elder abuse
- Removing key human rights protections
- Reducing older people's independence
- Allowing major decisions without independent oversight
- Moving South Australia backwards on person-centred care

Older people deserve laws that protect, not undermine, their dignity, safety, and choice.

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