

Australian Elder Abuse Conference

Outstanding ALRC reforms: What still needs to happen?

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THE ANTSIS MAP OF
INDIGENOUS AUSTRALIA

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Role of Public Advocate

Systemic advocate on behalf of adults with impaired decision-making ability

- Better regulation of restrictive practices
- Removing ban on people with an 'impairment of the mind' from having sexual relationships
- Improving our prevention of, and responses to, elder abuse
- Better acute mental health system
- Removing default confidentiality requirement in the guardianship system
- OPCAT compliance
- Adult safeguarding
- Supported accommodation

Outstanding ALRC reforms

‘outstanding’ *adjective*

1. very good
2. not yet done or completed

Australian Law Reform Commission, *Elder Abuse – A National Legal Response*. Final report, 2017.

43 recommendations

Achievements

- National plan (Recs 3-1 to 3-4)
- Prevalence study (Rec. 3-5)
- Several other achievements
 - Serious incident response scheme (Recs 4-1 to 4-6)
 - ‘Granny flat’ (dwelling unit) reform (Rec. 6-2)
 - Best practice guidelines
 - Law Council (Rec. 8-1)
 - Australian Banking Association (Rec. 9-1)
 - Aust. Guardianship and Administration Council (Rec. 10-2)



National Plan to Respond
to the **Abuse of Older
Australians** (Elder Abuse)
2019-2023





Conducted in response to Australian Law Reform Commission, *Elder abuse – A national legal response*, final report, 2017, Rec. 3-5.

Survey of 7000 people 65+ in general community.

‘In the 12 months prior to being surveyed, 14.8% of the sample reported experiencing at least one form of elder abuse ...

Psychological abuse was most commonly reported (11.7%), followed by neglect (2.9%), financial abuse (2.1%), physical abuse (1.8%) and sexual abuse (1%)’, p. 32.

‘Just over one-third (36%) reported that they had sought help or advice from a third party in relation to their experience’, p. 83.

Best Practice Guide for Legal Practitioners in Relation to Elder Financial Abuse

June 2023



Industry Guideline



Preventing and responding to financial abuse (including elder financial abuse)

1. Purpose of the industry guideline¹

This industry guideline:

- Explains what financial abuse can look like and how it can impact customers and a bank's relationship with their customers; and
- Outlines a framework for banks to raise awareness and promote consistent arrangements to deal with suspected cases of financial abuse.

This guideline reflects good industry practice, and the ABA encourages members to use the principles in this guideline to put in place internal processes, procedures, and policies.

The ABA has prepared consumer fact sheets about financial abuse and setting up powers of attorney that banks can share with their customers. These can be accessed at www.ausbanking.org.au

2. About this guidance

The **Banking Code of Practice (the Banking Code)** sets out the standards of practice and service in the Australian banking industry for individuals and small business customers, and their guarantors. The Banking Code provides safeguards and protections not set out in the law. It complements the law and, in some areas, sets a higher standard than the law.

This guideline complements the provisions of the Banking Code that requires member banks to take extra care with vulnerable customers, including those that may be experiencing financial abuse. The Banking Code notes that a bank may only become aware of a customer's vulnerability if the customer tells their bank about it.

In this context, extra care includes training staff to act with sensitivity, respect, and compassion, and working with customers to find a suitable way to undertake their banking. Banks will also be respectful of confidentiality, make communications easy, provide guidance to help customers maintain and regain control of their assets, and refer customers to external support services where appropriate.

Best Practice Guide for Legal Practitioners on Assessing Mental Capacity

June 2023



Maximising the participation of the Person in guardianship proceedings

Guidelines for Australian Tribunals

FINAL REPORT, JUNE 2019

Work needed

- Restrictive practices (Recs 4-10, 4-11)
- Aged care legislation and decision-making principles (Rec. 4-12)
- Tribunals' power to resolve 'assets for care' arrangements (Rec. 6-1)
- 'Nationally consistent' enduring powers of attorney laws (Rec. 5-3)
- Adult safeguarding (Recs 14-1 to 14-8)

Restrictive practices

- Quality of Care Principles – various versions – have been flawed
- Current iteration (until December 2024)
- Core problems:
 - Wedded to the ‘consent’ model (in the current legislation) which is agreed by many to be sub-optimal (odd to ask a person to consent to their own restrictive practice; hard to ask a substitute decision maker to do this, especially if they are required to implement the person’s ‘will and preferences’ ...)
 - Lack of distinction between therapeutic medication and chemical restraint
 - Inappropriate and instrumental use of adult guardianship system (and role of guardians is unclear)
 - Automatic hierarchy (including ‘friend’) enlivened when there is no authorisation process in the relevant state or territory, or there is one but there’s a delay ...

Australian Ageing Agenda

Stopping the inappropriate use of restrictive practices



Proposed restrictive practice changes 'deeply flawed'



Are we regulating or regularising aged care restrictive practices?



A way forward on restrictive practice regulation



Comment



We asked four aged care stakeholders:

What needs to happen to significantly reduce restrictive practice use in Australia's aged care homes?

Homes need regular long-term staff and meaningful regulation

Dr. SOMEONE is saying, as you're a caregiver you don't understand, your immediate response would not be to restrain the person, nor would it be to leave a doctor who could prescribe a sedative. If you felt threatened, you'd do

they feel threatened? Are they scared? I'm they think something is happening that actually is?/ Someone who knows there is much



JOHN LINDSAY

Restrictive Practices

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability argued (Final Report, 2023, Recommendation 6.35):

- appropriate legal frameworks in a range of settings should exist which ‘set out the powers and functions of a Senior Practitioner’

The NDIS Review argued (Final Report, Action 18.1, and p. 221):

- ‘All Australian governments should agree [on] a joint action plan for meaningful collaboration and a stronger focus on corrective actions against providers to reduce and eliminate restrictive practices ...’, and
- noted that ‘the Senior Practitioner model is recognised as the best practice approach for the authorisation of restrictive practices’.

Aged care legislation and national decision-making principles

- The exposure draft of new aged care legislation did introduce the role of 'supporters' and a substitute judgement ('will and preferences' based) role for 'representatives', but problems here included the interplay between these roles and state and territory supporters and substitute decision makers
- A new draft is imminent

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'More work needed on aged care bill'

By [Lynne Chambers](#) and [Jenny Wilson](#)

The bill provisions for substantial reform and it's a good start, writes [Dr John Chambers](#)

ANALYSIS

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In releasing an exposure draft of proposed new aged care legislation, the federal government has taken a significant step toward implementing some of the core recommendations from the 2021 Royal Commission into Aged Care Quality and Safety final report.

The [Aged Care Bill 2023](#) consists of 412 clauses in eight chapters covering, among other things, aged care eligibility and assessment criteria, the regulation of providers, and the operation and powers of the Aged Care Quality and Safety Commission and its oversight body, the Aged Care Quality and Safety Advisory Council.

The bill contains – as the royal commission recommended – an expansive “statement of rights” (clause 20), which includes the rights of aged care service recipients to “maintain their personal freedoms (the right to live in their home), as well as “be free from all forms of violence”. Although the bill makes clear (clause 71) that these “rights” would not be “enforceable by proceedings in a court of law”,

‘Nationally consistent’ enduring powers of attorney laws

Recommendation 5–3

‘A national online register of enduring documents, and court and tribunal appointments of guardians and financial administrators, should be established after:

- (a) agreement on nationally consistent laws governing:
 - i. enduring powers of attorney (including financial, medical and personal);
 - ii. enduring guardianship; and
 - iii. other personally appointed substitute decision makers; and
- (b) the development of a national model enduring document.’

Adult Safeguarding

Rec. 14–1 ‘Adult safeguarding laws should be enacted in each state and territory. These laws should give adult safeguarding agencies the role of safeguarding and supporting “at-risk adults”’.

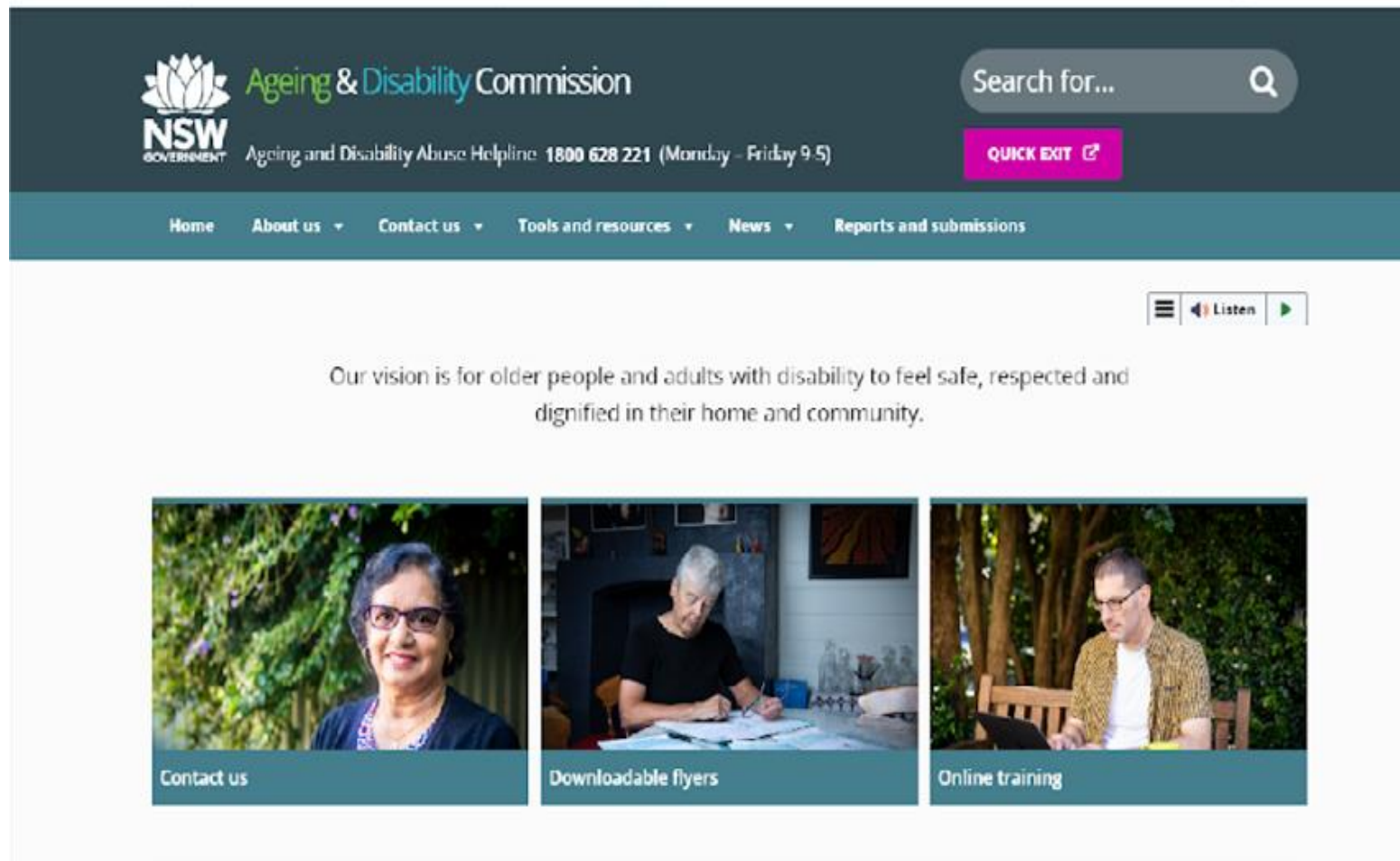
Rec. 14–3 ‘Adult safeguarding laws should define “at-risk adults” to mean people aged 18 years and over who:

- a. have care and support needs;
- b. are being abused or neglected, or are at risk of abuse or neglect; and
- c. are unable to protect themselves ... because of their care and support needs.’

Rec. 14–6 ‘Adult safeguarding laws should provide adult safeguarding agencies with necessary coercive information-gathering powers ...’

New South Wales

- In 2019 NSW created the office of Ageing and Disability Commissioner, with broad investigative powers.



South Australia

- In South Australia an Adult Safeguarding Unit, with broad investigative powers, has been operating since 2019.

The screenshot shows the official website of the Government of South Australia, specifically the SA Health section. The header includes the Government of South Australia logo and name, a red emergency button that says "DO YOU HAVE AN EMERGENCY?", and links for Accessibility and Language. A search bar is also present. The main navigation menu includes Clinical resources, Conditions, COVID-19, Healthy living, Public health, and Services. The breadcrumb trail reads: Home > About us > Department for Health and Wellbeing > Office for Ageing Well > Adult Safeguarding Unit.

Adult Safeguarding Unit

If you suspect you or someone you know is at risk of or is being abused, you can call the Adult Safeguarding Unit on [1800 372 310](tel:1800372310), Monday to Friday, 9.00 am to 5.00 pm for information, support or to make a report to the Adult Safeguarding Unit, or email adultsafeguardingunit@sa.gov.au.

The Adult Safeguarding Unit became operational on 1 October 2019. It is located in [Office for Ageing Well](#) and has a strong focus on safeguarding the rights of adults at risk of abuse.

The Unit responds to concerns of abuse in relation to adults vulnerable to abuse aged 65 years and over, and 50 years and over for Aboriginal or Torres Strait Islander people and adults living with a disability. From October 2022, the Unit will work with all adults who may be vulnerable to abuse.

Key functions of the Adult Safeguarding Unit include:


- On this page
- What is abuse?
- Facts about Elder Abuse
- What does abuse look like?
- Elder Abuse
- What can I do?
- Contact
- Related Documents
- Related Links



Adult Safeguarding in Queensland

Volume 1: Identifying the gaps

July 2022



Adult Safeguarding in Queensland

Volume 2: Reform recommendations

November 2022

Adult safeguarding 'gap'

- Who is contacted when an adult is considered to be at risk but there is no pressing medical emergency or obvious criminality?
- The Australian Law Reform Commission identified the existence of an 'investigation gap' when it came to possible responses to situations of abuse or neglect. ALRC, *Elder Abuse Discussion Paper*, 2016, p. 61.

We conducted research

- Eight in-person roundtables throughout Queensland exploring situations where adults are at-risk of harm.
- Roundtables real and virtual with people with disability (organised with Queenslanders with Disability Network and Dementia Australia)
- We asked roundtable participants to consider a range of hypothetical (though drawn from real life) scenarios.
- Key questions:
 - What happens in this situation?
 - What ideally should happen?



Adult Safeguarding in Queensland

Vol 2. Reform Recommendations

Recommendation 1

The Queensland Government should appoint an Adult Safeguarding Commissioner in Queensland.

Recommendation 10

‘The Queensland Government should facilitate the establishment of local Adult Safeguarding Networks ...

Each Adult Safeguarding Network should have three core roles:

- the consideration of complex social care situations involving at-risk adults in that Network’s region;
- the promotion of local-area knowledge and collaboration among Network members; and
- the development and implementation of local awareness raising activities to enhance community knowledge about preventing and responding to adult safeguarding concerns.’

Adult Safeguarding

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability argued (Final Report, 2023, Recommendation 11.1):

- There is a need to have ‘nationally consistent adult safeguarding functions’, which should be ‘operated by ... independent statutory bodies’.

The NDIS Review argued (Final Report, 2023, Action 16.5, and p. 206):

- ‘State and territory governments should establish or improve adult safeguarding agencies to deliver a universal service offering for the safeguarding of all people at risk of harm’ and
- ‘Adult safeguarding agencies (as recommended by the Australian Law Reform Commission ...) should provide holistic, person-centred safeguarding for anyone who needs them and a one-stop-shop to raise concerns about risks of harm.’



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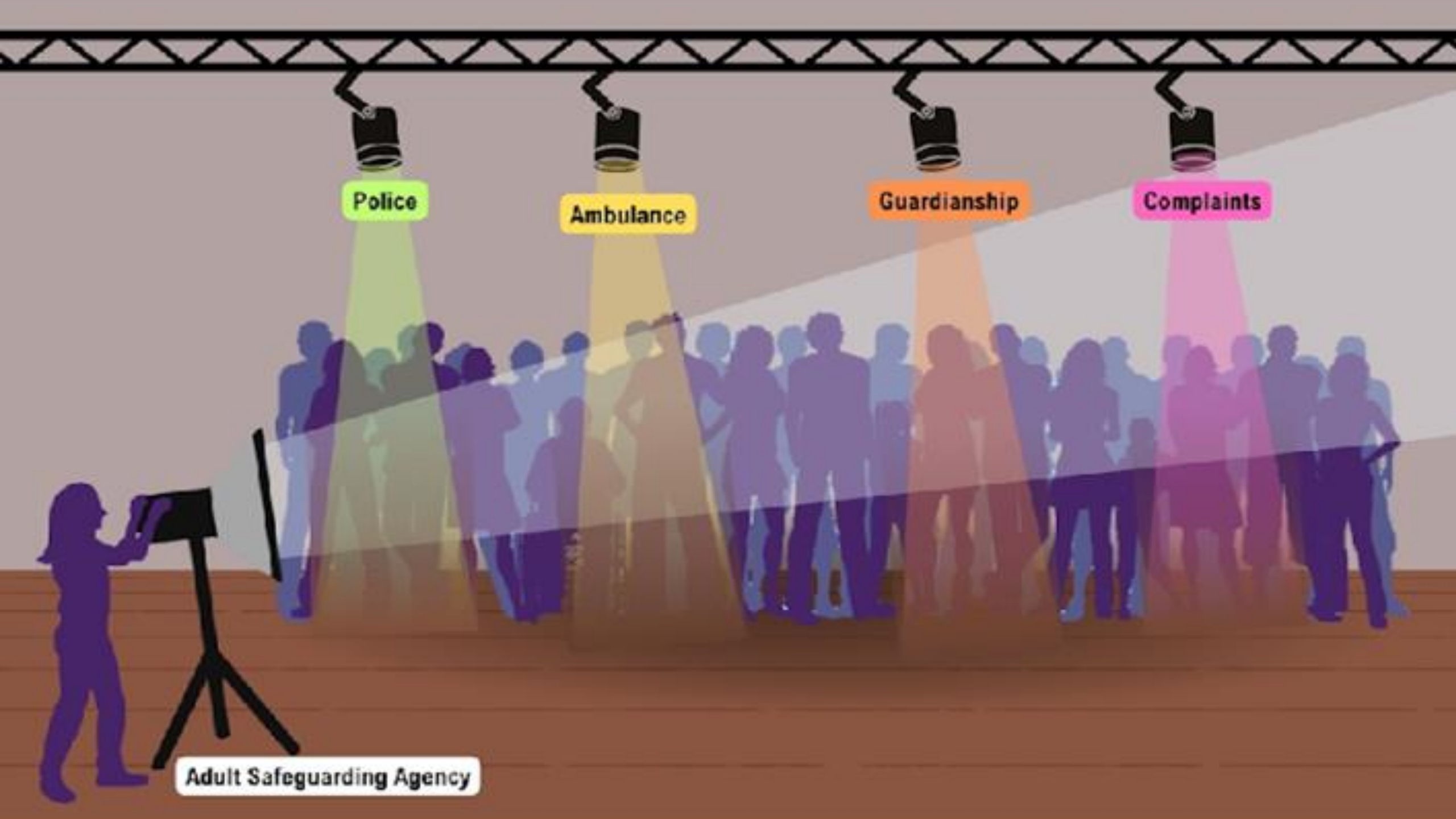
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By John Chesterman
Churchill Fellow 2019

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Questions and
comments?



Thank you

