

# ADULTS AT RISK: LEGISLATION/COMPLIANCE AND THE NCSS

The National Catholic Safeguarding Standards Edition 2 (NCSS Ed 2) broadens the scope of the NCSS to incorporate safeguarding measures for adults, with a focus on adults at risk. This reflects the duty of care incumbent on every Catholic ministry and/or service to provide an environment free from abuse and harm for all people, especially those that have an increased risk of harm.

## Federal legislation

Australia's Commonwealth legislation is the overarching generic legal protection for all Australians. While Australia does not have a national human rights act or bill of rights, the Universal Declaration of Human Rights, to which Australia is a signatory, outlines the basic rights of all Australians to live free from abuse and harm:

- **All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood (Article 1).**
- **Everyone has the right to life, liberty and security of person (Article 3).**
- **No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5).**
- **All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination (Article 7)**

The Disability Discrimination Act (1992), the National Disability Insurance Scheme Act (2013) and the Aged Care Act (1997) are Commonwealth legislative Acts that provide the framework for protection for a large proportion of adults at risk in Australia.

## State and Territory approaches

States and Territories also have significant responsibility to implement legislation to protect adults at risk in their own jurisdictions. South Australia is currently leading the way by formalising the safeguarding of adults at risk in legislation. The Ageing and Adult Safeguarding Act was passed in 1995 and more recently the *Office for the Ageing (Adult Safeguarding) Amendment Bill 2018* passed both houses of the South Australian Parliament in November 2018. This landmark legislation is the first of its kind in Australia and has resulted in the establishment of a new Adult Safeguarding Unit (ASU) within the Office for Ageing Well. This provides the South Australian community with an accessible body with statutory responsibility and accountability for receiving and responding to reports of suspected abuse or neglect. Currently the ASU manages reports of abuse for adults aged 65 and over (Aboriginal and Torres Strait Islander people aged 50 and over) and adults living with a disability. The ASU is scheduled to expand its remit again in October 2022, to take reports of abuse and neglect of all adults at risk of abuse.

In 2019, New South Wales established the Ageing and Disability Commission to protect and promote the rights of adults with disability and older adults, and protect them from abuse, neglect and exploitation.

Currently this service targets adults aged 65 and over (Aboriginal and Torres Strait Islander people aged 50 and over) and adults living with a disability.

In 2017 the Australian Law Reform Commission released the following recommendation:

**Recommendation 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’.*

This recommendation makes it clear that the responsibility for the development and implementation of such laws is that of each State and Territory. The Catholic Church in Australia, through the NCSS, is preparing Catholic entities to be in a strong position to respond to future legislative requirements in safeguarding adults at risk.

## **NCSS mapping document – key legislation concerning adults across Australia**

ACSL’s mapping document ‘Key legislation concerning adults across Australia’ displays the key legislation regarding safeguarding of adults across Australian jurisdictions.

Best efforts have been made to identify and represent key legislation across jurisdictions accurately. However, it is important to recognise that currently, only South Australia and New South Wales have specific legislation related the safeguarding of adults at risk. Furthermore, each State and Territory is at a different stage in their response to legislative requirements in these areas. This is also the reality for responses to Royal Commission recommendations and the application of Commonwealth priorities in State/Territory legislation.

The alignment work contained in this mapping document identifies where key legislation speaks to the requirements of a particular NCSS criterion. As any given piece of legislation has multiple components, it is not possible to identify a single portion to reference in the mapping document. The different structure and intent of the NCSS also means that precise alignment with specific parts of legislation can be difficult to achieve: while the NCSS facilitates a safeguarding review and audit mechanism through the criteria and indicators, legislation has not been drafted with this purpose. What this mapping aims to demonstrate is that at both the Federal and State/Territory level, key legislation speaks to a particular requirement of the NCSS. In many cases, the NCSS provides a tangible mechanism to enable Church entities to provide a practical response to these legislative requirements.

The mapping document also serve to highlight that there is no national consistency concerning safeguarding legislation, for either the safeguarding of children or adults. The Catholic Church in Australia has committed to national consistency in safeguarding, and the NCSS provides this. As a result of the inconsistencies present across the country, for some jurisdictions the NCSS results in ‘raising the bar’ for some minimum requirements – especially as many of these aspects have no current legislative requirement.

## **Alignment with Age Care and Disability Standards**

The NCSS development focused on cohesion with the Aged Care Quality Standards and National Standards for Disability Services, as well as the work of both the Royal Commission into Aged Care Quality and Safety and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. The development work also included examining many other approaches to dealing with adults to ensure best practice in safeguarding. The mapping document demonstrates the alignment.

## **Structure of the NCSS and alignment**

There are 10 NCSS. Each of the 10 Standards are then broken down into criteria. The criteria articulate critical elements within a ministry or entity that contribute to realisation of the related Standard. Each criterion is further broken down into a number of indicators which provide more detail of actions required to demonstrate implementation of the criterion and the Standard.

Alignment with legislation and other standards has been focused at the criterion level, as the indicators are ACSL's specific development and will be refined and changed over time to ensure their effectiveness. Critically, ACSL's risk-based audit and review framework will inform which of the indicators are applicable to any given entity.

## **Jurisdictional gaps and the reality of a national approach**

The mapping document identifies gaps within the legislative regimes in each jurisdiction and regulatory requirements. This is understandable given the different stages of implementation in each jurisdiction. The Catholic Church's commitment to national consistency in safeguarding addresses these gap areas by providing the NCSS, which are to be implemented across all Catholic entities nationally. It is therefore acknowledged that many Catholic entities will have an NCSS requirement that goes beyond their current minimum regulatory and legislative requirement concerning safeguarding. Simply, the only national consistency with respect to safeguarding is found in the NCSS.

## **The Catholic Church's commitment to a national approach to safeguarding**

The national approach links directly to the safeguarding commitment of the Catholic Church in Australia and our responsibility to the mission of the Church. This recognises the inherent dignity of all people (Genesis 1:26) and the centrality of safeguarding to the Church's mission, articulated through the NCSS. In some cases, Catholic entities may be going 'above and beyond' their minimum legislative or compliance requirements, but not their ministry requirements as they relate to the Catholic Church in Australia. In many ways this recognises the NCSS as a means to support ministries to operate in ways that outwork the Gospel in the area of safeguarding. In order to provide a ministry and/or service to people that follows the example of Jesus (especially to those who are at risk) it may be necessary to go 'above and beyond' the minimum required – this is also where the 'Catholic' aspect of the NCSS comes into effect. The work undertaken to demonstrate the theological underpinnings of the NCSS support this (see NCSS Ed 2 Compendium document, to be included with release of NCSS Ed.2).