

SENIOR ABUSE REGISTER ACT 2008



BERMUDA

2008 : 19

SENIOR ABUSE REGISTER ACT 2008

Date of Assent: 26 March 2008

Operative Date: 26 March 2008

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WHEREAS it is expedient to protect seniors from abuse; to establish a register of persons who have abused seniors; to provide for the mandatory reporting of the abuse of seniors; and to make supplementary provision for those purposes:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Short title

1 This Act may be cited as the Senior Abuse Register Act 2008.

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Interpretation

- 2 (1) In this Act, unless the context otherwise requires—
- “abuse” means physical, sexual or psychological abuse, or financial exploitation;
- “care worker” means a person employed to care for seniors;
- “financial exploitation” includes misappropriation of property or defraudment;
- “home” means a home within the meaning of the Residential Care Homes and Nursing Homes Act 1999;
- “Minister” means the Minister responsible for seniors;
- “physical abuse” or “psychological abuse” includes, where there is a legal duty to provide care, neglect;
- “prescribe” means prescribe by regulations made by the Minister;
- “register” means the senior abuse register kept and maintained under section 4(2)(a);
- “Registrar” means the Registrar of Senior Abuse appointed under section 4(1);
- “senior” means a person who is 65 years or older.
- (2) Without prejudice to the generality of the meaning of “abuse” in subsection (1)—
- (a) a single act may amount to abuse;
- (b) a number of acts that form part of a pattern of conduct may amount to abuse even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

Abuse of senior an offence

- 3 (1) A person who abuses a senior is guilty of an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years, or to both such fine and imprisonment.
- (2) A court convicting a person under subsection (1) shall order that the person’s name be entered in the register.
- (3) A court convicting a person of an offence under the Criminal Code or the Summary Offences Act 1926 shall order that the person’s name be entered in the register where—
- (a) the victim of the offence is a senior; and

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(b) the court is satisfied that the senior has been abused by the person.

(4) In this section “person” means a natural person.

(5) For the avoidance of doubt it is stated that this section applies only to offences committed after the coming into operation of this Act.

Appointment and functions of Registrar

4 (1) The Minister is to appoint a public officer to be the Registrar of Senior Abuse.

(2) The functions of the Registrar are—

(a) to cause a senior abuse register to be kept and maintained; and

(b) such other functions as are conferred on the Registrar under this Act.

Convicted person’s name to be entered in register

5 (1) It shall be the duty of a court, where it orders under section 3 that the person’s name is to be entered in the register, to inform the person that—

(a) the person’s name is to be entered in the register; and

(b) a person whose name appears in the register is—

(i) under section 9(1), prohibited from being employed as a care worker; and

(ii) under section 9(2), prohibited from carrying on, or being otherwise concerned in the management of, or having a financial interest in, a home or other institution that cares for seniors.

(2) It shall be the duty of the Clerk of the Magistrates’ Court or the Registrar of the Supreme Court (as the case may be), as soon as practicable after a court order is made under section 3(2) or 3(3), to cause a copy of the court order to be delivered to the Registrar.

(3) It shall be the duty of the Registrar, as soon as practicable after receiving a copy of the court order under subsection (2), to enter in the register—

(a) the name of the person and such other information as the Registrar is satisfied correctly identifies the person;

(b) the nature of the offence; and

(c) such further information as the Minister may prescribe.

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Removal of name from register

6 (1) The Registrar shall remove a person's name from the register if the Registrar is satisfied that—

- (a) the conviction in respect of which the person's name appears in the register is quashed on appeal; and
- (b) the person does not have any other conviction in respect of which his or her name appears in the register.

(2) A person whose name appears in the register may make written application to the Registrar—

- (a) after the expiration of three years from the date of the conviction in respect of which his or her name appears in the register, to have his or her name removed from the register; or
- (b) at any time, to correct, add or remove any information that appears in the register.

(3) The Registrar shall, in deciding an application made by a person under subsection (2)(a), take into account—

- (a) the nature and gravity of the offence for which the person was convicted;
- (b) whether seniors are at risk of being abused by the person; and
- (c) any other factor relevant to the person's suitability, or lack of suitability, to be responsible for the care of seniors.

(4) Notwithstanding subsection (3), the Registrar shall refuse an application made by a person under subsection (2)(a) where—

- (a) the Minister has prescribed requirements for the rehabilitation of persons whose names appear in the register; and
- (b) the person has not satisfied those requirements.

(5) The Registrar shall give the person written notice of the decision on an application under subsection (2) and, where the Registrar refuses the application, the written notice shall include—

- (a) the reason for the refusal;
- (b) the person's right to appeal against the refusal to the Supreme Court; and
- (c) the time within which, under subsection (6), the person may do so.

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(6) A person who is aggrieved by the decision of the Registrar may, within 21 days of being notified of the decision, appeal against the decision to the Supreme Court.

(7) Any hearing by the Supreme Court under this section shall be held in camera.

(8) A person whose application to have his or her name removed from the register is unsuccessful may, after the expiration of a period of at least one year from the date of such previous application, again apply to have his or her name removed from the register, and subsections (3) to (7) shall apply to the application as if it was made under subsection (2)(a).

Confidentiality of information in register

7 (1) The information in the register is confidential and, except as provided in this section, shall not be available for public inspection or publication.

(2) A person whose name is entered in the register is, on written application to the Registrar, entitled to inspect the information in the register relating to him or her.

(3) With the prior written approval of the Registrar, the information in the register may be used in the collection and publication of statistical information under the Statistics Act 2001.

(4) A person who employs, or intends to employ, a person as a care worker is, on written application to the Registrar, entitled to inspect any information in the register relating to that person, and the person who receives the information shall treat the information as confidential.

(5) A person who fails to treat information in the register as confidential, and an officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on summary conviction is liable to a fine not exceeding \$5,000, or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment.

Mandatory reporting of abuse

8 (1) A person who has information indicating that a senior is suffering abuse, has suffered abuse, or faces a substantial risk of suffering abuse, shall forthwith report that information to the Registrar.

(2) Notwithstanding subsection (1) or any statutory provision, a person who performs professional or official duties with respect to a senior, including—

- (a) a physician, nurse, dentist, pharmacist, psychologist or other health care professional;

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(b) a police officer, counsellor, social worker, member of the clergy or care worker; or

(c) a member of the management of a hospital, home or other institution which provides care for seniors,

who, in the course of that person's professional or official duties, has reasonable grounds to suspect that a senior is suffering abuse, has suffered abuse, or faces a substantial risk of suffering abuse, shall forthwith report the suspicion to the Registrar together with the information upon which it is based.

(3) Subsections (1) and (2) apply whether or not the information is confidential or privileged except that nothing in this section shall be taken to affect or abrogate the legal professional privilege that attaches to a communication between a lawyer and his or her client.

(4) No civil action lies against a person by reason of that person reporting information pursuant to subsection (1) or (2) unless the reporting of that information is done falsely and maliciously.

(5) No person shall reveal or be compelled to reveal the identity of a person who has reported information to the Registrar pursuant to subsection (1) or (2).

(6) On receiving a report pursuant to subsection (1) or (2), the Registrar—

(a) shall cause an investigation to be made into the circumstances of the case;

(b) may provide such care or accommodation to the senior, or take such other action, as the Registrar considers necessary to ensure the welfare and safety of the senior;

(c) may make an application for a protection order under section 6 of the Domestic Violence (Protection Orders) Act 1997; or

(d) shall refer the matter to the police if he or she reasonably believes that the senior is suffering, or has suffered abuse.

(7) A person who—

(a) contravenes subsection (2) or (5); or

(b) falsely and maliciously reports information to the Registrar indicating that a senior is suffering abuse, has suffered abuse, or faces a substantial risk of suffering abuse,

is guilty of an offence and is liable on summary conviction to a fine not exceeding \$3,000, or imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment.

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Persons disqualified from caring for seniors

9 (1) A person whose name appears in the register shall not seek employment as, or be employed as, a care worker.

(2) A person whose name appears in the register shall not carry on, or be otherwise concerned in the management of, or have any financial interest in, a home or other institution that cares for seniors.

(3) A person shall not employ, and shall cease to employ, a care worker whose name appears in the register.

(4) A person who contravenes subsection (1), (2) or (3), and an officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on summary conviction is liable to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 3 years, or to both such fine and imprisonment.

Disclosure of information

10 (1) No person shall communicate or allow to be communicated information obtained in the performance of his or her duties under this Act except where—

(a) authorized by the Registrar to do so; or

(b) required by a court to do so.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$2000.

Prohibition on publication

11 (1) No person shall publish or make public information that has the effect of identifying—

(a) a senior who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act; or

(b) a relative of a senior referred to in paragraph (a).

(2) Where the court is satisfied that the publication of a report of a hearing or proceeding, or a part thereof, would cause psychological harm to a senior who is a participant in or a witness at the hearing or is the subject of the proceeding, the court may make an order prohibiting the publication of a report of the hearing or proceeding, or the part thereof.

(3) Where the court makes an order pursuant to subsection (2), no person shall publish a report contrary to the order.

(4) A person who contravenes subsections (1) or (3), and an officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on

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summary conviction is liable to a fine not exceeding \$5,000, or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment.

Regulations

12 (1) The Minister may make regulations for the better carrying out of the purposes of this Act, including—

- (a) prescribing the form of any application or appeal under this Act; and
- (b) prescribing anything which is to be prescribed under this Act.

(2) Regulations under subsection (1) shall be subject to the negative resolution procedure.

Act binds Crown

13 This Act binds the Crown.

Consequential amendment

14 The Domestic Violence (Protection Orders) Act 1997 is amended in section 6(4) by—

- (a) at the end of paragraph (c), replacing the full stop with a semicolon; and
- (b) immediately after paragraph (c), inserting the following new paragraph—
 - “(d) the Registrar of Senior Abuse appointed under section 4(1) of the Senior Abuse Register Act 2008.”.