



14th October 2026

Expert briefing paper on undue influence and elder abuse (including torture, cruel, inhuman and degrading treatment or punishment)

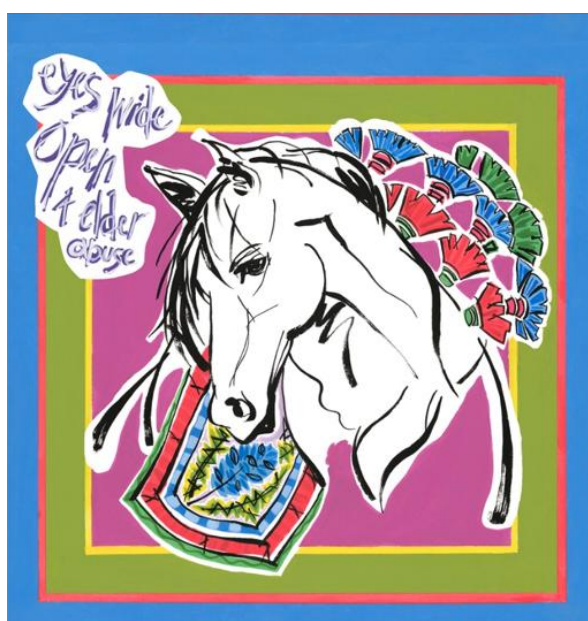
Authors: Carmelle Peisah,^{1,2,3} Olga Pandos,^{3,4} Claudia Cooper,⁵ Tiffany Jessop,³ Susan Mary Benbow⁶

Affiliations

1. Faculty of Medicine and Health, University of Sydney, Sydney, Australia
2. Psychiatry and Mental Health, Faculty of Medicine and Health, University of New South Wales, Sydney, Australia
3. Capacity Australia, Sydney, Australia
4. Deakin Law School, Deakin University
5. Wolfson Institute of Population Health, Queen Mary University of London
6. Centre for Ageing and Mental Health, University of Chester, Innovation Centre, Riverside Campus, Chester, United Kingdom.

Dedication: This submission is dedicated to lawyer and human rights champion, the late Mr Nick O'Neill.

Acknowledgements: The authors are grateful to Andrew Byrnes for his extremely helpful comments on a draft of this paper. The authors also wish to acknowledge Capacity Australia's global multidisciplinary healthcare and legal networks who have supported this work.



Executive Summary

This Briefing Paper is intended to inform the development of an international legal instrument on the rights of older persons and to support its translation into domestic law, policy, services, professional practice, monitoring, and accountability. We adopt the World Health Organization (WHO) definition of Elder Abuse as it forms the foundation of over 30 years of science and research in this area:

“single or repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person.”

Elder Abuse is a profound violation of human rights. It takes many forms including psychological abuse, financial abuse, neglect, physical abuse, and sexual abuse. It is a global problem, ubiquitous across all cultures due to ageism, industrialization and population aging, although its meaning and manifestations may be shaped by culture. Mental health disorders and cognitive disorders may confer vulnerability to Elder Abuse, although Elder Abuse also occurs in the absence of such.

Undue Influence is a type of Elder Abuse and one of the primary mechanisms by which Elder Abuse is perpetrated. It is so ubiquitous that it is worthy of separate mention in any Treaty. Moreover, the current use of the term, regardless of the jurisdiction, is no longer fit for purpose from a human rights perspective. We instead suggest a more inclusive definition of Undue Influence:

“when others seek to gain either money, power or exercise control over another person during decision making by disinformation, persuasion, subversion of will, or coercion”.

Capacity Australia recommends extending the substantive human rights law by legislating the contents of the WHO definition of Elder Abuse and this more inclusive definition of Undue Influence.

Capacity Australia advocates for an Eyes Wide Open to Elder Abuse strategy globally and across all sectors inclusive of government, healthcare, social care, law and policy. An Eyes Wide Open to Elder Abuse approach is a binding responsibility of all healthcare, legal (including the judiciary) and financial professionals. Equally, upholding rights to autonomy, dignity, will and preferences must be at the forefront of mind when responding to Elder Abuse. Thus, safeguarding against abuse, essential to preventing and providing remedy for such violations, must be respectful of older persons' rights, will and preferences and avoid paternalistic interventions.

Any Treaty on the Rights of Older Persons must include a positive statement regarding the right to live freely from all forms of violence, neglect, abuse, exploitation and undue influence. Existing human rights guarantees, and accordingly, state obligations must be expanded to protect older persons against all forms of violence, neglect, abuse, exploitation and undue influence.

Introduction

Elder Abuse (EA) is a global phenomenon. It is an egregious violation of human rights, violating the rights to freedom from violence, neglect, abuse and exploitation, including torture, cruel, inhuman and degrading treatment.¹ Safeguarding against abuse, while respecting older persons' rights, will and preferences and avoiding paternalistic interventions, is essential to preventing and providing remedy for such violations. Yet, elder abuse is often underrecognized and unaddressed, with siloed approaches to its remedy, which instead must be founded upon collaborative efforts from healthcare, social care, law and policy.

In this Briefing Paper, Capacity Australia, supported by its global, multidisciplinary healthcare and legal networks, provides expert input into the nature of the problem, the nature of States' obligations and accountability, including duties to take specific measures to prevent and provide protection against and remedies for elder abuse and undue influence. The Paper provides a concise, human rights-based framework that integrates over 30 years of science, research and practice in this area together with clinical approaches, legal principles, and best practices in this area, collating a range of international approaches to this problem. The Paper builds on our previous submission to the OHCHR.²

The context for this paper is the decision by the United Nations Human Rights Council in 2025 of an Open-ended Intergovernmental Working Group for the elaboration of a legally binding instrument on the promotion and protection of the human rights of older persons (UNHRC resolution 58/13, adopted on 3 April 2025).³ Accordingly, this Briefing Paper is intended to inform the development of

¹ United Nations. Convention on the Rights of Persons with Disabilities. United Nations; 2006.

² Peisah C, de Mendonça Lima C, Banerjee D, Rabheru K, Ayalon L. (2023) WPA-SOAP, IPA & Capacity Australia submission: Response to the call for inputs on Violence against older persons – 2023 Human Rights Commission report. UN-OHCHR
<https://www.ohchr.org/sites/default/files/documents/cfi/subm-2023-07/subm-violence-abuse-neglect-cso-ipa-wpa.pdf>

³ United Nations Human Rights Council. Open-ended intergovernmental working group for the elaboration of a legally binding instrument on the promotion and protection of the human rights of older persons. A/HRC/RES/58/13. United Nations; 2025.

such an international legal instrument on the rights of older persons and to support its translation into domestic law, policy, services, professional practice, monitoring, and accountability.

The Paper is divided into five sections:

Section 1. Understanding Elder Abuse

Section 2. Competing rights of safeguarding, autonomy and dignity

Section 3. Current state of the art: Examples of good practices for addressing EA

Section 4 Gaps and remedies

Section 5: Translating this evidence into a legally binding instrument on the promotion and protection of the Human Rights of Older Persons

Section 1. Understanding elder abuse

1.1 Definitions and manifestations

Elder abuse (EA) is defined by the World Health Organization (WHO) as “a single or repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person.” Implicitly, this includes torture or cruel, inhuman or degrading treatment or punishment, but goes well beyond these categories of rights-violative conduct. EA takes many forms, this being part of the problem, recognizing the myriad ways by which elder abuse is perpetrated, a broader approach to identification, prevention and remedy is needed, mandating an Eyes Wide Open to Elder Abuse⁴ strategy globally. Broadly, EA encompasses, in order of prevalence: psychological abuse, financial abuse, neglect, physical abuse, and sexual abuse, although this varies according to setting (e.g. at home or in care) and reporting, recognizing that all EA abuse is under-reported^{5,6} with most victims suffering in shame and silence.

Financial abuse in particular is notoriously under-reported and under-prosecuted because formerly, family members (usually sons) were the most frequent perpetrators, this abuse often facilitated by execution of documents such as Wills and Financial Powers of Attorneys.⁷ However, financial abuse

⁴ Peisah, C., De Mendonça Lima, C., Verbeek, H., & Rabheru, K. (2021). IPA and WPA-SOAP joint statement on the rights of older persons with mental health conditions and psychosocial disabilities. *International Psychogeriatrics*, 1–5; Peisah C. Capacity Masterclass. Capacity Australia Workshop Series. Adelaide, 2026.

⁵ <https://www.who.int/news-room/fact-sheets/detail/abuse-of-older-people>

⁶ Du, P., Chen, Y. Prevalence of elder abuse and victim-related risk factors during the COVID-19 pandemic in China. *BMC Public Health* **21**, 1096 (2021)

⁷ Peisah C., et al., for the International Psychogeriatric Association Task Force on Wills and Undue Influence (2009) The wills of older persons: risk factors for undue influence *International Psychogeriatrics* 21(1) 7-15; see also O’Neill N., Peisah C. (2021) Capacity and the law. 4th Edition Australasian Legal Information Institute (Austlii) Communities <http://austlii.community/wiki/Books/CapacityAndTheLaw/>.

is ever-mutating in its manifestations with 40 definitions now described⁸ and ever-emerging opportunities for stranger-based abuse with internet-and tele-fraud. Furthermore, dependent older persons receiving care or reliant upon the support of others may be preyed upon by those in positions of trust who seek financial gain, such as paid carers (“predatorial caregiving”)⁹ or by marriage (“abuse by marriage” or “predatorial marriage”).¹⁰

Neglect is an important and hitherto under-recognized type of EA (manifest at home and in care settings alike). This is because it is often not understood that abuse may equally consist of a failure to act as much as an act of violence. Akin to this is the issue of unlawful deaths of older people that go largely unremarked or uninvestigated in the context of institutional neglect and invisibility, recently investigated by the United Nations (UN) Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.¹¹

Furthermore, just as older persons are neglected and abandoned¹², so too are they deprived of their liberty, the various forms of deprivation of liberty also constituting EA.¹³ Other types of EA under the radar include overuse of psychotropics, often without consent¹⁴, to manage changed behaviors in dementia rather than meeting the needs that underlie these behaviors. Recently light has been shone on sexual abuse, which most commonly occurs in care settings and predominantly involves abuse of women (though sexual abuse of men is likely under-reported); the perpetrators are most commonly facility employees or fellow residents. At the same time, there is great complexity around what is considered unlawful sexual contact and the right to intimacy and to express sexuality in care settings, particularly for those living with dementia¹⁵ (this will be discussed in Section 2). Finally, domestic violence and coercive control are other areas of EA that have previously been largely

⁸ Phelan A et al. Financial abuse of older people by third parties in banking institutions: a qualitative exploration *Ageing & Society* (2021), 1–22

⁹ *Waters v Frank; Frank v Waters* [2025] NSWSC 1389

¹⁰ Peisah C, Brodaty H, Bridger M. (2008) Abuse by marriage: The exploitation of mentally ill older people *International Journal Geriatric Psychiatry* 2008 Sep;23(9):883-8.

¹¹ Tidball-Binz, M., UN. Secretary-General, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions Extrajudicial, summary or arbitrary executions : note / by the Secretary-General. A/81/215

¹² Kardile MS, Peisah C Elder abuse by abandonment in India: a novel community awareness and intervention strategy. *Int Psychogeriatr.* (2017) 29(6):1035-1036.

¹³ de Mendonça Lima CA et al. IPA and WPA-SOAP position statement on deprivation of liberty of older persons with mental health conditions. *International Psychogeriatrics*, 2022. doi:10.1017/S1041610222000746

¹⁴ Peisah C, Jessop T. (2021) Australia’s problem with obtaining consent for psychotropic use in older people *Internal Medicine Journal. Intern Med J.*;51(4):604-607

¹⁵ Olga C Pandos, ‘The Legal Landscape Governing Sexuality and Intimacy of Older Persons with Dementia in Residential Aged Care: A Comparative Analysis’ (2026) 50(2) *UNSW Law Journal* (in press).

ignored, despite their prevalence.¹⁶ For example, in a United Kingdom (UK) national survey, violence experienced by older people was most frequently inflicted by an intimate partner.¹⁷

It is important to understand that abuse is a spectrum of behaviors and degrees of behaviors, which we often artificially dichotomize. In research, “cases” of abuse have been identified by setting thresholds for the severity or frequency of an abusive behavior that constitute “significant” abuse,¹⁸ which fails to capture abuse that falls below this threshold, yet is equally harmful and significant.

1.2 Epidemiological Data: how common is elder abuse?

A systematic review and meta-analysis demonstrated that EA affects approximately one in six (17%) older adults worldwide, roughly 141 million.¹⁹ It is a global phenomenon, that occurs in all cultures²⁰ although its reported prevalence and manifestations vary across cultures. For example, despite the frequently held assumption that filial piety is synonymous with Chinese culture and renders it immune to EA, Li et al,²¹ data from the 2010 Third Survey on Chinese Women’s Social Status of 3,516 community dwelling subjects, found a past-year prevalence of EA of 4% of Chinese older adults, with respective prevalence of psychological abuse and financial abuse of 3.9% and 2%. Similarly, in the UK, analysis of a 2014 general population probability sample survey identified that 2.0 % of 2750 participants aged 60 or over had reported any experience of violence, abuse, bullying, or serious assault in the previous year.²² Both of these studies reported abuse within general population surveys. However, few countries extract data such as this pertaining to older persons from general population surveys, yet alone collect data on elder abuse specifically in stand-alone studies. While realistically, the “true” prevalence of EA is unlikely to be captured, maximizing the ecological validity of data pertaining to elder abuse is important. Globally, dedicated surveys of cohorts of older

¹⁶ Capacity Australia Submission

¹⁷ Fadeeva A, Hashemi L, Cooper C, Stewart R, McManus S. Violence against older people and associations with mental health: A national probability sample survey of the general population in England. *J Affect Disord*. 2024 Oct 15;363:1-7.

¹⁸ Cooper, C, Livingston G, Intervening to reduce elder abuse: challenges for research, *Age and Ageing*, Volume 45, Issue 2, March 2016, Pages 184–185, <https://doi.org/10.1093/ageing/afw007>

¹⁹ Yon Y, et al Elder abuse prevalence in community settings: a systematic review and meta-analysis. *Lancet Glob Health*. 2017; 5(2):e147-e156.

²⁰ Peisah C, Tsoh J, Chiu HF. (2022) [Elder abuse among Chinese Older Adults: global lessons](#). *Int Psychogeriatr*. 34(8):689-690

²¹ Li Y, et al. Effect of physical frailty on elder mistreatment in a national survey: examining psychological vulnerability, housework involvement, and financial independence as mediators. *Int Psychogeriatr*. 2022;34(8):743-753

²² Fadeeva A, Hashemi L, Cooper C, Stewart R, McManus S. Violence against older people and associations with mental health: A national probability sample survey of the general population in England. *J Affect Disord*. 2024 Oct 15;363:1-7.

persons, which scientifically address methodological limitations (e.g. use of validated screening instruments, addressing participant response and recruitment issues and social bias) are needed.

In Australia, the National Elder Abuse Prevalence Study in 2021, conducted by the Australian Institute of Family Studies, was the first nation-wide study to estimate the prevalence of EA specifically.²³ Findings were derived from the ‘Survey of Older People’, which represented approximately 7,000 individuals aged 65 years and older, living in the community.²⁴ Participants were asked whether they had experienced any form of EA within the past 12 months. Of note, the survey did not include older persons living in residential aged care, or those who were unable to complete the survey due to cognitive decline.²⁵

According to the survey results, the prevalence of EA was estimated to be 14.8% of those who participated.²⁶ Findings also indicated that psychological abuse was the most common sub-type at 11.7%, followed by neglect (2.9%), financial abuse (2.1%), physical abuse (1.8%) and sexual abuse (1.0%).²⁷ Data also indicated that females were more likely to experience abuse (15.9%), in comparison to males (13.6%);²⁸ the broader issue of violence against women being recently brought to light by the UN General Assembly.²⁹ With respect to those perpetrating EA, the findings strongly confirmed that children of the older person were the most common perpetrators (at 18%).³⁰ Within each sub-category of abuse, children were primary perpetrators, except for neglect (23.9%) and sexual abuse (1.5%) were most commonly perpetrated by a spouse or partner.³¹ With respect to the remaining sub-types, the relevant percentages were as follows for children as perpetrators – financial abuse (33%), physical abuse (16.8%) and psychological abuse (17.8%).³²

²³ Qu et al, National Elder Abuse Prevalence Study: Final Report (July 2021); Qu et al, ‘Elder abuse prevalence among older people living in the community in Australia’ (2024) 59 *Australian Journal of Social Issues* 164.

²⁴ Ibid.

²⁵ Ibid 1.

²⁶ Ibid 2.

²⁷ Ibid 33.

²⁸ Ibid 30, 55.

²⁹ United Nations General Assembly, *Violence against women and girls, its causes and consequences: Note by the Secretary-General, Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, Violence against older women*, [A/81/133](https://digitallibrary.un.org/record/4123509/files/A_81_133-EN.pdf) (2026), https://digitallibrary.un.org/record/4123509/files/A_81_133-EN.pdf

³⁰ Qu et al, National Elder Abuse Prevalence Study: Final Report (July 2021); Qu et al, ‘Elder abuse prevalence among older people living in the community in Australia’ (2024) 59 *Australian Journal of Social Issues* 164, 71.

³¹ Ibid.

³² Ibid.

The recurring themes involving EA perpetrated by a son or daughter³³ are illustrated by the following situations:

- The notion of financial entitlement (so-called “inheritance impatience” or “inheritance conservation”) – the child’s inheritance is “due” or needed;
- Financial gain by selling the residence of the parent, who then moves (or is moved regardless of their will and preference) to a residential aged care facility;
- Changes to legal instruments, including enduring powers of attorney and wills, to favor the child or to provide them with power to access the parent’s funds;
- The child gaslights their parent (or others) to believe they have lost capacity and can no longer make decisions regarding their health, finances and lifestyle; and
- Befriender cases, whether they are opportunistic or planned. The perpetrator develops a friendship or romantic relationship with an older person as a prelude to financial exploitation or fraud.³⁴

It is important to highlight the limitations associated with data pertaining to the prevalence of EA. All EA data are likely under-estimations, contaminated by the aforementioned phenomenon of under-reporting and under-recognition. Its under-reporting is also indicative of a more complex issue in relation to the nature of the relationship between the perpetrator and the victim and the implications of reporting abuse. This is especially the case where an older person with capacity is aware they are in an abusive relationship but chooses to remain in that situation due to fear of reprisal and associated consequences.³⁵ Another form of coercion and reprisal is when an adult child threatens (sometimes by implication) that they will deprive their parent/ parents of contact with grandchildren if the parent does not acquiesce with providing service or money. Often, that older person makes a reasoned decision to remain in that abusive situation, seeing that situation as the “lesser of two evils.”³⁶ Finally, a major barrier to reporting is shame. This is particularly so when abuse involves family members, such as adult children, as perpetrators. Many older persons blame themselves for abuse perpetrated by children.

³³ Olga C Pandos, ‘A Protectionist versus Interventionist Approach to Adult Safeguarding – Capacity, Consent and Coercion’ (2025) *Journal of Elder Law and Capacity* 32.

³⁴ Olga C Pandos, ‘A Protectionist versus Interventionist Approach to Adult Safeguarding – Capacity, Consent and Coercion’ (2025) *Journal of Elder Law and Capacity* 32.

³⁵ Olga C Pandos, ‘A Protectionist versus Interventionist Approach to Adult Safeguarding – Capacity, Consent and Coercion’ (2025) *Journal of Elder Law and Capacity* 32; David Lock, ‘Decision-Making, Mental Capacity and Undue Influence: Action by Public Bodies to Explore the Grey Areas between Capacity and Incapacity’ (2015) 20(1) *Judicial Review* 42.

³⁶ Olga C Pandos, ‘A Protectionist versus Interventionist Approach to Adult Safeguarding – Capacity, Consent and Coercion’ (2025) *Journal of Elder Law and Capacity* 32, 39.

EA remains a complex and insidious problem because there are significant gaps in notification, data collection and reporting. In many countries we are unaware of the nature and extent of the problem and thus do not turn our minds to its existence or remedy.

1.3 Cultural determinants of Elder Abuse

Understanding the way EA manifests in different cultures and different cultural expectations regarding EA is key to a nuanced global remedy. We have emphasized that EA is global and ubiquitous regardless of culture. In explaining this, and why EA is prevalent and increasing in Eastern cultures despite Eastern reverence for older persons, North and Fiske have postulated that both industrialization and modernization have caused the devaluation and loss of role of older persons; while population aging (at a more rapid pace in some countries “*speed of population aging*”) has placed unprecedented pressure on societies to accommodate older persons.³⁷ In their literature review and meta-analysis, sampling 23 countries with 21,093 total participants, they found that there were higher levels of “senior derogation” (i.e. deprecation of older persons) emerging in East Asia compared with South Asia and Southeast Asia; and in “non-Anglophone Europe” compared with “Anglophone Western countries” (i.e. Australia, Canada, New Zealand, United Kingdom and the United States).³⁸ They also found that contrary to beliefs regarding individualistic and collectivist societies individualism significantly predicted positive attitudes towards older persons.³⁹ However, it is important to note that what is regarded as “negative” in Western individualistic cultures – such as abrogation of autonomy and overriding of decision-making, may be accepted and normalized in other collectivist cultures. Thus, while certain behavior may be deemed abusive in some cultures, in others it may not.

1.4 Understanding mechanisms of abuse: Undue Influence

Undue influence is one of the primary mechanisms by which elder abuse is perpetrated. It is worthy of separate cover as acknowledged in Article 12 of the Convention on the Rights of People with Disabilities (CRPD) (United Nations Treaty Collection, 2016).⁴⁰ The term undue influence emerged

³⁷ North MS, Fiske ST. Modern Attitudes Toward Older Adults in the Aging World: A Cross-Cultural Meta-Analysis. *Psychol Bull.* 2015 Sep;141(5):993-1021.

³⁸ *Ibid.*,

³⁹ *Ibid.*,

⁴⁰ Article 12(4) CRPD provides in part: “States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are **free of** conflict of interest and **undue**

initially as a legal construct in late 19th century English case law in relation to will-making where it was considered synonymous with coercion.⁴¹ Today, claims of undue influence remain an important part of both challenges to the validity of wills and also to the validity of inter-vivos transactions (i.e. within life, based on the Latin meaning: “between the living”), for example when gifts are made or contracts concluded.⁴² Historically, these undue influence doctrines had different legal origins, something reflected in the different evidentiary criteria for invalidating a will as opposed to an inter-vivos transaction. Coercion was the basis of invalidation of wills under ecclesiastical and then probate jurisdictions, later also labelled “undue influence”, while “undue influence” in the courts of Chancery developed as an equitable doctrine and had broad application to many types of transactions. It is important to note that this is the case in Common Law jurisdictions, whereas in other Civil or Codal law systems, the issue of undue influence at least in relation to will-making has received little attention due to laws that prescribe significant portions of one’s estate to be left to family members.⁴³

In fact, today undue influence is so ubiquitous when others seek to gain either money, power or control, usually over an older person, including older persons with disability, during any decision making, that restriction of the term to the original legal construct of coercion, with application only to will-making or execution of contracts or other documents is no longer inclusive enough.⁴⁴ The current use of the term, regardless of the jurisdiction, is no longer fit for purpose from a human rights perspective. We therefore suggest the following definition of the term:

when others seek to gain either money, power or exercise control over another person during decision making by disinformation, persuasion, subversion of will or coercion.

Some years ago, an international task force identified several widely accepted risk factors for undue influence in will-making.⁴⁵ While developed in the context of determination of testamentary capacity, these risk factors have relevance for all situations in which undue influence is exerted:⁴⁶

influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body.”

⁴¹ Wingrove v Wingrove (1885) 11 PD81, 82,

⁴² Peisah C., et al., for the International Psychogeriatric Association Task Force on Wills and Undue Influence (2009) The wills of older persons: risk factors for undue influence *International Psychogeriatrics* 21(1) 7-15;

⁴³ Ibid.,

⁴⁴ Ibid.,

⁴⁵ Ibid.,

⁴⁶ O'Neill N., Peisah C. (2021) Capacity and the law. 4th Edition Australasian Legal Information Institute ([AustLII](http://austlii.community/wiki/Books/CapacityAndTheLaw/)) Communities <http://austlii.community/wiki/Books/CapacityAndTheLaw/>

1. Relationship risk factors

- (i) A favoured beneficiary and recipient of shifted alliances was in a position of trust;
- (ii) The person is dependent on the favoured beneficiaries for assistance.

2. Social or environmental risk factors

- (i) The isolation and sequestration of the person;
- (ii) Changes in family relationships/dynamics
- (iii) Recent bereavement
- (iv) Family conflict⁴⁷

3. Psychological and physical risk factors

- (i) Physical disability
- (v) Non-specific psychological factors such as deathbed Wills, sexual bargaining, serious medical illness with dependency and regression
- (vi) Personality disorders
- (vii) Substance abuse
- (viii) Mental disorders including dementia, delirium, mood and paranoid disorders

4. Legal risk factors

- (i) A beneficiary instigates or procures the Will or other document;
- (ii) The contents of the Will include unnatural provisions;
- (iii) The contents favour the beneficiary;
- (iv) The contents are not consistent with previous wishes
- (v) Other documents have been changed at the same time

Undue Influence operates in a raft of decision-making contexts, usually in relation to the execution of documents such as Powers of Attorney and Enduring Guardianship, as well as gifting. Other contexts include in relation to health decisions and decisions around voluntary assisted dying (medical assistance in dying)⁴⁸ and relationships.

⁴⁷ Peisah C, Brodaty H, Quadrio C. (2006) Family conflict in dementia: prodigal sons & black sheep Int J Ger Psychiatry 21(5):485-492

⁴⁸ Wand A., Peisah C, Draper B, Brodaty H (2018) The nexus between elder abuse, suicide, and assisted dying: the importance of relational autonomy and undue influence Macquarie Law Journal 18: 79-92

Case 1 illustrates undue influence and financial abuse (through gifting, overpaying for services and will-making) by a predatorial caregiver.

CASE 1

Mr X was 81 years old. He lived alone at home and had a diagnosis of dementia. He was widowed with three sons who had been appointed as his Enduring Guardians and Attorneys under a Power of Attorney. A paid domestic assistant was engaged to assist Mr X on a part-time basis.

Within three months of starting work for Mr X, the carer expressed opinions about his welfare and took it upon herself to instigate and facilitate decision-making pervasively across his life, replacing and overriding the decisions of his duly-appointed, natural decision-makers, his daughters. This ranged from his health decisions, including major surgery, change of surgeons and use of antidepressants, to his financial affairs, travel, sale of his family home, moving from his accommodation and financial settlement of a compensation case. X had total trust in the carer, over his family, and was so highly emotionally dependent on her that he was unable to interact with any health, legal or financial professional without her presence. In addition to receiving her pay (which she organized herself using his computer, and was far in excess of that owed to an untrained domestic assistant), she orchestrated a range of gifting, including cars and overseas trips.

This resulted in conflict with his daughters, which the carer fueled, ultimately leading to estrangement from his daughters.

Over the years the carer worked for him he made her a beneficiary of his estate, progressively increasing her share from zero bequest, to 10%, 25% and finally 40%.

1.5 Understanding mechanisms of abuse: intersectionality and vulnerability

Vulnerability, invisibility, ableism, mentalism, ageism, and racism are experienced by specific groups of older persons (e.g. older women, older LGBTQIA+ persons, older persons from ethnic and indigenous groups, older refugees and internally displaced persons, older persons with mental health disorders and psychosocial disabilities) variously rendering them vulnerable to abuse. A risk and vulnerability model has identified risk factors for EA, incorporating characteristics of the caregiver including personality, mental illness, substance abuse, caregiver burden and burnout; and vulnerability factors related to the older person including mental illness,⁴⁹ cognitive impairment,

⁴⁹ Seniors Rights Victoria at COTA Victoria, 2021. Elder abuse, mental health and wellbeing: Discussion paper. Melbourne: SRV.

isolation, bereavement, family conflict,⁵⁰ sequestration⁵¹ and impaired physical health. Female gender represents one source of such vulnerability, with women being the most common victims of EA. Finally, societal ageism allows ageism to go unaddressed and ignored with preferential focus on younger populations in policy and law (e.g. narrow definitions of domestic violence offences),^{52,53} exacerbated by internalized ageism (e.g. “I am old and I don’t deserve better”).⁵⁴

A hitherto neglected cause of abuse is the current pandemic of loneliness,⁵⁵ which explains the way need for social connection, companionship, love or intimacy can be exploited by others, whether they be family members, carers or internet scammers. It is important to understand the relational aspects of elder abuse, with vulnerability and trust being at the core of its foundation, often in a setting of sibling rivalry, family conflict and greed⁵⁶, against the background of the “Great Wealth Transfer” in high OECD countries, the largest recorded intergenerational wealth transfer from aging Baby Boomers to younger generations. Thus, while disability, conferred by mental illness, cognitive impairment and impaired physical health are risk factors for elder abuse, they are not prerequisites for elder abuse. For all the reasons outlined above, older persons without such disorders can be at risk of elder abuse as well.

Vulnerability can also be conferred by dependency, conferred by support needs due to age-associated health conditions or frailty.⁵⁷ The issue of dependency was recently addressed by the United Nations Independent Expert on the Enjoyment of All Human Rights by Older Persons:

⁵⁰ Peisah, C Brodaty H; Quadrio C. (2005) Family conflict in dementia: prodigal sons and black sheep *Int Psychogeriatrics* 17(Suppl 2): 165

⁵¹ A term used to refer to deliberate isolation and separation of a person from others to secure influence over that person (e.g. phone numbers are changed or phone contact with the person is limited, the house in which the person lives is heavily barred or no-one ever seems to be home); See Peisah C., et al., for the International Psychogeriatric Association Task Force on Wills and Undue Influence (2009) The wills of older persons: risk factors for undue influence *International Psychogeriatrics* 21(1) 7-15;

⁵² Capacity Australia Submission to The New South Wales (NSW) Department of Communities and Justice on the Review of the NSW Coercive Control Law.

⁵³ Ayalon, L., & Avidor, S. ‘We have become prisoners of our own age’: from a continuing care retirement community to a total institution in the midst of the COVID-19 outbreak. *Age and Ageing*. 2021 <https://doi.org/https://doi.org/10.1093/ageing/afab013>

⁵⁴ Pillemer, K., Burnes, D. & MacNeil, A. Investigating the connection between ageism and elder mistreatment. *Nat Aging* 1, 159–164 (2021).

⁵⁵ Ong AD, Uchino BN, Wethington E. Loneliness and health in older adults: a mini-review and synthesis. *Gerontology*. 2016; **62**: 443-449.

⁵⁶ Peisah, C Brodaty H; Quadrio C. (2005) Family conflict in dementia: prodigal sons and black sheep *Int Psychogeriatrics* 17(Suppl 2): 165

⁵⁷ Hill, T, Cortis, N, Hamilton M, Peisah C.. (2024) From rationing to rights: measuring unmet care needs to transform aged care systems Ch 4. in Kröger, T, Brimblecombe, N, Rodrigues R, Rummery K. Care Poverty and unmet Needs. Policy Press. Wylie

“Older persons continue to encounter barriers to the equal enjoyment of their rights because laws, policies and services are often designed without sufficient attention to the realities of increasing support needs, or based on assumptions about independence, family availability or institutional care, rather than being designed around autonomy with support.”⁵⁸

The issue of autonomy is crucial here, lest over-emphasis on vulnerability and dependence. Notably, the Independent Expert emphasised:

“increasing reliance on care and support does not diminish personhood, legal capacity or entitlement to the equal enjoyment of human rights.”

1.6 Elder Abuse and dementia

While we have specifically noted that elder abuse is NOT contingent upon the presence of disabilities such as dementia, it is crucial that having one’s fundamental human rights protected, including by an appropriate safeguarding framework, remains fully enjoyed amongst those living with dementia, which affects about 57 million people globally, with global prevalence of 6.97% among individuals aged ≥50 years.⁵⁹⁻⁶⁰ The UN Independent Expert on the enjoyment of all human rights by older persons, noted:

“Human rights do not cease to apply when cognition changes, when support becomes necessary, or when communication requires new forms of recognition. Rather, these circumstances challenge States and societies to ensure that existing rights continue to be recognized, exercised and realized throughout changing circumstances. The task is therefore not to redefine human rights for older persons living with cognitive impairment, but to reaffirm their universality.”⁶¹

We would add that the task is also to take measures to prevent such violations and to protect older persons living with cognitive impairment against violations by others by having in place effective laws, regulatory frameworks and services such as safeguarding regimes.

⁵⁸ Pirtošek, Z. The human rights of older persons : note / by the Secretary-General. [Report of the Special Procedure of the Human Rights Council](#); [Report of the Independent Expert on the Enjoyment of all Human Rights by Older Persons](#), A/81/177

⁵⁹ Cao Q, Tan CC, Xu W, *et al* The Prevalence of Dementia: A Systematic Review and Meta-Analysis. J Alzheimers Dis 2020;**73**:1157–66

⁶⁰ Rahman M, Saha T, Nayeem MAJ, Tabassum A, Abdullah I, Sultana S, Jahan I, Hasan I, Hayat S, Papri N, Mohammad QD, Islam Z. Alzheimer's disease and related dementias in South and Southeast Asia: a systematic review and meta-analysis of epidemiology and associated factors. BMJ Open. 2026 Sep 23;16(9):e118140.

⁶¹ Pirtošek, Z. Cognitive impairment and the continuing exercise of human rights by older persons Report of the Independent Expert on the enjoyment of all human rights by older persons, A/HRC/63/35

CASE 2

Mrs X is 84 years old. She lives in a multigenerational household with her daughter and son-in-law and grandchildren. She moved to Australia a few years ago from her home country of India when she needed more care. Her daughter works part time and is her fulltime carer. Mrs X does not want home carers and would not find it culturally acceptable to receive help from strangers.

Mrs X sleeps poorly at night, keeping the family awake. To prevent her waking the grandchildren, the family sometimes lock her in her bedroom. Her daughter feels bad but feels she has no other options. Her mother has recently been refusing to wash. Recently when her daughter tried to encourage her mother to use the shower and she refused, her daughter shouted at Mrs X and handled her roughly.

Mrs X felt frightened when this happened but would not feel able to discuss it with other family members through fear of losing her home. She has no rights to benefits in Australia and no individual income. She was diagnosed with dementia by her GP but the family declined follow-up care on her behalf, saying they could manage.

People living with dementia are at high risk of abuse. Abuse is defined by the impact, rather than intention of actions or inactions on an individual. As illustrated in case study 2, a carer may unintentionally be neglectful if they are unaware of a care recipient's needs or how to address them, especially if they are unable or unwilling to access support from care services. In a UK survey of family carers of people with dementia, around a third reported perpetrating significant abusive behaviors towards the care recipient, and experiencing aggression from the person they care for was a strong predictor of this.⁶²

People with dementia are at high risk of abuse; they are more likely to rely on others to provide care and may be less able to report perpetrated abuse. Professionals working with older people have a responsibility to screen for abuse and act appropriately where suspicions are raised, but are often reluctant to ask about abuse, perhaps because of a fear that discussing and acknowledging it would trigger a punitive response such as removal of the person with dementia.⁶³ Abuse is too often perceived as a rare action purposefully perpetrated by amoral abusers, in contrast to most carers who would never act abusively. While professionals have a duty to make a referral for the protection of an adult if they believe that someone is being harmed or is at significant risk of being harmed, it is

⁶² Cooper C, Selwood A, Blanchard M, *et al* . Abuse of people with dementia by family carers: representative cross sectional survey. *BMJ* 2009;338:b155; see also Cooper C, Selwood A, Blanchard M, *et al* Abusive behaviour experienced by family carers from people with dementia: the CARD (caring for relatives with dementia) study *Journal of Neurology, Neurosurgery & Psychiatry* 2010;81:592-596..

⁶³ Cooper C, Selwood A, Livingston G Knowledge, Detection, and Reporting of Abuse by Health and Social Care Professionals: A Systematic Review *The American Journal of Geriatric Psychiatry*, 17, 826-838

also important to detect and manage abusive behavior below this threshold. This may help to prevent more serious abuse.⁶⁴ Very high rates of elder abuse have been reported in residential aged care facilities. In a survey of 1544 staff in 92 English care home units, half of care home staff reported carrying out or observing potentially abusive or neglectful behaviors at least sometimes in the preceding 3 months.⁶⁵

1.7 Consequences of abuse

The impacts of EA are severe in many cases and EA is associated with increased rates of depression, anxiety, drug and alcohol abuse, chronic pain, as well as overall morbidity and mortality.

Section 2. Competing rights of safeguarding, autonomy and dignity

Any human rights framework must place human rights to dignity, autonomy, agency, and informed decision-making at the forefront while safeguarding from abuse.⁶⁶ This impacts a number of areas in which abuse occurs. Given what we know about older persons' shame and reluctance to notify, respect for autonomy and dignity must be incorporated into any remedy. We subsequently note in Section 3.3.2 that it is critical that when a person has decision-making capacity (which is presumed), the person's decision to refuse a safeguarding intervention is respected. When a person has impaired decision-making capacity in relation to a safeguarding intervention, the person should be provided with appropriate support so that they can reach and communicate their decision on whether or not they wish to accept that intervention. Safeguarding measures that might be offered to persons with capacity living in abusive situations might include additional independent supports and oversight mechanisms.

⁶⁴ Cooper C, Selwood A, Blanchard M, *et al* . Abuse of people with dementia by family carers: representative cross sectional survey. *BMJ* 2009;338:b155;

⁶⁵ Cooper C, Marston L, Barber J, Livingston D, Rapaport P, Higgs P, Livingston G. Do care homes deliver person-centred care? A cross-sectional survey of staff-reported abusive and positive behaviours towards residents from the MARQUE (Managing Agitation and Raising Quality of Life) English national care home survey. *PLoS One*. 2018 Mar 21;13(3):e0193399.

⁶⁶ Peisah C Kotze C, Swantek S., Legal Capacity, Abuse, Neglect, Coercion and Safeguards. *American Journal Geriatric Psychiatry* In Press

Another example is when the sexuality of older persons is viewed through a criminal law lens, creating tension between competing human rights to protection against abuse by others in contrast to the rights to autonomy, dignity and human relationships.⁶⁷

Section 3. Current state of the art: Examples of good practices for addressing EA

Over time, EA has been subject to a constellation of research, political debate and policy and legislative reform, it being beyond scope for this submission to inclusively capture all approaches to addressing EA. Here we adopt a Prevention model to categorize some illustrative examples of best practice and their limitations into three levels: Primary, Secondary, and Tertiary. This model, framed around the timing of intervention, namely before the problem occurs, early on, or when it is established, offers hope.

3.1 Primary EA prevention

Primary prevention aims to prevent EA before it occurs.

3.1.1 National plans and commissions that address elder abuse

It is beyond the scope of this submission to review all policy and institutional frameworks; but rather it provide examples from countries across different regions. The following countries have national plans, policies strategies addressing EA (this list being non-inclusive)⁶⁸:

⁶⁷ Peisah C, Ayalon, L, Verbeek H, Benbow SM, Wiskerke E, Rabheru K, Sorinmade O (2021) Sexuality and the human rights of persons with dementia *The American Journal of Geriatric Psychiatry* 29(10):1021-1026. See Also: Sorinmade O., Ruck Keene A, Peisah, C. (2021) Dementia, Sexuality and the Law: the case for advance decisions on intimacy" *The Gerontologist* 61(7):1001-1007. Also : Sorinmade O, Peisah C. Promoting Human Rights around Intimacy for People Living with Dementia: A Psychiatric Perspective. In: Clough B, Pritchard-Jones L, eds. *Mental Capacity Law, Sexual Relationships, and Intimacy*. Bristol University Press; 2024:118-144. <https://www.cambridge.org/core/books/abs/mental-capacity-law-sexual-relationships-and-intimacy/promoting-human-rights-around-intimacy-for-people-living-with-dementia-a-psychiatric-perspective/5DD82FDF55943861A34AAFD4E456B3B7>; see also Sorinmade, O, Ruck Keene, A; Peisah, C. The Law, Dementia and Sexuality- Is the Law striking the right balance?" *The Gerontologist*. 2024 64(11):gnae112; Olga C Pandos, 'The Legal Landscape Governing Sexuality and Intimacy of Older Persons with Dementia in Residential Aged Care: A Comparative Analysis' (2026) 50(2) *UNSW Law Journal* (forthcoming).

⁶⁸ See: Tackling abuse of older people: five priorities for the United Nations Decade of Healthy Ageing (2021–2030). Geneva: World Health Organization; 2022. For a comprehensive review of Western Pacific Region see: Ayalon, L., & Roy, S. (2022). A viewpoint on combatting ageism in the western pacific region. *The Lancet Regional Health-Western Pacific*, 100593.

- (a) UK;⁶⁹
- (b) Phillipines⁷⁰
- (c) Australia;⁷¹
- (c) Israel;⁷²
- (d) Cambodia;⁷³
- (e) US.⁷⁴
- (f) Brazil. ⁷⁵

3.1.2 Awareness raising amongst older persons

EA is under-recognized and under-reported. Ignoring the problem is a major impediment to obliterating the plague of EA, with awareness-raising being key to addressing elder abuse. Awareness raising will be the means to empowerment of older persons and will hopefully obliterate shame and uncloak the invisibility associated with EA. Shame, stigma and fear of disrupting family harmony are key reasons globally why incidents of abuse go unreported and under-prosecuted, strategies being required to empower older adults to report abuse, or even earlier in the cycle, perceive the behavior as abuse in the first place. Awareness raising is also crucial to address the targeting of older persons in scams and fraud, exponentially increased since the pandemic.⁷⁶ Several countries have employed media-based community-wide awareness raising

⁶⁹ UK has led the way in this area, see National Care Line

<https://www.thenationalcareline.org/AccessingHelp/ActionOnElderAbuse> among numerous initiatives

⁷⁰ The Commission on Human Rights (Phillipines) (*Komisyong ng Karapatang Pantao*);

⁷¹ Australian Law Reform Commission National Legal Response to Elder Abuse (made 43 recommendations for law reform www.alrc.gov.au/publication/elder-abuse-a-national-legal-response-alrc-report-131/; and the National Plan to Respond to Abuse of Older Australians www.ag.gov.au/sites/default/files/2020-03/National-plan-to-respond-to-the-abuse-of-older-australians-elder.pdf

⁷² Israel has a national program that is operated at the municipal level and consists of a multidisciplinary team that is dedicated to the prevention of elder abuse and neglect. See Alon, S., & Yoz, F. (2014) A guide for the development of units for elder abuse prevention and ways of operating them. Jerusalem, Israel: The Joint Israel Eshel. Available online: www.thejoint.org.il/en/wp-content/uploads/sites/2/2021/03/JDC-Eshel_Prevention-of-Abuse-and-Neglect-of-Older-Adults_2016.pdf;

⁷³ Cambodia's "National Aging Policy 2017-2030" recognizes that, "with pressures of caregiving mounting on younger family members they may feel trapped in the role of caregiver and tend to neglect or even abuse older persons".

⁷⁴ The US has a comprehensive programme of Adult Protective services; Long-term Care Ombudsman Programs, Forensic Centres and Multidisciplinary teams. See <https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx#response>

⁷⁵ de Souza TA, Gomes SM, Barbosa IR, de Lima KC. Action plan for tackling violence against older adults in Brazil: analysis of indicators by states. *Rev Bras Geriatr Gerontol* 2020; 23(6): <https://doi.org/10.1590/1981-22562020023.200106>

⁷⁶ Payne, B K. Criminals Work from Home during Pandemics Too: a Public Health Approach to Respond to Fraud and Crimes against those 50 and above. *American Journal of Criminal Justice*, 2020, 1-15. <https://doi.org/10.1007/s12103-020-09532-6>

programs. Building on such awareness, “Individualized safety plans” that capture the older person’s will and preferences to maximize safeguarding while preserving autonomy, provide excellent examples of good practice.⁷⁷

3.1.3 Empowerment of older people and reducing vulnerability.

Elder abuse occurs within a context of intersectionality and vulnerability conferred by ageism, invisibility, ableism, mentalism and loneliness. Solutions lie in targeting these risk factors at both a systemic and individual level, while empowering older persons at the same time.⁷⁸ Firstly, the COVID pandemic highlighted that mitigating marginalization, isolation and invisibility with regular contact and communication with older persons, particularly those living alone is important.⁷⁹ Recognizing the vulnerability of those supported by and reliant on a single caregiver to predatorial caregiving is equally important.

Secondly, another albeit untested proposal is to increase the financial autonomy of older persons by increasing their income and amplifying social security and welfare support to reduce dependence on adult children in particular, the most frequent perpetrators of EA.⁸⁰ Notably, the four strategic objectives of Morocco’s National Ageing Strategy⁸¹ focus on poverty reduction and securing a continuous income for older persons, strengthening social assistance, provision of a minimum income for all older persons, and enabling older persons to remain in employment after retirement.

Thirdly, surrogate or substituted decision making (both self-appointed and tribunal-appointed) can be important processes supporting either autonomy or safeguarding, depending on their use at different stages of the elder abuse cycle. For example, planning-ahead documents such as Enduring Powers of Attorney and Enduring Guardianship can provide a means of asserting voice and promoting autonomy when a person has capacity, in anticipation of possible loss of that capacity, assuming such appointments are not subject to undue influence. With established EA, supported

⁷⁷ Han, SD, & Mosqueda, L. Elder Abuse in the COVID-19 Era. *Journal of the American Geriatric Society*, 2020;68, 1386-1387.

⁷⁸ Benbow, S. M., Bhattacharyya, S., Kingston, P., & Peisah, C. (2022). Invisible and at-risk: Older adults during the COVID-19 pandemic. *Journal of Elder Abuse & Neglect*, 34(1), 70-76.

⁷⁹ Han, S. D., & Mosqueda, L. (2020). Elder abuse in the COVID –19 era. *Journal of the American Geriatric Society*, 68(7), 1386–1387. <https://doi.org/10.1111/jgs.16496>; see also Hwang, T. J., Rabheru, K., Peisah, C., Reichman, W., & Ikeda, M. (2020). Loneliness and social isolation during the COVID-19 pandemic. *International Psychogeriatrics*, 32(10), 1217–1220.

⁸⁰ Du P. and Chen Y. (2021). Prevalence of elder abuse and victim related risk factors during the COVID-19 pandemic in China. *BMC Public Health*. 21:1096

⁸¹ Strategie Nationale de la Sante des Personnes Agees 2024-2030

decision-making should be adopted followed by last resort appointment of independent substitute decision makers, to mitigate the impact of EA.

3.1.4 Addressing relational context of elder abuse

Providing support to over-burdened carers ("trusted others," some of whom themselves may be vulnerable) is integral.⁸² Awareness of the potential for elder abuse amongst those employing paid caregivers is essential.

3.2 Secondary prevention

Secondary prevention focuses on early detection and intervention with EA.

3.2.1 Professional Education

Probably the most "bang for our buck" in addressing EA is detecting it when it occurs. Thus, an "Eyes wide-open approach"⁸³ to elder abuse amongst all professionals and frontline personnel working with older persons is key to this. Healthcare professionals (especially those delivering primary health care) are in ideal positions to provide early identification, support, and referral of persons experiencing EA. However, they need the knowledge and skills in order to do so. Training programs abound in high income countries in healthcare but are almost non-existent across law, justice and finance.

3.2.2 Professional detection and early action

Active screening is the means to actualize detection. There is a plethora of screening tools available and there have also been recommendations to modify existing community assessment tools used for health assessments of older persons to improve their sensitivity in detecting elder abuse.⁸⁴

Professionals need to be prepared to raise questions about abuse sensitively with older adults and their families and to talk about it and about possible sources of support.⁸⁵ Such approaches can promote autonomy and offer supported decision making if there is loss of capacity, preventing

⁸² Han, SD, & Mosqueda, L. Elder Abuse in the COVID-19 Era. *Journal of the American Geriatric Society*, 2020;68, 1386-1387

⁸³ Peisah, C., De Mendonça Lima, C., Verbeek, H., & Rabheru, K. (2021). IPA and WPA-SOAP joint statement on the rights of older persons with mental health conditions and psychosocial disabilities. *International Psychogeriatrics*, 1–5.

⁸⁴ Hall, Y., Smith, J., Turner, R.M. *et al.* Creating opportunities to improve detection of older adult abuse: a national interRAI study. *BMC Geriatr* **22**, 220 (2022).

⁸⁵ Benbow SM & Kingston P. Spontaneous concerns about risk and abuse reported by people with dementia and their carers. *The Journal of Adult Protection* (2017) 19 (2): 92-99.

further abuse and mitigating the need for prosecution when the EA involves family members. This is illustrated in Case 3.

Case 3

A man in his 70s in a clinic talked about having to give his son money as otherwise he would stop helping him and might even stop seeing him - the man and his wife had physical health needs and relied on help from their son. The man didn't want anything done about the issue and he had capacity, but he and the professional had a conversation about possible sources of help and how this would be seen by other people as financial abuse - he was surprised to hear it labelled as abuse and hadn't thought of it in that way. He felt empowered by this conversation.

3.3 Tertiary Prevention: addressing EA, remedies, reparation and restoration of rights.

Tertiary prevention helps address established EA.

3.3.1 Legal, policy and institutional frameworks

It is beyond the scope of this submission to review all legislative frameworks. However, we rather provide examples of legislation against Elder Abuse (EA) from countries in different regions, namely:-

- (a) US;⁸⁶
- (b) UK;⁸⁷
- (c) Philippines⁸⁸;
- (d) Malaysia;⁸⁹
- (e) China.⁹⁰

⁸⁶ Social Security Act of 1974, provided federal funding to states to develop Adult Protective Services;

⁸⁷ Care Act (2014) in which Safeguarding Adult Boards(SABs) became a statutory requirement in all local authority Social Services

⁸⁸ Anti-Elder Abuse Act [2018], provides for penalties for acts of abuse committed on older individuals who are increasingly perceived as a "burden" on families

⁸⁹ the Older People Act known as "Akta Khusus Warga Emas" under the Ministry of Women, Family and Community Development;

⁹⁰ The Protection of the Rights and Interests of Elderly People (also known as the Filial Piety Law) which legislates for the "ironclad cultural norm" of filial piety (Xiào) and expectation that Chinese families will provide support to their parents. These prescriptive care laws may be protective in some ways but also carry their own burdens, and do not preclude EA. For discussion, see: Bu, Qingxiu. (2021). To Legislate Filial Piety: Is the Elderly Rights Law a Panacea? Statute Law Review, 42 (2), 219–240 <https://doi.org/10.1093/slr/hmz010>; also Dong X. Elder Rights in China: Care for Your Parents or Suffer Public Shaming and Desecrate Your Credit Scores JAMA Intern Med. 2016; 176(10): 1429–1430

3.3.2 Safeguarding Units

There are national and state Safeguarding Units and National Centres for Elder abuse.⁹¹ Such units operate at various levels of prevention, at Secondary levels for those vulnerable to abuse, or Tertiary levels, for those with known or existing abuse. A case example of a safeguarding unit is in South Australia (an Australian State), where an Adult Safeguarding Unit was established in 2019 to address the increasing prevalence of EA.⁹² Upon its establishment, it was intended to operate as a state-wide service to respond to cases of suspected or known abuse of older adults (aged 65 years and older). However, in 2022, it deviated from its primary purpose of addressing EA only. Currently, it responds to reports of suspected or known abuse of any ‘relevant adult’, who is an individual 18 years and older, ‘who may be vulnerable to abuse.’⁹³ The Adult Safeguarding Unit is given powers under the law to take certain actions, including referral to other bodies and investigation of the complaint. Importantly, prior to pursuing a safeguarding response (such as an application to a court or tribunal or providing formal supports), a relevant adult must consent to this intervention.⁹⁴

Although aspirational in their intent, such models to address EA are not unproblematic. First, anecdotal evidence has emphasized the need for adequate resourcing to cater for the workload of the relevant body vested with functions to support an individual subject to EA. Second, greater focus on prevention and specific safeguarding mechanisms are needed. Often, the abuse escalates to an unacceptable level, before the law is subsequently enlivened to implement safeguarding measures. Third, the regulatory complexity remains for individuals who have capacity and what recourse ought to apply where the presence of undue influence or coercion is such that it may abrogate their capacity to make a decision regarding their situation.⁹⁵ It is critical to reinforce that where an individual has capacity and chooses to refuse further safeguarding intervention, their decision must be respected. However, to assist in guiding decision-makers in circumstances where capacity is questioned, due to the severity of undue influence or coercion, the following factors were identified (with reference to the approach in England and Wales) and subsequently enumerated in the South Australian Adult Safeguarding Unit’s Code of Practice:

⁹¹ For example in Australia, South Australian Adult Safeguarding Unit (2026) established *Ageing and Adult Safeguarding Act 1995* (SA); In Ireland see Law Commission of Ireland, *A Regulatory Framework for Adult Safeguarding* (Report, Vol 2, 2024) 344–347; In the UK safeguarding was established with the Care Act 2014, https://www.ageuk.org.uk/siteassets/documents/factsheets/fs78_safeguarding_older_people_from_abuse_fc_s.pdf; In the US see [National Center on Elder Abuse](https://ncea.usc.edu) <https://ncea.usc.edu>

⁹² *Ageing and Adult Safeguarding Act 1995* (SA).

⁹³ *Ibid* ss 3, 15.

⁹⁴ *Ibid* s 28.

⁹⁵ Olga C Pandos, ‘A Protectionist versus Interventionist Approach to Adult Safeguarding – Capacity, Consent and Coercion’ (2025) *Journal of Elder Law and Capacity* 32.

'In determining whether an exception to seeking consent applies in a particular case, the Unit will consider the:

- seriousness of the abuse (whatever form(s) it may take)
- decision-making capacity of the adult
- adult's autonomy and right to make 'poor decisions'
- nature/dynamic of the relationship and its significance to the adult
- influence of culture, family and language
- underlying premise of the influence (religion, cultural expectation/norm, obligation)
- risk of displacement or destitution from preferred residence
- validity of consent and whether a decision was made freely and voluntarily
- presence of psychological abuse and its severity and effects
- potential outcomes of the proposed actions for the adult who may be vulnerable to abuse and any other relevant parties
- presence of coercive conduct (if any) and whether it justifies the Unit's intervention.

Any decision to act without consent should be necessary, reasonable and proportionate and requires the approval of the Director, Office for Ageing Well or their delegate.⁹⁶

This approach was also cited by approval by the Law Commission of Ireland in their review of adult safeguarding laws.⁹⁷ It is also imperative to reinforce that in these specific situations, where an individual's capacity is challenged due to the presence of undue influence or coercion, a clinical capacity assessment is required. This must be undertaken by a medical or health practitioner (such as a psychiatrist, geriatrician or neuropsychologist) with the requisite knowledge and expertise to do so. To override an individual's decision to refuse safeguarding intervention is a significant abrogation of their rights.

3.3.4 Establishment of complaints bodies

There are international examples of the establishment of complaints bodies. Two examples are: (i) the State Comptroller and Ombudsmen of Israel which has a special program dedicated to older persons' complaints;⁹⁸ (ii) the Long-term Care Ombudsman Programs in the US.

⁹⁶ Adult Safeguarding Unit, Code of Practice: South Australian Adult Safeguarding Unit (2026) 35 <https://dhs.sa.gov.au/__data/assets/pdf_file/0011/200108/South-Australian-Adult-Safeguarding-Unit-Code-of-Practice.pdf>; Olga C Pandos, 'A Protectionist versus Interventionist Approach to Adult Safeguarding – Capacity, Consent and Coercion' (2025) *Journal of Elder Law and Capacity* 32.

⁹⁷ Law Commission of Ireland, *A Regulatory Framework for Adult Safeguarding* (Report, Vol 2, 2024) 344–347.

⁹⁸ [https://www.mevaker.gov.il/\(X\(1\)S\(xrkw4omotgyt1rocifl11mdx\)\)/he/publication/Articles/Pages/2019-Elderly.aspx?AspxAutoDetectCookieSupport=1](https://www.mevaker.gov.il/(X(1)S(xrkw4omotgyt1rocifl11mdx))/he/publication/Articles/Pages/2019-Elderly.aspx?AspxAutoDetectCookieSupport=1)

3.3.5 Professional action

Once elder abuse is detected, a structured pathway for action is required. Health care professionals (especially those delivering primary health care) are in ideal positions to provide early identification, support, and referral of persons experiencing EA. However, they need the knowledge and skills in order to do so. Two examples of good practice emerging from Malaysia include the Supporting Family Doctors to Address Elder Abuse (SAFE)⁹⁹ and the Improving Nurses' Detection and Management of Elder Abuse (I-NEED) programs.¹⁰⁰ These programs include culturally sensitive and locally tailored education programs, clinical pathways and guidelines, screening and documentation forms to assist primary healthcare professionals and nurses to effectively intervene in elder abuse.

3.3.6 Other frontline implementation models

A range of novel initiatives have emerged which focus on educating other frontline personnel at the coalface of abuse, such as (i) Police in India, for intervening in EA by abandonment during the Kumbh Mela Festival¹⁰¹ and (ii) banking staff in Australia about FA.¹⁰²

3.3.7 Grassroot frontline crisis help

In the UK, ANI (Action Needed Immediately) is an innovative program developed for domestic, in which victims use a codeword to discretely signal the need for emergency help from the local pharmacy. When violence the code word is triggered, staff accompany victims to a consultation room to assist them to access helplines, police, or specialist support services.¹⁰³

⁹⁹ Mydin, M et al, Supporting family doctors to address elder abuse: a quasi-experimental study in Malaysia. *Journal of elder abuse & neglect*. 2021; 33. 1-17.

¹⁰⁰ Mydin et al., Evaluating the Effectiveness of I-NEED Program: Improving Nurses' Detection and Management of Elder Abuse and Neglect-A 6-Month Prospective Study. *J Interpers Violence*. 2022;37(1-2):NP719-NP741.

¹⁰¹ Kardile MS, Peisah C. Elder abuse by abandonment in India: a novel community awareness and intervention strategy. *Int Psychogeriatr*. 2017;29(6):1035-1036

¹⁰² Peisah C, et al. Knowledge translation regarding financial abuse and dementia for the banking sector: the development and testing of an education tool. *Int J Geriatr Psychiatry*. 2016;31(7):702-7.

¹⁰³ Norfolk Family Carers. Ask for ANI www.norfolkfamilycarers.org/ask-for-ani-action-needed-immediately/

3.3.8 Family relational contexts for EA

Family and relational contexts for EA can include abuse by marriage,¹⁰⁴ poisoning of the relationships of persons living with dementia by family members seeking to gain financially,¹⁰⁵ undue influence in suicide and assisted suicide/euthanasia¹⁰⁶ mandate family-based solutions.¹⁰⁷

Section 4 Gaps and remedies

The aforementioned examples of best practice give us insight into limitations, deficiencies and gaps¹⁰⁸, but also possible solutions.

4.1. Empowerment of older persons

As we have stated, EA occurs within a context of intersectionality and vulnerability contributed to by ageism, invisibility, ableism, mentalism and loneliness and solutions lie in targeting these risk factors at both a systemic and individual level. We have also noted the effective ways of using advance planning, supported decision-making and last-resort substitute decision-making at different stages of the EA cycle. However, in some regions, there is a paucity of legal structures that support advanced planning (e.g. enduring powers of attorney) and surrogate decision making through guardianship when necessary.¹⁰⁹

Remedies

Older persons' shame at being victims of elder abuse and hidden abuse¹¹⁰ must be hit squarely on the head with national campaigns that recognize older persons as holders of human rights. This must be buttressed by awareness raising around specific types of abuse such as email and cyber-scams,

¹⁰⁴ Peisah C, Brodaty H, Bridger M. (2008) Abuse by marriage: The exploitation of mentally ill older people *International Journal Geriatric Psychiatry* 2008 Sep;23(9):883-8

¹⁰⁵ Peisah C, Brodaty H, Quadrio C. (2006) Family conflict in dementia: prodigal sons & black sheep *Int J Ger Psychiatry* 21(5):485-492

¹⁰⁶ Wand A., Peisah C, Draper B, Brodaty H (2018) The nexus between elder abuse, suicide, and assisted dying: the importance of relational autonomy and undue influence *Macquarie Law Journal* 18: 79-92.

¹⁰⁷ Khanlary Z, Maarefvand M, Biglarian A, Heravi-Karimooi M. The effect of a family-based intervention with a cognitive-behavioral approach on elder abuse. *J Elder Abuse Negl.* 2016;28(2):114-26.

¹⁰⁸ Byrnes A. 2026. From Fragmentation to Accountability: Closing the Legal Protection Gap for Older Persons *American Journal Geriatric Psychiatry* In Press;

¹⁰⁹ Tsoh J, Peisah C, Narumoto J, et al. Comparisons of guardianship laws and surrogate decision-making practices in China, Japan, Thailand and Australia: a review by the Asia Consortium, International Psychogeriatric Association (IPA) capacity taskforce. *International Psychogeriatrics.* 2015;27(6):1029-1037.

¹¹⁰ Peisah C, Kotze C, Swantek S., Legal Capacity, Abuse, Neglect, Coercion and Safeguards. *American Journal Geriatric Psychiatry* In Press;

together with recognition of the risks of older persons living alone, as well as the risks of predatorial caregiving. State parties should consistently develop legislative processes for planning ahead instruments, supported decision making and last resort independent substitute decision making when necessary.

4.2 Inadequate and fragmented legislative frameworks for remedy

Countries often approach elder abuse with a patchy array of safeguarding, protection, criminalization and human rights legislation. Even within countries, a uniform legislative approach has not been adopted. In Australia for example, reliance is placed upon existing statutes and independent entities created by law, such as the Office of the Public Advocate, Commissioners and tribunals to address EA. In addition, severe cases of physical abuse will be captured by existing criminal laws in each State and Territory. In one State in Australia, South Australia, EA falls within safeguarding legislation under the *Ageing and Adult Safeguarding Act 1995* (SA), while in another state, Victoria, EA falls within the remit of family violence and recourse is provided under the *Family Violence Protection Act 2008* (Vic). Statutory bodies such as the Public Advocate or Tribunals are conferred defined powers to undertake specific functions and actions to assist an individual. In New South Wales, one of the functions of the Ageing and Disability Commissioner is ‘to deal with allegations of abuse, neglect and exploitation of adults with disability and older adults’.¹¹¹ Following a report of abuse, the Commissioner may refer to an appropriate body (such as the police), investigate the matter further or provide support and information.¹¹² Any action taken by the Commissioner, including applications to a court or tribunal, is undertaken with an intent to facilitate the safety of the individual and preserve their rights.¹¹³ Importantly, the Commissioner can only pursue an investigation if the individual subject to abuse provides their consent.¹¹⁴ Therefore, action is predicated on the individual having capacity to make this decision.

Various domestic Commissions into Elder Abuse Law Reform have highlighted this fragmentation. A case example is the Australian Law Reform Commission who published its Final Report, *Elder Abuse – A National Legal Response*, in 2017.¹¹⁵ This comprehensive project examined various facets of EA, including recommendations addressing its prevention and redress. Recommendations included the

¹¹¹ *Ageing and Disability Commissioner Act 2019* (NSW) s 12(1)(a).

¹¹² Ibid ss 13, 16–19. Ageing and Disability Commission, ‘Our response to reports’ (Web Page, 2023) <<https://ageingdisabilitycommission.nsw.gov.au/about-us/reporting/our-response-to-reports.html>>.

¹¹³ Ageing and Disability Commission, ‘Our response to reports’ (Web Page, 2023) <<https://ageingdisabilitycommission.nsw.gov.au/about-us/reporting/our-response-to-reports.html>>.

¹¹⁴ *Ageing and Disability Commissioner Act 2019* (NSW) s 13(11).

¹¹⁵ Australian Law Reform Commission, *Elder Abuse – A National Legal Response* (Report, 2017).

development of a National Plan (its second iteration recently released for 2026 to 2036)¹¹⁶ and the establishment of adult safeguarding laws in each State and Territory.¹¹⁷ Following this major inquiry, EA was scrutinized again as part of the Federal Royal Commission into Aged Care Quality and Safety, which concluded in 2021. Despite these federal investigations into EA, the approach to its redress remains different in each State and Territory in Australia.

Remedy

This submission does not seek to resolve the regulatory challenges accompanying EA. Rather, it aims to highlight the different approaches taken and highlight the legal issues relating to legislative mechanisms to address EA. The fragmented legislative approach adopted in response to EA is in part due to the myriad of ways in which EA is manifested – for example, physical abuse, financial abuse and neglect, which each type of abuse captured variably by criminal laws or safeguarding laws. In light of this, a more nuanced and targeted approach is necessary, which engages a variety of parties including police, the banking sector, social security and adult safeguarding units/centres. It is important to establish specific safeguarding statutes and entities, that have the ‘system capability’ to prevent, detect and investigate EA. In this way, ‘system capability’ refers to funding and resourcing to sustain a multi-disciplinary team of professionals, including medical practitioners and clinical psychologists and neuropsychologists. Further, greater dialogue between relevant bodies is needed to ensure an individual receives appropriate support, depending on the abuse and their circumstances. Where these bodies are created, the law must be cognizant of the boundary between respecting autonomy to refuse safeguarding intervention (where an individual has capacity) and overriding consent to intervene where the presence of undue influence and coercion is so severe that it potentially renders the individual incapacitous. This latter circumstance ought to remain within the remit of qualified clinicians.

In order for adequate remedy, a raft of communicating and interacting legislation is required: (i) broader human rights legislation; (ii) Safeguarding (Criminalization) legislation; (iii) broader application of other relevant legislation to include elder abuse (e.g. domestic violence; coercive control).

¹¹⁶ Attorney-General’s Department, National Plan to End the Abuse and Mistreatment of Older People 2026–2036 (Report, 2026) <<https://www.ag.gov.au/rights-and-protections/publications/national-plan-end-abuse-and-mistreatment-older-people-2026-2036>>.

¹¹⁷ Australian Law Reform Commission, *Elder Abuse – A National Legal Response* (Report, 2017) recommendation 3–1 and 14–1.

4.3. Safeguarding units or National Centres

These types of units or centres are sporadically established and predominantly in High Income Countries.

Remedy

Safeguarding units or National Centres with Call Lines must be consistently established, adequately resourced and empowered with back-up safeguarding legislation as outlined in 3.3.2.

4.4 Professional Training Programs

Elder abuse awareness programs abound in high income countries in health but are almost non-existent across law (including the judiciary) and finance. There is a deficit in understanding of health professionals regarding the law governing capacity, consent and abuse, and a paucity of training on capacity assessment with screening for abuse. Human rights awareness is almost non-existent across all sectors. Training and education of legal and finance/accounting professionals may have benefits for primary prevention of EA, while education of the judiciary may have benefits with common law remedy with established EA.

Remedy

An ***Eyes Wide Open to Elder Abuse***¹¹⁸ campaign is called for across all professions dealing with older persons. Education and Training Programs about human rights more broadly and specifically about elder abuse should be extended across the professions, from health to law (including the judiciary) and finance. Specifically for health professionals, Capacity, Human Rights and Abuse Interface workshops are important to provide education to enhance understanding of the law governing capacity, consent and abuse with training on assessment and screening for abuse. We note that vulnerability for financial abuse has been acknowledged as one of the testing domains for financial abuse,¹¹⁹ and acknowledged in Common law.¹²⁰ Capacity Australia has extensive expertise in providing such education across sectors and across disciplines.¹²¹

¹¹⁸ Peisah, C., De Mendonça Lima, C., Verbeek, H., & Rabheru, K. (2021). IPA and WPA-SOAP joint statement on the rights of older persons with mental health conditions and psychosocial disabilities. *International Psychogeriatrics*, 1–5.

¹¹⁹ Marson DC et al, 'Assessing financial capacity in patients with Alzheimer's disease' (2000) 57 Archives Neurology 877-884; see also Griffith HR et al, 'Impaired financial abilities in mild cognitive impairment' (2003) 60 Neurology 449-457.

¹²⁰ IFZ Guardianship [2020] VCAT 582

¹²¹ Peisah C. Bhatia S. MacNab J., Brodaty H. (2016) Knowledge translation regarding financial abuse and dementia for the banking sector: the development and testing of an education tool *International Journal Geriatric Psychiatry* 31(7):702-7

4.5 Grassroot frontline crisis help

The UK, ANI (Action Needed ImmEDIATEly)¹²² and the Kumbh Mela Festival Police education program¹²³ show the value of frontline action.

Remedy

Frontline crisis services (e.g. pharmacists, ambulance/paramedics and police) need to be educated.

4.6 Action on elder abuse is often not considered part of core business

Action on elder abuse is often not considered part of core business at both government and institutional levels

Remedy

Action on elder abuse should be part of quality and safety indicators in primary care and in hospitals, where it should be integrated into hospital accreditation standards.

4.7 Inadequate data

Remedy

National initiatives to improve detection, monitoring, data collection and research must be consistent across all state parties.¹²⁴

¹²² Norfolk Family Carers. Ask for ANI www.norfolkfamilycarers.org/ask-for-ani-action-needed-immediately/

¹²³ Kardile MS, Peisah C. Elder abuse by abandonment in India: a novel community awareness and intervention strategy. *Int Psychogeriatr*. 2017;29(6):1035-1036

¹²⁴ Hall Y et al. Creating opportunities to improve detection of older adult abuse: a national interRAI study. *BMC Geriatrics* (2022) 22:220; See also <https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx#response>

SECTION 5: Translating this evidence into a legally binding instrument on the promotion and protection of the Human Rights of Older Persons

Proposed Treaty Provisions

5.1 Relationship with other international human-rights instruments such as the CRPD

Current human rights frameworks such as the United Nations Convention on the Rights of Persons with Disabilities (CRPD), deal with undue influence, abuse, torture or cruel, inhuman or degrading treatment or punishment of persons with disability, including those with mental health, cognitive and intellectual disabilities, under Articles 12, 15 and 16. Specifically; Article 16 of the CRPD states:

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

While an important starting point, this Article is neither older persons'-specific, nor particularly age-friendly. This is because, as stated above, the rights of older persons to be free from elder abuse are not, and should not, depend on their having to show that they have a disability (though they may of course) to enjoy protections under the CRPD. Furthermore, because of the broader societal and individual relational context of elder abuse, this CRPD article does not address the broader complexities of elder abuse, including the wider societal context of elder abuse, the reluctance of older persons to notify and the professional ignorance and lassitude with regards EA. As stated by Byrnes:

*"existing treaties were not formulated with an understanding of the nature and significance of ageing, the phenomenon of ageism, and the impact of increased longevity".*¹²⁵

Specifically, a bespoke older persons' Treaty needs to affirm the equality and equal worth of older persons,¹²⁶ and specifically with regards to elder abuse, to affirm the right of older persons to be safeguarded against any form of violence, abuse, exploitation or undue influence. Older persons are holders of rights, not petitioners for the charity of "protection".¹²⁷

Remedy

The formulation of a relevant right of older persons to be free from being subjected to any form of violence, abuse, exploitation or undue influence. The new Treaty must include an Article on Undue Influence and Elder Abuse, with specific State obligations for remedies and accountability processes bespoke to older persons as rights holders (see below).

4.2 Proposed definitions

Given that the WHO definition of EA forms the foundation for all current research and data collection on EA, we propose the adoption of the WHO definition of elder abuse:

¹²⁵ Byrnes A. 2026. From Fragmentation to Accountability: Closing the Legal Protection Gap for Older Persons American Journal Geriatric Psychiatry In Press;

¹²⁶ Ibid.,

¹²⁷ Ibid.,

“a single or repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person”.

We suggest that a note be added that while mental health disorders and cognitive disorders may confer vulnerability to EA and this should be acknowledged, EA also occurs in the absence of such.

We also propose the following definition of Undue Influence:

“when others seek to gain either money, power or exercise control over another person during decision making by disinformation, persuasion, subversion of will or coercion”

We note and endorse the reference to undue influence in the CRPD General Comment No 1:

“22. All people risk being subject to “undue influence”, yet this may be exacerbated for those who rely on the support of others to make decisions. Undue influence is characterized as occurring, where the quality of the interaction between the support person and the person being supported includes signs of fear, aggression, threat, deception or manipulation. Safeguards for the exercise of legal capacity must include protection against undue influence; however, the protection must respect the rights, will and preferences of the person, including the right to take risks and make mistakes.”¹²⁸

4.3 Remedies, implementation and monitoring provisions: illustrative indicators

We have adapted Article 16: Illustrative indicators on freedom from violence, exploitation and abuse,¹²⁹ based on the aforementioned scientific literature to develop a set of indicators more appropriate to older persons. We offer the following suggested measures to achieve and give effect to the right to be free from violence, abuse, and exploitation and undue influence:

1. Legislation criminalising, protecting against and preventing all forms of violence, abuse, exploitation and undue influence of older persons, with sanctions for perpetrators and effective remedies for victims. Extension of existing legislation relating to discrimination, domestic violence and coercive control to specifically include EA. Provision for supported decision making with regards to action and notification must be embedded within such legislation;
2. No provision in legislation which permits exemption from criminalization of non-consensual practices of any kind, including those based on a restriction/denial of legal capacity, or actual

¹²⁸ General Comment No. 1 - Article 12 : Equal recognition before the law (Adopted 11 April 2014) - Plain English version. <https://docs.un.org/en/CRPD/C/GC/1>

¹²⁹ Office of the United Nations High Commissioner for Human Rights (OHCHR). (2020) *The Human Rights Indicators on the Convention on the Rights of Persons with Disabilities (CRPD)*. Article 16. SDG-CRPD Resource Package.

or perceived impairment of the victim and/or the determination of best interest by a third party.

3. Adoption of national plan/policies with safeguarding units to prevent, detect, and combat violence, abuse, and all forms of exploitation and undue influence with explicit reference to older persons;
4. Statutory requirement to collect data on EA occurrence including complaints, investigations, and convictions related to violence, abuse, exploitation and undue influence of older persons;
5. Appointment of independent authorities to conduct regular monitoring and inspections of all public and private facilities and programmes designed to serve older persons, with the competence to initiate legal proceedings for the enforcement of related legislation, including on preventing and combating violence;
6. Awareness raising campaigns and education to eradicate violence, abuse, exploitation and undue influence of older persons, directed at:
 - a. the wider public, to combat negative stereotypes, challenging the notion that abuse or violence against persons is acceptable or tolerable and making available information regarding action; and programmes to;
 - b. older persons regarding their rights, seeking protection, assistance and services and support;
 - c. professionals working with older persons, including but not limited to the law (lawyers/solicitors, notaries, judges), health (physicians, allied health professionals including psychologists, social workers occupational therapists); and finance (accountants, bankers, financial planners and managers; superannuation fund managers).
7. Ensuring active involvement of all older persons, including through their representative organizations, in the design, implementation and monitoring of laws, regulations, policies and programmes related to violence, abuse, exploitation and undue influence of older persons.