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New guides to help lawyers identify elder abuse

Today, on World Elder Abuse Awareness Day 2023, the Law Council has published a revised Best Practice Guide for Legal Practitioners in Relation to Elder Financial Abuse to help lawyers to identify potential incidents of abuse, particularly financial abuse, of older Australians and take steps to respond.

“Lawyers are at the frontline in terms of recognising and preventing elder financial abuse,” Law Council of Australia President, Mr Luke Murphy said. “This is because of the role that lawyers play with the preparation and execution of wills and other advance planning documents. These are important contexts in which the risk of elder financial abuse may arise.”

The updated *Best Practice Guide—Elder Abuse* sets out best practice measures which legal practitioners should adopt to identify and respond to the risk of elder financial abuse arising in the execution and performance of such documents.

“Elder abuse is completely unacceptable and sadly the perpetrators are usually someone very close to the victim, someone the person should be able to trust to care for them and have their best interests at heart when they are at their most vulnerable,” Mr Murphy said.

Accompanying the *Best Practice Guide—Elder Abuse* for the first time is a Best Practice Guide for Legal Practitioners on Assessing Mental Capacity.

“The assessment of mental capacity is an essential, but complex, task to be performed by a legal practitioner in advising on the execution of a will or other advanced planning document,” Mr Murphy said. “The *Best Practice Guide—Assessing Mental Capacity* details the obligations of legal practitioners in assessing mental capacity and provides practical guidance.”

The Law Council has also published online similar materials produced by its Constituent Bodies. The publication of these materials continues the commitment of the Law Council to mitigate the risk of elder financial abuse, in the wake of the seminal 2017 Australian Law Reform Commission report, [Elder Abuse – A National Legal Response](#).

In 2021, the Law Council held a national roundtable to increase national awareness of financial elder abuse arising from enduring power of attorney (EPOA) arrangements. The roundtable produced a [Communiqué](#) with model provisions which comprise the core essential features of more consistent EPOA laws to mitigate the risk of such abuse.

“The Law Council maintains the call for the creation of nationally consistent laws relating to the use of EPOA instruments,” Mr Murphy said.

The Law Council was encouraged to see that EPOA reform was discussed at the recent meeting of the Standing Council of Attorneys-General, along with a commitment to create a new *National Plan to Respond to the Abuse of Older Australians*. It stands ready to contribute the expertise of the legal profession to this work.

“On World Elder Abuse Awareness Day, let’s commit to doing more to keep those who raised and cared for us safe from abuse.”

Link: <https://lawcouncil.au/resources/policies-and-guidelines/best-practice-guides-for-legal-practitioners-in-relation-to-elder-financial-abuse-and-assessing-mental-capacity>

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