



Discussion Paper No.17

**TACKLING ELDER ABUSE: STATE
INTERVENTION UNDER SINGAPORE'S
VULNERABLE ADULTS ACT**

Prof. Chan Wing Cheong

January, 2019

Nagoya University

Center for Asian Legal Exchange

Center for Asian Legal Exchange (CALE)

Nagoya University, Japan

**TACKLING ELDER ABUSE: STATE INTERVENTION UNDER SINGAPORE'S
VULNERABLE ADULTS ACT**

CHAN Wing Cheong

Singapore

Contents

Abstract

I.	A Brief Comparison between Japan and Singapore	2
II.	Why Elder Abuse is Different	4
III.	A scenario	8
IV.	Definitions under the VAA.....	9
V.	Principles under the VAA	13
VI.	Powers of intervention under the VAA.....	14
VII.	General comments	25
VIII.	Conclusion	28

TACKLING ELDER ABUSE: STATE INTERVENTION UNDER SINGAPORE'S VULNERABLE ADULTS ACT

CHAN Wing Cheong*

Abstract:

Abuse and neglect of adults raise complex issues on the freedom of the individual to choose for themselves versus the powers of the State to intervene. The law has traditionally limited the scope of compulsory intervention to extreme situations only which can frustrate social workers who deal with such cases. On the other hand, it would be unacceptable to allow intervention simply because it is assessed to be in the adults' best interests. A balance therefore has to be struck between autonomy and protection. This paper examines how Singapore's Vulnerable Adults Act identifies the point for intervention and embodies safeguards to prevent abuse of the State's powers.

* Associate Professor, Faculty of Law, National University of Singapore. I would like to thank the Center for Asian Legal Exchange, Nagoya University, Japan, for hosting my visit from June to July 2018.

This paper aims to give a brief overview of the issues relating to elder abuse¹ in general and explain why the traditional legal approaches are unable to tackle this problem. It argues that a new way of conceptualising the problem of elder abuse is needed and explains how Singapore's Vulnerable Adults Act ("VAA"), which was passed on 18 May 2018,² is a step in this direction.³ It ends with some brief comments on how the VAA can be further improved.

It may be appropriate at the beginning to outline for readers a few broad similarities and differences between Japan and Singapore, and explain why Singapore's VAA is worthy of study.

I. A Brief Comparison between Japan and Singapore

Singapore lies at the tip of Peninsula Malaysia in Southeast Asia. Its land area is only slightly more than 700 square kilometres, making it about 500 times smaller in size than Japan.⁴ In terms of total population, there were 5.71 million people as at 2017 in Singapore as compared to 127.48 million people in Japan.⁵ Singapore's small physical size coupled with its relatively large population means that it has one of the highest population densities in the world.⁶

In terms of its economy, Singapore's per capita GDP was USD 52,239 in 2015 as compared to Japan's which was USD 34,629.⁷ This makes Singapore one of the wealthiest countries in the world on this measure.

¹ Although there is no universally accepted definition of elder abuse, a commonly used definition is given in the text below accompanying note 27. Those who are considered "elders" or "older persons" are typically persons who are 60 to 65 years old (the retirement age in most developed countries) and above.

² At the time of writing, the VAA has not been brought into force yet. The Vulnerable Adults Bill (Bill No. 20 of 2018), as well as other Singapore legislation mentioned in this paper, can be found online at <https://sso.agc.gov.sg/Index>.

³ Different jurisdictions have adopted different approaches. Within the UK, England (Care Act 2014), Wales (Social Services and Well-Being Act 2014), and Scotland (Adult Support and Protection Act 2007) have each crafted slightly different powers of State intervention.

⁴ Japan's land area is 364,560 square kilometres, as compared to Singapore's which is 709 square kilometres. See <https://data.worldbank.org/indicator/AG.LND.TOTL.K2>.

⁵ Department of Economic and Social Affairs, *Statistical Yearbook 2017 Edition* (New York: United Nations, 2017).

⁶ It had a population density of 8,155.5 per square kilometre in 2017. In comparison, Japan's population density in 2017 was 349.7 per square kilometre, *ibid.*

⁷ *Ibid.*

The percentage of Singapore's population above 65 years old was estimated to be 12.9% in 2017, as compared to Japan's which was 27.1%.⁸ While an ageing population does not seem to be a matter of concern in Singapore from this figure, the topic must be viewed holistically with Singapore's low total fertility rate and overall life expectancy. Between 2010 to 2015, Singapore's total fertility rate was 1.23 and life expectancy was 82.3 years.⁹ The corresponding figures for Japan were 1.41 and 83.3 years.¹⁰

It has been predicted that, according to these trends, Singapore will have one of the highest percentages of persons aged 60 years and above in its population in the world in 2050 at 40.1%.¹¹ This percentage will only be slightly lower than Japan's at 42.4%, which is well known to have one of the oldest populations in the world.¹² With the onset of dementia and other mental or physical disabilities with age, there is concern that there will be an increase in the number of persons at risk of abuse.

Singapore is an interesting case study for policy makers in that planning for issues relating to the elderly started as early as 1984¹³ and committees to advise the Government on these issues have been formed at regular intervals starting from 1989.¹⁴ New legislation was also passed in 2008 as part of comprehensive reforms to improve and modernise Singapore's laws relating to mental health and mental capacity which benefit the elderly population, namely, the Mental Capacity Act ("MCA");¹⁵ the Mental Health (Care and Treatment) Act ("MHCTA").¹⁶

⁸ Department of Economic and Social Affairs, *World Population Prospects: The 2017 Revision* (Volume II: Demographic Profiles) (New York: United Nations, 2017).

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Department of Economic and Social Affairs, *World Population Ageing 2017* (United Nations, New York, 2017). But note that the numbers have been disputed by the Singapore government, see Siau Ming En, "Elderly to make up almost half of S'pore population by 2050: United Nations", *Today*, 6 December 2017.

¹² According to *World Population Ageing 2017*, *ibid.*, the top 10 countries in the world with the highest proportion of its population who are aged 60 years and above in 2050 are: Japan, Spain, Portugal, Greece, Republic of Korea, Taiwan, Hong Kong, Italy, Singapore and Poland.

¹³ *Report of the Committee on the Problems of the Aged* (Singapore: Ministry of Health, 1984).

¹⁴ *Report of the Advisory Council on the Aged* (Singapore: Advisory Council on the Aged, 1989); *Report of the Inter-Ministerial Committee on the Ageing Population* (Singapore: Ministry of Community Development, 1999); *Report on the Ageing Population* (Singapore: Ministry of Community Development, Youth and Sports, 2006). See generally Wing-Cheong Chan (ed), *Singapore's ageing population: Managing healthcare and end of life decisions* (London: Routledge, 2011).

¹⁵ Cap 177A, 2010 Revised Edition.

¹⁶ Cap 178A, 2012 Revised Edition.

However, unlike Japan's Elder Abuse Prevention and Caregiver Support Law passed in 2006, Singapore did not have a national law dealing specifically with elder abuse. Under this Japanese law, which defines an elderly person as someone who is 65 years or above, the roles for the national and local governments were clarified in terms of elder abuse prevention and support for caregivers. A reporting system for elder abuse in domestic and institutional settings was set up, with intervention teams and multi-agency networks for investigation of elder abuse.¹⁷

In the case of Singapore, there have been piecemeal legislative intervention in terms of the Maintenance of Parents Act¹⁸ for financial neglect of parents by their children, expansion of civil protection orders for "family violence" under the Women's Charter¹⁹ in 1996 to cover family members other than spouses and their children, and a new criminal offence under the MCA of "ill-treatment" of a person who lacks or is reasonably believed to lack mental capacity by their care giver.²⁰ The VAA was finally enacted in 2018 to set out the situations where the State can intervene to protect "vulnerable persons" from "abuse, neglect and self-neglect".²¹

II. Why Elder Abuse is Different

It is well known that elder abuse exists around the world, but its exact prevalence is debatable owing to reasons such as different definitions used, its very nature being hidden from public view, and the lack of representative sampling.²² One estimate given in the United States is that 5% to 10% of people aged 65 or older have been abused by someone

¹⁷ Areas for improvement in Japan have been pointed out by Miharū Nakanisi *et al*, "Impact of the elder abuse prevention and caregiver support law on system development among municipal governments in Japan" (2009) 90 Health Policy 254; Miharū Nakanisi *et al*, "Systems development and difficulties in implementing procedures for elder abuse prevention among private community general support centers in Japan" (2014) 26 Journal of Elder Abuse & Neglect 31.

¹⁸ Cap 167B, 1996 Revised Edition. See Wing-Cheong Chan, "The Duty to Support an Aged Parent in Singapore" (2004) 13(3) Pacific Rim Law and Policy Journal 547.

¹⁹ Cap 353, 2009 Revised Edition. See Chan Wing Cheong, "Latest Improvements to the Women's Charter" [1996] Singapore Journal of Legal Studies 553; Leong Wai Kum, *Elements of Family Law in Singapore* (2nd Edition, LexisNexis, 2007).

²⁰ Section 42 of the MCA. The offence also applies to a perpetrator who is the donee of a lasting power of attorney or a deputy appointed by the court for victim.

²¹ These terms will be defined later in this paper.

²² See National Research Council, *Elder mistreatment: abuse, neglect, and exploitation in an aging America* (Washington DC: National Academies Press, 2003); Wing-Cheong Chan, "Victims of elder abuse in Singapore: a study of cases at TRANS SAFE Centre" in Wing-Cheong Chan (ed), *Singapore's ageing population: Managing healthcare and end of life decisions* (London: Routledge, 2011).

whom they depend for care or protection.²³ However, one thing is clear is that with populations ageing at an unprecedented pace, the problem will only get greater over time. In the case of Singapore for example, it is estimated that there will be a 137% increase in the population aged 60 years and above between 2017 and 2050.²⁴

Efforts to target elder abuse through the traditional criminal and civil laws will be difficult for various reasons, especially in the Asian context. First, such laws typically require the adult victim to seek legal recourse (such as making a police report or initiating a civil claim) without which there will be no State intervention. However, the adult victim may not wish to do so because of shame, fear of reprisal, inability to seek help on their own, or fear of being institutionalised as a result if the caregiver is removed and so on.²⁵ Language, financial means and mobility issues may also hinder them from seeking help. Unlike child victims, older persons are also less “visible” in that they do not have mandatory school or vaccination requirements, and it may not seem out of the ordinary if they are not seen around the neighbourhood.

The reluctance to seek help for themselves is particularly strong among Asian elders because of the concept of “face”. To acknowledge a child’s abusive behaviour to third parties reflects on one’s own poor parenting and it is a great loss of “face” to admit that one’s own children are not fulfilling their filial obligations.²⁶

Secondly, although there are clear definitions on what society will consider as wrong in many cases, such as criminal offences concerning theft, destruction of property, and physical or sexual harm which will be applicable to any person, there can be behaviour considered as elder abuse but do not fall within the criminal or civil laws. One common definition of elder abuse is:²⁷

Elder abuse is 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.

²³ Elsie Yan, Ko-Ling Chan, Agnes Tiwari, “A Systematic Review of Prevalence and Risk Factors for Elder Abuse in Asia” (2015) 16(2) *Trauma, Violence & Abuse* 199 which also gives prevalence estimates in various parts of Asia. See Wing-Cheong Chan, *ibid.*, for a Singapore study.

²⁴ Department of Economic and Social Affairs, *World Population Ageing 2017* (United Nations, New York, 2017).

²⁵ Kathryn D Katz, “Elder Abuse” (1979-80) 18 *Journal of Family Law* 695, 711.

²⁶ Elsie Yan, Ko-Ling Chan, Agnes Tiwari, “A Systematic Review of Prevalence and Risk Factors for Elder Abuse in Asia” (2015) 16(2) *Trauma, Violence & Abuse* 199, 201.

²⁷ World Health Organization, University of Toronto, International Network for the Prevention of Elder Abuse, *Toronto Declaration on the Global Prevention of Elder Abuse* (2002).

This definition is wide enough to encompass actions such as socially isolating the older person, making demeaning or hurtful comments, using overly controlling behaviour and undue influence, but such behaviour may not be considered sufficient for a criminal offence or a basis for civil liability.

Within the Asian context, what may be considered as abusive can be different from a Western perspective. Instances such as “being ignored by children”, “sharing the care of the elder between different family members so that parents feel like ‘a ball being kicked around among relatives’”, “being used as additional domestic help”, and “direct expression of disagreement with the mothers-in-law” are seen as showing disrespect and a form of abuse by Asian parents which may not be so in Western cultures.²⁸ On the other hand, it has also been noted that Asian elders have a higher tolerance for financial abuse as compared to their counterparts in other societies.²⁹

Thirdly, the traditional legal approach seeks to find a culpable party to penalise and an innocent party to protect. However, this may not be possible or right in situations of elder abuse. The perpetrator in such situations may not be culpable in the same way as strangers who inflict harm on others. The perpetrator is often a family member with few social resources who may be stressed by the burden of looking after the elderly.³⁰ They may not have any intention to cause harm, and face immense difficulties in looking after a person with deteriorating mental or physical disability.³¹ Furthermore, the context in which the victim came to be abused may need to be considered. Some of the abuse between the elderly and caregiver may be mutual, with screaming, hitting or slapping being common to both parties.³² It is also known that abusive caregivers may have been victims of abuse themselves in the past at the hands of their parents when they were younger.³³

²⁸ Elsie Yan, Ko-Ling Chan, Agnes Tiwari, “A Systematic Review of Prevalence and Risk Factors for Elder Abuse in Asia” (2015) 16(2) *Trauma, Violence & Abuse* 199, 200.

²⁹ Elsie Yan, Ko-Ling Chan, Agnes Tiwari, *ibid.*, at 200–201.

³⁰ See generally Katheryn D Katz, “Elder Abuse” (1979-80) 18 *Journal of Family Law* 695, 700–704.

³¹ Jill E Korbin, Georgia J Anetzberger, J Kevin Eckert, “Elder Abuse and Child Abuse: A Consideration of Similarities and Differences in Intergenerational Family Violence” (1989) 1(4) *Journal of Elder Abuse & Neglect* 1 makes the point that it is the caregivers’ *perception* of the burden that is more important than the actual burden by some objective measure.

³² Myron R Utech, Robert R Garrett “Elder and Child Abuse: Conceptual and Perceptual Parallels” (1992) 7(3) *Journal of Interpersonal Violence* 418. This is not meant to blame the victim for bringing about their own abuse. The point is that abuse of the elderly can be a complex and deep rooted issue which requires the history of the family relationship to be understood.

³³ *Ibid.*

Fourthly, and most importantly, adults are recognised in law as having legal capacity and autonomy to make decisions for themselves. Their decisions are to be respected and the State cannot control how they choose to live even if it will promote their well-being. This stance in the law can be seen most clearly in a person's right to consent to or refuse medical treatment, even if death may result from that choice.³⁴ In *Re LP (adult patient: medical treatment)*, the Singapore High Court held:³⁵

Generally, a person who is sufficiently matured is entitled to give or withhold consent to any medical treatment and the doctors are entitled, if not obliged, to respect that person's decision. No one else, however close by reason of kinship or friendship, is legally entitled to make that decision for the patient.

The general rule is therefore that social services cannot be imposed on the elderly without their consent, unless they are determined to lack mental capacity through a court process.³⁶ Just because a person is old does not mean that they do not have legal capacity to make choices for themselves.

On the other hand, there is a danger that respect for independence and autonomy of a person can be emphasised to such an extent that abuse is allowed to flourish.³⁷ It can be argued that the State has a wider obligation to actively support those who are unable to protect themselves and to keep them safe.³⁸ There is no issue if the elderly person

³⁴ *Re C (Adult: Refusal of medical treatment)* [1994] 1 All ER 819; *St George's Healthcare NHS Trust v S* [1998] 3 All ER 673. See also *Re T (Adult: Refusal of Treatment)* [1992] 4 All ER 649 at 653, where it was held that a person with legal capacity has the right to decide "notwithstanding that the reasons for making the choice are rational, irrational, unknown or even non-existent". An exception to this general rule is where the situation poses an emergency where there is a risk of death or serious harm.

³⁵ [2006] 2 SLR(R) 13 at para [4].

³⁶ See for example Connecticut General Statutes, §17b-455:

If an elderly person does not consent to the receipt of reasonable and necessary protective services, or if such person withdraws the consent, such services shall not be provided or continued, except that if the Commissioner of Social Services has reason to believe that such elderly person lacks capacity to consent, he may seek court authorization to provide necessary services ...

The approach is different in the case of child abuse which presumes that children are incompetent and vulnerable. In the case of Singapore, see for example s 9 of the Children and Young Persons Act (Cap 38, 2001 Revised Edition) ("CYPA").

³⁷ See Chris Clark, "Self-determination and paternalism in community care: practice and prospects" (1998) 28 *British Journal of Social Work* 387; Rachel Fyson, Deborah Kitson, "Independence or protection – does it have to be a choice? Reflections on the abuse of people with learning disabilities in Cornwall" (2007) 27 *Critical Social Policy* 426; Shannon McDermott, "Ethical decision making in situation of self-neglect and squalor among older people" (2011) 5 *Ethics and Social Welfare* 52.

³⁸ This is rooted in the common law principle of *parens patriae* which allows the State to intervene in the lives of children and other vulnerable persons who are unable to protect themselves.

consents to State intervention. But what if the person has been abused but is mentally competent and refuses to accept social services? Should State intervention be allowed? But what are the limits and how can checks be placed on the State's powers? Can a balance between autonomy and protection of the person be struck? Singapore's VAA will be examined to see how it seeks to achieve this balance.

III. A scenario

Before we begin an examination of the VAA, a scenario is described below to illustrate the type of case where State intervention is needed:³⁹

Theresa, a 70 year old woman, has been taken care of by her unmarried daughter, Jill, in the last few years. They live together in a flat. Owing to a disagreement between Jill and her siblings, she has prohibited the siblings from visiting or contacting Theresa for the last 6 months.

The siblings are worried about the standard of care that Jill is able to provide. They know that Theresa has not gone for her last medical check up to monitor her high blood pressure and diabetes.

The siblings report the case to a social worker.

When the social worker makes a home visit and if Theresa and Jill refuse to open the door, it is not possible to enter the flat without their permission. The police will also not have powers to break into the premises without proof that there is danger to life or property. But herein lies the conundrum: the police is able to forcibly enter the flat if Theresa's life is in danger, but they do not know if that is the case unless they do so. Furthermore, we can only ignore Theresa's wishes if she is not mentally competent, but we can only assess her mental condition if we ignore her wishes in the first place!

Without being able to engage with either Theresa or Jill, we are unable to find out more details about their relationship and the conditions in which Jill has been taking care of Theresa. For example, we do not know if Jill is able, financially as well as physically, to

³⁹ For other similar scenarios and a plea for greater powers for social workers, see Dwayne Johnson, "Strengthening the law to protect vulnerable adults" (2008) 12(1) Working with Older People 27.

take care of Theresa, why Theresa is not being taken care of by her other children, what was the disagreement between Jill and her siblings, and the medical condition of Theresa.

Singapore's VAA is described in the following sections to examine how intervention is possible in such a case.

IV. Definitions under the VAA

The VAA provides a four part definition of a “vulnerable adult” and all parts must be met.⁴⁰ First, the person must be 18 years old or above.⁴¹ Secondly, the person must be incapable of protecting themselves. Thirdly, the incapacity must be by reason of mental or physical infirmity, disability or incapacity. Fourthly, the type of harm that the person is unable to protect themselves from are “abuse, neglect or self-neglect”. Each of these terms are in turn defined in the VAA.

It can be noted that under the VAA, a vulnerable adult is not equated with either a person above a certain age, or a person without mental capacity. A person who is above a certain age need not be vulnerable, and conversely, a person who is vulnerable can be of any age.

A person who is mentally incapable will also conceivably be unable to protect themselves, but the converse may not be true. Hence, a person who is bed- or wheelchair-bound, for example, may not be mentally incapable but they may not be able to protect themselves from abuse, neglect or self-neglect and therefore fall within the definition of a “vulnerable person” in the VAA.

Two suggestions for improvement to the definition of vulnerable person can be made. First of all, it should not be limited to incapacity which arises “by reason of mental or physical infirmity, disability or incapacity” only. A person may also be vulnerable due to psychological reasons such as having been victims of sexual or domestic abuse who have suffered long-term abuse leaving them unable to protect themselves. Secondly, the

⁴⁰ The definition of “vulnerable adult” in s 2 of the VAA is divided into two parts, but there are in fact four parts to it.

⁴¹ Protection for those who are 16 years old and below come within the CYPA. A gap therefore exists for those who are above 16 but under 18 years old. The CYPA will be amended later to extend the child protection framework to those who are above 16 but under 18 years old. See *Opening Speech by Minister Desmond Lee at the Second Reading of the Vulnerable Adults Bill* (18 May 2018), para 21.

requirement of being “incapable” of protecting themselves is a high one. It should be sufficient if the person’s ability to protect themselves is “impaired” or “limited in their ability” such that they are more at risk than other persons.

“Abuse” is defined in the VAA as:⁴²

- (a) physical abuse;
- (b) emotional or psychological abuse;
- (c) conduct or behavior by an individual that in any other way controls or dominates another individual and causes the other individual to fear for his or her safety or wellbeing; or
- (d) conduct or behavior by an individual that unreasonably deprives, or threatens to unreasonably deprive, another individual of that other individual’s liberty of movement or wellbeing.

“Emotional or psychological abuse” is defined in the VAA as conduct or behavior:⁴³

- (a) that torments, intimidates, harasses or is offensive to the other individual; or
- (b) that causes or may reasonably be expected to cause mental harm to the other individual, including thoughts of suicide or inflicting self-harm.

⁴² Section 2(1) of the VAA. Missing from this list is financial abuse. The Government has said that this aspect will be re-examined later after more experience is gained from tackling physical and emotional abuse, see *Closing Speech by Minister Desmond Lee at the Second Reading of the Vulnerable Adults Bill* (18 May 2018), para 19.

⁴³ Section 2(1) of the VAA. The following examples are given in the VAA on what amounts to psychological and emotional abuse are:

- (a) X has Parkinson’s disease and cannot walk without assistance. Her caregiver, Y, does not physically abuse X but regularly threatens to beat or harm X’s grandchild (a baby) whom X is devoted to.
- (b) X has dementia and lives with her adult son, Y. When Y is drunk and does not get what he wants from X, Y shouts at X and destroys X’s belongings in X’s presence, causing fear and distress to X.

“Neglect” is defined in the VAA as “the lack of provision to the individual or essential care (such as but not limited to food, clothing, medical aid, lodging and other necessities of life), to the extent of causing or being reasonably likely to cause personal injury or physical pain to, or injury to the mental or physical health of, the individual”.⁴⁴

“Physical abuse” is defined in the VAA to *include* conduct or behaviour:⁴⁵

- (a) that causes, or threatens to cause, personal injury or physical pain to an individual;
- (b) that coerces,⁴⁶ or attempts to coerce, an individual to engage in sexual activity; or
- (c) that threatens an individual with the death or injury of the individual.

“Self-neglect” is defined in the VAA as:⁴⁷

... the failure of the individual to perform essential tasks of daily living (such as but not limited to eating, dressing and seeking medical aid) to care for himself or herself, resulting in the individual:

- (a) living in grossly unsanitary or hazardous conditions;
- (b) suffering from malnutrition or dehydration; or
- (c) suffering from untreated physical or mental illness or injury.

⁴⁴ Section 2(1) of the VAA.

⁴⁵ Section 2(1) of the VAA (emphasis added). The definition of physical abuse was intentionally not exhaustive.

⁴⁶ “Coerce” is defined in s 2 of the VAA to mean:

- (a) to compel or force the individual to do, or refrain from doing, something; or
- (b) to cause the individual to do something without the individual’s consent.

⁴⁷ Section 2(1) of the VAA

“Wellbeing” is defined in the VAA to mean any of the following:⁴⁸

- (a) personal dignity;
- (b) physical, mental and emotional health;
- (c) control by the individual over his or her day-to-day life (including over the day-to-day care provided by another individual and the way in which it is provided);
- (d) social, domestic, family and personal relationships.

As can be seen in the above definitions, a very wide approach is taken under the VAA. A vulnerable person is to be protected from physical, sexual as well as psychological harm. The latter extends to instances social isolation and where the person may be deprived of their sense of self-worth and dignity. Positive acts as well as omissions which have an impact on the vulnerable adult are covered. Finally, even instances of “self-neglect”, which do not involve an external perpetrator, is a situation considered for State intervention.

⁴⁸ Section 2(1) of the VAA. The following examples are given in the VAA on when the wellbeing of X is unreasonably deprived:

- (a) X is wheelchair-bound and does not lack mental capacity. X is prescribed medication to prevent serious deterioration of his health. X’s caregiver, Y, prevents X from taking the medication by hiding it in a cupboard beyond X’s reach. Y’s conduct has an adverse effect on X’s physical health.
- (b) X is unable to dress herself. Y, her caregiver, does not dress X after bathing her. Despite X’s protests, Y leaves her unclothed in a room with the windows open so that X is in full view of neighbours walking past the flat. The flat is situated along a common corridor to which members of the public have access. X is deprived of her personal dignity.
- (c) X’s family member, Y, controls all of X’s daily living activities (including eating, drinking, bathing, toileting and the programmes X watches on the television or listens to on the radio) and refuses to allow X to have contact with any other person or to receive visitors. Y’s control over X’s day-to-day life and social relationships has an adverse effect on X’s emotional health.

V. Principles under the VAA

The VAA contains principles which guide any persons acting under the statute.⁴⁹ These principles are of crucial importance in resolving the tension between autonomy and protection of the vulnerable adult. These principles state:⁵⁰

- (a) the duty is being performed or the power is being exercised [under the VAA] for the purpose of protecting the vulnerable adult from abuse, neglect and self-neglect;
- (b) a vulnerable adult, where not lacking in mental capacity, is generally best placed to decide how he or she wishes to live and whether or not to accept any assistance;
- (c) if a vulnerable adult lacks mental capacity, the vulnerable adult's views (whether past or present), wishes, feelings, values and beliefs, where reasonably ascertainable, must be considered;
- (d) regard must be had to whether the purpose for which the duty is being performed or the power is being exercised [under the VAA] can be achieved in a way that is less restrictive of the vulnerable adult's rights and freedom of action;
- (e) in all matters relating to the administration or application of [the VAA], the welfare and best interests of the vulnerable adult must be the first and paramount consideration.

These principles are not ranked in order of importance and there is a potential for the principles to be in conflict. For example, what if it is in the best interests of the vulnerable adult that he be removed to prevent the risk of harm but he, being fully competent, refuses to agree. How should the case be resolved?

⁴⁹ Under s 4(3) of the VAA, a court must also have regard to these principles when deciding whether to make an order under the Act, but it "may also have regard to such other matters as the court thinks fit". There is no explanation of what such "other matters" could be. Similar principles can also be found in s 3 of the MCA:

- a person must be assumed to have capacity unless it is established that he lacks capacity;
- a person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success;
- a person is not to be treated as unable to make a decision merely because he makes an unwise decision;
- an act done, or a decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests;
- before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

⁵⁰ Section 4(1) of the VAA.

Of prime importance is the principle of adopting the least restrictive alternative (principle (d)) if the protection cannot be obtained by other means. This principle can also be found under the MCA where a deputy's power to make decisions for a person without mental capacity is to be "as limited in scope and duration as reasonably practicable in the circumstances".⁵¹ Hence, State intervention is not meant to take over the person's life completely. The preference for choosing the minimum or least restrictive alternative means that the vulnerable person should be left in their present living environment rather than institutionalized where possible; and if removal the vulnerable person must be carried out, this should be for as short a period as possible.

If the vulnerable adult has mental capacity, principle (b) states that he is best placed to make the decision whether to accept assistance. In order to help him decide, sufficient information and support (for example by the use of interpreters) must be given so that he can participate fully in the decision-making.

In the case where the vulnerable adult lacks mental capacity, principle (c) requires consideration of the ascertainable views of the vulnerable adult. This may involve seeking information from relevant persons such as immediate family members, relatives or care givers on the views of the vulnerable adult.

VI. Powers of intervention under the VAA

State intervention, through the Director of Social Welfare⁵² ("Director") or "protector"⁵³ appointed under the VAA can only be exercised if:⁵⁴

- (i) the Director or protector has reason to believe that the individual is a vulnerable adult, and the individual has experienced, or is experiencing or at risk of, abuse, neglect or self-neglect; or
- (ii) the court has made an order ... authorizing the Director or protector to do so.

⁵¹ Section 20(4) of the MCA.

⁵² Section 2(1) of the VAA. They are appointed under s 3(1) of the CYPA.

⁵³ Such persons are "public officers with suitable qualifications and experience" appointed by the Director of Social Welfare, s 3(2) of the VAA.

⁵⁴ Section 5(a) of the VAA. If the vulnerable adult is already subject to a court order, the intervention must also not be inconsistent with any condition or direction in the court order.

The intervention powers under the VAA for adults at risk of harm can be placed in an hierarchy and viewed in terms of a pyramid (Figure 1). At the bottom of the pyramid, vulnerable adults may be subjected to assessment of their risk at their residence. The level of protection increases as we progress up the pyramid, with increasing levels of compulsion.⁵⁵ The principles applicable to the VAA, particularly the principle of minimum intervention, must be followed in order to ensure that the vulnerable adult's liberty is not unduly restricted. Conceptualising the powers of intervention as a pyramid helps to visualize the increasingly intrusive nature of the interventions and to identify the appropriate legal safeguards to prevent abuse of such powers that go with each level of intervention.

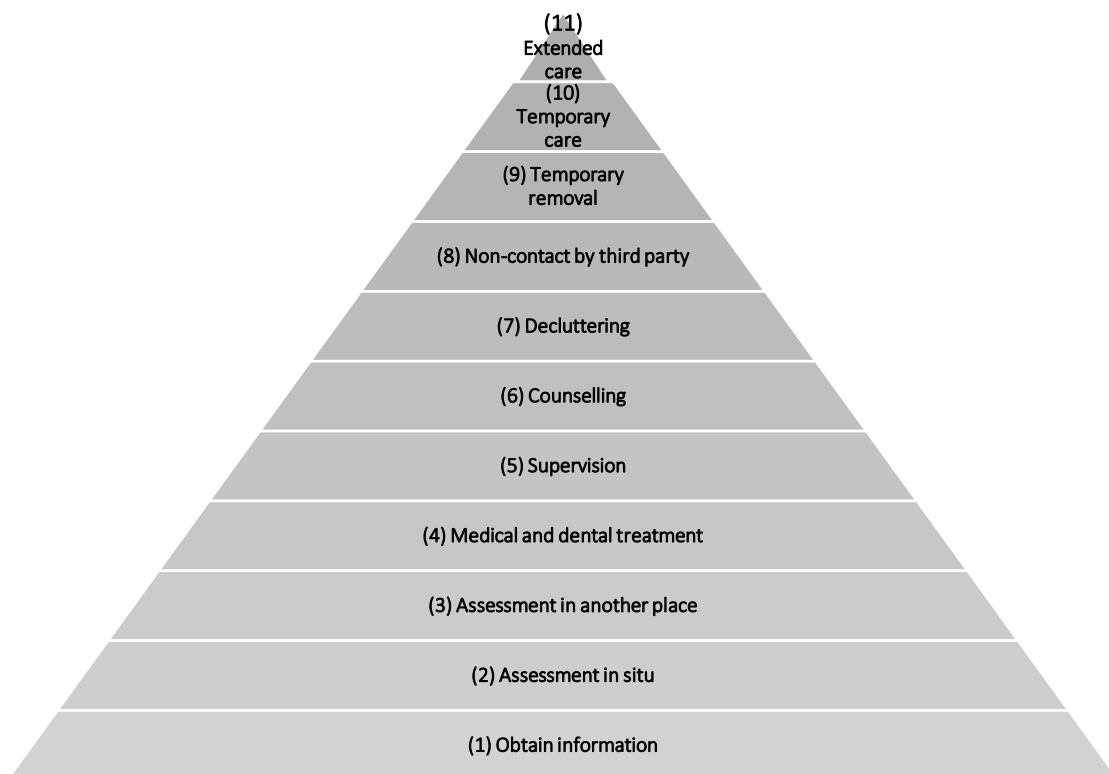


Figure 1: Powers of intervention

⁵⁵ There can be debate as to whether certain measures are placed in the correct hierarchy. For example, it can be argued that the order for non-contact by a third party should be placed higher than the temporary removal order since the former can be of indefinite duration. However, it can also be argued that the latter constitutes a more severe intrusion on the liberty of the vulnerable adult even though it may be temporary.

Level 1: Obtain information

If there is reasonable belief that the person is either a vulnerable adult or is a person who has experienced, or is experiencing or at risk of, abuse, neglect or self-neglect, the Director or a protector may require information to be given in order to assess the condition of the vulnerable adult.⁵⁶ To this end, the Director and protector may examine and take records of the person's health record and "any record ... compiled in connection with a social service function".⁵⁷ The latter is not defined in the VAA and its scope may need to be clarified through case law.

A court is also given similar powers to require a person to give information to it such as the vulnerable adult's family background, home environment, medical history and state of physical and mental health and wellbeing, if there is reason to believe that the person has experienced, or is experiencing or at risk of, abuse, neglect or self-neglect, and the order is necessary for the protection and safety of the vulnerable adult.⁵⁸

To overcome concerns about breach of confidentiality, the VAA provides that information given to the Director or protector is not to be regarded as breach of "any code of professional etiquette or ethics or to have departed from any accepted form of professional conduct" and there is no civil or criminal liability in giving this information.⁵⁹ A criminal offence is committed if the requested information is not given without a reasonable excuse⁶⁰ or if false information is knowingly given.⁶¹

Level 2: Assessment in situ

This involves a visit to the vulnerable adult's residence for an assessment to be made by the Director, protector or a "qualified assessor".⁶² Such visit can be made without notice, at any time of the day or night.⁶³ If the vulnerable adult to be assessed is prevented from

⁵⁶ Section 9(1) and (2) of the VAA.

⁵⁷ Section 9(3) of the VAA.

⁵⁸ Sections 12(1) and 14(4)(b) of the VAA.

⁵⁹ Section 9(4) of the VAA.

⁶⁰ Sections 9(5), 14(13)(a) of the VAA.

⁶¹ Section 9(6) of the VAA.

⁶² Section 6(1)(a) and (b) of the VAA. "Qualified assessors" are persons whom the Director or protector "reasonably considers qualified to conduct an assessment", s 2(1) of the VAA. Such persons include "mental capacity assessors" as well who could be a medical practitioner, a psychiatrist or a psychologist, s 3(4) of the VAA.

⁶³ Section 8(1) of the VAA.

being seen by a third party, the Director or protector may direct the third party to produce the vulnerable adult for assessment.⁶⁴ Failure to produce the vulnerable adult without a reasonable excuse or obstructing another person from doing so results in a criminal offence.⁶⁵ The court also has powers to punish non-compliance with the order as a contempt of court.⁶⁶

If the visit is not welcomed by the vulnerable adult or a third party, there are powers to use force to enter the premises,⁶⁷ and for the Director or protector to be accompanied by other persons such as a medical practitioner or auxiliary police officer.⁶⁸ In addition, the Director or protector may request for any person present to leave so that the assessment can be held in private.⁶⁹

Considering the intrusive and delicate nature of the task, it will be good practice for the visitors to identify themselves, inform the vulnerable adult of their reason for visiting, and also the vulnerable adult's right to refuse to co-operate. If the vulnerable adult is reasonably believed to lack mental capacity, the assessment can be carried out if the Director or protector is satisfied that the assessment would be in the person's best interests.⁷⁰ However, if the vulnerable adult has mental capacity but refuses to be assessed, a court order must be obtained for the assessment to take place. The court must be satisfied, on a balance of probabilities, that the vulnerable adult has experienced, or is experiencing or at risk of, abuse, neglect or self-neglect, and that the making of the order is necessary for the safety and protection of the vulnerable adult.⁷¹ Before the order is made, the vulnerable adult must be given an opportunity to be heard, unless it is not practicable to do so.⁷²

Level 3: Assessment in another place

Despite the attempt to engage with the vulnerable adult or their caregiver, situations may arise such that there is a need for the Director or protector to remove the vulnerable adult

⁶⁴ Section 6(1)(c) of the VAA.

⁶⁵ Section 6(8) of the VAA.

⁶⁶ Section 16 of the VAA.

⁶⁷ Section 8(3) of the VAA.

⁶⁸ Section 8(2) of the VAA and the definition of "relevant support person" in s 2(1) of the VAA.

⁶⁹ Section 6(4) of the VAA.

⁷⁰ Section 7(2) of the VAA.

⁷¹ Section 7(3) of the VAA.

⁷² Section 13(3), (4) of the VAA.

from their residence to another place for assessment.⁷³ This avenue is especially useful where a third party is being obstructive.

Where the vulnerable adult has mental capacity, they can consent to the removal even if a third party objects. If the vulnerable adult does not have mental capacity to consent to the removal, they can be removed by the Director or protector without seeking the consent of the vulnerable adult's donee or deputy if one has been appointed.⁷⁴

However, if the vulnerable adult has mental capacity but refuses to be removed, a court order must be obtained for the removal.⁷⁵ The court can issue the order only if it is satisfied on a balance of probabilities that the vulnerable adult has experienced, or is experiencing or at risk of, abuse, neglect or self-neglect, and that the order is necessary for the safety and protection of the vulnerable adult.⁷⁶ Before the order is made, the vulnerable adult must be given an opportunity to be heard, unless it is not practicable to do so.⁷⁷

In order to carry out the removal, the Director or protector may be accompanied by "relevant support persons" such as an auxiliary police officer and may use force as the Director or protector considers necessary to remove the vulnerable adult or to prevent a third party from obstructing their removal.⁷⁸ The Director or protector may enter the premises where the vulnerable adult is staying at any time in the day or night, and may use break open any door, window, lock etc that is necessary to effect entry.⁷⁹

After assessment, the vulnerable adult is to be returned to where they were removed or to the care of another person.⁸⁰

⁷³ Section 6(1)(d) of the VAA.

⁷⁴ Section 6(2) of the VAA. For the appointment of donees and deputies, see the MCA.

⁷⁵ Section 6(1)(d)(iii) of the VAA.

⁷⁶ Section 7(3) of the VAA.

⁷⁷ Section 13(3), (4) of the VAA.

⁷⁸ Section 6(5) of the VAA.

⁷⁹ Section 8 of the VAA.

⁸⁰ Sections 6(6) and 7(4) of the VAA.

Level 4: Medical and dental treatment

The Director or protector may require the vulnerable adult to be produced for medical and dental treatment before or during the time when they are under the temporary care.⁸¹ If needed, a court may make an order to a third party to produce the vulnerable adult for medical or dental treatment before they are committed to temporary care.⁸² It is a criminal offence to obstruct compliance with the court order.⁸³

Such medical or dental treatment can only be administered with the vulnerable adult's consent unless they lack mental capacity to consent and the treatment is reasonably believed by the doctor or dentist to be in the vulnerable adult's best interests, or if it is not practicable to obtain consent because the doctor or dentist reasonably believes that a medical or dental emergency exists and it is in the vulnerable adult's best interests to receive the treatment.⁸⁴

Where the vulnerable adult lacks mental capacity, the medical or dental treatment is to be carried out with the consent of the vulnerable adult's donee or deputy (if one has been appointed) unless the consent cannot be obtained within a reasonable time or if the consent is unreasonably withheld by the donee or deputy.⁸⁵

Level 5: Supervision

A vulnerable adult may be placed under the supervision of a protector, an approved welfare officer⁸⁶ or another person appointed by the court for a specified period.⁸⁷ The court must be satisfied, on a balance of probabilities, that the vulnerable adult has experienced, or is experiencing or at risk of, abuse, neglect or self-neglect, and the order is necessary for the protection and safety of the vulnerable adult.⁸⁸ It is a criminal offence to obstruct compliance with this order.⁸⁹

⁸¹ Section 18(1) of the VAA.

⁸² Section 14(1)(c) of the VAA.

⁸³ Section 14(12) of the VAA.

⁸⁴ Section 18(2) of the VAA.

⁸⁵ Section 18(3) of the VAA.

⁸⁶ Such officers must be "suitably qualified" and appointed by the Director under s 3(3) of the VAA.

⁸⁷ Section 14(1)(d) of the VAA.

⁸⁸ Sections 12(1) and 14(1) of the VAA.

⁸⁹ Section 14(12) of the VAA.

Level 6: Counselling

The court may direct the vulnerable adult to attend counselling or other programmes.⁹⁰ The court must be satisfied, on a balance of probabilities, that the vulnerable adult has experienced, or is experiencing or at risk of, abuse, neglect or self-neglect, and the order is necessary for the protection and safety of the vulnerable adult.⁹¹ It is a criminal offence to obstruct compliance with this order.⁹² Non-compliance with the order to attend counselling or other programmes will also amount to contempt of court which may be applied for by the Director or protector.⁹³

The use of counselling orders by a court is not new. It can also be found in legislation relating to family violence⁹⁴ and in cases involving juveniles.⁹⁵

Level 7: Decluttering

The court may authorize the disposal of items in the vulnerable adult's residence in order to make it a safe living environment if the condition of the residence poses a risk to the safety or health of the vulnerable adult.⁹⁶ The court must be satisfied, on a balance of probabilities, that the vulnerable adult has experienced, or is experiencing or at risk of, abuse, neglect or self-neglect, and the order is necessary for the protection and safety of the vulnerable adult.⁹⁷ It is a criminal offence to obstruct compliance with this order.⁹⁸

In making the court order, there must generally be consent by every owner of the residence as well as the vulnerable adult. However, consent by the owner of the residence is not needed if the vulnerable adult consents and the owner(s) cannot be located despite reasonable attempts to do so.⁹⁹ Consent by the owner of the residence or the vulnerable adult is also not needed if either lack mental capacity, or if the court is of the view that the order is necessary for the protection and safety of the vulnerable adult.¹⁰⁰ Before the

⁹⁰ Section 14(1)(i) of the VAA.

⁹¹ Sections 12(1) and 14(1) of the VAA.

⁹² Section 14(12) of the VAA.

⁹³ Section 16(4)(c) of the VAA.

⁹⁴ Section 65(5)(b) of the Women's Charter (Cap 353, 2009 Revised Edition).

⁹⁵ Sections 46 and 51 of the CYPA.

⁹⁶ Section 14(1)(j) of the VAA.

⁹⁷ Sections 12(1) and 14(1) of the VAA.

⁹⁸ Section 14(12) of the VAA.

⁹⁹ Section 14(2) of the VAA.

¹⁰⁰ Section 14(3) of the VAA.

order is made, the vulnerable adult must be given an opportunity to be heard, unless it is not practicable to do so.¹⁰¹

Hence, even if the vulnerable adult (or owner of the residence) has mental capacity and objects to the disposal of items, the “decluttering” order may nevertheless be made by the court on satisfaction that it concerns a vulnerable adult and it is necessary for their protection and safety. However, this latter requirement is not an additional safeguard at all since a court can only make orders if satisfied that it is necessary for the protection and safety of the vulnerable adult.¹⁰² The added safeguard for the decluttering order is that the court must sit with 2 advisers when determining whether to make this order.¹⁰³

Level 8: Non-contact by third party

Non-contact orders can be expected to cause great unhappiness and strain family relationships where the third party is a family member or relative of the vulnerable adult. Such orders must therefore be used with caution.

A third party can be directed by the Director or protector not to contact the vulnerable adult who has been temporarily removed if it is reasonably believed not to be in the vulnerable adult’s best interests.¹⁰⁴ Such a direction can last till a court makes orders concerning the vulnerable adult. Failure to comply without reasonable excuse amounts to a criminal offence.¹⁰⁵

A court considering the vulnerable adult’s case may also make an order prohibiting a third party from entering and remaining in an area outside the vulnerable adult’s residence or any other place frequented by the vulnerable adult,¹⁰⁶ or visiting or communicating with the vulnerable adult.¹⁰⁷ As with other court orders, the court must be satisfied, on a balance of probabilities, that the vulnerable adult has experienced, or is experiencing or at risk of, abuse, neglect or self-neglect, and the order is necessary for the protection and safety of the vulnerable adult.¹⁰⁸ Where the court is satisfied, on a balance of probabilities,

¹⁰¹ Section 13(3), (4) of the VAA.

¹⁰² Sections 12(1) and 14(1) of the VAA.

¹⁰³ Section 13(6) of the VAA.

¹⁰⁴ Section 11(4) of the VAA.

¹⁰⁵ Section 11(5) of the VAA.

¹⁰⁶ Section 14(1)(g) of the VAA.

¹⁰⁷ Section 14(1)(h) of the VAA.

¹⁰⁸ Sections 12(1) and 14(1) of the VAA.

that the vulnerable adult is experiencing, or is in imminent danger of, abuse, neglect or self-neglect, it may issue an “expedited order”,¹⁰⁹ meaning that the order can be made even if the application for it is not served on the person against whom it is to be made or if that person does not appear at the hearing of the application.¹¹⁰

Failure to comply with these court orders without reasonable excuse is a criminal offence.¹¹¹ However, in recognition that breaches of the court orders may arise from a variety of reasons including caregiver stress, action is not taken by the police but by Ministry officials.¹¹² The Director and “authorised officers”¹¹³ are empowered to arrest, without warrant, any person reasonably suspected of violating these orders.¹¹⁴ Breach of the order prohibiting a third party from entering and remaining in an area outside the vulnerable adult’s residence or any other place frequented by the vulnerable adult can also be treated as a contempt of court which the vulnerable adult can apply for.¹¹⁵

Curiously, the VAA states that the court order prohibiting the third party from entering and remaining in an area outside the vulnerable adult’s residence or place frequented by them is “for a specified period”, but there is no time limit for the order prohibiting the third party from visiting or communicating with the vulnerable adult.¹¹⁶ This is probably because the latter order is not considered as intrusive on the rights of the third party as the former. In any case, application can be made for the court orders to be varied, suspended or revoked, subject to the court’s satisfaction that this is in the best interests of the vulnerable adult.¹¹⁷

Level 9: Temporary removal

Where the Director or protector is satisfied on reasonable grounds that the vulnerable adult has experienced, or is experiencing or at risk of, abuse, neglect or self-neglect, they can be committed to a place of temporary care and protection or to the care of a fit

¹⁰⁹ Section 15(1) of the VAA.

¹¹⁰ Section 15(2) of the VAA

¹¹¹ Sections 14(10), 15(8) of the VAA.

¹¹² *First Reading of the Vulnerable Adults Bill: Strengthening Our Ability to Protect* (20 March 2018), para 7(c).

¹¹³ Such officers are auxiliary police officers and “enforcement officers” who are public officers with “suitable qualifications and experience”, ss 2(1), 3(5) and 3(9) of the VAA.

¹¹⁴ Section 28 of the VAA.

¹¹⁵ Section 16(4)(d) of the VAA.

¹¹⁶ Section 14(1)(g), (h) of the VAA.

¹¹⁷ Section 17 of the VAA.

person.¹¹⁸ It can be anticipated that such removals will only be used in crisis situations where the vulnerable adult is at grave risk should they continue living in their current premises.

Such removals must be with the consent of the vulnerable adult unless they are assessed to lack mental capacity to consent. There is no need to obtain the consent of the vulnerable adult's donee or deputy (if appointed) in such cases where the person lacks mental capacity.¹¹⁹ But if the vulnerable adult has mental capacity and objects to the removal, an order of court must be obtained to authorise the removal.¹²⁰ The court must be satisfied, on a balance of probabilities, that the vulnerable adult has experienced, or is experiencing or at risk of, abuse, neglect or self-neglect, and that the order is necessary for the safety and protection of the vulnerable adult.¹²¹ An opportunity must be given for the vulnerable adult to be heard by the court unless it is not practicable in the circumstances to do so.¹²²

The Director or protector may enter the premises where the vulnerable adult is staying without notice, at any time of the day or night, and may break open any door, window or lock if necessary to effect entry.¹²³ The Director or protector may also be accompanied by "relevant support persons" such as an auxiliary police officer and use such force as necessary to remove the vulnerable adult or to prevent a third party from obstructing the removal.¹²⁴

Unless the vulnerable adult is returned, the Director or protector must apply to court, within 14 days after the day of the removal, for an order to be made.¹²⁵ If this application cannot be made in time, the Director or protector must nevertheless apply for an order for the custody, charge and care of the vulnerable adult for the period before the court application for an order can be made and explain the reasons for the delay.¹²⁶

¹¹⁸ Sections 10(1), 11(1)(a) of the VAA. Places of temporary care and protection are places where assessments and investigations are carried out and where longer-term care arrangements are planned (s 19 of the VAA). Fit persons can be an individual (such as a family member or relative) or organisation which the court or Director thinks is competent to provide care and protection to the vulnerable adult (s 2(1) of the VAA).

¹¹⁹ Section 10(2) of the VAA.

¹²⁰ Section 10(4) of the VAA.

¹²¹ *Ibid.*

¹²² Section 13(3), (4) of the VAA.

¹²³ Section 8 of the VAA.

¹²⁴ Section 10(5) of the VAA.

¹²⁵ Section 11(1) of the VAA.

¹²⁶ Section 11(2) of the VAA.

If the vulnerable adult refuses to be removed, the best approach would be to obtain a court order for the removal unless it is clear that they do not possess mental capacity. It may not be possible to come to an accurate assessment of mental capacity without the cooperation of the vulnerable adult and their care givers.

Level 10: Temporary care

On application to a court, an order may be made for the vulnerable adult to be committed to a place of temporary care and protection, or the care of a fit person, for a period not exceeding 6 months.¹²⁷ As with other court orders, the court must be satisfied, on a balance of probabilities, that the vulnerable adult has experienced, or is experiencing or at risk of, abuse, neglect or self neglect, and that the order is necessary for the protection and safety of the vulnerable adult.¹²⁸ The court must grant the vulnerable adult a reasonable opportunity to be heard unless it is not practicable to do so or if they are assessed to lack mental capacity.¹²⁹

A Review Board is established by the VAA to ensure that a proper care plan is in place for vulnerable adults committed to a place of temporary care and protection, or a place of safety¹³⁰ or the care of a fit person which is an organisation.¹³¹ The Review Board also advises the Director whether the vulnerable adult can be discharged from such place or care before the completion of the period of committal.¹³²

Level 11: Extended care

Finally, the court may also commit the vulnerable adult to stay in a place of safety or to a fit person for an extended duration exceeding 6 months. The only guidance to the court expressed in the VAA as to when this is more appropriate than a committal to temporary care is that “it is in the best interests of the vulnerable adult to be so committed”.¹³³ Unfortunately, this does not provide much guidance since one of the principles to be

¹²⁷ Section 14(1)(a) of the VAA.

¹²⁸ Sections 12(1) and 14(1) of the VAA.

¹²⁹ Section 13(3), (4) of the VAA.

¹³⁰ A place of safety is for the care and protection of vulnerable adults over the longer term, s 19 of the VAA.

¹³¹ Section 20(2) of the VAA.

¹³² Section 20(2) of the VAA.

¹³³ Section 14(1)(b) of the VAA.

followed in the VAA “in all matters” is that “the welfare and best interests of the vulnerable adult must be the first and paramount consideration”.¹³⁴

However, a court hearing an application for extended care must sit with 2 advisers who will inform and advise the court on the protection and safety of the vulnerable adult, and the appropriateness of making the order.¹³⁵ This is unlike the application for an order for temporary care where the judge sits alone.

The court must grant the vulnerable adult a reasonable opportunity to be heard unless it is not practicable to do so or if they are assessed to lack mental capacity.¹³⁶

The Review Board also plays a role as described in the previous section.

VII. General comments

It can be noted that the criteria for State intervention does not change even as the level of intervention increases. It may be argued that, under the principle of minimum intervention, the level of risk and degree of vulnerability are very important to justify the intervention. As the intrusiveness of the intervention increases, there ought to be proof of risk of *serious* harm, and not just risk of harm, and stronger proof that the vulnerable adult is unable to protect themselves.

In situations where a court order has to be obtained, for example where the elderly has mental capacity and object to their removal, one concern is whether the legal proceedings will turn out to be too adversarial in nature which can worsen the relationships between family members, caregiver(s), the elderly and the social workers. Legal representation can also cause their positions to be even more entrenched.¹³⁷ Perhaps consideration can be given to whether the orders needed can be made by a tribunal which will not be bound strictly by matters of evidence and where the parties are not allowed to be legally

¹³⁴ Section 4(1)(d) of the VAA. However, it is noted that the court may consider “other matters as the court thinks fit” as well, s 4(3) of the VAA.

¹³⁵ Sections 13(6), 13(8) of the VAA.

¹³⁶ Section 13(3), (4) of the VAA.

¹³⁷ Under the Legal Aid and Advice Act (Cap 160, 2014 Revised Edition), only Singapore citizens and Singapore permanent residents are eligible for legal aid in civil proceedings. Legal aid may also be refused based on the merits of the case or if the applicant has financial means, see ss 5 and 8, *ibid*.

represented. The tribunal system is already adopted under the Maintenance of Parents Act.¹³⁸

Another query concerns how the initial determination of whether the vulnerable adult has mental capacity to object to the State intervention such as temporary removal for assessment can be made since the reason of seeking their removal is that a proper assessment cannot be made otherwise. The wording of section 6(1)(d)(ii) of the VAA assumes that the assessment of mental capacity can be made by a “qualified assessor” even though assessment by the Director or protector may be prevented. However, it is equally likely that the vulnerable adult or a third party will prevent access by the qualified assessor as well. In such a case, it is not clear if it would be possible to resort to s 7(2) of the VAA which allows a Director or protector to exercise their powers if they have reason to believe that the vulnerable adult lacks mental capacity to refuse the assessment and that doing so will be in their best interests. If this is possible, then it is only the very few cases where the mental capacity of the vulnerable adult is known and they refuse to cooperate that a court order is needed. On the other hand, if this route is not available, the avenues for intervention will be hampered if access to the vulnerable adult is refused and it is not possible to assess the person’s mental capacity – the very issue which the VAA was meant to overcome.

It is also a very difficult and serious issue in deciding if the vulnerable adult has mental capacity or not. It is a highly artificial line to draw in a binary fashion between those who have or do not have mental capacity.¹³⁹ Under the MCA, mental capacity is determined on purely functional grounds to decide on the specific issue concerned: they are either able or unable to make a decision in relation to a specific matter.¹⁴⁰ However, a person may also find it difficult to make a decision because of their connections and interdependencies with others which is not reflected in a purely functional test.¹⁴¹

¹³⁸ Cap 167B, 1996 Revised Edition.

¹³⁹ This is recognized by the Minister for Social and Family Development when he said, “mental capacity is not a black and white concept. Indeed, there are good days and bad days”. See *Closing Speech by Minister Desmond Lee at the Second Reading of the Vulnerable Adults Bill* (18 May 2018), para 33.

¹⁴⁰ Section 4(1) of the MCA. The inability must be due to “an impairment of, or disturbance in the functioning of, the mind or brain”. Under s 5(1) of the MCA, a person is considered unable to make a decision for themselves if they are unable:

- (a) to understand the information relevant to the decision;
- (b) to retain that information;
- (c) to use or weigh that information as part of the process of making the decision; or
- (d) to communicate his decision (whether by talking, using sign language or any other means).

¹⁴¹ See Jonathan Herring, *Vulnerable adults and the law* (OUP, 2016), chapter 3.

What amounts to consent will also have to be fleshed out by case law since the VAA does not contain a definition. The scenarios envisaged is where the refusal of assistance “stems from duress or pressure from family members or the perpetrator”,¹⁴² or “duress or undue influence”.¹⁴³ But what kinds of “influence” will amount to duress, pressure or undue influence? And at what stage would duress, pressure or undue influence vitiate consent?¹⁴⁴ Would submission amount to consent? Or must consent be actively given? Would any mistaken assumption made by the vulnerable adult vitiate the apparent consent? Or will only certain mistakes do so? What if the mistaken assumption was not encouraged by or reasonably known to other persons?

Although the VAA utilises the “best interests” test, there is no guidance in the Act in how this is to be determined. This may be compared to the explicit guidance provided in s 6 of the MCA such as a person’s best interests is not to be determined based on their age, how they look or how they behave; and requiring that the opinion of persons such as the person’s caregiver on what is in the person’s best interests be consulted. Such guidance should also be considered for the VAA.

Finally, the limited role of the Review Board may also be criticised. It is to ensure that there is a proper care plan and reviews vulnerable adults committed to a place of temporary care and protection, a place of safety or care of a fit person which is an organisation.¹⁴⁵ Its ambit does not extend to those who have been committed to the care of a fit person which is *not* an organisation such as a family member. Considering that the vulnerable adult has been subjected to abuse, neglect or self-neglect, there should be continued monitoring of the welfare of all vulnerable adults by the Review Board whether or not the fit person is an organisation.

¹⁴² *First Reading of the Vulnerable Adults Bill: Strengthening Our Ability to Protect* (20 March 2018), para 7(b).

¹⁴³ *Opening Speech by Minister Desmond Lee at the Second Reading of the Vulnerable Adults Bill* (18 May 2018), para 36.

¹⁴⁴ The Singapore courts may have to refer to case law from other jurisdictions to see how a refusal to consent may be ignored. See for example s 35 of the Adult Support and Protection (Scotland) Act 2007, and s 59 of British Columbia’s Adult Guardianship Act. These two Acts were studied when drafting the VAA, see *Opening Speech by Minister Desmond Lee at the Second Reading of the Vulnerable Adults Bill* (18 May 2018), paras 39 and 40.

¹⁴⁵ Section 20(1) of the VAA.

VIII. Conclusion

The notion of caring and showing respect for our elders can be found in all cultures and religions. Unfortunately, this notion has somehow been eroded over time, with increasing incidents of elder abuse and neglect reported in the media.

A combination of approaches is needed to tackle elder abuse: mandatory receipt as well as voluntary engagement of social services. The test of the former is how to do so without encouraging ageism or violating the autonomy of the elderly. The VAA attempts to fill the current gaps in the law by keeping vulnerable adults safe through increasing powers of intervention. Those engaged in vulnerable adult protection will have to start from the bottom of the pyramid and justify the need to move up the different levels of intervention. Where the vulnerable adult to be protected has mental capacity but refuses to accept support, compulsory intervention is possible but is limited and subject to legal safeguards. Rather than focusing on the coercive powers of the VAA, the interventions should be seen as supporting vulnerable adults to lead lives free from harm. The VAA seeks to strike a balance between respecting the individual rights of the vulnerable adult and the duty to protect. The key is *how* the powers under the VAA are utilised in practice. As pointed out by the Minister for Social and Family Development at the Second Reading of the Bill, persons working with vulnerable adults will continue to build relationships with the vulnerable adults they serve.¹⁴⁶ The VAA does not change the fundamentals of good social work practice of reaching out to the family, the community, the neighbours and the vulnerable adult, but provides an added legislative option to protect those at risk.¹⁴⁷ The VAA has been referred to numerous times as a means only to be used as “a last resort” to protect vulnerable adults where attempts to engage with the vulnerable adult and/or their family have failed,¹⁴⁸ and that care arrangements are largely matters for individuals and families to decide on.¹⁴⁹

Taking care of an elderly person is by no means easy, especially for their children who face family and work pressures of their own. This is made even more so if the elderly suffer from physical or mental disabilities. In order for the elderly to age with dignity,

¹⁴⁶ *Opening Speech by Minister Desmond Lee at the Second Reading of the Vulnerable Adults Bill* (18 May 2018), para 18.

¹⁴⁷ *Closing Speech by Minister Desmond Lee at the Second Reading of the Vulnerable Adults Bill* (18 May 2018), paras 27, 37, 38 and 44.

¹⁴⁸ *First Reading of the Vulnerable Adults Bill: Strengthening Our Ability to Protect* (20 March 2018).

¹⁴⁹ *Opening Speech by Minister Desmond Lee at the Second Reading of the Vulnerable Adults Bill* (18 May 2018).

various other support services must also be made available such as home medical services, adult day care centres and respite care. The VAA is only one step of the journey towards giving elders the care that they deserve. It is hoped that by positioning the VAA in terms of “safeguarding of vulnerable adults”¹⁵⁰ rather than criminal punishment of elder abuse,¹⁵¹ there will be greater willingness of caregivers and vulnerable adults to engage with external support networks.¹⁵²

¹⁵⁰ Short title to the VAA.

¹⁵¹ Criminal punishment is possible if the behaviour falls within the definition of a criminal offence under the Penal Code or other legislation such as s 42 of the MCA.

¹⁵² This has been one of the difficulties faced in Japan, see Miharu Nakanishi *et al*, “Impact of the elder abuse prevention and caregiver support law on system development among municipal governments in Japan” (2009) 90 Health Policy 254.



Prof. Chan Wing Cheong

Chan Wing Cheong is Professor of Law, School of Law, Singapore Management University. He completed his undergraduate studies in Law in Oxford University (England) and his Masters degree in Cornell University (USA). He is an advocate and solicitor of the Supreme Court of Singapore, a barrister of Gray's Inn (England & Wales), and a qualified attorney of New York State (USA).

His academic career started with the Faculty of Law at the National University of Singapore in 1993. He teaches and researches mainly in the areas of criminal law and family law, and he has been recognised for his excellence in teaching at the Faculty and University levels. His major works as sole author or co-author include Criminal Law in Malaysia and Singapore (3rd Edition) (LexisNexis, 2018); Criminal Law for the 21st Century: A Model Code for Singapore (Academy Publishing, 2013); Codification, Macaulay and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform (Ashgate, 2011); Singapore's Ageing Population: Managing Healthcare and End of Life Decisions (Routledge, 2011); Support for Victims of Crime in Asia (Routledge, 2008); Fundamental Principles of Criminal Law in Singapore and Malaysia: Cases and Materials (LexisNexis, 2005).

CALE Discussion Paper No.17

TACKLING ELDER ABUSE: STATE INTERVENTION UNDER SINGAPORE'S VULNERABLE ADULTS ACT

Author Prof. Chan Wing Cheong

Published by Center for Asian Legal Exchange (CALE)
Nagoya University
464-8601 Furo-cho, Chikusa-ku, Nagoya, JAPAN
Tel: +81 (0)52-789-2325 Fax: +81 (0)52-789-4902
<http://cale.law.nagoya-u.ac.jp/>

Issue date January, 2019

Printed by Nagoya University Co-operative Association

© All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the publisher.