

SELECT COMMITTEE INTO ELDER ABUSE

INQUIRY INTO ELDER ABUSE



TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 7 MAY 2018

SESSION TWO

Members

Hon Nick Goiran, MLC (Chair)
Hon Alison Xamon, MLC (Deputy Chair)
Hon Matthew Swinbourn, MLC
Hon Tjorn Sibma, MLC

Hearing commenced at 11.02 am

Mr CHRIS DAWSON

Commissioner of Police, Western Australia Police Force, sworn and examined:

Ms SUSAN YOUNG

Acting Commander Judicial Services, Western Australia Police Force, sworn and examined:

The CHAIRMAN: This is a public hearing for the Select Committee into Elder Abuse. This is our tenth public hearing. Before we commence, I need to ask you whether you wish to take the oath or the affirmation.

[Witnesses took the oath or affirmation.]

The CHAIRMAN: Thank you. You will have both signed a document entitled “Information for Witnesses”. Have you read and understood that document?

The WITNESSES: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard and broadcast on the internet. Please note that this broadcast also will be available for viewing online after this hearing. Please advise the committee if you object to the broadcast being made available in this way. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record. Please be aware of the microphones in front of you and try to talk into them; ensure you do not cover them with papers or make noise near them.

I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

We have a number of questions for you this morning, but, at the outset, would you like to make an opening statement?

Mr DAWSON: No, thank you.

The CHAIRMAN: Okay; great. It has been the usual practice of the committee to make its way through each of the 10 terms of reference. However, I need to foreshadow that we have a range of questions in respect to terms of reference (e), (g), (h) and (i). We are time poor this morning, so I will bundle the first four together for any comment that you might have. The committee has been asked to determine an appropriate definition of elder abuse; identify its prevalence; identify the forms of elder abuse, including, but not limited to, neglect; and identify the risk factors. Before you answer that, I indicate to you that the committee is aware from a previous public hearing that the WA Police Force is part of APEA and that APEA has now upgraded its protocol, which does, of course, address a number of those issues. I invite any comment you might wish to make.

Mr DAWSON: Thanks, Chair. By way of added introduction, Sue Young is the Western Australia Police Force representative on APEA, so she will be able to answer more specifically on matters that I may omit—unintentionally, of course. On the definition question, Western Australia Police Force

has adopted and is aligned with APEA's definition of elder abuse. We have previously had some alignment with a previous definition that has now been adopted by APEA. How long ago was that, Sue?

Ms YOUNG: December 2017 was the latest iteration.

Mr DAWSON: As the committee may note, in our written submission to the committee, we made commentary within the matter of the definition of elder abuse that in terms of the criminal law, the Criminal Code of Western Australia provides a number of aggravated penalties and elements for criminal offences, primarily around offences against the person. I would be happy to further respond if anyone on the committee is interested as to whether in fact that should be extended beyond the existing aggravated penalties, which primarily relate to assaults and the like against elderly people, and to whether the law should be amended to reflect offences regarding property, fraud et cetera.

The CHAIRMAN: I think that will certainly be addressed in term of reference (e), and we will deal with that in a moment. If you do not have anything further on the first four terms of reference, let us go straight into it. Term of reference (e) is assess and review the legislative and policy frameworks. The first question that the committee has for you is: can the holder of an enduring power of attorney apply for a misconduct restraining order on behalf of the donor?

Mr DAWSON: I am personally unaware of whether it extends to the matter of a restraining order, unless my colleague has that information.

Ms YOUNG: We would have to take that on notice. I think that would be something for the Department of Justice.

Hon ALISON XAMON: By way of explanation, one of the things the committee is aware of is that if someone becomes immediately aware that an elderly person perhaps is being subjected to financial abuse, it can be difficult to get swift intervention to prevent that abuse from remaining ongoing. We have previously had evidence that the police are sympathetic to that but feel powerless to do anything about that. I would be interested to hear more around those particular circumstances when members of the public are going to the police and desperately trying to get assistance, and the sorts of limitations that you feel are placed on them being able to assist.

Mr DAWSON: My comment in response would be, particularly for matters involving family and domestic violence, that we have quite clear protocols in terms of actually ensuring that we provide as much assistance as possible to vulnerable people. In the case of a person who may hold enduring power of attorney status, while I would like to respond further on notice in terms of that specificity, by way of principle, I would think it is a matter that under the guardianship act is much clearer. In cases where there is uncertainty and where the complainant themselves is not able to or is unwilling or there may be some inhibition on the part of the individual to have an enduring power of attorney do that, one would need to clarify that in law. But by way of principle, we would want to do everything we can to assist any victim or person who is making a complaint. If they are seeking a restraining order from the court, what we routinely do in matters of family and domestic violence is that we will facilitate as much as possible to ensure that they in fact get such an order.

[11.10 am]

Hon ALISON XAMON: I am aware, though, that in the case of family and domestic violence, the police can intervene as a party in the event that people are either unwilling or unable to do that. In the case of financial abuse, which, as has been produced in evidence to this committee, appears to be the principal form in which elder abuse occurs, what capacity do the police have to intervene if they become aware that financial elder abuse is occurring?

Mr DAWSON: At present we do not have any legal authority as far as I am aware.

Ms YOUNG: Again, in the criminal domain, it would be whether it is an offence of fraud or some other property-type offence. Outside of that —

Hon ALISON XAMON: If it is simply humbugging or harassment or just an ongoing request for money, which may be seen to be given willingly but you have a person who is in a position of vulnerability, are you confirming to this committee that the police have no powers to intervene?

Mr DAWSON: I am presently unaware of any direct power that police have to intervene on behalf of an elderly person. As to the merit of that, that is another question. But legally, as at present, I am unaware of any legal matter that enables police to intervene without the consent of the person who at law is able to cognitively make decisions for themselves.

Hon ALISON XAMON: Would you have any protocols in place whereby you may refer it through to the Public Advocate—for example, if you became aware of somebody who was potentially in that vulnerable situation and required a third party to perhaps provide assistance?

Ms YOUNG: We do not have specific protocols around it. We have a referral process in terms of our relationship with Child Protection and Family Support certainly in relation to that.

Hon ALISON XAMON: But that really would not pertain to elder abuse, would it? We are talking about elderly people. We are not talking about people in the child protection system. It is the other end of life.

The CHAIRMAN: I think this is an important point. The committee has received evidence from Legal Aid WA. I will quote from their answer to a question taken on notice. This is in respect of family violence restraining orders. They say, and I quote —

Someone is needed to make the application. The older person may be reluctant or unable to make the application to the court. In practice, Police do not make the application for the FVRO, but they do have the power to do so.

If needs be, I would ask that you take that on notice. Plainly, the committee needs to know: is it a fact that police have the power to apply for a family violence restraining order; and, if you do have that power, in what circumstances do you apply the use of that power, and have you ever done so?

Hon ALISON XAMON: And also, if you do not have the power, should these powers that the committee is investigating be made available?

Mr DAWSON: Although I am very happy to take that question on notice, my immediate response, with a caveat that we will consider this more fully outside the committee, is that in such applications, it would only be related to family and domestic violence abuse in the sense of that physical personal abuse, as opposed to, for instance, an element of financial abuse. I am not confident, as I sit here, that we presently have the power to do so.

The CHAIRMAN: Yes, but has not the definition of family and domestic violence changed so that financial abuse is now included? I thought that that had changed in the legislation in the last year or two.

Ms YOUNG: Yes. There is capacity for an applicant to go to the court and apply for a family violence restraining order. If there is not a family relationship, a violence restraining order specifically around the family violence, it can encompass physical, mental and psychological abuse, and that is based on the applicant demonstrating to the court on the balance of probabilities that they are suffering from those types of abuse sufficiently so to warrant the issuance of a family violence restraining order.

The CHAIRMAN: The question that remains unresolved is whether WA police also have the power to step in and make such an application.

Ms YOUNG: Police do have the power under the Restraining Orders Act to apply for family violence restraining orders but we do not as a matter of course.

The CHAIRMAN: It has never happened?

Ms YOUNG: It does happen, but very rarely, though; a very small proportion.

The CHAIRMAN: What would be the circumstances or is there a protocol which provides a guideline as to when you would step in and apply for a family violence restraining order?

Ms YOUNG: It would be if the applicant was almost incapable of applying, so it would be on their behalf. The department of child protection, for example, can apply on behalf of a child. They can undertake that application. Police can apply on behalf of an applicant or person protected. We do not as a matter of course, but we will, however, in urgent circumstances, or in certain circumstances. That would be high risk.

The CHAIRMAN: If the person has capacity to make an application but is unwilling to do so, you would not step in in that situation?

Ms YOUNG: No.

Hon ALISON XAMON: Certainly part of the evidence we have heard is that people may well and truly be capable but because of fear of loss of relationship, or loss of relationship with grandchildren, for example, or a whole range of other personal complexities, they may be extremely reluctant to seek those protections. That is an area of vulnerability that surely should be considered by the police as a mitigating factor as to whether the police step in to do something about it.

Ms YOUNG: Some of the complexities around managing that circumstance is that if the person protected does not want the order, it is problematic from an enforcement perspective in terms of access and the order being breached. If an order is given and the person to be protected does not want it, it can often result in the person being prosecuted or a person breaching offence as a result of consent from the person protected.

Hon ALISON XAMON: It may just be that all they want is for someone—a third party—to be making it clear that that behaviour is not appropriate and it just needs to stop. If the police are stepping in to do that, that sends a very clear signal to the perpetrator that they need to cease whatever it is they are doing but potentially still preserves the relationship between the person being abused and the abuser. I am just making the comment that there is a unique vulnerability there that probably needs to be considered, and it needs simply the capacity to consent.

The CHAIRMAN: Just to round this issue out, I am getting the sense that we do not need to take anything on notice. Are the witnesses sufficiently comfortable that the evidence to the committee is that WA police does have the power to apply for a family violence restraining order and does so sparingly in appropriate circumstances?

Mr DAWSON: Yes. I would still want to be satisfied that the threshold, leaving aside the capacity issue, is that it is sufficiently covered within the existing legislation on the element of financial abuse as opposed to physical abuse. Certainly in physical abuse, I have no difficulty at all in totally agreeing with your proposition. Whether it extends just to a person's difficulty in, let us put it bluntly, pressure from family to, for instance, share assets, and whether they have the capacity to willingly do that but feel under pressure, that is a matter which no doubt is the subject of a whole lot of disputation as to the consent element but also as to whether in fact they may be reluctant as an elderly person to do anything to jeopardise relationships with the family. It is not an area free of difficulty, I think. It is a matter that police certainly are often placed in situations to, in a form,

adjudicate whether we should or should not intervene and let a court ultimately come to some sort of determination. Certainly, I would like to explore this further on notice.

[11.20 am]

Hon MATTHEW SWINBOURN: I want to make the point that we are talking about family and domestic violence here, but elder abuse does not always happen in that context. I think sometimes the most egregious examples are by people who are not related to them. I am not sure if that changes your perspective in terms of whether you have intervened in the past or proposed to intervene in terms of making an application or if you even have the powers to intervene in those circumstances. I think that needs to be considered in that context, particularly with financial abuse. The police will of course have examples where they have successfully investigated and prosecuted people who were carers or other health professionals or others within the community. But one of the key things here is before you can prosecute, sometimes you need to stop the behaviour, and a restraining order is a great mechanism for doing that so that the behaviours can stop and then you can deal with the criminality side of things.

Mr DAWSON: If I could, with your consent, make comment about that. In matters that turn on where the other party is not related to the elderly person, I certainly have had experience with financial scams and the like, in some cases fraud, where third parties are involved and where it is often elderly people—it may be a romance-type scam. Certainly in the role that I was previously doing in Canberra, some 70 per cent of financial scams often involve these romance type of online personas where persons, quite often elderly people, are sending a lot of money, often overseas, to a person who they have been deluded into believing they may have some romantic interest and relationship with. Despite being warned by immediate family, by authorities, I am aware of a number of instances in which the elderly person has continued to voluntarily send money, despite the best efforts of authorities and the immediate family. It is not a particularly easy area for us as police to always intervene if the issue of consent is quite clear and the issue of capacity is not there. They are simply convinced that they want to send money to another party.

Hon MATTHEW SWINBOURN: In that example, you cannot get a misconduct restraining order because the perpetrator is out of the jurisdiction and you might have trouble identifying who the actual person is. Perhaps we should get them against the elderly person themselves. I am being flippant here, of course. But I take your point that people who have capacity to act in a manner that is detrimental to their interests have a right to act that way generally in our population so long as they are not harming others. I am thinking of those circumstances where you can identify a person in the jurisdiction and deal with that person to stop the behaviours before further damage is done.

Hon ALISON XAMON: On that, I know of an example where an elderly couple, who were very frail, were being visited by a young man who had a drug addiction every second day or so turning up demanding money. That was being handed over willingly. When I say “willingly”, I mean because those people were frightened and did not know what would happen if they did not pay that money. The police were made aware of it and the police made it very clear that there was nothing that they could do and it would require civil action on behalf of the family in order to stop that. In that instance, the young man managed to do away over time with \$25 000 of what was effectively their life savings. Those are the sorts of scenarios that I am talking about, wanting to know why the police could not, or alternatively would not, at least pay a visit to that man whose address was known to say, “You do not go around there anymore; this stops”, let alone potentially press charges for what was really quite intimidatory behaviour, even if it was not accompanied with overt threat. Do you have any comments about that sort of scenario?

Mr DAWSON: Police are too often called in what may be perceived as civil disputes. We have to make a delineation between whether, in fact, it crosses the threshold into criminal responsibility, because I cannot have my officers adjudicating in terms of whether it is a civil dispute or a criminal. I think in the scenario that you have put, there are criminal thresholds for demanding property with intent, with threats and the like, and matters that go so far as extortion. There is a clear criminal threshold for matters that the law already provides for once it crosses into that criminal threshold.

Hon ALISON XAMON: In this case we are talking about a young man who just managed to find a soft touch. So there is nothing that you could have done?

Mr DAWSON: That is why I want to take on notice the question earlier about whether, in fact, there is an intervention opportunity that goes beyond physical abuse to financial abuse.

The CHAIRMAN: Let us round this out. Commissioner, I propose that you take on notice these two questions: For which forms of elder abuse does WA police have the power to apply for a family violence restraining order? Secondly, does that power also apply for violence restraining orders and misconduct restraining orders?

Mr DAWSON: I am happy to take that.

The CHAIRMAN: Let us move to another topic, then. We have conflated terms of reference (e) and (g), which is assessing and reviewing the legislative and policy frameworks with the capacity of WA police to identify and respond to elder abuse. I just want to turn to the issue of training. What training is provided to new recruits and also to existing police officers as part of continuing professional development on the issue of elder abuse?

Mr DAWSON: In so far as I am aware, in the training provided at recruit period over a 28-week period, there is clearly a legal module in which recruits receive broad training across the entire criminal thresholds and acts. Of course that extends well beyond just the Criminal Code but the Criminal Investigation Act, the Misuse of Drugs Act and the Road Traffic Act. It has compressed the full gamut of the criminal law into a legal module. It is impossible, to be blunt, in that period of time to provide such comprehensive training that a recruit in their first 28 weeks will graduate with a full compendium of the criminal law. But we then obviously add to that some practical training within the 28-week period. Thereafter, they are on an 18-month probationary period in which more senior officers are able to guide them through, and there is some professional development training thereafter. As to specific matters regarding elder abuse, I am well aware that the training at recruit and subsequent detective training et cetera does provide clarity around aggravated penalties for specific matters. For example, where there is a sexual abuse or physical abuse matter, or, indeed, aggravated burglary, the elements of the age of the victim is an important part. So they are made well aware of that. As to a specific module around elder abuse, I am unaware and, to be blunt, I would be surprised if there is a specific module about elder abuse.

The CHAIRMAN: Further to that then, WA police is one of the members of APEA. APEA has now produced a new “Elder Abuse Protocol: Guidelines for Action”. What proportion of serving WA police officers would have received a copy of this protocol?

Ms YOUNG: They would not have received a hard copy. A copy will be made available electronically on our system, on our intranet site. You would be aware that in July last year, changes were made to the Restraining Orders Act. In order to reach our geographic spread across the state, predominantly our training in terms of that updated information is done electronically. We have a blackboard environment where we will send out e-learning, and it is done online. The changes to the Restraining Orders Act incorporated the family violence restraining orders, as you suggested. We also augmented things around elder abuse and honour-based violence and a range of other

issues that may affect our policing response or issues that we need to be aware of. There was certainly some aspect of it that was updated in the latest iteration of policy and training.

[11.30 am]

The CHAIRMAN: Is this online blackboard, which I think you referred to it as, mandatory?

Ms YOUNG: Yes.

The CHAIRMAN: Is there a mechanism to ensure that each police officer has actually touched base with the blackboard?

Ms YOUNG: Yes. We would have to take on notice the actual percentiles, but it is in the high 90 per cent in terms of completion rates of that particular training component.

Hon ALISON XAMON: What happens if the individuals do not complete it?

Mr DAWSON: It is a management supervisory matter that is brought to their attention.

The CHAIRMAN: I believe that this latest protocol, even though it has been released in a public hearing with our committee, is going to be properly formally released by the government in due course.

Ms YOUNG: I have that in draft; I do not actually have it in that —

The CHAIRMAN: You do not have it in the final form?

Ms YOUNG: That document, no.

The CHAIRMAN: So the committee is one step ahead, which is nice to know.

Ms YOUNG: Yes.

The CHAIRMAN: At some point in time, there will be an online system within WA police to ensure that every police officer could have access to this and is expected to have some understanding about the latest elder abuse protocol?

Ms YOUNG: Yes. We created late last year—again without going into laborious detail—desktop icons. One of the things we created last year as well was a family violence desktop icon. In it, we are able to put things such as that, and research papers and information. There is no guarantee that everybody will look at it, but it is a resource that is available.

The CHAIRMAN: I am sympathetic to that. I can well imagine that for the ordinary WA police officer, with all their other duties and responsibilities, to go and lob this on their desk, the level of enthusiasm is probably not high to pore over the content, but it is important.

Ms YOUNG: Yes.

The CHAIRMAN: It is a constant challenge. Let us move on to whether WA police has a specialised unit for responding to elder abuse.

Hon ALISON XAMON: We note that Victoria does.

Mr DAWSON: We do not have a specific division termed as such, but certainly Superintendent Young's area as a division encompasses matters for vulnerable people, including the elderly.

The CHAIRMAN: What is the capacity of that unit that you are looking after?

Ms YOUNG: It is 10 FTE and it covers across family violence and, as I said, elder abuse and honour-based violence.

Hon ALISON XAMON: You would be covering very broad ground in terms of looking at vulnerability?

Ms YOUNG: Yes. It is the strategic policy environment.

Hon ALISON XAMON: Has anyone looked at establishing a specific elder abuse area of expertise in the same way that other jurisdictions have begun doing that?

Mr DAWSON: No, there has not, but I have recently announced an extension beyond the immediate area that Sue Young just referred to, to provide for, in the restructuring effective from 1 July, 56 additional police officers in the metropolitan area, comprising a sergeant and six officers in each of the new eight police districts, who will be specifically subject matter experts, to complement each of the police districts in respect of family and domestic violence. Given our earlier discussions and the questions you put on notice, I expect that that would also encompass not just family and domestic violence in a certain age demographic, but include elderly people as well and all vulnerable people.

Hon ALISON XAMON: What the committee has heard on several occasions, though, during this inquiry is that stakeholders are concerned that the police are not taking issues of elder abuse seriously unless physical abuse is involved. By the way, I welcome the new focus on family and domestic violence, but there may be a risk that we will simply see a continuation of the focus on physical abuse at the expense of the other more prevalent forms of elder abuse. Have you got any comment on that?

Mr DAWSON: My broad comment would be that I allocate resources as I try and balance the full myriad of matters that we deal with. I know, for instance, that there are stakeholders in certain sectors who are always desirous of police having specialised units. There are many sectors that have made and continue to make such requests, and I expect that will continue. But given the demographic and the ageing population, I am happy to further examine the resources that we are applying to family and domestic violence. I am just as concerned for our regional Western Australian areas as well, given the demographic slice between both vulnerable people, whether it be through their regional locations, their ethnicity, Indigenous or otherwise, and the age cohort, and that is a matter that I have to balance out between the available resources. That is why the decision I have made to extend the resources to an additional 56 officers in the metro area will not necessarily be required or, indeed, be able to be deal with all such matters, but they can provide additional support and advice to our 2 500 metropolitan-based officers. It is even more challenging, to be blunt, in our regional Western Australian areas because of the spread of resources over what is the world's largest policing jurisdiction by geography.

The CHAIRMAN: Moving then to training for police prosecutors, do they have any specialised training to identify aspects of elder abuse when they are considering charges of assault or fraud? Perhaps, commissioner, this might lead into your earlier discussion around circumstances of aggravation and whether there needs to be some improvement there.

Mr DAWSON: I am certainly aware, Chair, that when I undertook the prosecuting training many years ago, there was very specific training about the circumstances of aggravation attached to various offences and certainly as to what court jurisdiction applies in terms of whether matters should go before a superior court or a lower court. In terms of a specific module dealing with elder abuse, I am unaware, but I will take it on notice because I may be wrong in assuming that there is not any—there may well be some, but with your consent I will take that on notice.

The CHAIRMAN: Let us make that question on notice 3. In the meantime do you want to touch on this area of circumstances of aggravation, and when they apply and in which circumstances they are not applicable?

Mr DAWSON: In terms of matters where the victim's age is a circumstance of aggravation, matters that police routinely deal with are in terms of personal offences such as grievous bodily harm, all types of sexual offences, stalking offences, robbery, and various elements of assault. They are

matters on which the police day in, day out have to make determinations as to what charge to prefer and how to investigate a particular matter, because if age is a circumstance of aggravation, that is very important in ensuring that you get the elements of proof correct, and that, if you go to charge, the prosecution brief reflects those elements. Police are quite accustomed to doing that. I think, though, that is somewhat different from your earlier questions, which were as to whether there should be any specialised effort in regard to a class of vulnerable people other than just those that we do in regard to age-specific offences, if I can put it that way.

The CHAIRMAN: There is also the question: should there be?

Mr DAWSON: Correct.

The CHAIRMAN: Does WA police have a position on that?

Mr DAWSON: Again, I am not trying to be overly hesitant here; I am just conscious that when I provided an earlier response to you about the level of training that we provide to our officers, if we were to physically lay out the statutes that we have to deal with—it is not just confined to criminal, traffic and general disorderly, drugs or other—we have to be very mindful of a whole area of law outside the criminal law, involving the Equal Opportunity Act, involving occupational safety and health and all such other myriad matters. I do not want my officers to be so bureaucratically encumbered by every change in the law, but if there is a specific area in which clearly—I know from the records, prior to coming here today, that of the personal offences that we record on an annual basis of about 130 000 against persons, about 10 per cent of such offences are against persons 60 years or older. I am also well aware of the demographics that we have an ageing population. I think this discussion and your questions invite me and my executive to look at, if we have an increased demographic of aged persons, whether we need to recalibrate that what we are presently training and equipping our officers with is fit for purpose.

The CHAIRMAN: So 10 per cent of offences against a person are against people over the age of 60?

Mr DAWSON: Yes.

The CHAIRMAN: How does that correlate with the proportion of Western Australians over the age of 60?

Mr DAWSON: I do not have that answer.

The CHAIRMAN: I do not suppose anyone else happens to know that off the top of their head?

Hon TJORN SIBMA: It is about 20 per cent.

[11.40 am]

Hon ALISON XAMON: Can I suggest that is because you are talking about assaults primarily, are you not? As I understand it, most assaults are perpetrated by and against young men. Because we are talking about a much broader definition of elder abuse, I would suggest the 10 per cent that you cited does not capture the full breadth of potential offending that we are investigating.

Mr DAWSON: No, although there are some —

The CHAIRMAN: That would be just physical abuse, they are saying.

Hon ALISON XAMON: Yes. We already know that the bulk of that occurs with young men.

Mr DAWSON: Yes. If I might remind the committee, in our written submission to you, the analysis that I am looking at here, in the 2016–17 financial year, of the approximate 10 per cent of reported person victims aged 60 years or over, 185 of those crime instances of reported victims were associated with elder abuse, which is specifically what we have recorded, which is under one per cent.

Hon ALISON XAMON: Would that have been principally spousal abuse or would it have been children or other carers? Have you got any breakdown of that?

Mr DAWSON: I do not have a further breakdown, but this is associated with elder abuse, so it would not involve children.

Hon ALISON XAMON: Children perpetrating against their parents.

Mr DAWSON: As perpetrators?

Hon ALISON XAMON: Yes.

Mr DAWSON: No. I am aware of a number of matters—obviously, I do not see all these, but I see the most serious of matters. I saw one only several weeks ago, a matter in which it was about providing the necessities of life. It was one of those sort of very serious matters that had been brought to my attention because of the particular circumstances. I am aware of a number of those that do and would fall within this category. But as to the breakdown as to who the alleged perpetrators are and what cohort, unless my colleague has that —

Ms YOUNG: Only to the extent that two-thirds of them are family violence related, so there is a parallel.

Hon ALISON XAMON: Two-thirds?

Ms YOUNG: Yes, so 66 per cent of that volume. Again, I guess the issue for policing is the context of who that person in trust is: Is it carers? Is it someone who has a professional obligation, so lawyers, accountants? When we talk about a person in trust, who are we capturing in that? For police, we are very set around the criminal law, which is why the aggravating factor is clarity. It may be that the person is aged 60 and over. In the case of elder abuse, though, that does not capture the nuances of some other demographic, such as in the Aboriginal population, where the elder may be younger than 60. So a circumstance of aggravation in the criminal law will not capture the issues around elder abuse that may be occurring in a younger demographic of the Aboriginal population, because by virtue of their culture an elder might be someone who is 40 and is deemed to be an elder, and is that elder abuse in the context of the terms we use for elder abuse? For police, it is very much managing, as you say, the abuse, the notion of the word “abuse”, and the notion of what the criminal law can help us with or how we help our community within the criminal law space. It is an area in which we are looking to partner with as many people as we can to best provide an effective service so that if we cannot help, who can we turn to who might be able to help. That presents as a problem for us in a 24-hour, seven-day-a-week service delivery model with what is available to us to be able to access in that timeline. Often some of the support sector does not operate in a 24/7 dynamic, so it presents as an issue for us in a crisis circumstance for example.

The CHAIRMAN: Do you have any information on some of the barriers to reporting elder abuse to police that victims might face?

Ms YOUNG: It would be anecdotal at best, but again, I attended the national elder abuse conference in Sydney earlier this year and very much the feedback is that the opening statement to solicitors or lawyers when they arrive is, “I can’t believe my child would do this to me.” There are a lot of reasons why people will not want to have a criminal sanction or criminal law outcome for members of their family, so for us it is managing the notion that if you come to the police, obviously we are a law enforcement agency so for us it is about, is this a state wrong? Is this something that requires a policing response and, if not, what are the options we have available to us that might remedy or might assist you to achieve the best possible outcome? Very much, particularly in that family setting, it is really very much about, “My child’s going to get this money anyway.” Anna Bligh made a presentation that I thought was very relevant about if someone turns up and they are seemingly

lucid and coherent, which is also our circumstance, and we may not like what is happening, but there is that issue around autonomy and self-determination, and at what point does it trip over into the state needs to intervene and actually make a decision for you? That is a very fine line for anyone to tread and make reasonably good decisions for everyone concerned. The reasons why people will not come to us will be that we are the police and the perceptions of what that means if you come to the police, and also the possible outcomes we have for you would stop people from coming to us.

The CHAIRMAN: Some of those perceptions are just that—imagined—but some of them will be actual consequences. Just going back to the earlier scenario we were discussing where in rare circumstances WA police would apply for a family violence restraining order, particularly around a person who is unable to do so themselves, as distinguished from unwilling. If WA police did apply for a restraining order in those circumstances, would that be on the person's record at some later stage? If someone was to do a criminal record check at a later stage, would something like that be flagged?

Ms YOUNG: Family violence restraining orders are a civil process, so they are obtained in a Magistrates Court sitting as a civil court, so —

The CHAIRMAN: So there would be no record for that?

Ms YOUNG: No. We would have a record of the existence of an order if it was issued. If it is an application process and does not proceed, we would not hold that data. That would be data held by the Department of Justice.

Hon ALISON XAMON: The point is it is not to become part of the criminal record.

The CHAIRMAN: No, and so —

Ms YOUNG: Only a breach.

Mr DAWSON: Only a breach would be recorded.

The CHAIRMAN: Yes, so therefore it really is only a perception of a problem that WA police have been involved in this civil jurisdiction. There is no legal problem with WA police being involved unless, of course, you breach.

Mr DAWSON: Yes, but I guess the other element this introduces is that the moment police are involved, most commonly obviously in the family domestic violence setting, the assistance and/or existence of an order is one thing. One of the well-known, I guess, hesitations and reluctance on the part of some persons are not to involve police in the first instance because of fear of repercussions and/or threats. So the very existence of an application and then the service of the order, of course, will invite police involvement. That, of course, has historically been one of the big challenges for people actually wanting to invoke such an application process. Certainly what we are contemplating on those questions on notice is: will this cause a different response on behalf of law enforcement in what is often a family disputation over property. That is not an area free of challenge.

The CHAIRMAN: Okay. The committee would be interested in any comment by WA police on proposals to make the reporting of elder abuse mandatory.

Mr DAWSON: I have difficulty agreeing with that straight up. Mandatory reporting for those persons who are in care of children is well understood by all persons, but as to the extent for mandatory reporting, firstly, police are not clinicians, so the capacity issue necessarily comes into play here if we receive a complaint that an elderly person has been subject of some form of abuse. As to who reports that matter, if it is from the victim themselves, firstly, that is the victim reporting. As to whether a third party in, let us assume, an aged-care facility, who the onus falls on. I think this

matter requires very careful deliberation. I am aware that the Law Reform Commission has examined these sorts of issues and I am aware that the Law Reform Commission did not make any such recommendation out of that. I think this is really careful matter to be deliberated in terms of mandatory reporting.

The CHAIRMAN: That is all we wanted to know—the WA police position on that, and thank you for articulating that.

We would also be interested to have WA police's position—in some respects you touched on this earlier—on the possibility of creating a new specific criminal offence on elder abuse.

[11.50 am]

Mr DAWSON: Again, it will have to be so well-defined that we would have to examine any such definition as what would be drafted and then make comment on that. I think the definition and the matters that my colleague has already outlined, particularly in matters of trust, would have to be very carefully defined and I would be reluctant to make any sort of authoritative response until we saw such a definition.

The CHAIRMAN: Sure. I guess the question that arises from that, then, is: does WA police consider the current criminal offences available sufficient to cover the field to address elder abuse, or is there a known gap that you would like to see filled?

Mr DAWSON: The known gap I would like to see filled is to have the criminal law as it is presently positioned extended beyond personal offences to those involving property. I do not think the aggravated penalties attached to all property-type matters have a circumstance of aggravation attached to them as they do against personal offences against elderly people. I think that has great merit in the law being examined there, as to whether there is. I would think if a person is vulnerable as a child, that is well done in terms of the way the criminal sanctions apply, but also in the way evidence is adduced in camera and at times on video. Such consideration could be extended to elderly people as well in terms of their property and whether in fact the way evidence is adduced within the court could also be a consideration, for the same reasons, I think, that we do it with children.

The CHAIRMAN: Further, WA police's position on the merits of creating specific criminal procedures to deal with elder abuse, similar to how courts treat child witnesses.

Mr DAWSON: I think in my last response, that is what I was trying to articulate; I do not think I have much to add.

The CHAIRMAN: Okay. Anything further on that, members? No? If not, we have a couple more questions, Commissioner. We touched earlier on education and awareness, but that was more in respect of WA police, your officers. Does WA police involve itself in education and awareness campaigns to the community at large to highlight elder abuse issues?

Mr DAWSON: I will let my colleague add to anything I might say. In my last role in heading up the Australian Criminal Intelligence Commission, I know I participated at a national level in matters certainly touching on financial scams, and often they are aged persons who fall within that category; it is not confined to them, but certainly through the Australian cyber online reporting network, which we are recipients of as WA police, we receive such reports and there is some analysis put over that in terms of matters that are basically online scamming. We are involved with that, but there is no other public education element that I am aware of that WA police specifically have.

Ms YOUNG: Again, I think the target area or cohort for police is the broader ageing population and aged population, as opposed to very specifically elderly people who are being abused by someone

in a position of trust. That is not a cohort, I guess, that is targeted in any particular way by WA police. Certainly the larger demographic of older people and the ageing population in terms of the risks associated, but not in the context of elder abuse.

Mr DAWSON: Chair, if I could add to this, I am aware through my 40-odd years of experience that I have been asked to provide advice to individual complainants when I was an operational officer where an elderly person distrusted not only their family but they distrusted their medical practitioner, their lawyer, their accountant and any sort of authority figure. Again, for the matter that you asked me about earlier—should we intervene and then assist that person in getting a restraining order against their lawyer or their doctor—that is where I am saying we need to step through this very carefully because if the criminal law provides such a direct mandatory or, indeed, something less than mandatory, which had an expectation that police will intervene whenever an aged person said, “I don’t trust my doctor”, or, “I don’t trust my lawyer”, should that invite police to seek a restraining order on that basis? The balance that we would invite to assist in that gets police at times, I think, in matters that are not purely criminal. One, we are not clinicians; two, it may be at the request of a person who sees themselves as a victim, but this is where I think we should exercise a high degree of caution.

The CHAIRMAN: The committee has also heard evidence that existing laws do not adequately safeguard older persons from crimes relating to elder abuse. Can you provide details of all offences in the WA Criminal Code or other relevant legislation that could apply in the elder abuse scenario? You touched earlier on fraud, I think, and that was one other area, but is there, if you like, a comprehensive list of offences that might apply in an elder abuse situation?

Mr DAWSON: I would rather take that question on notice. I think we can provide you a more complete response if we can consider that.

The CHAIRMAN: Okay, that is question on notice 4. The last question I have for you, subject to any further questions that committee members might have, is: in 2016 the WA police submission to the Australian Law Reform Commission’s elder abuse inquiry referred to creating a new offence related to assault that would assist a victim aged over 60 who is deemed to be an incapable person in broader offences. The committee seeks elaboration on what was meant by “an incapable person” and how it would be defined.

Mr DAWSON: I was not commissioner at the time and I do not know whether in fact that went through the Office of the Commissioner on that previous submission. Again, unless my colleague has something further to add, I want to exercise some caution and take that on notice.

The CHAIRMAN: Okay, let us make that question on notice 5.

Hon TJORN SIBMA: Commissioner or superintendent—whoever is most appropriate—in your submission on page 5 there is reference made to a commitment stemming from a government policy paper concerning the establishment of —

... secure integrated database for information sharing for family violence that will improve safety of victims and children ...

It goes on to say that that database could potentially avail itself or be made useful for the purposes of recording elder abuse information. Could I just seek where you are up to in establishing that database, whether a decision has been made to extend the use of that database to issues pertaining to elder abuse and actually how you would operationalise that database.

Mr DAWSON: I do not have that information, unless my colleague does.

Ms YOUNG: That particular commitment made by the government has a priority rating; it is subject to funding and I think the realisation of that database will be subject to a great deal of funding necessary to develop the IT solutions around it. In relation to elder abuse, it will automatically capture those in the 66 per cent who are in the family violence sphere. Where there are family relationships, the issue will be about capturing that other 33 per cent in that information capture and sharing.

[12.00 noon]

Hon TJORN SIBMA: Would the creation of this database effectively replace disaggregated data that WAPOL already collects in a different form or are you utilising this as a standalone base-up build model which you have to develop effectively from your own resources?

Ms YOUNG: I think the notion of that particular commitment was around acknowledging that we are reasonably siloed in our information holding, so each government agency will hold information about particular individuals and it is not shared perhaps as well as it could be. A database that allows everyone access to the holdings of each other agency can only enrich the way in which we would respond, child protection would respond and Health would respond because there is access to that shared information. There is a greater understanding of the broader picture as opposed to just the police holdings, so just what we know.

Hon TJORN SIBMA: I appreciate that. Would there also be a view that it would be useful to provide access to information to non-government agencies that are also active in this space? I am thinking of Advocare or even the banks, for example. Has any consideration been given to that?

Ms YOUNG: I think yes, there has. I think there is some issue around the nature of the information and sharing it and then the security of that information once it is shared within a government framework and setting clarity around access and what happens with that information. My personal view would be there is a lot of benefit in sharing information with support services. The family and domestic violence response teams have within them a support service sector—someone from a support organisation—and their holdings are often just as rich as child protection and police holdings. There are certainly some benefits, because people, as you would be aware, self-select who they go to see and often it might be a support service that will have a wealth of holdings that are not known to any government agency. There are certainly some benefits in terms of that sharing. The larger issue around information security and risks associated would be something that would need to be managed.

Hon TJORN SIBMA: I am assuming here—tell me if my assumptions are correct—that effectively notwithstanding the question about funding, which will come in time, how long would you require to actually stand up the database? Is it a lengthy development process? This is hypothetical, but I am interested to know, because the perennial issue that we have faced is actually just data capture prevalence. It is fundamental to designing any policy response, so I am just interested to know how long it might take for a database like this to be established and then operationalised.

Mr DAWSON: In my experience at the national level, there has been a period of work for about three years in which an interim violence recording register—it is proposed that we fully integrate from the courts through to the police—where the mobility of a perpetrator and/or a victim moving about Australia crosses over into a myriad of different jurisdictions, courts and police in transferring that information across. The interim order system is up and running now, so that is now integrated across Australia, but it is not a complete solution because it does not extend to the NGOs, the refuges and other such providers, but it is primarily a conduit by which law enforcement and the courts have now joined the pipe, so to speak. It is not a complete integration of the data as this is proposing.

The CHAIRMAN: At this time, we want to thank you both for attending. A transcript of this hearing will be provided to you and forwarded for your correction. If you believe that any corrections should be made because of typographical or transcription errors, please indicate these corrections on the transcript. You did take on notice five questions and the committee requests that you provide your answers to those questions when you return your corrected transcript of evidence. We will write to you in respect of that. If you want to provide additional information or elaborate on particular points, you may provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence. Thank you both very much.

Hearing concluded at 12.04 pm
