

40TH PARLIAMENT



'I NEVER THOUGHT IT WOULD HAPPEN TO ME': WHEN TRUST IS BROKEN

Final Report of the Select Committee into Elder Abuse

Presented by
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September 2018

Select Committee into Elder Abuse

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Government response

This report is subject to Standing Order 191(1):

Where a report recommends action by, or seeks a response from, the Government, the responsible Minister or Leader of the House shall provide its response to the Council within not more than 2 months or at the earliest opportunity after that time if the Council is adjourned or in recess.

The two-month period commences on the date of tabling.

CONTENTS

Executive summary	i
1 Introduction.....	1
Establishment of the Committee and this inquiry.....	1
Abuse in aged care.....	4
2 What is elder abuse?.....	7
Introduction.....	7
Definitions vary	7
Age limits.....	11
Forms of elder abuse	18
How often does elder abuse occur?	21
A national prevalence study.....	24
3 Risk factors for elder abuse	26
Introduction.....	26
Vulnerability	27
Women.....	28
Aboriginal communities	29
Cognitive impairment and disability.....	34
Culturally and linguistically diverse communities	35
LGBTI older people	36
Social isolation	39
Carer stress and other factors related to the perpetrator.....	41
Laws to protect adults who are ‘at-risk’	43
4 Preventing elder abuse	44
Intervention strategies and the importance of social inclusion	44
Raising community awareness.....	47
Training for professionals	49
5 Government agencies and community services that respond to elder abuse.....	51
Department of Communities as lead agency.....	51
The importance of Advocare	54
6 Access to justice for older people experiencing elder abuse	56
Introduction.....	56
Community legal centres	56
State Administrative Tribunal	58

Western Australia Police Force response to elder abuse	60
Review of the criminal law to prevent elder abuse.....	66
Health-justice partnerships	70
New adult safeguarding legislation	71
7 Powers of attorney and guardianship	74
Introduction.....	74
Enduring documents in Western Australia—what they are and how to apply for one	74
Jurisdiction of State Administrative Tribunal	78
Problems with Enduring Powers of Attorney	80
Better protection for older people who have an Enduring Power of Attorney	87
8 Banks and financial elder abuse	92
Introduction.....	92
How should banks respond to financial elder abuse?	93
Examples of action taken by banks to address elder abuse	96
9 Assets for care arrangements.....	102
Introduction.....	102
No contract exists	102
Limited remedies available when relationships break down	103
Jurisdiction of State Administrative Tribunal should be expanded.....	104
10 A plan for Western Australia.....	106
National Plan on Elder Abuse 2018	106
Action at the State level.....	107
Elder Abuse Community Action Plan for Victoria.....	108
Conclusions.....	109
Appendix 1 Stakeholders contacted, submissions received and public hearings.....	110
Appendix 2 United Nations Principles for Older Persons	117
Appendix 3 Elder Abuse Helpline Posters	119
Appendix 4 Adult Support and Protection (Scotland) Act 2007	122
Appendix 5 Witnessing requirements across Australia.....	124
Appendix 6 Statutory review recommendations	126
Glossary.....	129

Figures

Figure 1. <i>Ageism</i>	14
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Figure 2. <i>Investigations carried out by Office of the Public Advocate (OPA) 2016/17</i>	23
Figure 3. <i>Risk factors for elder abuse and strength of evidence for the risk factor</i>	26
Figure 4. <i>Elder Abuse brochure, South Australia</i>	33
Figure 5. <i>Five dimensions of loneliness as experienced by older people</i>	40
Figure 6. <i>Older People's Peer Education Scheme volunteers and staff with the Purple Road</i>	48
Figure 7. <i>Select Committee into Elder Abuse members at the State Administrative Tribunal</i>	59

Tables

Table 1. <i>Elder abuse referral and support agencies</i>	3
Table 2. <i>Forms of elder abuse</i>	18
Table 3. <i>Who to call for further information about Dementia</i>	35
Table 4. <i>Department of Communities Annual Recurrent Funding 2017-18</i>	52
Table 5. <i>Western Australia Police applications for restraining orders where protected person is aged over 65 years: 2017/18 to 19 June 2018</i>	64
Table 6. <i>Guardians, administrators and attorneys—key differences</i>	77
Table 7. <i>Recognising potential financial abuse and what can banks do?</i>	94
Table 8. <i>Priorities for action to address elder abuse response in Victoria</i>	108

EXECUTIVE SUMMARY

- 1 The Select Committee into Elder Abuse (Committee) was established by motion in the Legislative Council on 13 September 2017. The Committee's task during this 12 month inquiry has been to investigate elder abuse in Western Australia, along 10 broad areas of inquiry (refer to the Committee's Terms of Reference at the back of this report).
- 2 The Committee has found that community perceptions about the low risk of elder abuse do not reflect the reality: there are up to 75 000 older people at risk of elder abuse in Western Australia. The lack of reliable reporting of elder abuse means that statistics vary widely, but previous data estimates that between two and ten per cent of older people in Australia will experience elder abuse. There are recurring themes in any discussion of elder abuse and the risk factors can affect anyone, either personally or through our relationships with an older person.
- 3 Elder abuse is defined as a single or repeated act, or lack of appropriate action, that occurs in a relationship with an older person where there is an expectation of trust and where that action causes harm or distress to the older person. There are six main forms of elder abuse: financial, psychological/emotional, physical, neglect, sexual and social abuse. An older person may often experience multiple forms of elder abuse at the same time. The Committee heard, for example, that psychological and financial elder abuse often occur in tandem, where a perpetrator may 'groom' a vulnerable older person using psychological abuse (such as threats or manipulation) so that they are more susceptible to financial elder abuse.
- 4 The Committee learned that most perpetrators of elder abuse are closely related to the victim. This sad fact reflects the strong connection between elder abuse and family violence and goes some way to explaining the feelings of guilt and shame that a victim may feel at experiencing abuse at the hands of a trusted family member. Many perpetrators do not commit elder abuse maliciously and there are many instances of family members or carers (or those who are both) being overwhelmed with their responsibilities who inadvertently commit elder abuse because of their inability to cope.
- 5 Older people, irrespective of background, have the potential to be subject to elder abuse however there are risk factors which make certain individuals and population groups more vulnerable to abuse than others. The Committee explored the concept of vulnerability during this inquiry including risk factors for elder abuse where a person is: female, Aboriginal or Torres Strait Islander, socially isolated, a person who identifies as lesbian, gay, bisexual, trans or intersex (LGBTI), suffering from a cognitive impairment or disability or from a culturally and linguistically diverse background. Carer stress or 'carer burnout' is also a risk factor for elder abuse, where a perpetrator may experience difficulties whilst caring for an older person or may not have/know of support services available.
- 6 One of the most effective ways to prevent elder abuse or to at least reduce its prevalence is to educate the community to identify the signs of elder abuse and to empower older people so that they are less vulnerable to abuse. The Committee heard of strategies to increase social inclusion for older people who may find themselves with diminishing social networks or family connections (which are recognised risk factors), such as volunteering, peer support programs and Advocate's well-established Elder Abuse Helpline. The Committee fully supports these initiatives and has found that they provide invaluable support to older people in the community. These services, in particular the Elder Abuse Helpline, would benefit from increased funding as our population ages and the number of older people in the community increases.

- 7 Power of attorney documents—ordinary and Enduring Powers of Attorney (EPA)—and Enduring Powers of Guardianship are significant tools that can be used to protect an older person’s rights and fulfil their wishes, but which can also be used as a means to perpetrate elder abuse on a vulnerable older person. The statutory regime surrounding these documents is centred around the best interests of the represented person. The Committee heard about the investigative work that the Public Advocate undertakes to ensure that older people who may have their decision-making capacity questioned by potential perpetrators of abuse are protected. The Public Trustee’s role with regard to preventing financial elder abuse is also significant as it will take steps to safeguard an older person’s assets if there are concerns about the possible misuse of an enduring document.
- 8 The only time where an EPA must be registered in Western Australia relates to dealings with land. The Committee has heard that Landgate conducts checks to determine the validity of a power of attorney (EPA or ordinary) but notes that these checks are not as robust as they should be. The Committee has heard that Landgate will take an EPA presented to it at face value and may not even verify if another EPA already exists on its register. The lack of adequate checks and balances around the use of EPA in land transfers is an area that clearly needs improvement.
- 9 Access to the criminal justice system is an area where the Committee heard that the response to elder abuse is inadequate. Stakeholders gave evidence that there appears to be a belief held by some police officers in Western Australia that, unless physical violence is involved, they cannot intervene in cases of elder abuse. The Committee notes that elder abuse shares many similarities with family violence, to which Western Australia Police already has an established response. The Committee is of the view that a shift in focus to elder abuse is needed, commencing with better training for police recruits to identify elder abuse and respond correctly. The penalties for offences against older people outlined in the Criminal Code should be broadened to ensure that a victim’s age is included as a circumstance of aggravation for more offences, thus giving better protection to an older person who accesses the criminal justice system.
- 10 The State Administrative Tribunal (SAT) plays an essential role in providing justice for an older person who may be experiencing elder abuse. The Committee has heard that the tribunal is the forum for applications for guardianship where an older person’s decision-making ability may be in question. SAT caters for older people in the guardianship and administration stream of cases by making the application and hearing process as non-confrontational as possible, with court-supplied interpreters, thoughtful room layout and access to support services.
- 11 As gatekeepers to an older person’s finances, the Committee observed that banks and their staff potentially play an important role in detecting the signs of elder abuse early and potentially preventing attorneys from misusing an EPA. The Committee learned of the training programs that banks deliver to their staff and is of the view that this training should continue for all frontline banking staff. The banking sector advised the Committee that a national register of EPA would greatly assist staff to determine if an attorney is over-stepping their powers when making transactions on an older person’s account. The Committee supports the urgent creation of a State register of enduring powers while a national register is being considered.
- 12 A holistic and multidisciplinary approach to tackling elder abuse is the most effective way to ensure that all older people are protected. A key aspect of such an approach is the use of health-justice partnerships in the community. The Committee has heard of many successful arrangements in place in Western Australia that provide a joint legal and health response to older people seeking advice and the Committee supports the expansion of these arrangements. The Committee also recommends that further investigation is undertaken to

consider opportunities for new health-justice partnerships in the community, particularly for those groups in the community that are at higher risk of elder abuse.

- 13 Witnesses have advised the Committee of the unfortunately common occurrence where an older person enters into an arrangement with their children to build an extension or a new dwelling on the child's land, with the older person's savings used to contribute to or fund the entire project: the 'granny flat' scenario. The Committee heard devastating stories where, following the deterioration of the relationship, the older parent is told by their child to leave the house and they are left homeless or destitute or, sometimes, both. The law around land transfers and indefeasibility of title in these situations is complex and the Committee notes that this is an emerging issue of necessary research.
- 14 Research into prevalence data and the formulation of a national plan is underway at the Commonwealth level, but is likely several years away and may not specifically address the Western Australian experience. Action at the State level is still required and the Committee notes that a State-based plan to address elder abuse is needed urgently: it is not sufficient to merely wait for the national plan. The Committee anticipates that this report will inform the Commonwealth's plan, due for release by the end of 2018. The Committee urges all stakeholders to this inquiry to continue to champion for action at the Commonwealth level and hopes that this report will help inform the National Plan and provide valuable insights to develop effective action to address elder abuse.
- 15 The Committee is certain that making key changes as outlined in this report will lead to a better system to protect vulnerable older people from abuse. In summary, the Committee recommends action along the following themes:
 - greater emphasis on community awareness, similar to public education campaigns about family violence, with increased funding from the State Government
 - funding for the work of community legal centres in order to ensure State-wide services are able to be provided
 - ongoing funding for peer work projects
 - more funding for advocacy services, especially Advocare's Elder Abuse Helpline
 - increased training for Western Australia Police on elder abuse, particularly where it does not involve physical violence against an older person
 - delivery of training on how to identify elder abuse to those professions who are 'gatekeepers' in the community: lawyers, health professionals, banking staff and real estate agents
 - more funding and/or grants for the establishment of health-justice partnerships
 - legislative amendments to better protect older people who are experiencing elder abuse: increasing penalties for breaches of EPA, better access to justice through SAT rather than the court system, extending circumstances of aggravation to offences that involve an older person's property and creating a register of enduring documents.

Findings and recommendations

Findings and recommendations are grouped as they appear in the text at the page number indicated:

FINDING 1

Page 5

Elder abuse occurs within a variety of settings, has devastating effects on older people and has significant cost impacts for the community.

FINDING 2

Page 5

Elder abuse still occurs within aged care settings, despite the regulatory regime that exists to monitor and protect older people who reside in aged care.

FINDING 3

Page 6

Whilst unconscionable contracts or unfair or deficient management practices in retirement or lifestyle villages can have devastating effects on older people and require further investigation, such circumstances do not fall within the definition of elder abuse and are outside the terms of reference for this inquiry.

FINDING 4

Page 9

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.

RECOMMENDATION 1

Page 11

The Government's response to elder abuse in Western Australia be informed by a human rights-based approach that focuses on the inherent dignity and autonomy of older people.

RECOMMENDATION 2

Page 13

For the purposes of defining elder abuse, the starting age for status as an 'older person' in Western Australia be set at 55 years of age for Aboriginal and Torres Strait Islander people and 65 years of age for non-Aboriginal and Torres Strait Islander people.

FINDING 5

Page 15

Negative attitudes within the community towards ageing and older people often manifest as ageism in society and can be a reason for elder abuse occurring.

FINDING 6

Page 15

Ageism has detrimental effects on society.

FINDING 7

Page 16

Feelings of guilt and shame associated with elder abuse affect the reliability of prevalence data and the full extent of elder abuse in the community is not yet known.

FINDING 8

Page 17

The majority of people who perpetrate elder abuse are likely to be close family members, including children, grandchildren or spouses of the older person who is experiencing abuse.

FINDING 9

Page 20

The most common forms of elder abuse that occur are: financial abuse, emotional or psychological abuse, social abuse, physical abuse, neglect and sexual abuse.

FINDING 10

Page 21

Older people may experience more than one form of abuse at the same time.

FINDING 11

Page 25

Data on elder abuse is generally not being collected by agencies or departments who respond to elder abuse, but where it is being collected, it is not collated in a consistent or meaningful way.

RECOMMENDATION 3

Page 25

The Department of Communities determine which agencies and government departments should be collecting data on elder abuse and also research methods to better collate that data and investigate more effective methods to increase the rate of reporting abuse.

FINDING 12

Page 30

There is a lack of formal research on the prevalence and forms of elder abuse that affect Aboriginal and Torres Strait Islander communities in Western Australia.

FINDING 13

Page 30

Aboriginal and Torres Strait Islander older people face a greater risk of experiencing elder abuse and it may occur at a younger age than other older people in the community.

FINDING 14

Page 30

Any support service that is offered to Aboriginal and Torres Strait Islander older people must be culturally safe, developed in conjunction with Aboriginal and Torres Strait Islander people and acknowledge the unique circumstances in which elder abuse can occur.

RECOMMENDATION 4

Page 31

The Department of Communities commission research into the prevalence and forms of elder abuse and the unique challenges that Aboriginal and Torres Strait Islander older people face in Western Australia.

RECOMMENDATION 5

Page 31

The Government develop an action plan that is culturally safe, developed in conjunction with Aboriginal and Torres Strait Islander people and acknowledges the unique circumstances that Aboriginal and Torres Strait Islander older people face in Western Australia.

FINDING 15

Page 32

Humbugging in Aboriginal communities in Western Australia is a form of elder abuse that requires a culturally safe response from the relevant agencies and services.

RECOMMENDATION 6

Page 32

The Government ensures that, when the National Plan to combat Elder Abuse is released, it addresses humbugging as a form of elder abuse that affects Aboriginal and Torres Strait Islander older people and includes culturally safe strategies and responses.

FINDING 16

Page 39

Older people who identify as lesbian, gay, bisexual, trans or intersex are subject to the same type of abuse as the rest of the community but also can experience discrimination unique to their identity and, as a result of their life experience, are less likely to speak up and report elder abuse when it occurs to them.

FINDING 17

Page 40

Experiencing social isolation and loneliness is one of the most significant risk factors for elder abuse and a source of vulnerability in older people.

FINDING 18

Page 43

Carer stress or carer fatigue is a risk factor for elder abuse and symptoms of carer stress can be early indicators of an increased risk of elder abuse in a relationship.

FINDING 19

Page 43

Elder abuse that occurs as a result of carer stress can be a result of not having the necessary skills or support services to provide effective care for an older person.

FINDING 20

Page 43

Carer stress can arise due to factors related to an older person being cared for, including the person's behaviour, mental or physical health or other circumstances.

RECOMMENDATION 7

Page 43

The Government facilitate more support services and information for carers of older people in Western Australia.

FINDING 21

Page 44

Developing and maintaining relationships and encouraging social inclusion decreases the risk of elder abuse and other negative health impacts for older people.

FINDING 22

Page 45

Volunteering and peer support programs are an important strategy to prevent elder abuse and increase the participation of older people in the community.

RECOMMENDATION 8

Page 45

The Government allocate funding to continue and expand peer education schemes, such as the Older People's Peer Education Scheme.

FINDING 23

Page 48

The community in general is not well-educated on the specific signs of elder abuse, nor of the extent of the problem in the community.

FINDING 24

Page 49

One of the most effective ways to prevent elder abuse is to raise the community's awareness of the issue and educate both older people and those who interact with them on the warning signs of elder abuse.

RECOMMENDATION 9

Page 49

The Government commission an audit into the quantum of funding, and its effectiveness, with a view to increasing funding to community organisations and agencies to raise awareness of elder abuse and educate the community.

FINDING 25

Page 50

There is insufficient training for Western Australian police officers to learn to identify and respond to elder abuse effectively.

RECOMMENDATION 10

Page 50

Western Australia Police develop a separate training module for all police officers that specifically covers the forms, signs and risk factors of elder abuse and how to respond effectively.

FINDING 26

Page 54

The Department of Communities is best placed to remain the lead agency to coordinate Western Australia's response to elder abuse.

FINDING 27

Page 54

The Department of Communities has not prioritised the discharge of its responsibilities as a lead agency for elder abuse and is yet to take definitive steps to develop its elder abuse policies.

FINDING 28

Page 55

Advocare Inc. provides an essential service in Western Australia to address the risks and prevalence of elder abuse and the advocacy and information that the organisation delivers to older people is widely commended.

RECOMMENDATION 11

Page 55

The Government provide further funding to Advocare Inc. to continue the Elder Abuse Helpline beyond 31 December 2018.

RECOMMENDATION 12

Page 55

The Government increase funding to Advocare Inc. to enable the organisation to train more volunteers and expand its advocacy services for older people.

FINDING 29

Page 57

Community legal centres are an essential first point of contact for older people and need to be able to identify cases of elder abuse and refer them to specialist community legal centres.

FINDING 30

Page 57

The Northern Suburbs Community Legal Centre provides a useful specialised point of contact for older people experiencing elder abuse, however it is only funded to a restricted catchment area in the northern metropolitan area of Perth. There is a need for every older person in Western Australia, regardless of where they reside, to have access to specialised community legal services.

RECOMMENDATION 13

Page 58

The Government ensure that every older person in Western Australia, regardless of where they reside, has access to specialised community legal services which provide advocacy and advice on elder abuse.

FINDING 31

Page 59

The State Administrative Tribunal is designed and aspires to provide an accessible and user-friendly forum for older people who may be experiencing elder abuse in Western Australia.

RECOMMENDATION 14

Page 59

The Government survey older clients of the State Administrative Tribunal to assess if this design and aspiration is effective to the end user.

FINDING 32

Page 61

An opportunity exists for Western Australia Police to provide more information for older people about elder abuse on its website.

RECOMMENDATION 15

Page 61

Western Australia Police take definitive action to target elder abuse as a priority and increase its public information and community awareness campaigns.

FINDING 33

Page 63

The definition of 'family violence' in the *Restraining Orders Act 1997* covers behaviour that falls within the definition of elder abuse, in particular, behaviour that, depending on the facts, could be classified as financial elder abuse (in section 5A(2)(g) and (h) of the *Restraining Orders Act 1997*) and psychological or emotional elder abuse (in section 5A(2)(c) through (f), (i) and (k) of the *Restraining Orders Act 1997*).

FINDING 34

Page 64

Elder abuse that is perpetrated by a person who is not related to the older person in question can be stopped or prevented by an application for a misconduct restraining order or a violence restraining order under sections 11A or 35A of the *Restraining Orders Act 1997*.

FINDING 35

Page 65

The tension between the duty of Western Australia Police to protect vulnerable older people in the community and the duty to respect the inherent dignity and autonomy of adults in terms of the decision to apply for orders under the *Restraining Orders Act 1997* can sometimes result in a lack of appropriate action being taken to protect an older person from continued or greater harm.

FINDING 36

Page 68

It is not necessary to create new criminal offences of elder abuse, but existing criminal laws should be strengthened in order to effectively protect older people in Western Australia.

RECOMMENDATION 16

Page 68

Circumstances of aggravation for property offences in the Criminal Code should be broadened to include where a victim is aged 60 years or more.

RECOMMENDATION 17

Page 68

Specialist elder abuse units should be created within Western Australia Police.

FINDING 37

Page 70

It is not desirable to introduce mandatory reporting of elder abuse, as distinguished from that prescribed by the *Aged Care Act 1997* (Cth).

FINDING 38

Page 71

Health-justice partnerships are a valuable way to deliver a holistic response to older people experiencing elder abuse who may be seeking legal advice or healthcare and should be supported wherever possible.

RECOMMENDATION 18

Page 71

The Government investigate further opportunities to develop and fund new health-justice partnerships and expand existing partnerships that are currently being delivered to older people in the community.

RECOMMENDATION 19

Page 73

The Government monitor and review the Office for the Ageing (Adult Safeguarding) Amendment Bill 2018 (SA) as it progresses through the South Australian Parliament.

FINDING 39

Page 76

Witnessing requirements outlined in the *Guardianship and Administration Act 1997* can be improved to provide more robust protection for an older person who creates an Enduring Power of Attorney or Enduring Power of Guardianship.

RECOMMENDATION 20

Page 76

The Government review the witnessing requirements set out in the *Guardianship and Administration Act 1997* with a view to strengthening the protection for donors of Enduring Powers of Attorney and Enduring Powers of Guardianship.

FINDING 40

Page 83

The State Administrative Tribunal could be given jurisdiction to hear claims for compensation for the misuse or abuse of a power of attorney.

RECOMMENDATION 21

Page 83

The Government review the *Guardianship and Administration Act 1990* with a view to giving the State Administrative Tribunal jurisdiction to order compensation for the misuse or abuse of a power of attorney.

FINDING 41

Page 83

The creation of an offence for a donee of an enduring power of attorney who does not comply with their obligations in section 107 of the *Guardianship and Administration Act 1990* will help prevent elder abuse that may occur from the misuse of enduring documents.

RECOMMENDATION 22

Page 84

The penalty in section 107 of the *Guardianship and Administration Act 1990* that currently only applies to a breach of section 107(1)(b) be expanded to apply to the entirety of section 107(1) of the *Guardianship and Administration Act 1990*.

FINDING 42

Page 84

The lack of a procedure in the *Guardianship and Administration Act 1990* for revoking an Enduring Power of Attorney creates opportunities for elder abuse, an administrative burden for agencies and confusion for older people who may wish to revoke an existing Enduring Power of Attorney.

FINDING 43

Page 87

The system used by Landgate for registering Enduring Powers of Attorney in relation to land transfers is inadequate and leaves older people who have such documents vulnerable to financial elder abuse.

RECOMMENDATION 23

Page 87

Landgate urgently review its processes for registering land transfers where an Enduring Power of Attorney is lodged with a view to increasing the safeguards in place to ensure that only one valid and current document may be registered against a land transfer per individual.

RECOMMENDATION 24

Page 87

The Government introduce a bill to amend the *Guardianship and Administration Act 1990* to implement the recommendations contained in the 2015 statutory review of the act as a matter of urgency.

FINDING 44

Page 89

There is broad support in Western Australia for the creation of a State-based central register of Enduring Powers of Attorney and that such a register would be an effective means of reducing the potential for financial elder abuse to occur.

RECOMMENDATION 25

Page 89

The Government investigate the viability and timeframe for creating a Western Australian central register of Enduring Powers of Attorney, with a view to integrating it with any national model that may be agreed to in the future.

RECOMMENDATION 26

Page 89

The Government amend the *Guardianship and Administration Act 1990* to include a requirement that private guardians, attorneys or administrators be required to sign an undertaking with respect to their statutory responsibilities and obligations.

FINDING 45

Page 91

Supported decision-making is an effective means of empowering older people in Western Australia to take control of their decisions wherever possible and enable them to preserve their inherent dignity and autonomy in later life.

FINDING 46

Page 91

A good way for older people to protect themselves from elder abuse is to plan ahead while they have capacity and make arrangements for later life using Enduring Powers of Attorney, Enduring Powers of Guardianship and Advance Health Directives.

FINDING 47

Page 97

The volume of online transactions far exceeds those interactions conducted at a branch level within banks.

FINDING 48

Page 97

Banks can do more to proactively engage with community groups and legal centres to promote awareness of financial elder abuse and provide more training to frontline staff to help detect elder abuse.

FINDING 49

Page 99

Banks have the potential to play a crucial role in identifying and taking steps to prevent financial elder abuse in the community, by both effectively training frontline staff and using data analytics to raise red flags on suspicious banking activity.

RECOMMENDATION 27

Page 101

The Department of Communities, acting as lead agency for countering elder abuse in Western Australia, engage with the banking sector to develop safeguards and processes to reduce the risk of older people experiencing financial elder abuse.

FINDING 50

Page 104

Assets for care arrangements carry great potential for an older person to experience financial elder abuse and older people are often left vulnerable to abuse when such an arrangement exists within a family.

RECOMMENDATION 28

Page 105

The Government direct the Law Reform Commission of Western Australia to inquire into the possible expansion of the State Administrative Tribunal's jurisdiction to cover disputes that involve assets for care arrangements.

RECOMMENDATION 29

Page 106

The Government advocate strongly on behalf of all older Western Australians to the Commonwealth's peak body, Elder Abuse Action Australia, to ensure that the situation faced by older people in this State is recognised and addressed in any future action or policies relating to elder abuse.

RECOMMENDATION 30

Page 107

The Government actively collaborate with Elder Abuse Action Australia to ensure that progress is made to address elder abuse in Western Australia and to contribute to a nationally consistent legal framework to address elder abuse.

RECOMMENDATION 31

Page 107

The Government actively contribute to the National Plan to Combat Elder Abuse to ensure that the plan adequately reflects the needs of Western Australia's older population.

RECOMMENDATION 32

Page 107

The Government scrutinise the National Plan to Combat Elder Abuse when it is released with particular emphasis on whether it adequately addresses our Western Australian experience of elder abuse.

RECOMMENDATION 33

Page 107

After it has scrutinised the National Plan to Combat Elder Abuse, the Government report to the Parliament of Western Australia on whether or not the plan adequately addresses the Western Australian experience of elder abuse.

FINDING 51

Page 109

The Elder Abuse Community Action Plan for Victoria is a useful starting template to focus attention on, and begin to take action to address elder abuse in the community.

RECOMMENDATION 34

Page 109

The Government develop and fund a comprehensive plan to prevent and address elder abuse in Western Australia using a human rights based approach that upholds the inherent dignity and autonomy of older people.

RECOMMENDATION 35

Page 109

The Government urgently develop a State action plan to complement or improve the National Plan to Combat Elder abuse and to identify gaps and priorities in agency responses and create a more effective framework to address elder abuse in Western Australia.

CHAPTER 1

Introduction

Establishment of the Committee and this inquiry

- 1.1 Hon Nick Goiran MLC moved a Notice of Motion in the Legislative Council on 23 May 2017 to establish a select committee to look at risk factors and ways to better protect vulnerable older people in Western Australia.
- 1.2 The Legislative Council established the Select Committee into Elder Abuse (Committee) by motion on 13 September 2017 to inquire into elder abuse, with a particular focus on 10 areas of inquiry as set out in the terms of reference.¹ The Committee's membership was determined by order of the Legislative Council on 13 September 2017, as set out in the motion to establish the Committee.
- 1.3 The motion that established the Committee also provided that the Committee report no later than 12 months after the motion is agreed to. According to the Standing Orders of the Legislative Council, the Committee will dissolve upon its final report to the Legislative Council.²

Committee procedure

- 1.4 The Committee heard from stakeholders and the community through written submissions and oral evidence at public hearings. The Committee invited 105 stakeholders to provide a submission to the inquiry and received 46 submissions, including several private submissions. All public submissions are available on its website. See Appendix 1 for details of stakeholders, submissions received and hearings held during this inquiry.
- 1.5 The Committee advertised its inquiry through social media and in *The West Australian* newspaper and regularly broadcast its public hearings on its website throughout the inquiry.
- 1.6 The Committee has resolved to make all minutes of its meetings public with redactions to protect individuals' privacy where necessary and has made them available on its website so that the public may access them after the Committee tables its final report.
- 1.7 Over a period of five months in 2018, the Committee held almost 20 hours of public hearings, which were streamed live on the internet and are now archived online at the Committee's website: www.parliament.wa.gov.au/eld.
- 1.8 Members of the Committee travelled to Sydney in February 2018 as delegates for the 5th National Elder Abuse Conference, hosted by the Seniors Rights Service. The theme for the conference was 'Together Making Change' and the Committee was privileged to hear from distinguished national and international speakers discuss how to identify and best respond to elder abuse while maintaining the dignity of older people.
- 1.9 The Committee took the opportunity to meet with the members of the New South Wales Portfolio Committee No. 2 of the Legislative Council of New South Wales, authors of the 2016 report into elder abuse (see paragraph 1.27). The Committee also discussed the approach of the banking sector and what action is being taken by industry with Hon Anna Bligh AC, Chief Executive Officer of the Australian Banking Association.

¹ For full detail of the Committee's terms of reference, refer to the back of this report.

² Standing Orders of the Legislative Council, Schedule 3.

- 1.10 The Committee thanks all those who provided a submission to this inquiry and especially to the individuals who shared their own experiences of elder abuse, either in writing or by appearing before the Committee.
- 1.11 This report contains extracts of private evidence received by the Committee from individuals and from submissions. All identifying features such as names and locations have been changed to preserve confidentiality and the Committee has obtained individuals' consent before including these stories in this report.

Structure of the report

- 1.12 This report discusses the main issues and areas for improvement that the Committee has identified during the inquiry.
- 1.13 **Chapter 1** contains details of other inquiries into elder abuse that have assisted the Committee. This chapter addresses submissions received that referred to aged care and retirement villages. These topics are not otherwise covered in this report.
- 1.14 **Chapter 2** introduces the concept of elder abuse and important definitions. The Committee encountered variance between stakeholders on the age at which someone is classified as an 'older person'. This chapter also deals with the importance of human rights when responding to elder abuse. Elder abuse is an emerging topic for debate in the community despite the large amount of research conducted and data compiled in recent years, mentioned in this chapter. The Committee also discusses the various forms that elder abuse can take, explores who is most likely to be a perpetrator of elder abuse and who may experience it.
- 1.15 **Chapter 3** focuses more closely on the individuals who are most at risk of experiencing elder abuse. This chapter also discusses how the nature of the relationship between a victim and a perpetrator can put an older person at risk of abuse. Factors related to the perpetrator themselves and the notion of 'carer stress' is also covered in this chapter.
- 1.16 **Chapter 4** discusses strategies to prevent elder abuse, for example how to engage older people in the community and prevent social isolation. The Committee has heard of current successful initiatives that are raising community awareness of elder abuse.
- 1.17 **Chapter 5** outlines which government agencies and services are involved in responding to elder abuse at the State level. This chapter also discusses the work of Advocare Inc. and its funding.
- 1.18 **Chapter 6** explores the barriers that older people face when accessing the justice system and alternatives that are available. The importance of community legal centres, Western Australia Police and the State Administrative Tribunal are discussed. The success of health-justice partnerships is also outlined in this chapter.
- 1.19 **Chapter 7** provides important information about the legislative regime in which Powers of Attorney, Enduring Powers of Attorney and Powers of Guardianship operate. These different agreements that are available to the public can often be used to perpetrate abuse on an older person. This chapter outlines when the different agreements can be used, what the complexities are and what checks and balances (if any) exist to protect an older person's interests and finances from abuse.
- 1.20 **Chapter 8** discusses the most commonly reported form of elder abuse: financial elder abuse. This chapter covers the signs that may indicate that financial elder abuse may be occurring, what action banks are taking to identify and prevent it and remedies available to victims.

- 1.21 **Chapter 9** explains what ‘assets for care arrangements’ are, also known as granny flat arrangements. Common problems are discussed in this chapter, including the lack of a contract resulting in limited legal remedies and the role of the State Administrative Tribunal in these matters.
- 1.22 **Chapter 10** of the report looks at action currently underway on the national level to address elder abuse. This chapter also includes observations that the Committee has made about the Victorian government’s plan to address elder abuse and provides conclusions for Western Australia.

Where to go for help

- 1.23 The Committee provides the following information for members of the public who suspect that they, or a loved one, may currently be experiencing elder abuse. For life threatening situations, always contact emergency services on 000. Call Western Australia Police on 131 444 for non-emergency response where police attendance is required.
- 1.24 The following support agencies are examples of services and organisations trained to respond to elder abuse and can assist with referrals:

Table 1. *Elder abuse referral and support agencies*

Response and referral agencies	
Advocare Elder Abuse Helpline	1300 724 679 or (08) 9479 7566
Older People’s Rights Service	Mirraboooka: (08) 9440 1663 Joondalup: (08) 9301 4413
Crisis Care	(08) 9223 1111 or 1800 199 008
Family Helpline	(08) 9223 1100 or 1800 643 000
1800 RESPECT	1800 737 732
Legal Aid WA	1300 650 579

[Source: Elder Abuse Protocol: Guidelines for Action, APEA, 2018]

- 1.25 For a full list of community support agencies, refer to the Elder Abuse Protocol: Guidelines for Action document published by the Alliance for the Prevention of Elder Abuse: Western Australia, available at https://www.advocare.org.au/wp-content/uploads/2018/07/AdvocareElderAbuseProtocol_BOOKLET_WEB.pdf.

Other inquiries and current projects

- 1.26 This report comes at a time when there is significant action being undertaken in Australia to investigate elder abuse and develop informed strategies to address its prevalence.
- 1.27 The Committee notes that much work has been undertaken by interstate parliamentary committees and other State governments to highlight the problem of elder abuse. The South Australian House of Assembly tabled its final report into elder abuse in October 2017 after a 12 month inquiry with broadly similar terms of reference.³ New South Wales’ Legislative Council also tabled a committee report investigating elder abuse in 2016, which has substantially informed this inquiry and emphasised key areas of focus.⁴

³ South Australia, House of Assembly, Joint Committee on matters relating to elder abuse, *Final Report of the Joint Committee into matters related to elder abuse*, 31 October 2017.

⁴ New South Wales, Legislative Council, General Purpose Standing Committee No. 2 (now referred to as ‘Portfolio Committee No. 2), Report 44, *Elder abuse in New South Wales*, June 2016.

- 1.28 Similar inquiries have also been completed by Queensland's Parliament⁵ and by the Royal Commission into Family Violence in Victoria, which considered elder abuse in the context of family violence.⁶
- 1.29 The Australian Law Reform Commission (ALRC) final report into elder abuse was released in May 2017 and triggered much of the policy work currently underway at the national level. For example, the Commonwealth Attorney General announced in February 2018 that a National Plan to combat elder abuse was being developed to ensure a consistent and effective response to elder abuse across Australia. According to the ALRC's report, a national plan emphasises 'the need for a national approach to elder abuse and to provide a coordinating framework for state and territory initiatives as well as those at the Commonwealth level'.⁷
- 1.30 In June 2018, the Commonwealth Attorney General announced the establishment of Elder Abuse Action Australia, the national network of organisations involved in the prevention of elder abuse. The Commonwealth Government has announced its intention to develop a nationally consistent legal framework and establish a National Register of Enduring Powers of Attorney as part of its 2018-19 Budget Measures.⁸
- 1.31 The Committee has continued its inquiry into elder abuse at a time when there is significant activity underway at the Commonwealth level because it has a responsibility to the Parliament of Western Australia and to stakeholders to report its findings. The Committee understands the seriousness of elder abuse and does not propose to wait for the findings of other inquiries in order to reach its own conclusions on the issue. The Committee hopes that this report will provide valuable insights to the growing body of findings around elder abuse.

Abuse in aged care

- 1.32 This Committee was tasked with inquiring into the concept of elder abuse, which has revealed, both through research and evidence, that the vast majority of elder abuse occurs in inter-generational, intra-familial situations: that is, perpetrators are younger members of the older person's family. Incidents of elder abuse are not limited to family relationships however and have often occurred in institutional settings, with devastating effects.
- 1.33 During the course of this inquiry, the Committee received submissions and personal accounts from the public regarding issues of institutional abuse in aged care homes as well as legal issues arising from retirement village contracts.
- 1.34 There have been numerous inquiries, both at State and Commonwealth level, into institutionalised aged care and investigations into specific incidents where vulnerable older people were found to be at risk of abuse. South Australia focused its attention on the abuse occurring to older people in its residential aged care system. The horrific circumstances of the Oakden Older Persons Mental Health Facility were uncovered and investigated by the Independent Commissioner against Corruption.⁹

⁵ Queensland, 55th Parliament, Communities, Disabilities and Domestic and Family Violence Prevention Committee, Report 2, *Inquiry into the adequacy of existing financial protections for Queensland's seniors*, August 2015.

⁶ Victoria, Royal Commission into Family Violence, *Report and recommendations: Volume V*, March 2016, Chapter 27.

⁷ Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, p 60.

⁸ Commonwealth Government, *Budget Measures 2018-19*, Budget Paper 2, p 76.

⁹ South Australia, Hon Bruce Lander QC, Independent Commissioner against Corruption, *Oakden: A shameful chapter in South Australia's history*, 28 February 2018.

- 1.35 The Committee notes that residential aged care is subsidised, funded and managed at the Commonwealth level with care delivered by service providers primarily under the *Aged Care Act 1997* (Cth). The Committee considered the role that paid carers and aged care service providers play in this inquiry into elder abuse and notes that an investigation of the adequacy of aged care has a far broader scope than this inquiry alone.
- 1.36 The Joint Committee on Matters Related to Elder Abuse of the South Australian Parliament recently found that:
- notwithstanding community anxiety about residential aged care ... the Committee has noted expert advice that most elder abuse occurs in ordinary private homes, with elder abuse historically described as a 'hidden problem'.¹⁰
- 1.37 This hidden aspect of elder abuse has therefore been the focus of this inquiry and the Committee has explored how devastating abuse by a family member can be on older Western Australians. The Committee has not inquired into elder abuse in aged care settings.

FINDING 1

Elder abuse occurs within a variety of settings, has devastating effects on older people and has significant cost impacts for the community.

FINDING 2

Elder abuse still occurs within aged care settings, despite the regulatory regime that exists to monitor and protect older people who reside in aged care.

Retirement and lifestyle villages

- 1.38 The Committee acknowledges the concerns raised during this inquiry regarding unconscionable contracts and fees in some retirement and lifestyle villages. The imbalance in bargaining power, unfair contractual terms and alleged mismanagement of lifestyle and retirement villages warrants further investigation.
- 1.39 The Committee received a submission signed by residents of retirement villages who raised concerns about the management of their property and the fees collected as part of their residential contract. The Committee heard that it is common practice within retirement villages to charge a levy of 'deferred management fees' and to charge residents a percentage fee of the individual's pension or income, rather than a set dollar fee.¹¹
- 1.40 Submitters also referred to issues related to complexities in the contracts that they signed to purchase a home in the retirement village and the difficulties in interpreting the applicable legislation, including the *Residential Tenancies Act 1987*, *Residential Parks (Long-stay Tenants) Act 2006*, *Retirement Villages Act 1992* and *Strata Titles Act 1985*.
- 1.41 The Committee empathises with the difficulties facing residents of lifestyle and retirement villages, but notes that the definition of elder abuse requires the relationship in question to possess an expectation of trust: in this case, the Committee considers that these contractual relationships do not meet this requirement.
- 1.42 The Committee nonetheless is of the view that a review of the legislative framework surrounding retirement and lifestyle villages should be undertaken to ascertain what improvements can be made to safeguard the interests of residents.

¹⁰ South Australia, House of Assembly, Joint Committee on Matters Relating to Elder Abuse, *Final Report*, 31 October 2017, p 8.

¹¹ Submission 37 from Retirement and Lifestyle Villages in Swan Hills, 21 November 2017, p 1.

FINDING 3

Whilst unconscionable contracts or unfair or deficient management practices in retirement or lifestyle villages can have devastating effects on older people and require further investigation, such circumstances do not fall within the definition of elder abuse and are outside the terms of reference for this inquiry.

CHAPTER 2

What is elder abuse?

Introduction

- 2.1 Violence committed against older people by those in positions of trust is not a new phenomenon. It has occurred in all parts of the world, in all cultures, for generations. The World Health Organization (WHO) declared in its call for action in 2002 that 'elder abuse is a universal problem' that all countries must work towards preventing.¹²
- 2.2 A key term of reference for the Committee's inquiry into elder abuse was to 'determine an appropriate definition'. The Committee is of the view that agreeing (as far as possible) on a standard definition of elder abuse is important as this achieves two things:
- provides guidance to agencies and the community on the type of behaviour that is not acceptable
 - assists in more accurately recording its prevalence, thus revealing the full extent of the problem.
- 2.3 The Committee notes that there are many unfortunate situations that happen to older people that are not elder abuse. It is not the case that all negative things that an older person may experience necessarily amounts to elder abuse and it is important to make that distinction. In this regard, the following discussion about the definition of elder abuse is an essential aspect of the Committee's inquiry.

Definitions vary

- 2.4 A definition of elder abuse is coloured by the context of experience and the Committee has noted that stakeholders to this inquiry rely on different definitions of the term. The most widely accepted definition of elder abuse amongst researchers and academics comes from WHO:
- 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. It can be of various forms: physical, psychological/emotional, sexual, financial or simply reflect intentional or unintentional neglect.¹³
- 2.5 The ALRC referred to the WHO definition in its final report into elder abuse and noted that 'to obtain a full picture of the abuse of older people, a broad description of elder abuse needs to be used, like the WHO definition'.¹⁴ The ALRC also pointed out the difficulties with using too broad or too narrow a definition, the problems with (chronological) age limits in a definition of 'older person' and the overlap of elder abuse with family violence (that is, family violence becoming elder abuse over time).

¹² World Health Organization, *The Toronto Declaration on the Global Prevention of Elder Abuse*, Toronto, 17 November 2002.

¹³ *ibid.*

¹⁴ Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, p 41.

- 2.6 The Committee has observed that many stakeholders rely on the WHO definition of elder abuse, including:
- Aged & Community Services Australia
 - Northern Suburbs Community Legal Centre
 - Older Adult Mental Health Sub-Network
 - Office of Multicultural Interests
 - Department of Communities
 - MercyCare
 - Legal Aid Western Australia
 - Albany Community Legal Centre
 - Women's Council for Domestic and Family Violence Services
 - Office of the Public Trustee.
- 2.7 The Alliance for the Prevention of Elder Abuse: Western Australia (APEA) is a Western Australian group comprised of agencies that advocate around elder abuse and work together to develop elder abuse policy at the State government level.¹⁵ The Committee notes that the definition used by APEA was amended during the course of this inquiry. Consequently its most recent protocol document is based on the WHO definition:
- elder abuse is defined as ... a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person.¹⁶
- 2.8 Previously, APEA's definition of elder abuse referred to abuse that occurs 'within an informal relationship of trust, such as family or friends'.¹⁷ APEA advised the Committee that, in updating its Elder Abuse Protocol document, its members now support the WHO definition of elder abuse:
- I think limiting elder abuse to those very personal relationships excludes responsibility where an older person could be supported by professionals.¹⁸
- 2.9 The Committee also heard that other definitions of elder abuse are in use by various community organisations: People with Disabilities WA prefers the definition used in its 2015 report on violence against people with disabilities, as that definition 'crosses all boundaries':
- Abuse occurs when integrity of any person is violated by another person who inflicts physical or psychological pain on them or in situations where an individual's civil rights are breached, negated or ignored.¹⁹

¹⁵ Members of APEA are Advocare Inc., Department of Communities, Department of Health, Department of Local Government, Sport and Cultural Industries—Office of Multicultural Interests, Department of Planning, Heritage and Lands, Legal Aid (WA), Office of the Chief Psychiatrist, Office of the Public Advocate, Older People's Rights Service, Office of the Public Trustee, Western Australia Police, Western Australian Local Government Association.

¹⁶ Alliance for the Prevention of Elder Abuse: Western Australia, *Elder Abuse Protocol: Guidelines for Action*, June 2018, p 4.

¹⁷ Alliance for the Prevention of Elder Abuse: Western Australia, *Elder Abuse Protocol: Guidelines for Action*, September 2013, p 4.

¹⁸ Deidre Timms, Chief Executive Officer, Advocare Inc., *Transcript of evidence*, 12 March 2018, p 2.

¹⁹ People with Disabilities WA and Development Disability WA, *Behind Closed Doors: Preventing Violence, Neglect and Abuse against West Australians with Disability*, 2015.

- 2.10 GLBTI Rights in Ageing Inc. (GRAI) submitted to the Committee that even the widely-accepted definitions of elder abuse are problematic when discussing LGBTI rights which have been negated or undermined by systemic abuses within society (such as by the state, the psychiatric profession, organised religion). GRAI refers to the WHO definition of elder abuse in its submission but also mentions it would like to see 'a broadening of the definition of elder abuse to extend to systemic abuse, as exclusionary or discriminatory policies, procedures, organisational structures and cultures can perpetrate abuse just as surely as if by a natural person'.²⁰
- 2.11 Western Australia Police advises in its submission that, until recently, it defined elder abuse as 'the wilful or unintentional harm caused to an older person (60 years or older), by another person or persons with whom they have a relationship implying trust'.²¹ Recent amendments to police procedure guidelines, however, mean that Western Australia Police now follows the APEA definition of elder abuse.

FINDING 4

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.

A human rights-based approach

- 2.12 Many submissions did not refer to an established definition of elder abuse as above, but mentioned that any definition that the Committee adopts should be viewed from a 'human rights-based approach'.²² The Committee heard that a definition that reflects a human rights approach preserves the dignity of older people:
- if you wanted to approach it from a rights-based perspective, you could actually refer to elder abuse as the denial or restriction of a person's basic rights and freedoms—removing a person's power to make decisions for themselves and the like.²³
- 2.13 Elder abuse has been classified as 'fundamentally a human rights issue', with responses in Australia tending to emphasise 'self-determination, autonomy and respect'.²⁴ The United Nations 'Principles for Older Persons' acknowledges these rights and enshrines them in its provisions: reproduced at Appendix 2 to this report.
- 2.14 Advocare Inc. (Advocare), a non-government agency in Western Australia lobbying against elder abuse, uses a rights-based approach in its advocacy model. Advocare's rights-based advocacy focuses on the individual and their concerns, with empowerment and support of the older person at the centre of any intervention or action. Advocare's rights-based approach is endorsed by APEA, noting that the:

²⁰ Submission 44 from GLBTI Rights in Ageing Inc., 26 November 2017, p 2.

²¹ Submission 30 from Western Australia Police Force, 16 November 2017, p 2.

²² For example, Submission 19 from Relationships Australia (WA), 16 November 2017, p 2.

²³ Professor Wendy Lacey, Dean and Head of School of Law, University of South Australia, *Transcript of evidence*, 26 March 2018, p 2.

²⁴ Dr Rae Kaspiw, Dr Rachel Carson, Professor Helen Rhoades, Australian Institute of Family Studies, *Elder Abuse – Understanding issues, frameworks and responses*, Research Report No. 35, February 2016, p 3.

utility of focusing on rights rather than care and service provision is that a rights focus is more inclusive, as it views older people as part of humanity and therefore entitled to the same rights as everybody else.²⁵

- 2.15 The Australian Research Network on Law and Ageing (ARNLA) is an Australia-wide network of legal scholars who are experts in the field. ARNLA supports a human rights focus when addressing elder abuse. ARNLA has drafted a Charter of Rights and Freedoms of Older Persons that outlines the human rights framework that underpins ARNLA's work on elder abuse. The Charter observes the following:

Human rights do not fluctuate or wane as we age, but policy interventions may be required to enable older persons to fully enjoy and realise their basic human rights, as well as ensure that others continue to respect the rights of older persons ... Human rights are also recognised as inhering in every human being; thus, with human rights also comes the responsibility of recognising and respecting the rights of other human beings ...

Older persons have the right to be treated with dignity and humanity and to be free to exercise personal self-determination. This includes the right to be presumed as having full decision-making capacity unless otherwise determined in accordance with law, the right to make decisions regarding their present and future circumstances, and to be supported to make decisions if they have difficulty in doing so ...

Older persons have the right to liberty and security of the person and to be free from exploitation and physical, social, psychological and sexual abuse ...

Older persons have the right to own property, the right to exercise self-determination with respect to that property and the right not to be arbitrarily or unlawfully deprived of their own property ...

Older persons are entitled to access and seek remedies for breaches of their rights, including when they occur in institutional settings ...

Older persons have the right to be free from arbitrary or unlawful interferences with his/her privacy, family, home or correspondence and respect for a person's privacy must be maintained in institutional settings ...

Older persons have the right to a family life, to marry and enjoy intimate relationships and to have their family unit and personal relationships respected by others, including government agencies and officials and the operators and managers of residential care facilities ...

Older persons have the right to freely associate with others and to participate fully in the social and cultural life of their community ...

Older persons have the right to freedom of opinion and expression and to seek, receive and impart information and ideas, particularly in respect of policies which affect their wellbeing or interests ...²⁶

- 2.16 In determining the best approach to healthy ageing from a global perspective, WHO recommends a focus on the following factors, which the Committee also considers important when considering any responses to elder abuse in Western Australia:

²⁵ Dr Barbara Black, *Empowering and rights-based approaches to working with older people*, 2018, Alliance for the Prevention of Elder Abuse Western Australia, viewed 20 April 2018, <http://apeawa.advocare.org.au/publications/empowering-rights-based-a/>.

²⁶ Submission 9 from Australian Research Network on Law and Ageing, 15 November 2017, pp 30-34.

- consider the heterogeneity of experiences in older age and be relevant to all older people, regardless of their health status
- address the inequities that underlie this diversity
- avoid ageist stereotypes and preconceptions
- empower older people to adapt to and shape the challenges they face and the social change that accompanies population ageing
- consider the environments an older person inhabits
- consider health from the perspective of an older person's trajectory of functioning rather than the disease or comorbidity they are experiencing at a single point in time.²⁷

2.17 The Committee is of the view that, if human rights principles are kept at the forefront of any responses to elder abuse, this will ensure that the inherent dignity and autonomy of older people is supported and strengthened.

RECOMMENDATION 1

The Government's response to elder abuse in Western Australia be informed by a human rights-based approach that focuses on the inherent dignity and autonomy of older people.

Age limits

- 2.18 The Committee notes that selecting a particular age to delineate elder abuse carries with it troubling assumptions about age and vulnerability. The ALRC noted in its report that 'increasing diversity over the life course, particularly with regard to shifts in expectations about retirement from paid work, has implications for distinguishing elder abuse as a specific form of abuse'.²⁸ A broader, more appropriate concept to consider may be vulnerability, also used to refer to a group that is 'at risk'.²⁹
- 2.19 There is general agreement amongst academics and relevant agencies that either 60 or 65 years of age is an appropriate starting point for classifying elder abuse. WHO uses 60 as the defining age for its definition, but Australian services and agencies rely on different ages.
- 2.20 In Australia, 65 is the statistical starting age for 'older person' status as well as being the minimum age for access to the aged pension.
- 2.21 The ALRC relied on 65 years of age for its inquiry, based on Australian Bureau of Statistics (ABS) data that classifies 'older people' as 65 years or over when it distinguishes between its population age cohorts: such as '15-64', '65 years and over' and '85 years and over'.³⁰
- 2.22 According to ABS data, between 1996 and 2016, the proportion of people aged 65 years and over in Australia increased from 12 per cent to 15.3 per cent of the total population and those aged 85 years and over almost doubled from 1.1 per cent to 2 per cent of the

²⁷ World Health Organization, *World Report on Health and Ageing*, 2015, p 27.

²⁸ Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, p 39.

²⁹ Referring to adults as 'vulnerable' implies that the cause of abuse lies inherently with the victim, rather than shifting the responsibility to those who perpetrate the abuse; 'it might be the context, the setting, or the place which makes a person vulnerable': The Law Commission, *Adult Social Care*, Law Com No. 326, London, 10 May 2011, p 114. See: <https://www.lawcom.gov.uk/project/adult-social-care/#related>. Viewed 19 April 2018.

³⁰ Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, p 32.

population. The ABS also notes that our population is ageing at a fast rate: over the past 20 years, the number of persons aged 85 years and over increased by 141.2 per cent, compared with a total population growth of 32.4 per cent over the same period.³¹

- 2.23 The 2016 ABS census data reveals that 'Aboriginal and Torres Strait Islander people continue to have a much younger age profile than the non-Indigenous population': Aboriginal and Torres Strait Islander people who are 65 years or over represent only 4.8 per cent of Australia's total population, compared to 15.9 per cent of non-Indigenous people who are over 65 years old.³² In Western Australia, there are 75 978 Aboriginal and Torres Strait Islander people: 3 per cent of the total resident population of the State.³³
- 2.24 The ALRC noted that there are significant variations in life expectancy among different groups in the population, such as Aboriginal and Torres Strait Islander people having much lower life expectancy than other Australians.³⁴ Data from the ABS reveals that, since 1971, life expectancy has risen for Australians from an average age of 68.3 years to 80.4 years for males and from 74.8 years to 84.6 years for females.³⁵ Life expectancy for Aboriginal and Torres Strait Islanders continues to be significantly lower than non-Indigenous Australians: in 2012, a male Aboriginal and Torres Strait Islander person had an average life expectancy of 67.4 years and for a female Aboriginal and Torres Strait Islander person: 72.3 years.³⁶
- 2.25 The age at which an Aboriginal and Torres Strait Islander person in Western Australia may be considered an older person should be reflected in any age limits placed on a definition of elder abuse for this inquiry. When discussing elder abuse, the ALRC refers to Aboriginal and Torres Strait Islander people aged 50 years and over and a 2016 publication from the Australian Institute of Family Studies (AIFS) mentions 45-55 years of age as an appropriate starting point.³⁷
- 2.26 The Committee heard evidence that agencies that deal with older people in Western Australia generally use an age range between 50 and 55 years of age as the starting point for their Aboriginal clients to be defined as 'older'.³⁸

³¹ Australian Bureau of Statistics, June 2016, *3101.0 – Australian Demographic Statistics, June 2016*, viewed 23 March 2018,

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/3101.0Feature%20Article1Jun%202016>.

³² Australian Bureau of Statistics, June 2017, *2071.0 – Census of Population and Housing: Reflecting Australia – Stories from the Census, 2016*, viewed 23 April 2018,

<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20Population%20Data%20Summary~10>.

³³ Australian Bureau of Statistics, June 2017, *2071.0 – Census of Population and Housing: Reflecting Australia – Stories from the Census, 2016, Aboriginal and Torres Strait Islander Population 2016*, viewed 23 April 2018,

<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20Population%20Article~12>.

³⁴ Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, p 33.

³⁵ Australian Bureau of Statistics, October 2017, *3302.0.55.001 – Life Tables, States, Territories and Australia, 2014-2016*, viewed 27 April 2018, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3302.0.55.001>.

³⁶ Australian Bureau of Statistics, November 2013, *3302.0.55.003 – Life Tables for Aboriginal and Torres Strait Islander Australians, 2010-2012*, viewed 27 April 2018,

<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/A80BD411719A0DEECA257C230011C6D8?opendocument>.

³⁷ Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, pp 32 and 34; Dr Rae Kaspiw, Dr Rachel Carson and Professor Helen Rhoades, Australian Institute of Family Studies, 'Future Directions for the family law system', *Family Matters* 2016 No. 98, p 65.

³⁸ Advocare uses a cut-off age of 50 years for Aboriginal clients and 65 for non-Indigenous people: Deidre Timms, Chief Executive Officer, Advocare, *Transcript of evidence*, 12 March 2018, p 3; the Older People's Rights Service negotiated funding from the Department of Communities for 55 years for Aboriginal clients and 65 years for

- 2.27 In delineating age limits for use during this inquiry, the Committee is mindful that physical age is not necessarily an indication of cognitive function or decision-making ability and that vulnerability is a more meaningful concept when discussing elder abuse (see paragraph 3.8 onwards).
- 2.28 For the purposes of clarity, however, the Committee considers 65 years of age for non-Aboriginal and Torres Strait Islander people and 55 years of age for Aboriginal and Torres Strait Islander people to be an appropriate defining age for 'older person'.

RECOMMENDATION 2

For the purposes of defining elder abuse, the starting age for status as an 'older person' in Western Australia be set at 55 years of age for Aboriginal and Torres Strait Islander people and 65 years of age for non-Aboriginal and Torres Strait Islander people.

Ageism

- 2.29 Ageism is widely acknowledged to be at the heart of the problem of elder abuse:
- We think there is a lot of effort needed around educating people about this issue of power, in particular, and trust in relationships, and the abuse of those positions of trust ... issues of respect and dignity are fundamental to the whole issue of elder abuse, and the lack of respect and dignity granted to older people in our community is part of all this. I do not think you can separate that from the actual abuse.³⁹
- 2.30 WHO sees elder abuse as a public health policy issue and identifies 'pervasive misconceptions, attitudes and assumptions about older people' as one of the biggest barriers to developing effective policies to address elder abuse.⁴⁰ Older people are often stereotyped as 'frail, out of touch, burdensome or dependent'. This negative ageist attitude not only diminishes the contribution that older people make to society but also denies our own humanity and inevitable ageing. See Figure 1 for further information on ageism.
- 2.31 North American academics note that 'each culture uniquely identifies acceptable and unacceptable treatment of elders' and 'what is perceived as abusive in one population may not be perceived as abusive in another'.⁴¹ This difference in cultural definitions of elder abuse is significant to the Committee's inquiry as it will impact how culturally and linguistically diverse (CaLD) communities and Aboriginal communities in WA identify and respond to elder abuse (see further, paragraph 3.41 onwards).

others: Karen Merrin, Manager, Older People's Rights Service, Northern Suburbs Community Legal Centre, *Transcript of evidence*, 19 March 2018, p 3; and the Women's Law Centre of Western Australia does not have a specific age limit in place but has Aboriginal clients who are grandmothers at age 40 and who are considered elders in their own culture: Caroline Hannington, Senior Executive Officer, Women's Law Centre of Western Australia, *Transcript of evidence*, 19 March 2018, p 2.

³⁹ Grahame Searle, Director General, Department of Communities, *Transcript of evidence*, 9 April 2018, p 17.

⁴⁰ World Health Organization, *World Report on Ageing and Health*, 2015, p 10.

⁴¹ RB Wallace and VL Crabb, 'Toward Definitions of Elder Mistreatment', in Xinqi Dong (ed.), *Elder Abuse: Research, Practice and Policy*, Springer International Publishing, Chicago, 2017, pp 10-11.

Ageism is the stereotyping of and discrimination against individuals or groups based on their age. Ageism can take many forms, including prejudicial attitudes, discriminatory practices, or institutional policies and practices that perpetuate stereotypical beliefs (46).

Negative ageist attitudes are widely held across societies and not confined to one social or ethnic group. Research suggests that ageism may now be even more pervasive than sexism and racism (48, 49). This has serious consequences both for older people and society at large. It can be a major barrier to developing good policies because it steers policy options in limited directions. It may also seriously impact the quality of health and social care that older people receive.

These negative stereotypes are so pervasive that even those who outwardly express the best of intentions may have difficulty avoiding engaging in negative actions and expressions. Furthermore, negative ageist attitudes are often seen as humorous and based in some degree of fact; thus, the humour is often mistakenly assumed to counteract any negative effects on the older person. Yet ageism has been shown to cause lowered levels of self-efficacy, decreased productivity, and cardiovascular stress (50). And these stereotypes can become a self-fulfilling prophecy, reinforcing the inaction and deficits that result from their internalization. These negative attitudes are also widely present even within the health and social-care settings where older adults are at their most vulnerable.

Some of this prejudice arises from observable biological declines. This so-called objective starting point for the stereotype of older age may be distorted by awareness of disorders such as dementia, which may be mistakenly thought to reflect normal ageing. Furthermore, because ageism is assumed to be based on these presumed physiological and psychological facts, little or no account is taken of the less obvious adaptations made by older people to minimize the effects of age-related loss, nor the positive aspects of ageing, the personal growth that can occur during this period of life and the contributions made by older people.

This socially ingrained ageism can become self-fulfilling by promoting in older people stereotypes of social isolation, physical and cognitive decline, lack of physical activity and economic burden (51).

Figure 1. *Ageism*

[Source: World Health Organization, *World Report on Ageing and Health*, 2015]

- 2.32 The Committee notes that the ageing process is a universal human experience, independent of race, religion or gender. It is therefore ironic that a society that encourages people to live longer nonetheless discriminates against those who do reach old age. Older people may be also assumed to be submissive, dependent and weak purely by virtue of their age and 'as people get older, there is an unstated but prevalent view that they are less important than younger people'.⁴²
- 2.33 Negative stereotypes and assumptions may translate into a wider societal disregard for older people, which in turn places them at greater risk of marginalisation and denies them opportunities, resources and entitlements. This progression is dangerous for individuals and for society in general when:

[as] ageist attitudes become entrenched in our culture, older people may internalise them and believe that they deserve to be treated in a lesser manner than others. Some forms of financial abuse feed into these beliefs, for example, that the older person's money or assets should be for the benefit of their children and grandchildren ... 'spending the kid's inheritance'.⁴³
- 2.34 'Inheritance impatience' is a relatively new descriptor for behaviour that is not a new phenomenon in society. Inheritance impatience may be triggered by factors such as mortgage stress or increased financial stress on families due to the current global economic climate. The concept of reliance upon a substantial inheritance may be traced back to previous generations, where life expectancy was not as advanced as in current times (see paragraph 2.24).

⁴² Dr Helen McGowan, Clinical Co-lead, WA Mental Health Network, *Transcript of evidence*, 2 May 2018, p 2.

⁴³ Dr Barbara Black, Curtin University of Technology, Centre for Human Rights Education, Division of Humanities, *The human rights of older people and agency responses to elder abuse*, March 2008, p 3.

Hon ALISON XAMON: ... [We] have heard evidence about this idea of inheritance impatience.

Mr ROCHE: Yes, I think we certainly witness that quite regularly at times.

...

Mr BOWYER: Yes. They also call it early inheritance syndrome, and I have been in a room, for instance, where a woman said, 'That's mine. It's been left to me in the will', and my response is, 'But he's not dead yet and he needs the money now'.

Mr ROCHE: I think rising house prices—there are all sorts of pressures that come to bear, I think, for people to get hold of mum and dad's money a bit quicker than they would like. The fact is we are living longer, too ... Medical technology and medicines and everything is keeping us alive longer so the kids are not getting the inheritance they might have got when their parents were in their 60s or 70s. Their parents are now living ... into their 80s and 90s. So that is probably causing some of it too.⁴⁴

- 2.35 Northern Suburbs Community Legal Centre (NSCLC) refers to the colloquial term 'boomerang kids' for adult children or grandchildren who return to live at home with their family.⁴⁵ According to NSCLC, there are many reasons why an adult child or grandchild may return to live at home, but in NSCLC's experience, one of the most common reasons is the loss of employment and financial hardship.

FINDING 5

Negative attitudes within the community towards ageing and older people often manifest as ageism in society and can be a reason for elder abuse occurring.

FINDING 6

Ageism has detrimental effects on society.

A hidden problem

Mum will not even tell the GP what is going on as she is so embarrassed that her kids would behave in this way. She will also not mention it to her friends. This leaves people in her situation very isolated.

- 2.36 The scourge of elder abuse is three-fold: 'the abuse is often hidden, associated with shame and under-reported'.⁴⁶ The Committee has heard that the feelings of shame that accompany elder abuse are often entangled with deep-seated feelings of parental obligation and responsibility:

Elder abuse is a deeply personal complex issue ... when adult children abuse their parents, feelings of parental love and responsibility and concern over their potential failure as parents that this should happen and come to pass is a real limitation on older people reporting on elder abuse.⁴⁷

⁴⁴ Hon Alison Xamon MLC, Deputy Chair, Michael Bowyer, Principal Legal Officer and Brian Roche, Public Trustee, Office of the Public Trustee, *Transcript of evidence*, 26 March 2018, pp 3-4.

⁴⁵ Submission 47 from Northern Suburbs Community Legal Centre, 1 December 2017, p 33.

⁴⁶ Submission 43 from Older Adult Mental Health Sub-Network, 24 November 2017, p 1.

⁴⁷ Grahame Searle, Director General, Department of Communities, *Transcript of evidence*, 9 April 2018, p 1.

- 2.37 The fact that elder abuse (mostly⁴⁸) occurs within a family may mean that parents or spouses are inhibited or reluctant to disclose its existence or severity.⁴⁹
- 2.38 This in turn affects the reliability of prevalence data. The issue of under-reporting of elder abuse has been the subject of much research, with the results of a 2002 Curtin University survey clearly demonstrating that loyalty to the family and fear of consequences are the major reasons for non-reporting of abuse by survey respondents, with respondents referring to 'fears of being abandoned or "put into a home"'.⁵⁰
- 2.39 The Committee observes that, although 16 years have passed since that report, little has changed regarding the sense of shame and fear of retribution that may prevent victims from speaking out to stop the abuse.

FINDING 7

Feelings of guilt and shame associated with elder abuse affect the reliability of prevalence data and the full extent of elder abuse in the community is not yet known.

Who are the perpetrators?

- 2.40 Despite the definition of elder abuse being broad enough to include non-family members, such as friends or other individuals in a position of trust, the Committee has heard that the vast majority of elder abuse is perpetrated by the immediate family of an older person.
- 2.41 Senior Rights Victoria found that over two thirds of elder abuse incidents that occurred in Victoria were perpetrated by a son or daughter of the older person, with over 92 per cent of the alleged perpetrators being related to the victim:
- 40 per cent were sons and 26.8 per cent were daughters
 - 4.8 per cent were husbands, 3.3 per cent were wives and 3.1 per cent were de facto partners
 - 4.4 per cent were grandchildren
 - 3.3 per cent were sons-in-law and 3.1 per cent were daughters-in-law.⁵¹
- 2.42 The Committee has heard evidence that supports the Victorian experience: that close family members are the largest group that perpetrates elder abuse on older relatives:

Ms MERRIN: I think there are clearly two types of abuse. There are carers as against family members. We probably need to separate those two in terms of elder abuse. I would say that a high percentage of the clients we see are actually family members ...

The CHAIRMAN: In terms of these two groups—the carers as one and the family members as another—do you have a sense as to which is the larger proportion of elder abuse that takes place?

Ms OTTOLINI: Many of our clients have carers that are children. That issue is interlaced.

⁴⁸ CHAPTER 3 discusses who is most at risk of experiencing elder abuse in our community.

⁴⁹ Submission 41 from Office of Multicultural Interests, 23 November 2017, p 2.

⁵⁰ Curtin University, Centre for Research into Aged Care Services, 'Elder Abuse in Western Australia: Report of a Survey Conducted for the Department of Community Development – Seniors' Interests', Professor Duncan Boldy, Mathew Webb, Barbara Horner, Margaret Davey and Beth Kingsley, June 2002, p 20.

⁵¹ Victoria, Royal Commission into Family Violence, *Report and recommendations: Volume V*, March 2016, p 70.

Ms MERRIN: But they are family members.

Ms OTTOLINI: That is right.

The CHAIRMAN: The biggest proportion in terms of prevalence is family members?

Ms OTTOLINI: Is family members.⁵²

- 2.43 NSCLC further specified that, according to its anecdotal evidence and experience as a community legal centre, the majority of its clients are older women who experience emotional and financial abuse at the hands of their children or grandchildren.⁵³

FINDING 8

The majority of people who perpetrate elder abuse are likely to be close family members, including children, grandchildren or spouses of the older person who is experiencing abuse.

- 2.44 The Committee acknowledges the huge amount of unpaid work done by family carers and notes the sentiment of Emeritus Professor Rosalind Croucher AM, former President of the ALRC, during its elder abuse inquiry:

Children in their 50s may be the biggest group of abusers—but many of these may also be carers. And for the few ‘bad eggs’ there are many angel sons and angel daughters out there.⁵⁴

- 2.45 The Committee also heard evidence of a group of perpetrators of elder abuse who are not relatives of the older person, but who ‘befriend’ the older person and then seek to gain (usually) financially through taking advantage of the person’s vulnerability.⁵⁵ The type of person who seeks to gain from an older person can further be classified as potentially falling into one of two groups of ‘predatory carers’ or ‘befrienders’:

One is the befrienders who have very limited insight into whether what they are doing is morally and ethically right. For example, those sorts of people might provide care for a person. They see themselves as providing support and assistance, and so they see nothing wrong with taking \$100 out of their account or encouraging them to change the will to leave them a lump sum to recompense them for the care that they have provided, even though they see themselves as great friends and so on.

Then you have the people who are going about the caring process deliberately to see a will changed, or to see an EPA [Enduring Power of Attorney] executed in their favour. No, you would say about those people that they have insight, they are embarking on a deliberate course of conduct to benefit them financially during the life of that vulnerable person, and certainly after that person has passed away.⁵⁶

⁵² Hon Nick Goiran, Chair, Karen Merrin, Manager and Franca Ottolini, Senior Solicitor, Older People’s Rights Service, Northern Suburbs Community Legal Centre, *Transcript of evidence*, 19 March 2018, p 4.

⁵³ Karen Merrin, Northern Suburbs Community Legal Centre, Answer to question on notice 1 asked at hearing held 19 March 2018, dated 26 March 2018, p 1.

⁵⁴ Emeritus Professor Rosalind F Croucher AM, ‘Reflections from the ALRC’s Elder Abuse Inquiry’, Paper presented at the National Administrative Law Conference, Canberra, 20 July 2017, p 2.

⁵⁵ Franca Ottolini, Senior Solicitor, Older People’s Rights Service, Northern Suburbs Community Legal Centre, *Transcript of evidence*, 19 March 2018, p 4.

⁵⁶ Helen St Jack, Solicitor, Albany Community Legal Centre, *Transcript of evidence*, 18 June 2018, pp 4-5.

Forms of elder abuse

2.46 Elder abuse has been recognised as an issue in Australia since the late 1970s, but the terminology used to describe it has changed over time as community attitudes to ageing and abuse have evolved.⁵⁷ It is no longer acceptable to generally refer to older people as 'frail' as frailty is not always a defining feature that may mean that an older person is vulnerable to abuse. Similarly, as awareness of elder abuse has increased in the community, it is accepted that elder abuse is more nuanced than just physical assault.

2.47 The Committee is of the view that the 2016 AIFS report best summarises the forms of elder abuse in Australia, as much as is possible, given the uncertainty surrounding data collection:

In the absence of systematic empirical data, the dynamics, circumstances and effects of elder abuse are difficult to assess. However, the available evidence suggests that most elder abuse is intra-familial and intergenerational, with mothers most often being the subject of abuse by sons, although abuse by daughters is also common, and fathers are victims too. Financial abuse appears to be the most common form of abuse experienced by elderly people and this is the area where most empirical research is available. Psychological abuse appears slightly less common than financial abuse and seems to frequently co-occur with financial abuse, suggesting a pattern of behaviour analogous to grooming in the sexual abuse context ... In the absence of systematic data to shed light not only on prevalence but also on dynamics and effect among different groups and in different circumstances, the evidence base to support further development of policy and practice initiatives is underdeveloped.⁵⁸

2.48 As with the definition of elder abuse, the Committee was once again confronted with a range of categories to describe the behaviour that constitutes elder abuse. The Committee notes that the definition preferred by APEA and its members contains substantively the same categories of elder abuse, but there is an additional form of elder abuse called 'social abuse' in APEA's protocol guidelines (see Table 2).

Table 2. *Forms of elder abuse*

Emotional or psychological abuse	<p>Inflicting mental anguish, fear or feelings of shame and powerlessness. It may be verbal or nonverbal and part of a pattern of behaviour repeated over time and intended to control the person by maintaining a hold of fear over them.</p> <p>Examples: verbal intimidation, humiliation, harassment and shouting; threats of various forms; withholding affection; removal of decision-making power; an enduring guardian acting inappropriately.</p> <p>Signs: Shame; depression; anxiety; resignation; confusion; social isolation; insomnia; marked passivity or anger.</p>
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⁵⁷ M Joosten, F Vratsidis and B Dow, 'Understanding Elder Abuse: A Scoping Study', University of Melbourne and the National Ageing Research Institute, 2017, p 9.

⁵⁸ Dr Rae Kaspiew, Dr Rachel Carson, Professor Helen Rhoades, Australian Institute of Family Studies, *Elder Abuse – Understanding issues, frameworks and responses*, Research Report No. 35, February 2016, p 46.

Financial or material abuse	<p>Illegal or improper use of an older person's finances or assets.</p> <p>Examples: Misappropriation of assets, money or valuables; forced changes to legal documents; the denial of access to personal funds; forging signatures; misuse of a bank card or Enduring Power of Attorney; spending the older person's money on themselves; exerting undue influence to give away assets or gifts; putting undue pressure on the older person to accept lower-cost or lower-quality services in order to preserve financial resources for inheritance; not contributing to household expenses.</p> <p>Signs: The older person not being able to access adequate food, clothing, shelter or utilities; unusual activity in bank accounts; no access to bank statements; interference with mail; not being able to pay normal accounts and having an accumulation of unpaid bills; having less money to spend; fear, stress and anxiety.</p>
Neglect	<p>The failure of a caregiver to provide the necessities of life to the person for whom they are caring, such as adequate food, shelter, care and emotional support. Neglect can be intentional or unintentional.</p> <p>Examples: not providing appropriate care when in a caretaking relationship with an older person; preventing an older person from accessing services; receiving Carer Allowance but not providing care to the older person.</p> <p>Signs: malnourishment and weight loss, hypothermia, overheating or clothing inappropriate for the season; injuries that have not been properly treated; poor personal hygiene; abandoned or left alone for long periods; lack of social, cultural, intellectual or physical stimulation; lack of safety precautions or inappropriate supervision.</p>
Physical abuse	<p>Deliberately causing physical pain or injury, including physical coercion and physical and chemical restraint.</p> <p>Examples: slapping, hitting, bruising, pushing and shoving, tripping; physical restraint; over or under-medicating.</p> <p>Signs: discrepancies between an injury and the explanation of how it happened; burns, bruising and injuries at different stages of healing; being seen by different doctors and hospitals/treatment centres.</p>
Sexual abuse	<p>A broad range of unwanted sexual behaviour including rape, indecent assault, sexual harassment and sexual interference.</p> <p>Examples: rape and indecent assault; sexual harassment; the use of sexually offensive language and/or materials/media; inappropriate touching.</p> <p>Signs: bruising around genitals; unexplained venereal disease; torn/stained/bloody underclothes; bruising on the inner thighs; difficulty in walking or sitting; sitting huddled and in fear of being touched or in fear of certain visitors.</p>

Social abuse	<p>Intentional prevention from having social contact with family or friends or accessing social activities of their choice. This may also have the effect of hiding abuse from others.</p> <p>Examples: preventing the person from having contact with family or friends; denying phone and/or internet use and/or monitoring calls; cutting off activities without explanation and other controlling behaviours; unexpected cancellation of services; withholding mail; disconnecting the telephone without the older person's consent; living in and taking control over the older person's home without their consent; preventing the older person from engaging in religious or cultural practices.</p> <p>Signs: sadness or grief at the loss of important relationships; reduction or lack of self-esteem; appearing ashamed; constant or close presence of the abuser and a high level of gate-keeping.</p>
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[Source: Alliance for the Prevention of Elder Abuse: Western Australia, *Elder Abuse Protocol: Guidelines for Action*, 2018]

- 2.49 In relation to psychological abuse, academic research mentions the danger of paternalism (that is, treating the older person like a child) and how this may amount to psychological elder abuse. The Committee is of the view that framing the response to elder abuse with dignity and autonomy for the older person will go some way towards striking a balance between removing an older person from harm and displacing their independence.

Grandma lived in WA and had a mild stroke ... She was admitted to hospital and the prognosis was poor. The granddaughter sold the unit and everything in it, keeping [her grandmother's] piano for herself. But Grandma did not die. She recovered, asking about her garden and looking forward to going home. She was devastated by the news that everything had been sold.

- 2.50 The Committee received a submission from GRAI that also refers to systemic abuse as a form of elder abuse: 'exclusionary or discriminatory policies, procedures, organisational structures and cultures'. LGBTI elders may also be subject to 'overt and covert abuse by providers/agents who remain uncomfortable with or disapproving of non-heteronormative, non gender-conforming identities'.⁵⁹

FINDING 9

The most common forms of elder abuse that occur are: financial abuse, emotional or psychological abuse, social abuse, physical abuse, neglect and sexual abuse.

- 2.51 In 2016, the New South Wales Legislative Council Portfolio Committee No. 2 – Health and Community Services heard evidence that many older people experience two or more types of elder abuse simultaneously. Financial abuse and psychological abuse in particular were often frequently reported as occurring together.⁶⁰
- 2.52 Australian research has identified a disturbing link between the incidence of psychological elder abuse and financial elder abuse in a study that examined the effect of cognitive impairment on rates and forms of elder abuse:

Cognitive impairment and other forms of disability are established in the research literature as having a strong association with being vulnerable to elder abuse ...

Financial abuse is reported to occur at similar rates whether or not the victim has dementia, but psychological abuse (as a primary abuse type) occurs about half as

⁵⁹ Submission 44 from GLBTI Rights in Ageing Inc., 26 November 2017, pp 2 and 4.

⁶⁰ Submission 75 from NSW Government in New South Wales, Legislative Council, General Purpose Standing Committee No. 2, Report 44, *Elder Abuse in New South Wales*, 24 June 2016, p 7.

often when the victim has dementia. This suggests that psychological abuse occurs to support financial abuse where dementia is not present, but is no longer necessary where dementia is present.⁶¹

- 2.53 The Committee notes that these findings suggest that perpetrators use psychological elder abuse to ‘groom’ their victims prior to engaging in financial abuse, with such grooming being unnecessary where the older person suffers from dementia (and therefore may already be vulnerable to abuse: see further, paragraph 3.33).

FINDING 10

Older people may experience more than one form of abuse at the same time.

How often does elder abuse occur?

- 2.54 The Committee heard that discussion around elder abuse is similar to other forms of violence that are now considered to be unacceptable by community standards: ‘elder abuse is 10 years behind family and domestic violence and 20 years behind child protection’.⁶² This lag in community awareness of the problem inevitably leads to difficulties in obtaining reliable data and may result in victims feeling isolated and unaware of the resources available to them.
- 2.55 The issues with data collection are also apparent across the country, with South Australian academics recently pointing out that ‘effective legal and policy action has often been hamstrung by the patchy and minimal data available in Australia regarding the prevalence of abuse among older Australians’.⁶³
- 2.56 There have been numerous prevalence studies in Australia and the Committee notes that many studies have shown that data is not collected in a consistent way and methodologies vary greatly across previous research. AIFS acknowledges that evidence about the prevalence of elder abuse in Australia is lacking, but it is likely that between two and ten per cent of older Australians experience elder abuse in any given year, with figures for neglect possibly higher.⁶⁴ Numerous studies and literature reviews have repeatedly revealed that the absence of reliable empirical data hinders effective responses at both the policy and practical level.
- 2.57 There are potentially 75 000 older people in Western Australia affected by elder abuse, although this figure could be much higher in reality.⁶⁵ APEA refers to the following breakdown of prevalence data in its 2018 protocol guidelines:
- financial elder abuse: 34.2 per cent
 - psychological elder abuse: 32.8 per cent
 - social elder abuse: 13.1 per cent
 - physical abuse: 9.7 per cent
 - neglect: 9.6 per cent

⁶¹ Dr Rae Kaspiw, Dr Rachel Carson and Helen Rhoades, ‘Elder Abuse in Australia’, *Family Matters*, 2016, No. 98, p 67.

⁶² Diedre Timms, Chief Executive Officer, Advocare Inc., *Transcript of evidence*, 12 March 2018, p 8.

⁶³ Professor Wendy Lacey et al, ‘Prevalence of Elder Abuse in South Australia Final Report: Current Data Collection Practices of Key Agencies’, University of South Australia, February 2017, p 12.

⁶⁴ Dr Rae Kaspiw, Dr Rachel Carson, Professor Helen Rhoades, Australian Institute of Family Studies, *Elder Abuse – Understanding issues, frameworks and responses*, Research Report No. 35, February 2016, p 46.

⁶⁵ Deirdre Timms, Chief Executive Officer, Advocare Inc., *Transcript of evidence*, 12 March 2018, p 11.

- sexual elder abuse: 0.6 per cent.⁶⁶
- 2.58 Global estimates of elder abuse vary widely between countries and across studies, with academics estimating ranges as broad from 3.2 percent to 27.5 per cent.⁶⁷ The most widely-cited figures from WHO, however, refer to between 2.2 per cent and 14 per cent of older people in high- or middle-income countries experiencing elder abuse in the community (excluding elder abuse that may occur in institutional care).⁶⁸
- 2.59 According to WHO, a 2017 study based on the best available evidence from 52 studies in 28 countries from diverse regions, including low and middle income countries, estimated that 'over the past year, 15.7 per cent of people aged 60 years and over were subjected to some form of abuse' and that 'this is likely to be an underestimation as only 1 in 24 cases of elder abuse are reported'.⁶⁹
- 2.60 The Committee also notes that the research cited by WHO found that a staggering number of older people experience elder abuse on a global scale:
- Although robust prevalence studies are sparse in low-income and middle-income countries, elder abuse seems to affect one in six older adults worldwide, which is roughly 141 million people. Nonetheless, elder abuse is a neglected public health priority, especially compared with other types of violence.⁷⁰
- 2.61 The Office of the Public Advocate provided the Committee with statistics on the number of allegations and investigations carried out during the 2016/17 financial year. The following statistics related to elder abuse in Western Australia:
- allegations of abuse were a factor for 211 investigations, with financial abuse the most common
 - of the 211 people alleging abuse, 102 people were 65 years or older
 - allegations of abuse were a factor for 124 represented people in guardianship applications, and 51 people in that group were 65 years or older.⁷¹
- 2.62 The Committee has produced two flowcharts which illustrate these statistics: see Figure 2.

⁶⁶ Alliance for the Prevention of Elder Abuse: Western Australia, *Elder Abuse Protocol: Guidelines for Action*, June 2018, p 5.

⁶⁷ JL Williams, M Davis & R Acierno, 'Global Prevalence of Elder Abuse in the Community', in Xinqi Dong (ed.), *Elder Abuse*, Springer International Publishing, Chicago, 2017, p 45.

⁶⁸ World Health Organization, *World Report on Ageing and Health*, 2015, p 74.

⁶⁹ World Health Organization, June 2017, 'Fact Sheet 357 – Elder Abuse', viewed 24 January 2018, <http://www.who.int/mediacentre/factsheets/fs357/en/>.

⁷⁰ Y Yon, CR Mikton, ZD Gassoumis, KH Wilber, 'Elder abuse prevalence in community settings: a systematic review and meta-analysis', *The Lancet Global Health*, 2017, vol 5(2): e147-e156.

⁷¹ Submission 6 from Office of the Public Advocate, 10 November 2017, pp 3-4.

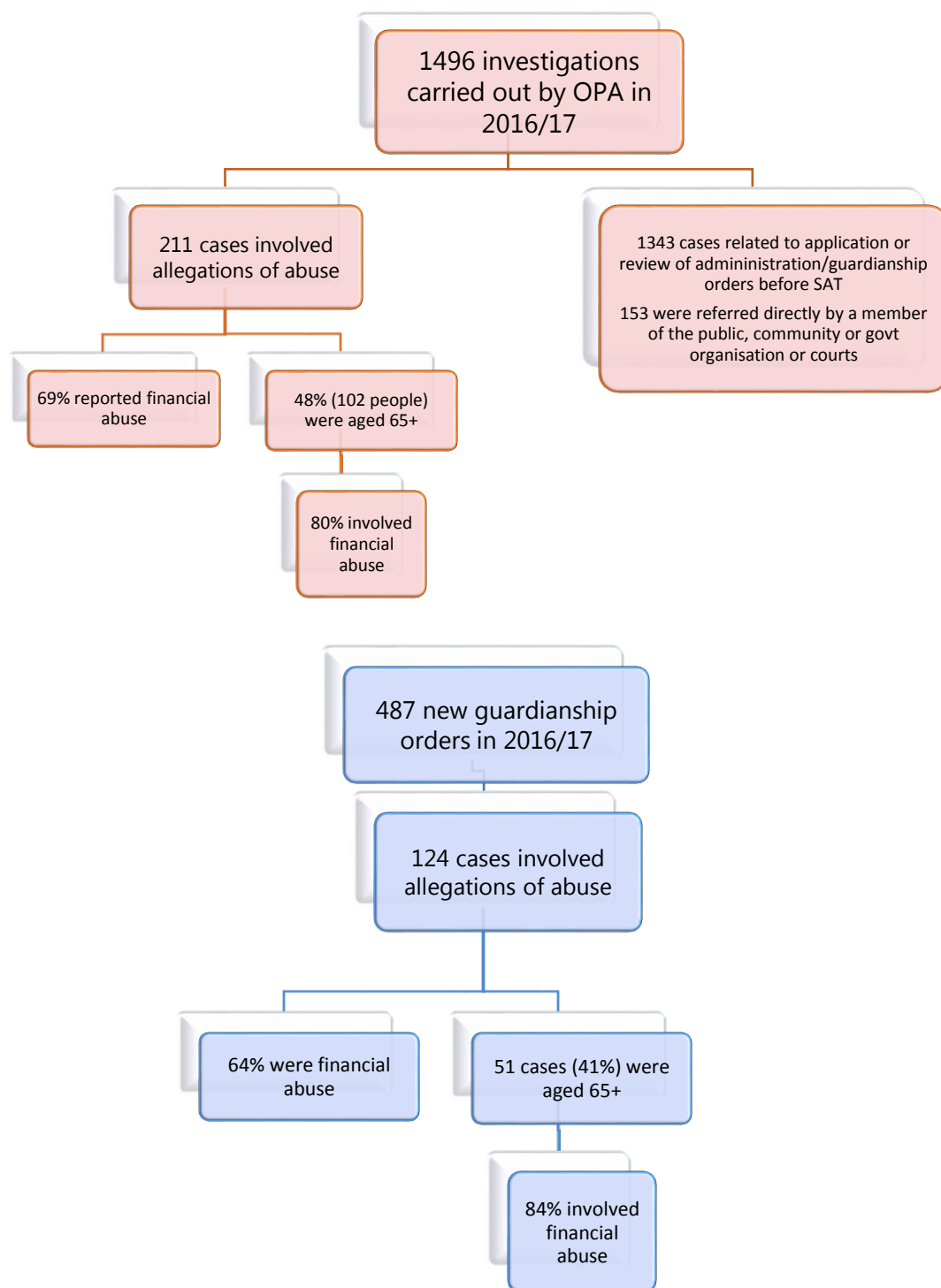


Figure 2. *Investigations carried out by Office of the Public Advocate (OPA) 2016/17*

2.63 Psychological abuse is rated by WHO as the most common form of elder abuse (11.6 per cent), followed by financial abuse (6.8 per cent), with neglect, physical and sexual abuse each representing less than five per cent each.⁷²

⁷² AIFS research suggests that in Australia, however, financial abuse appears to be the most common form of abuse, followed by psychological abuse (with both forms of abuse frequently occurring simultaneously).

A national prevalence study

- 2.64 During the course of this inquiry, the Committee has heard the statement that 'No national elder abuse prevalence data has been collected'.⁷³
- 2.65 One of the key recommendations arising from the ALRC report in 2017 was that 'there should be a national prevalence study of elder abuse to build the evidence base to inform policy responses'.⁷⁴ The ALRC also noted that prevalence data already exists for similar issues, such as family violence and child abuse, therefore such a study into elder abuse would be both timely and appropriate.
- 2.66 AIFS is the Commonwealth Government's key research body in the area of family wellbeing and was allocated funding to undertake research into prevalence data on elder abuse. This research commenced in May 2017 with AIFS' scoping study: Elder Abuse Prevalence Scoping Study.
- 2.67 The AIFS national research project, 'Elder Abuse National Research Strengthening the Evidence Base', initially commenced in 2017 with research to understand the issues and frameworks around elder abuse in Australia. The project intends to measure the prevalence of elder abuse using nationally-consistent data collection methods. The three stage project, in collaboration with the National Ageing Research Institute, the Social Research Centre and the Social Policy Research Centre, was funded by the Commonwealth Attorney General.
- 2.68 According to AIFS, one of the key aims of the project is to 'test data collection tools to measure the abuse of older people' because 'to protect older people from abuse, we must first be able to identify and measure the extent of the problem'.⁷⁵
- 2.69 The National Research Agenda for Elder Abuse is occurring in several stages, with Stage One to 'lay the foundations for an Australian study of the prevalence of elder abuse', to be conducted in 2018-19. Stage One will inform the commissioning of Stage Two (the prevalence study proper). As part of the analysis of existing data sources, the Australian Institute of Health and Welfare is currently working on an analysis of administrative data and survey holdings to determine what can be understood about mistreatment experienced by Aboriginal and Torres Strait Islander people.⁷⁶
- 2.70 Whilst the Committee understands the importance of collecting data that can be rigorously interrogated to better understand the prevalence of elder abuse, it notes that a focus on updating data can lead to an over-emphasis on statistics to the detriment of meaningful government response. The Committee notes the views expressed by ARNLA in this regard:

I am totally done with prevalence studies ... we know there is a serious problem with elder abuse ... I do not think there is any issue about that. It just seems that the knee-jerk reaction is, 'Oh let us do a prevalence study' ... We need to do something concrete and constructive now, rather than sitting around and waiting for another prevalence study ... We know there is a problem. Let us do something constructive about dealing with it.⁷⁷

⁷³ Submission 40 from Dr Barbara Blundell, Prof Mike Clare and Amy Warren, 23 November 2017, p 4.

⁷⁴ Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, p 93, Recommendation 3-5.

⁷⁵ Australian Institute of Family Studies, 2018, Elder Abuse National Research Strengthening the Evidence Base – Stage One, *Frequently Asked Questions*, viewed 27 April 2018, <https://aifs.gov.au/projects/elder-abuse-national-research-strengthening-evidence-base-stage-one>.

⁷⁶ Dr Rachel Caspiew, Senior Research Fellow, Manager, Family Law and Family Violence (HD), Australian Institute of Family Studies, Email, 2 August 2018.

⁷⁷ Dr Eileen Webb, Professor of Law, Curtin University Law School, *Transcript of evidence*, 26 March 2018, p 4.

- 2.71 Raising public awareness of elder abuse and of support services could also be an effective means of producing more reliable prevalence data, as it would place the issue in the forefront of people's minds and increase community awareness (such as previous public campaigns that highlighted family violence or child abuse).
- 2.72 The Committee notes that most submissions to this inquiry agree that a comprehensive prevalence study into elder abuse must be undertaken, with specific emphasis on at-risk groups. Whilst the ALRC is firmly of the view that national prevalence data will be the best way to determine an appropriate response, the Committee considers that a State-based prevalence study may be beneficial to best formulate a local response to elder abuse.

FINDING 11

Data on elder abuse is generally not being collected by agencies or departments who respond to elder abuse, but where it is being collected, it is not collated in a consistent or meaningful way.

RECOMMENDATION 3

The Department of Communities determine which agencies and government departments should be collecting data on elder abuse and also research methods to better collate that data and investigate more effective methods to increase the rate of reporting abuse.

CHAPTER 3

Risk factors for elder abuse

Introduction

- 3.1 Research indicates that there are different risk factors for different forms of elder abuse, but the Committee notes that there are some common risk factors that cut across all forms. Risk factors for elder abuse do not only relate to the individual who may be suffering from abuse, but can fall broadly into four areas, as follows:
- characteristics that place an individual at increased risk
 - risks that relate to the perpetrator
 - the type/quality of relationship between the victim and perpetrator
 - systems and services that monitor, prevent and respond to elder abuse.⁷⁸
- 3.2 Some commonly cited risk factors that relate to victims include: physical or cognitive impairment, social isolation, lack of support services, a traumatic life event(s) or history thereof, low income, cultural beliefs and substance abuse issues.
- 3.3 WHO identified a matrix of risk factors for elder abuse (Figure 3) that clearly shows the high risk of isolation and dependence: two seemingly contradictory risk factors that can actually combine to render an older person much more susceptible to abuse.

Level	Risk factors	Strength of evidence
Individual (victim)	Gender: female	Low–moderate
	Age: older than 74 years	Low–moderate
	Dependence: significant disability	Strong
	Poor physical health	Strong
	Mental disorders: depression	Strong
	Low income or socioeconomic status	Strong
	Financial dependence	Low–moderate
	Race	Low–moderate
	Cognitive impairment	Strong
	Social isolation	Strong
Individual (perpetrator)	Mental disorders: depression	Strong
	Substance abuse: alcohol and drug misuse	Strong
	Dependence on the abused: financial, emotional, relational	Strong
Relationship	Victim–perpetrator relationship	Low–moderate
	Living arrangement: victim lives alone with perpetrator	Strong
	Marital status	Low–moderate
Community	Geographical location: socially isolated	Low–moderate
Societal	Negative stereotypes about ageing	Insufficient data
	Cultural norms	Insufficient data

Figure 3. *Risk factors for elder abuse and strength of evidence for the risk factor*
 [Source: World Health Organization, *World Report on Ageing and Health*, 2015]

- 3.4 The Committee heard that an important, but not always intuitive, consideration is the circumstances that may lead to a person becoming a perpetrator of elder abuse. An individual is more likely to become a perpetrator of abuse (and this may be true for abuse in general, not only elder abuse) if they have a limited understanding or capacity to respond to the older person's needs, are dealing with their own trauma or stress (such as substance abuse, mental health issues, financial stress) or have a history of being involved in other

⁷⁸ Submission 43 from Older Adult Mental Health Sub-Network, 24 November 2017, p 2.

abuse, either as a perpetrator or victim. If the relationship previously contained abusive elements, these may continue and turn into elder abuse as the victim ages.⁷⁹

3.5 Isolation is a risk factor common to both victims and perpetrators because it:

renders elders more vulnerable to exploitation for psychological, emotional and physical reasons and it also means that abusive behaviour is less likely to be discovered ...⁸⁰

3.6 AIFS also explains this phenomenon in the following way:

As with most forms of abuse, access to the potential victim is a significant risk factor for the emergence of or continuation of elder abuse. Also, in regard to living arrangements, social isolation has been shown to contribute to and result from ongoing abusive situations. Caregivers, family members and potential victims who lack substantial social networks experience increased demand on a limited number of caregivers and decreased social sanctions as a result of abusive behaviour and they may avoid future social interactions out of shame or fear of discovery.⁸¹

3.7 The Older Adult Mental Health Sub-Network also refers in its submission to a community being more likely to have increased incidence of elder abuse if there is insufficient regulation or resources to address the victim/perpetrator risk factors. Ageism in a society (or even systemic ageism) can also lead to increased isolation of older people and under-valuing the role of carers.⁸²

Vulnerability

3.8 Throughout the inquiry, the Committee has focused on the concept of vulnerability as an overarching risk factor for elder abuse. Vulnerability in the context of elder abuse refers to the cluster of risk factors associated with elder abuse and the ability to predict if elder abuse will occur when those risk factors are present in a person's life.⁸³

3.9 The Committee has concluded that any older person can be subjected to elder abuse. However, the Committee has identified seven main risk factors. An older person is more likely to experience elder abuse if they:

- are a woman
- are an Aboriginal or Torres Strait Islander person
- have a cognitive impairment or are a person with a disability
- are a member of a culturally and linguistically diverse (CaLD) community
- identify as LGBTI
- are experiencing social isolation or loneliness
- are being cared for by a person who is experiencing carer stress.

3.10 The Committee notes that the risk factors may not exist in isolation and an older person will be more vulnerable to elder abuse if they experience more than one risk factor concurrently.

⁷⁹ Submission 43 from Older Adult Mental Health Sub-Network, 24 November 2017, p 3.

⁸⁰ Australian Institute of Family Studies, *Elder Abuse*, 2017, p 12.

⁸¹ L Mariam, R McLure, J Robinson & J Yang, 'Eliciting change in at-risk elders (ECARE): Evaluation of an elder abuse intervention program', *Journal of Elder Abuse and Neglect*, 2015, vol. 27(1), p 20.

⁸² Submission 43 from Older Adult Mental Health Sub-network, 24 November 2017, p 3.

⁸³ Dr Xinqi Dong and Dr Melissa A Simon, 'Vulnerability Risk Index Profile for Elder Abuse in Community-Dwelling Population', *Journal of the American Geriatrics Society*, 2014, vol. 62(1), p 10.

For example, the Committee has heard that being a woman is an additional risk factor for many of the other groups in the community who are already recognised as being at risk of elder abuse, such as Aboriginal or Torres Strait Islander people, CaLD communities, those who identify as LGBTI or people with a disability.⁸⁴ The Committee has investigated these vulnerabilities and heard evidence throughout this inquiry that action to address elder abuse must focus on these risk factors.

Women

- 3.11 Older women have been identified as far more likely to experience elder abuse than older men by many researchers, with various reasons posited for the higher risk, including:
- differences in life expectancy between females and males (therefore more older women are statistically at risk)
 - higher risk of women experiencing family violence that transitions to 'elder family violence' upon ageing
 - higher risk of women experiencing sexual violence overall, with vulnerability increasing with age
 - traditional gender roles where some men took control of financial matters, leaving some women without skills or knowledge when their partner dies
 - stereotypical assumptions towards women, especially older women (such as a belief that they are less capable than men⁸⁵).⁸⁶
- 3.12 Research undertaken by Curtin University in 2002 found that women were abused at 2.5 times the rate of men and most commonly suffered financial abuse.⁸⁷
- 3.13 The Committee notes that the gendered nature of elder abuse means that women who have experienced a lifetime of family violence and are thus reluctant to report instances of elder abuse:
- The barriers there are all the same ones that attach to the reporting of any sort of family violence ... When you have an older woman who has been in it all her life, you have the additional thing that you do not do that to your husband and that it is rather shameful to talk about it or even think about it in that way, and disloyal ... the other thing we find is that they may often be disrespected by children, particularly male children because the male children have had the abusive perpetrator as a role model all their lives. So it is perfectly natural for them to start behaving in the same way.⁸⁸
- 3.14 There is a significant overlap between the incidence of family violence and elder abuse. The Women's Law Centre of Western Australia submitted that they share the following characteristics:

⁸⁴ Submission 46 from Women's Law Centre of Western Australia, 27 November 2017, p 8.

⁸⁵ Victoria, Royal Commission into Family Violence, *Report and Recommendations*, March 2016, Volume V, p 69.

⁸⁶ South Australia's Multicultural Aged Care gave evidence to a South Australian joint committee of 'marking a line in the sand where culture stops and elder abuse begins': South Australia, Joint Committee on Matters Relating to Elder Abuse, *Final Report*, 31 October 2017, p 37.

⁸⁷ Curtin University, Centre for Research into Aged Care Services, 'Elder Abuse in Western Australia: Report of a Survey Conducted for the Department of Community Development – Seniors' Interests', Professor Duncan Boldy, Mathew Webb, Barbara Horner, Margaret Davey and Beth Kingsley, June 2002, p 17.

⁸⁸ Caroline Hannington, Senior Executive Officer, Women's Law Centre of Western Australia, *Transcript of evidence*, 19 March 2018, p 3.

- behaviour can include physical, sexual, psychological, financial abuse or neglect
 - both involve relationships of trust or dependency with the perpetrator
 - victims are usually women.⁸⁹
- 3.15 The Committee notes that practices which may have been more widespread in previous generations may now be considered to be elder abuse, such as:
- [a] husband being the sole income earner, controlling the finances for all of a woman's life, using money for his own interests and leaving just enough money for her and the children is still regarded by women born in previous decades as a husband's 'right' – part of what constitutes a woman's 'place' in a 'good' marriage.⁹⁰
- 3.16 In the past, women were often only permitted to take the role of caregivers, both for children and for older relatives, which restricted women's participation in the paid workforce and, in some cases, had many negative consequences for them in later life. One of these negative consequences includes an increased risk of abuse and poor health in old age. Relationships Australia (WA) submitted that where 'there is a history of family violence, frailty and fear of being left without a carer can be a leverage point for change and prevention of future abuse'.⁹¹

Aboriginal communities

- 3.17 There has been limited research on elder abuse in Aboriginal and Torres Strait Islander communities and this is reflected in the Committee's observations throughout this inquiry.
- 3.18 The Committee has encountered significant difficulty with obtaining evidence from the community and from key stakeholders regarding the additional risks that are faced by older Aboriginal and Torres Strait Islander people. The hidden nature and shame associated with elder abuse may discourage Aboriginal or Torres Strait Islander older people from sharing their stories. The Committee does also note, however, that no submissions were received from stakeholders in both government and community groups who specifically deal with Aboriginal and Torres Strait Islander health or legal issues in Western Australia.
- 3.19 The Committee notes that in many Aboriginal cultures, the status of being an 'Elder' has different connotations than the use of the word in describing an older person generally. An Aboriginal elder is usually a recognised community representative and can be a custodian of culture and history; a person may be recognised as an Elder in their community at an age younger than 65 years of age (see further paragraph 2.25). The Committee has heard that:
- [in Aboriginal cultures] many Aboriginal women can be grandmothers by the time they are aged 35-45 and great-grandmothers when they are aged 50-60. They are by this time considered 'elders'.⁹²
- 3.20 Family obligation in Aboriginal cultures is important and a strong tie to kin can have positive and negative effects for elders in a community. Strong family relationships may dissuade an older person from viewing negative behaviour towards them as elder abuse, which can increase their vulnerability. The Committee has heard that many Aboriginal cultures are matriarchal and 'it is nearly always women who shoulder the burden'.⁹³

⁸⁹ Submission 46 from Women's Law Centre of Western Australia, 27 November 2017, p 4.

⁹⁰ Caroline Hannington, Senior Executive Officer, Women's Law Centre of Western Australia, Letter, 5 April 2018, p 7.

⁹¹ Submission 19 from Relationships Australia (WA), 16 November 2017, p 8.

⁹² Submission 46 from Women's Law Centre of Western Australia, 27 November 2017, p 6.

⁹³ *ibid.*, p 7.

- 3.21 The Committee has heard evidence that any response to elder abuse must be 'culturally safe' and be delivered by culturally competent professionals or else older Aboriginal people will not access the services.⁹⁴

Cultural safety is to do with recognition of what is culturally appropriate. There are certain aspects to services that are delivered, for instance, to non-Aboriginal people but are not appropriate for Aboriginal people ... in some Aboriginal communities there are certain family members who cannot be in the same room, cannot interact together, because of their particular family relationship ... it is important to remember there are all sorts of Aboriginal nations and countries and languages.⁹⁵

- 3.22 South Australia Health suggests that the best way to address elder abuse in Aboriginal cultures is to bring together respected community leaders, recognised Aboriginal elders and family members, thereby keeping agency responses culturally safe and appropriate.⁹⁶
- 3.23 The Committee acknowledges that Aboriginal older people face unique difficulties when accessing mainstream support services, especially if living in rural or remote areas of Western Australia and it is important to provide a culturally safe service for reporting elder abuse.
- 3.24 The Department of Health advised the Committee that two of its policy documents refer to Aboriginal older people and elder abuse: the 'WA Aboriginal Health and Wellbeing Framework 2016-2026' and the 'WACHS [WA Country Health Service] Preventing and Responding to Abuse of Older People Policy'.⁹⁷ The Department of Health also referred to another internal policy document, 'Identifying and Responding to the Abuse of Older People Procedure', which 'has a dedicated section that addresses elder abuse in the older Aboriginal community' and 'requires that older Aboriginal people suffering abuse are provided with culturally appropriate services and support'.⁹⁸
- 3.25 The Committee notes that it would have been beneficial to this inquiry to have received direct evidence from Aboriginal communities in Western Australia.

FINDING 12

There is a lack of formal research on the prevalence and forms of elder abuse that affect Aboriginal and Torres Strait Islander communities in Western Australia.

FINDING 13

Aboriginal and Torres Strait Islander older people face a greater risk of experiencing elder abuse and it may occur at a younger age than other older people in the community.

FINDING 14

Any support service that is offered to Aboriginal and Torres Strait Islander older people must be culturally safe, developed in conjunction with Aboriginal and Torres Strait Islander people and acknowledge the unique circumstances in which elder abuse can occur.

⁹⁴ *ibid.*, p 9.

⁹⁵ Caroline Hannington, Senior Executive Officer, Women's Law Centre of WA, *Transcript of evidence*, 19 March 2018, p 6.

⁹⁶ Government of South Australia, Office for the Ageing, SA Health, *Elder Abuse: People from an Aboriginal background*, 30 November 2017, p 3.

⁹⁷ Dr DJ Russell-Weisz, Director General, Department of Health, Letter, 10 April 2018, p 1.

⁹⁸ *ibid.*

RECOMMENDATION 4

The Department of Communities commission research into the prevalence and forms of elder abuse and the unique challenges that Aboriginal and Torres Strait Islander older people face in Western Australia.

RECOMMENDATION 5

The Government develop an action plan that is culturally safe, developed in conjunction with Aboriginal and Torres Strait Islander people and acknowledges the unique circumstances that Aboriginal and Torres Strait Islander older people face in Western Australia.

Humbugging

- 3.26 An aspect of elder abuse that appears to disproportionately affect Aboriginal and Torres Strait Islander older people is the notion of applying pressure to an older person to obtain a benefit (including money, medicine, food, possessions): known as humbugging.
- 3.27 The Committee has learned that humbugging is highly complex in Aboriginal communities and stems from cultural concepts of reciprocal rights and strong family obligations. It can include:
- unreasonable or excessive demands made by an individual's family. At best it is a form of bullying to which the less powerful party is the victim. At worst, it is theft, fraud and a form of intimidation that leads to assault and violence.⁹⁹
- 3.28 Humbugging can occur if an older person is harassed for their social security payment or other form of income or is forced to provide accommodation or care for family members who may be abusive or threatening. The Committee has heard of the particular risk that older Aboriginal women face in relation to elder abuse and child custody issues, which result in devastating effects on the family:
- the number of Aboriginal women particularly, but it is not just confined to the Aboriginal community, who are grandmothers and are getting bound up in Family Court and child protection proceedings ... as to where the children should be. It is not uncommon now for grandparents to be, effectively, fostering children because the parents are not able to look after them because of alcohol and drug problems or a variety of other problems ... What we have seen with the Aboriginal community is that a grandmother will take over the care but will then become subject to abuse, either by the grandchildren for whom she is caring or the parents who have had the child taken off them. That can sometimes result in ... the Department of Communities ... taking an interest and then the children are removed and placed with non-family foster carers.¹⁰⁰
- 3.29 Kinship and family bonds are highly valued in many Aboriginal cultures and 'for the elderly Aboriginal person, family obligation is at the core of their Aboriginality'.¹⁰¹ The Committee is of the view that this statement may go some way to understanding the reluctance that an older Aboriginal person may feel in reporting humbugging or elder abuse when it occurs to them.

⁹⁹ Grahame Searle, Director General, Department of Communities, Letter, 6 April 2018, p 1.

¹⁰⁰ Caroline Hannington, Senior Executive Officer, Women's Law Centre of Western Australia, *Transcript of evidence*, 19 March 2018, p 3.

¹⁰¹ Grahame Searle, Director General, Department of Communities, Letter, 6 April 2018, p 1.

- 3.30 The Council of Aboriginal Elders of South Australia has produced a brochure targeted at Aboriginal communities in South Australia that includes information about humbugging: see Figure 4.
- 3.31 In Western Australia, various State agencies become involved if an allegation of elder abuse through humbugging is reported, but the Committee notes that the response is fragmented and inadequate. The Department of Communities does not target humbugging with any specific strategy or policy, but rather addresses the ‘negative behaviours’ of humbugging across the divisions within the department (Strategy and Policy, Housing, Child Protection and Family Support and Disability Services).¹⁰² The Commonwealth Government has a role in administering ‘welfare quarantining measures’ such as the ‘Cashless Debit Card’, which restricts a proportion of a person’s welfare payments from being spent on harmful goods or being withdrawn as cash.¹⁰³
- 3.32 The Committee has been advised that the forthcoming National Plan to combat elder abuse will set priorities for addressing elder abuse, including strategies to focus on elder abuse as it occurs in Aboriginal communities. The timing of the Committee’s inquiry has meant that the National Plan is not yet finalised and the Committee hopes that it will address the issues relating to Aboriginal and Torres Strait Islander older people that have been raised in this report.

FINDING 15

Humbugging in Aboriginal communities in Western Australia is a form of elder abuse that requires a culturally safe response from the relevant agencies and services.

RECOMMENDATION 6

The Government ensures that, when the National Plan to combat Elder Abuse is released, it addresses humbugging as a form of elder abuse that affects Aboriginal and Torres Strait Islander older people and includes culturally safe strategies and responses.

¹⁰² *ibid.*, p 2.

¹⁰³ Serena Wilson, Deputy Secretary, Department of Social Services, Letter, 13 April 2018, p 1.



The Council of Aboriginal Elders of South Australia say:

“Any abuse of an Aboriginal Elder is a real dog act.

It’s a real shame job.
We will not tolerate it.”

Get the Message?
Abuse of Elders is **NOT OK.**

If it is happening to you or someone you know in SA then call:
Aged Rights Advocacy Service (ARAS)


ARAS provides a free and confidential service
Telephone (08) 8232 5377
Country Toll Free 1800 700 600
or Council of Aboriginal Elders of SA
Telephone (08) 8367 0783

An actor was used for the photo on this poster.

What is Abuse?

- Bashing an Elder.
- Ripping them off by taking their food.
- Ripping them off for their money.
- Ripping them off for their medication.
- Ripping them off for their possessions.
- Threatening Elders with violence.
- Sponging off Elders.
- Threatening Elders that they will not see their grannies.
- Cutting Elders off from their community support.
- Starving Elders of food, money and every day needs.

aras
aged rights advocacy service inc.


COUNCIL OF ABORIGINAL ELDERS OF SOUTH AUSTRALIA INC.

This poster has been endorsed by the Council of Aboriginal Elders of South Australia in collaboration with Aged Rights Advocacy Service.


Government of South Australia

Funded by 'Improving with Age - Our Ageing Plan For South Australia'

Figure 4. *Elder Abuse brochure, South Australia*
[Source: Council of Aboriginal Elders of South Australia]

Cognitive impairment and disability

- 3.33 A significant cause of vulnerability in older people is the increased onset of cognitive impairment that is associated with ageing, as well as disability, whether age-related or not. The Committee notes that a common ageist assumption in society is that older people are all frail, out of touch and suffering from cognitive decline.¹⁰⁴
- 3.34 People who have some form of decision-making disability or another form of disability are more likely to experience abuse due to their increased vulnerability; this applies equally to people as they age.¹⁰⁵
- 3.35 The Committee has heard that having a cognitive impairment puts an older person at a higher risk of experiencing elder abuse and increases their state of vulnerability:
- an individual who has got these issues [cognitive impairment and decision-making incapacity] is less likely to be able to assert themselves, to make sense of complex issues and to make good decisions for themselves, so other people are going to be making decisions for them.
- ...
- The other issue that is associated with cognitive impairment—obviously it is a spectrum—is that it places a particular strain on relationships as well, and carers are often under-resourced, under-supported and under-educated ... the stresses and strains of caring for somebody who has dementia or cognitive impairment and is displaying difficult behaviours ... also make it more likely that there is going to be some sort of abuse, because people are going to feel more entitled to be dismissive, curtail somebody's social options or utilise funds to support themselves in what is often a difficult process.¹⁰⁶

Dementia

- 3.36 Dementia is a term used to describe a collection of symptoms that are caused by disorders affecting the brain, such as Alzheimer's disease, Parkinson's disease and vascular dementia.¹⁰⁷ Dementia affects thinking, behaviour and the ability to perform everyday tasks. A common feature of dementia is the inability to carry out everyday activities as a consequence of this diminished cognitive ability.
- 3.37 Dementia is the single greatest cause of disability in Australians aged 65 years and over: almost 1 in 10 people over 65 have dementia, with this statistic rising to 3 in 10 people over 85 experiencing symptoms of dementia.
- 3.38 According to Australian statistics, dementia is the second leading cause of death of Australians, contributing to 5.4 per cent of all deaths in males and 10.6 per cent of all deaths in females each year.¹⁰⁸ Dementia Australia estimates that there are 425 416 Australians in 2018 who are living with the condition/disease, with people who are diagnosed with dementia expected to increase to 318 new cases per day by 2020.

¹⁰⁴ World Health Organization, *World Report on Health and Ageing*, 2015, pp 10-11.

¹⁰⁵ Submission 40 from Dr Barbara Blundell, Prof Mike Clark and Amy Warren, 23 November 2017, p 7.

¹⁰⁶ Dr Helen McGowan, Clinical Co-lead, WA Mental Health Network, *Transcript of evidence*, 21 May 2018, pp 3-4.

¹⁰⁷ Dementia Australia, November 2017, What is dementia?, viewed 15 May 2018, <https://www.dementia.org.au/resources/help-sheets>.

¹⁰⁸ Dementia Australia, January 2018, Dementia statistics, viewed 15 May 2018, <https://www.dementia.org.au/statistics>.

- 3.39 WHO draws attention to the common misconception that dementia is an inevitable consequence of ageing and that all older people will develop a form of dementia as they age.¹⁰⁹ There are many reasons why a person may develop dementia and the risk increases with age, but the Committee notes that it is a brain disease, not a normal part of ageing. See Table 3 for further information and support about dementia.
- 3.40 Alzheimer's disease is the most common form of the disease and accounts for approximately two-thirds of diagnoses. Alzheimer's disease causes a gradual decline in cognitive abilities and often begins with memory loss.¹¹⁰ The Committee notes that living with dementia can increase an older person's vulnerability significantly and therefore increase the risk that they may experience elder abuse at the hands of a carer or family member.

Table 3. *Who to call for further information about Dementia*

Dementia Australia (formerly Alzheimer's Australia) is a national peak body that provides support and education for people living with all forms of dementia and their families and carers.

National Dementia Hotline: 1800 100 500 (operates from 9.00am to 5.00pm AWST Monday to Friday)

Alzheimer's WA is based in Perth and advocates for and supports Western Australians living with all types of dementia.

Alzheimer's WA: 1300 66 77 88 (operates 8.30am to 4.30am AWST Monday to Friday)

[Source: Dementia Australia and Alzheimer's WA]

Culturally and linguistically diverse communities

- 3.41 The Committee has learned that older people from CaLD backgrounds face additional risks of elder abuse due to cultural and linguistic differences. These risks may be exacerbated by the failure of existing systems in place to recognise the extra needs of the CaLD community. CaLD elders may have financial and language illiteracy that can expose them to greater risk of abuse as they age.
- 3.42 Language barriers, both inherent and from a reversion to their native language through the ageing process, mean that older people from CaLD communities are vulnerable to elder abuse.¹¹¹ Social and cultural isolation can also affect a CaLD older person and render them more at risk of elder abuse, as can the effects of familism.
- 3.43 'Familism' is a cultural value that emphasises the importance of the family over the individual and is a significant issue in some CaLD communities. Familism may lead to a reluctance to report elder abuse, create interdependence in family relationships and priority being placed on reliance on family for support rather than institutions or agencies¹¹² (such as the idea of trusting family more than the 'system').

In the West ... it starts with individual autonomy and choice, whereas in collectivist orientation, it is more like a family, like a group as a whole deciding about the welfare of a person. It is very much instead of you deciding about yourself, you are asking your parents, your siblings, your close relatives or cousins, 'Okay, what is

¹⁰⁹ World Health Organization, *World Report on Ageing and Health*, 2015, p 59.

¹¹⁰ Dementia Australia, November 2017, What is dementia?, viewed 15 May 2018, <https://www.dementia.org.au/resources/help-sheets>.

¹¹¹ Dr Rita Afsar, Senior Strategy, Planning and Research Officer, Office of Multicultural Interests, *Transcript of evidence*, 14 May 2018, p 6.

¹¹² Yvette G Flores, Ladson Hinton, Judith C Baker, Carol E Franz, Alexandra Velasquez, 'Beyond Familism: Ethics of Care of Latina Caregivers of Elderly Patients with Dementia', *Health Care for Women International*, 2009, vol. 30(12), December, p 1056.

best for me?’ That concept of ‘I’ and ‘me’ is often used more as ‘we’ and ‘our’. In that collectivist orientation, the whole family bears the accountability and responsibility.¹¹³

- 3.44 The Committee notes that familism in practice can mean that when a person from a CaLD background is not fluent in English in their youth or middle age, they may learn to rely on family support networks to access service providers or undertake tasks without negative effects. This may, however, leave the older person open to elder abuse as they age if a family member sees their lack of English language skills as an opportunity to take advantage, now that the older person is more vulnerable.¹¹⁴
- 3.45 Capacity Australia notes that the gendered nature of elder abuse can be amplified by cultural determinants, thus making older women from CaLD backgrounds more susceptible to elder abuse. For example, women in cultures where they are considered inferior to men may then have their properties seized when their husbands die.¹¹⁵ The Committee notes that not all cultures share these beliefs about women or older people, but for those that do, the risk of experiencing elder abuse increases.
- 3.46 Culturally safe care and responses must also take into account the needs of older people from CaLD backgrounds and should focus on ‘seeing the individual as unique’. The Office of Multicultural Interests suggests that culturally responsive services should also acknowledge the cultural differences of CaLD older people and note that an older person’s culture can also impact on the extent to which a person will assert their needs.¹¹⁶

LGBTI older people

- 3.47 The Committee heard that discrimination against LGBTI people in general is still evident in beliefs of the ‘wrongness of diverse sexuality and gender identities’, which also affects older LGBTI people.¹¹⁷ LGBTI older people may also suffer from being ‘invisible’ within the community which ‘can stymie reform and ... contribute to the rarity of complaint from LGBTI elders’.
- 3.48 Due to a greater likelihood of poor or estranged relationships with biological families, LGBTI older people are more vulnerable to abuse. GRAI submitted that elder abuse as it relates to LGBTI older people can manifest in the following ways:
- denial of/obstruction of visits from LGBTI friends or partners of the older person
 - not recognising the relationship of the LGBTI partner of an older person; excluding them from important decisions in the older person’s life; claiming possessions and/or property ahead of the partner
 - denial of access to grandchildren (by children) if the older person does not ‘conform to their [children’s] wishes’
 - threats to ‘out’ an LGBTI person, resulting in exploitation and manipulation.¹¹⁸

¹¹³ Dr Rita Afsar, Senior Strategy, Planning and Research Officer, Office of Multicultural Interests, *Transcript of evidence*, 14 May 2018, p 6.

¹¹⁴ Submission 9 from Australian Research Network on Law and Ageing, 15 November 2017, p 10.

¹¹⁵ Capacity Australia, Sangita Bhatia, *Elder Financial Abuse in CaLD groups*, 2016. See: www.capacityaustralia.org.au/wp-content/uploads/2016/05/CALD-FIN-ABUSE-Sv.pdf. Viewed 15 February 2018.

¹¹⁶ Helen Maddock, Manager Strategy and Planning, Office of Multicultural Interests, Supplementary Information, 24 May 2018, p 4.

¹¹⁷ Submission 44 from GLBTI Rights in Ageing Inc., 26 November 2017, p 1.

¹¹⁸ *ibid.*, p 4.

Systemic elder abuse

- 3.49 LGBTI older people may also suffer disproportionately from institutional and systemic elder abuse, either from health/support providers or aged care providers. GRAI refers to a lack of inclusive services, a lack of awareness of legal rights and the extra vulnerability faced by LGBTI older people who are also living with dementia.
- 3.50 GRAI advised the Committee that many assumptions are made in a heteronormative society regarding older people that do not factor in the different experiences that older LGBTI people may have:

What happens is that our laws, policies and organisations are set up with the hetero norm, which is an assumption where it is just naturally assumed that everybody is heterosexual and gender binary. It is part of the air we breathe ... As such, there is not an intentional harm, but it tends to be an exclusionary thing ... we need to expand what we think of as normal ... Things around gender, where we are completely fixed on having two genders, which does not suit everybody, and you are really out on a limb, and you have to argue your case if you do not fit neatly into one box or another, especially if you decide you are in neither box ...

We have a way to go really in getting people's heads around: what has been assumed as normal for a very long time is actually a slice of normal and that normal is much more than that.¹¹⁹

- 3.51 The Committee has heard evidence that LGBTI older people face the same risks as heterosexual older people, but that these risks are amplified and may be affected by their experiences as a LGBTI person throughout their lives:

The same barriers that occur to all elders are present. You are afraid of exacerbating the situation. You are relying on people to support you when you are vulnerable ... But also the key thing for LGBTI elders is that a lot of it is internalised as normal. It is kind of, 'Oh, yeah, that is the world'. So quite often people do not acknowledge harm and distress because that is part of what they are used to on a daily basis, especially trans people—they get regular abuse ...

So you can imagine, then, in terms of elder abuse, it places another degree of difficulty. You have already got the same issues about not wanting to alienate family ... but also you are not anticipating that you are going to get a sympathetic response because your whole life has led [you] to believe that that is not going to happen.¹²⁰

- 3.52 The Committee also notes that changing attitudes towards LGBTI and same-sex couples may not have the entirely positive effects for older people that would be predicted:

as the stigma towards LGBTI people has come down in recent years, and it undoubtedly has, and the legal system has supported that, the incidence of people coming out later in life has risen, and also that places them at far greater risk. One of the reasons they have not come out before is because they had a very pretty strong gut feeling they were not going to be accepted and so they gain confidence with the broader acceptance but then actually have made themselves in fact more vulnerable to that.¹²¹

¹¹⁹ June Lowe, Chair, GLBTI Rights in Ageing Inc., *Transcript of evidence*, 21 May 2018, p 2.

¹²⁰ *ibid.*, pp 3-4.

¹²¹ *ibid.*, p 5.

- 3.53 Research in the United States has found that of 2560 LGBT¹²² older adults (aged 50-95 years), 82 per cent had experienced at least one incident of victimisation during their lifetime and 64 per cent had experienced at least three incidents.¹²³ Whilst these incidents probably did not all occur while the respondents were aged over 50, the Committee notes that research reveals the endemic nature of abuse that LGBTI people generally face.
- 3.54 Loree Cook-Daniels describes the elder abuse faced by LGBT older people as follows:
- LGBT elders are subject to the same types of abuse as non-LGBT elders: virtually every type of abuse described in this book can and does happen to elders who are LGBT. The history of social and interpersonal discrimination, violence and trauma that LGBT elders have experienced simply adds to the ways in which they can be threatened or manipulated by abusers.¹²⁴
- 3.55 Studies of LGBTI victims of elder abuse 'are practically non-existent' in the United States, according to academics, probably due to an absence of questions related to sexual orientation or gender in previous research.¹²⁵

Posthumous abuse

- 3.56 An aspect of elder abuse that appears to be unique to the LGBTI community is the concept of posthumous abuse: where the sexuality or gender identity of a person is 'erased upon their death', where funeral or memorial arrangements 'revert to the natal name and gender of a trans person'.¹²⁶

This is an interview with somebody whose pseudonym is Alison—

'Another experience that many in the trans community have witnessed relates to attending the funeral of a trans person. I had only ever known this person as trans and they lived full time as trans and had transitioned some years earlier. The person's family did not accept their transition and the person was only referred to as their sex assigned at birth and their christened name and not their preferred gender or name. They had not been dressed as a male, referenced as a male and for trans people to be ignored or disdained in terms of the funeral and the reception afterwards is about the most distressing thing that I've ever done in my life and it's happened on multiple occasions. This was totally ignoring, hiding, denying the real life of this person and absolutely abhorrent for their true friends. The family did not want us there and we were shunned throughout. Unfortunately, this is not an isolated situation'.¹²⁷

- 3.57 The concept of posthumous rights can trigger broader questions such as do we have rights when we are dead and do we have the right to be represented for who we are?¹²⁸ Further, is it a form of elder abuse to deny a deceased person the right to be referred to and presented in the way that they chose, rather than the way that the family wishes? These queries fall outside the scope of the Committee's terms of reference in this inquiry but it acknowledges the importance of these issues to older LGBTI people.

¹²² The author uses the acronym 'LGBT' in this text; GRAI uses 'LGBTI' in its submission.

¹²³ Loree Cook-Daniels, 'Coping with Abuse Inside the Family and Out: LGBT and/or Male Victims of Elder Abuse', in XinQi Dong (ed.), *Elder Abuse: Research, Practice and Policy*, Springer, Chicago, 2017, p 543.

¹²⁴ *ibid.*

¹²⁵ *ibid.*

¹²⁶ Submission 44 from GLBTI Rights in Ageing Inc., 26 November 2017, p 4.

¹²⁷ June Lowe, Chair, GLBTI Rights in Ageing Inc., *Transcript of evidence*, 21 May 2018, p 4.

¹²⁸ *ibid.*, p 5.

- 3.58 GRAI submitted to the Committee that such action which denies dignity and self-determination to a LGBTI older person is elder abuse and can affect not only the victim, but also their same-sex or trans partners and friends.¹²⁹

FINDING 16

Older people who identify as lesbian, gay, bisexual, trans or intersex are subject to the same type of abuse as the rest of the community but also can experience discrimination unique to their identity and, as a result of their life experience, are less likely to speak up and report elder abuse when it occurs to them.

Social isolation

- 3.59 Social isolation is the absence of relationships with family or friends on an individual level and with society on a broader level.¹³⁰ A person's social network is made up of the relationships or 'connections' that they have with a group of people. The importance of a social network is the support that such a network can provide in times of crisis or difficulty.
- 3.60 The Committee notes that many discussions of social isolation confuse the concept of loneliness and isolation: whilst the two are linked, however, they are not the same thing. The experience of loneliness involves a person's 'perception and interpretation of their social relationships', therefore a person with very few social connections may not feel lonely if they are satisfied with those relationships, while a person with a large number of social relationships may still feel a sense of loneliness.¹³¹
- 3.61 Loneliness can cause significant health impacts, including high blood pressure, poor sleep quality, mental health and wellbeing issues such as depression or suicidal thoughts, increased rates of cognitive decline and an increased risk of heart disease and stroke.¹³² Developing good relationships, especially for older people, increases resilience and the ability to deal with adversity and stress, which, in turn, reduces the risk of experiencing elder abuse.
- 3.62 Social isolation can occur gradually, as ageing can lead to social relationships and external connections shrinking, or can be triggered by a specific incident, such as a health emergency or a traumatic life event:

Life transitions which are common in later life can weaken or diminish social roles that provide personal value, belonging and attachment. Retirement or redundancy is often the first major transition of later life ... Poor physical and mental health and needing care can lead to loss of confidence and withdrawal from social engagement. Health issues such as sensory loss, impaired vision or hearing, onset of dementia, mental illness and disability are risk factors.¹³³

¹²⁹ Submission 44 from GLBTI Rights in Ageing Inc., 26 November 2017, p 4.

¹³⁰ Anne Pate, COTA Victoria, *COTA Victoria Working Paper No. 1: Social Isolation: Its impact on the mental health and wellbeing of older Victorians*, February 2014, p 6.

¹³¹ *ibid.*

¹³² Commissioner for Senior Victorians, *Ageing is everyone's business: a report on isolation and loneliness among senior Victorians*, January 2016, p 20.

¹³³ *ibid.*, p 14.

- 3.63 Social isolation is well-established as being a risk factor for elder abuse and an indicator of vulnerability in older people.¹³⁴ Some groups of older people in society already vulnerable to elder abuse may also face a higher risk of being socially isolated, which confirms the negative consequences that social isolation can have for older people.

FINDING 17

Experiencing social isolation and loneliness is one of the most significant risk factors for elder abuse and a source of vulnerability in older people.

- 3.64 The damage that social isolation can cause to an individual's health has been described to the Committee as the 'the equivalent of smoking 15 cigarettes a day'.¹³⁵

Since last year we have not had much contact with [my mother in law]. [Her daughter] refused to get her a land line and the mobile phone that [she] uses is either never charged or in her bag where she is unable to hear it. We spoke with her a couple of days after Mother's Day this year ... [she] told me that she had no friends and was unable to go anywhere but the facility that [her daughter] put her in.

- 3.65 The Committee notes the view of the Commissioner for Senior Victorians that: 'the literature is clear that socially active older people are happier and healthier than those who are not socially active and that socially active older people, through continued participation, have reduced risk of social isolation and its negative health consequences'.¹³⁶ Figure 5 outlines the interrelated dimensions in which loneliness manifests amongst older people, based on research undertaken by the Commissioner for Senior Victorians.

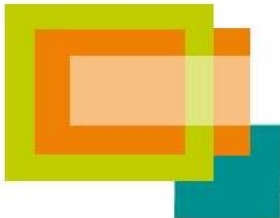
- 1 Loneliness is a private experience that is unique to each individual and often difficult to describe and talk about. It can be exacerbated by the stigma and shame associated with talking about loneliness, with some people afraid to speak up about loneliness for fear of being viewed as weak or defeated.
 - 2 Loneliness is relational. Meaningful relationships can prevent or reduce loneliness, while poor-quality relationships is a defining feature of loneliness.
 - 3 A sense of connectedness to local communities, and of belonging to others, is an important antidote to loneliness for many older people. In contrast, a feeling of disconnection from community, and of feeling like a stranger or an outsider, is associated with loneliness.
 - 4 Loneliness may be temporal and might change over the course of a day, emerge at particular times during the year, or shift between different stages of life such as in response to the loss of a loved one.
 - 5 Loneliness can be influenced by periods of readjustment following major life events in older people's lives, such as retiring from the workforce, losing a loved one or facing one's own mortality.
- 

Figure 5. *Five dimensions of loneliness as experienced by older people*
[Source: Ageing is everyone's business, 2016]

¹³⁴ Dr Rae Kaspiew, Dr Rachel Carson, Professor Helen Rhoades, Australian Institute of Family Studies, *Elder Abuse – Understanding issues, frameworks and responses*, Research Report No. 35, February 2016, p 8.

¹³⁵ Diedre Timms, Chief Executive Officer, Advocare Inc., *Transcript of evidence*, 12 March 2018, p 9.

¹³⁶ Commissioner for Senior Victorians, *Ageing is everyone's business: a report on isolation and loneliness among senior Victorians*, January 2016, p 15.

Carer stress and other factors related to the perpetrator

3.66 Factors that relate to the perpetrator of elder abuse and the relationship that they may have with a victim are also significant when considering who may be at risk of experiencing elder abuse.

3.67 Carer stress or 'carer burnout' is not limited to cases involving elder abuse, as carers in the community look after the needs of individuals from all ages and backgrounds. The feeling of being emotionally and/or physically exhausted as a result of being exposed to excessive or prolonged periods of stress relating to caring for someone can manifest as carer stress.¹³⁷

3.68 Carers WA advised the Committee that an issue with unpaid carers is often that 'a lot of people in caring roles do not identify as being in a caring role; they just consider themselves a loved one – a husband or wife'.¹³⁸ The Committee notes the complexities that arise when the carer in question is also a family member, as abuse that occurs may be unintentional or because of a lack of skills or support:

Many people put a lot of time and emotional effort and resources and forgo things such as employment and being able to build up superannuation for their own aged element of their life and they are in a very difficult situation as a result.

Their resilience is down, their financial resilience is down, if not minimal, and they themselves are very vulnerable. Then they may be caring for somebody who has dementia and cannot remember who this person who is caring for them is, or they may have mental health issues, which causes all sorts of problems ... It is a complex and very difficult situation.¹³⁹

3.69 Carers who are family members are often in complex and long term situations where they have a low level of health literacy and do not have access to the right information to assist them. This then leads to unintentional elder abuse, most often in the form of financial or psychological abuse, with associated feelings of guilt and shame.¹⁴⁰

3.70 There is a generation of working women known as the 'sandwich generation': an adult daughter who is a parent to school-aged children and is also caring for one or both parents, often in the same household, all while working full or part-time.¹⁴¹ This additional burden of caring for two generations can lead to these women committing elder abuse, whether intentional or as a result of carer stress.

3.71 An individual is also more likely to become a perpetrator of elder abuse if they display any of the following characteristics:

- are dealing with their own personal stress, for example housing or financial stress
- have a lack of knowledge of legal responsibility, such as what powers of attorney or powers of guardianship permit them to do
- suffer from a psychiatric or psychological illness
- have a history of being a victim of abuse themselves

¹³⁷ Melissa Wilson, 20 January 2017, *Avoiding carer burnout*, SANE Australia, viewed 30 May 2018, <https://www.sane.org/the-sane-blog/caring-for-others/avoiding-carer-burnout>.

¹³⁸ Sean Gardyne, Program Manager, Carers WA, *Transcript of evidence*, 7 May 2018, p 5.

¹³⁹ Paul Coates, Chief Executive Officer, Carers WA, *Transcript of evidence*, 7 May 2018, p 10.

¹⁴⁰ Sean Gardyne, Program Manager, Carers WA, *Transcript of evidence*, 7 May 2018, pp 4-5.

¹⁴¹ Deborah Rose, Member Advice and Policy Officer, Aged & Community Services Australia, *Transcript of evidence*, 14 May 2018, p 6.

- have a history of substance abuse
- are deliberately malevolent (although this is rare).¹⁴²

Sylvia was a very frail 70-year-old woman who had given up on life ... Her husband was an alcoholic and alcohol and drugs adversely affected her four children ... She was in an abusive relationship with the only child not estranged from her ... Unannounced and unexpected, her son Dave appeared at her front door and without saying a word he sat on her couch and fell asleep.

Sylvia feared that if she didn't do what Dave wanted, he would physically harm her, as Dave threatened her with burning down the house ... Sylvia sold her unit for \$79 000. With the money, Dave purchased a three-bedroom house away from Sylvia's friends and familiar surroundings. Sylvia's name was included on the certificate of title ...

Sylvia's GP referred her to the Older People's Rights Service ... [but] women's refuges do not provide suitable accommodation to older women and Sylvia was ineligible for public housing because of her legal interest in a house ... In the end, Sylvia had no other option but to accept a permanent placement in aged care. She was also unwilling to take police or legal action against Dave because she was too scared of him.

Sylvia died some nine months after entering residential care.

- 3.72 The motivations of a perpetrator of elder abuse has also been found to exist on a spectrum, where:

perpetrators may be pre-meditated 'bad actors' committing deliberate actions, or 'exploiters' who readily take advantage of unexpected opportunities. 'Reluctant' perpetrators may exploit opportunities due to mixed motivations, including caregiver stress. 'Inappropriate' abusers may act in a way that is somewhat consistent with the older person's wishes, though inappropriately. 'Unintentional' perpetrators are people who legitimately do not understand why their actions or omissions are abusive, or are not capable of fulfilling expected roles.¹⁴³

- 3.73 The Committee also notes that the nature of the relationship between an older person and a perpetrator of elder abuse is a significant risk factor for abuse occurring. Where a relationship has a history of interpersonal conflict, violence or a lack of trust, then it is more likely that this situation will continue and escalate into elder abuse. The situation has been described where a series of events can precede the abuse, but the relationship itself can be a risk factor:

We do have family members who step in ... and say, 'Come and live with us, mum and dad; we can look after you', which, on the surface, looks really, really lovely and rosy. But there is that whole baggage of the relationship between those people and when you go through it all with that person, you can see that maybe it was not always the best decision-making that was made at that time ...

They have gone along with it, hoping it would improve and get better, but it actually gets a lot worse to the point where, by the time they get to coming to a community legal centre, they really are in a very difficult position at that time, because they have not realised they have relied on that person. They have put their trust in them, so by the time they get to seeing [a community legal centre], a catalogue of events has generally occurred to the point where the relationship has almost deteriorated to the point where there will be loss of contact. That generally involves grandchildren as well.

¹⁴² Submission 43 from Older Adult Mental Health Sub-network, 24 November 2017, p 3.

¹⁴³ Submission 40 from Dr Barbara Blundell, Prof Mike Clare and Amy Warren, 23 November 2017, p 8.

It is this whole history of events that goes on. We pick them up at the very end, but there is a massive story that has gone on beforehand.¹⁴⁴

FINDING 18

Carer stress or carer fatigue is a risk factor for elder abuse and symptoms of carer stress can be early indicators of an increased risk of elder abuse in a relationship.

FINDING 19

Elder abuse that occurs as a result of carer stress can be a result of not having the necessary skills or support services to provide effective care for an older person.

FINDING 20

Carer stress can arise due to factors related to an older person being cared for, including the person's behaviour, mental or physical health or other circumstances.

RECOMMENDATION 7

The Government facilitate more support services and information for carers of older people in Western Australia.

Laws to protect adults who are 'at-risk'

- 3.74 The ALRC refers to adult safeguarding laws that would protect and support 'at-risk adults', defined by the ALRC as adults who '(a) need care and support; (b) are being abused or neglected, or are at risk of abuse or neglect; and (c) cannot protect themselves from the abuse'.¹⁴⁵ The ALRC notes that 'some, but by no means all' older people will meet this definition of an at-risk adult, with some of the risk factors including mental health considerations, poor physical health and social isolation.
- 3.75 Currently, at-risk adults are supported and protected by a range of government agencies and community organisations (and family, where available), including the criminal justice system, medical services, elder abuse help lines and advocacy services and State and Territory public advocates and guardians. The ALRC expressed concerns that 'despite this, the protection and support available to adults at risk of abuse may be inadequate':
- No government agency in Australia has the clear statutory role of safeguarding and supporting adults who, despite having full decision-making ability, are nevertheless at risk of abuse. In the ALRC's view, this protection and support should be provided by state adult safeguarding agencies.¹⁴⁶
- 3.76 The ALRC recommended that adult safeguarding laws should be enacted across Australia and should give adult safeguarding agencies 'the role of safeguarding and supporting at-risk adults' (Recommendation 14-1, ALRC report).
- 3.77 See further, the discussion of adult safeguarding legislation at paragraph 6.66.

¹⁴⁴ Gaynor Noonan, Client Advocate, Older People's Rights Service, Northern Suburbs Community Legal Centre, *Transcript of evidence*, 19 March 2018, pp 5-6.

¹⁴⁵ Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, p 376.

¹⁴⁶ *ibid.*, p 384.

CHAPTER 4

Preventing elder abuse

Intervention strategies and the importance of social inclusion

- 4.1 The importance of maintaining satisfying relationships as individuals age is central to the wellbeing of older people and may decrease the risk of elder abuse and provide benefits to physical and mental health.¹⁴⁷
- Considering [that] intergenerational elder abuse often occurs within the family and that many people wish to maintain family relationships across the lifetime, prevention and intervention measures that make proper consideration of the older person's relationships may be more likely to succeed and reduce the risk of elder abuse.¹⁴⁸
- 4.2 Addressing social isolation amongst older people requires foundation services to be implemented widely. It is important to provide these services with sufficient ongoing funding to reach those older people who are suffering from social isolation and make a positive impact on their lives.
- 4.3 Increasing social inclusion amongst older people can be achieved by providing access to health and aged care services, recreation and leisure activities, volunteering and mentoring programs.
- 4.4 The Committee has heard that there are projects underway to reduce loneliness amongst older people and strengthen social connections, such as the 'Campaign to End Loneliness' launched in 2011 in the United Kingdom.¹⁴⁹ Five partner organisations govern the campaign: Age UK Oxfordshire, Independent Age, Manchester City Council, Royal Voluntary Service and Sense, and these organisations fund research and increase the public's awareness of the negative effects of loneliness in the community.
- 4.5 Campaign to End Loneliness identified three key challenges to addressing loneliness, which are the 'first steps' and are foundation services required in a community to help reduce social isolation:
- reaching lonely individuals
 - understanding the nature of an individual's loneliness and developing a personalised response
 - supporting lonely individuals to access appropriate services.¹⁵⁰

FINDING 21

Developing and maintaining relationships and encouraging social inclusion decreases the risk of elder abuse and other negative health impacts for older people.

¹⁴⁷ World Health Organization, *World Report on Ageing and Health*, 2015, p 184.

¹⁴⁸ Mel Joosten et al, *Understanding Elder Abuse: A Scoping Study*, p 35.

¹⁴⁹ Campaign to End Loneliness, viewed 30 May 2018, <https://www.campaigntoendloneliness.org/>.

¹⁵⁰ Kate Jopling and Konstantina Vasileiou, Campaign to End Loneliness, *Promising approaches to reducing loneliness and isolation in later life*, January 2015, p 9.

Volunteering

- 4.6 Volunteering, in its various manifestations, can provide great benefits to both an individual and to the community at a broader level. The social connections, skill development and feelings of self-worth that arise from being a volunteer are widely recognised as providing benefits to the individual.

Research on volunteering suggests that bringing people together from all walks of life, including older adults, to work on a common project or objective, contributes to social cohesion or social capital ... Working together to address common needs and issues helps to alleviate social isolation and creates a supportive environment that is good for the health of all those involved.¹⁵¹

- 4.7 The Committee notes that the individual benefits can also have flow-on effects for social groups and communities at large, which can in turn help to address the risk factors of elder abuse amongst particular social groups.¹⁵²
- 4.8 The Committee has heard that there are several community-based volunteer initiatives in Western Australia that seek to address the loneliness and social isolation that can lead to elder abuse, with promising results.

Older People's Peer Education Scheme

- 4.9 The Older People's Peer Education Scheme (OPPES) was a two-year pilot project that commenced in mid-2016 and received funding from the Department of the Attorney General Criminal Property Confiscation Grant Program and from Lotterywest. The program was a partnership between NSCLC and the Southern Communities Advocacy Legal and Education Service (SCALES).
- 4.10 OPPES focused on increasing awareness amongst older people about elder abuse and providing them with information and strategies to prevent or reduce the incidence of elder abuse.¹⁵³
- 4.11 The program was run with older people working as peers to educate other older people within their community about the risks and signs of elder abuse, as well as supporting ongoing learning for participants. The Committee has heard of the success of OPPES and the 29 committed volunteers who worked as peers for the duration of the two-year pilot. The Committee understands that the program ended in mid-2018 and its effectiveness is currently being reviewed.

FINDING 22

Volunteering and peer support programs are an important strategy to prevent elder abuse and increase the participation of older people in the community.

RECOMMENDATION 8

The Government allocate funding to continue and expand peer education schemes, such as the Older People's Peer Education Scheme.

¹⁵¹ Canada, Nova Scotia Department of Seniors, *SHIFT: Nova Scotia's Action Plan for an Aging Population*, 2017, p 8.

¹⁵² International Labour Organization, *Manual on the measurement of volunteer work*, Geneva, 2011, p 14.

¹⁵³ Submission 47 from Northern Suburbs Community Legal Centre, 1 December 2017, p 49.

Dementia Friendly Communities and CaLD Champions

- 4.12 The Office of Multicultural Interests currently provides \$44 900 of funding to Alzheimer's Australia (WA) for its CaLD-specific Dementia Friendly Communities project, called 'CaLD Champions'. The project commenced in 2016 and will conclude in 2018-19.¹⁵⁴
- 4.13 Through the Dementia Friendly Communities project, Alzheimer's Australia (WA) recruited a total of 10 CaLD Champions in two phases:
- Phase 1 involved the recruitment of three champions representing Spanish-speaking communities (Spain, Chile and Peru)
 - Phase 2 recruited four champions: one Croatian, one Polish and two from the Filipino community.
- 4.14 A Farsi-speaking, Arabic-speaking and an Indian champion were also recruited during the project.
- 4.15 These CaLD Champions have helped to promote dementia awareness in their respective communities through a series of radio interviews conducted on 6EBA World Radio, a Western Australian multicultural community radio station that broadcasts news and other programs in languages other than English. The CaLD Champions recorded 30-second radio messages in their native language and helped create 200 family and service provider translated resource packs for the CaLD communities.
- 4.16 The Committee has heard of the ongoing success of the CaLD Champions and of the legacy that the project has created:

With the help of these champions talking about the CaLD issues, the local government areas where we work now have age-friendly plans in which CaLD issues are included, so they have a multicultural action plan.¹⁵⁵

Age-friendly communities

- 4.17 Western Australia is involved in the WHO initiative, the Global Network for Age-Friendly Cities and Communities (Global Network).
- 4.18 The Global Network was set up in 2010 to promote communities across the world that take steps to actively foster the full participation of older people in community life. The Global Network includes 400 cities and communities across 37 countries, covering over 146 million people worldwide.¹⁵⁶
- 4.19 Western Australia was the first Australian State to be recognised as a member of the Global Network in 2017, which 'reflects and acknowledges a commitment to listen to the needs of an ageing population'.¹⁵⁷ Currently in Western Australia, the City of Melville, City of Rockingham and City of Fremantle are members of the Global Network.
- 4.20 According to the Department of Communities, over \$673 000 in grants has been provided to 75 local governments to identify priorities and develop 'age friendly plans' as part of encouraging communities to deliver projects to better meet the needs of older people in Western Australia. The Department of Communities advises that over 75 per cent of Western

¹⁵⁴ Office of Multicultural Interests, Answer to question on notice 2 asked at hearing held 14 May 2018, p 1.

¹⁵⁵ Dr Rita Afsar, Senior Strategy, Planning and Research Officer, Office of Multicultural Interests, *Transcript of evidence*, 14 May 2018, p 11.

¹⁵⁶ Department of Local Government and Communities, 'Global Network for Age Friendly Cities and Communities, 14 June 2017, viewed 11 April 2018, <https://www.dlgc.wa.gov.au/CommunityInitiatives/Pages/Global-network-for-age-friendly-cities-and-communities.aspx>.

¹⁵⁷ *ibid.*

Australians aged 60 years and over live in a local government area that has received government funding for age friendly planning.¹⁵⁸

Raising community awareness

- 4.21 The Committee has heard almost unanimously from stakeholders that one of the most effective methods to reduce the incidence of elder abuse is to educate the broader community to recognise its signs and increase community awareness:

Building on learning from child protection and family and domestic violence highlights the importance of i) raising public awareness, ii) increasing the capacity of the community to identify and respond to the concerns of vulnerable older people and iii) preventative work ...¹⁵⁹

The Public Trustee believes that education is integral to empowering older persons to better protect themselves from the risks of elder abuse as they age.¹⁶⁰

I would just reiterate to the Committee ... that I think that empowerment education is the answer to a lot of this. We are always going to have elder abuse, but we can reduce it if we can get people to actually just think about what they are doing ...¹⁶¹

Increased awareness of [elder] abuse will prevent some abuse, as the perpetrators will be less able to explain away the circumstances.¹⁶²

Educate the community ... Educate the elderly and their family ... Inform the families and carers ... [Target] GPs, clinicians and other care providers regarding subtle signs of abuse ...¹⁶³

- 4.22 Specific initiatives that have been brought to the Committee's attention during the inquiry include the 'Purple Road', which is a project commenced by OPPES involving a crocheted 'road' of flowers, with each flower representing an older person's experience of elder abuse. The Purple Road was transported across the Perth metropolitan area in late 2017 with crocheted flowers added to its length during the journey: see Figure 6.
- 4.23 As part of advertising its Elder Abuse Helpline, the Committee also notes that Advocare has produced posters and postcard-size brochures that illustrate different forms of elder abuse and humanise the stress that carers may be experiencing. The scenarios depicted in the posters are directed at an older person who may be experiencing elder abuse and provides the details of Advocare's successful helpline. The Committee has reproduced some of these posters at Appendix 3.

¹⁵⁸ Department of Communities, Supplementary information, dated 20 April 2018, pp 3-4.

¹⁵⁹ Submission 40 from Dr Barbara Blundell, Prof Mike Clare and Amy Warren, 23 November 2017, p 13.

¹⁶⁰ Submission 7 from Public Trustee, 13 November 2017, p 8.

¹⁶¹ Karen Merrin, Manager, Older People's Rights Service, Northern Suburbs Community Legal Centre, *Transcript of evidence*, 19 March 2018, p 15.

¹⁶² Submission 39 from Country Women's Association of Western Australia (Inc.), 17 November 2017, p 6.

¹⁶³ Submission 43 from Older Adult Mental Health Sub-network, 24 November 2017, p 5.



Figure 6. Older People's Peer Education Scheme volunteers and staff with the Purple Road
[Source: Sound Telegraph, 30 May 2018]

- 4.24 The Committee is of the view that, to send the clear message that our community does not tolerate elder abuse and to acknowledge that it does, in fact, happen, much more must be done to increase awareness in the community. Educating the public on the warning signs of elder abuse and specifically targeting older people to reassure them that they will be supported if they find themselves experiencing abuse are key steps to take as part of an effective response. The media attention during this inquiry has also demonstrated to the Committee that the community would respond positively with action if it is made more aware that elder abuse occurs:

there has been quite a lot of media coverage around elder abuse during January [2018]. On our helpline we normally get about 45 to 50 calls a month. In January, we had 90. I am sure that is through raising the profile of elder abuse.¹⁶⁴

- 4.25 The Committee acknowledges the exemplary work undertaken by Advocare and NSCLC but notes that these organisations could do more to raise awareness of elder abuse with increased funding and greater focus on the issue. The Committee therefore makes the following findings and recommendation.

FINDING 23

The community in general is not well-educated on the specific signs of elder abuse, nor of the extent of the problem in the community.

¹⁶⁴ Diedre Timms, Chief Executive Officer, Advocare Inc., *Transcript of evidence*, 12 March 2018, p 3.

FINDING 24

One of the most effective ways to prevent elder abuse is to raise the community's awareness of the issue and educate both older people and those who interact with them on the warning signs of elder abuse.

RECOMMENDATION 9

The Government commission an audit into the quantum of funding, and its effectiveness, with a view to increasing funding to community organisations and agencies to raise awareness of elder abuse and educate the community.

Training for professionals

- 4.26 The Committee has also heard evidence that more training for professionals who interact with older people should be delivered and even made mandatory. Lawyers, health professionals and real estate agents are amongst the wide variety of people who may have an opportunity to spend time with a vulnerable older person and therefore may be in a position to identify the early signs of elder abuse and take action.
- 4.27 Lawyers in Western Australia must attend continuing professional development (CPD) seminars as part of their ongoing practising requirements and the Committee notes that CPD seminars cover a wide range of topics, including elder abuse. In November 2017, the Committee attended a 1-day CPD seminar hosted by The Law Society of Western Australia, titled 'Elder Law Forum—Addressing Elder Abuse'. This type of professional training for lawyers in Western Australia is an important way to increase the profile of elder abuse in the legal community and to provoke discussion and analysis of legal issues.
- 4.28 The Committee has heard evidence that similar training regimes should be offered to health practitioners and, more broadly, to other industries:

Providing training and education to older people, carers and support workers, staff of residential aged care facilities, medical personnel including doctors, lawyers, counsellors, psychiatrists and other relevant and interested stakeholders ... At present, there is a very poor overall understanding of what constitutes elder abuse, how it can be prevented and how it can be combatted ... Many workers may realise that elder abuse is occurring but feel helpless to stop it from continuing. Knowledge via education can provide a way forward to helping people to stop this from happening.¹⁶⁵

- 4.29 Western Australia Police advised that new police recruits receive limited training that targets elder abuse, rather it is part of their broader training on the criminal justice system:

In so far as I am aware, in the training provided at recruit period over a 28-week period ... 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

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.

¹⁶⁵ Submission 36 from Catholic Women's League of Australia Inc., 21 November 2017, p 4.

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.¹⁶⁶

- 4.30 Police prosecutors participate in a seven week course, with four weeks of theory, which includes training on the circumstances of aggravation as defined in the Criminal Code (see further, paragraph 6.44), but still with no specific modules on elder abuse.¹⁶⁷ Information is provided to police officers using an 'online blackboard' feature, which is mandatory, but the Committee notes that this method of delivering training is impersonal, imprecise and also potentially not engaging for participants.
- 4.31 Given the difficulties with underreporting abuse identified during this inquiry and the lack of awareness in the community of elder abuse generally, the Committee is concerned that Western Australia Police does not take a more proactive stance in ensuring that its officers are comprehensively trained to identify elder abuse in all its forms.

FINDING 25

There is insufficient training for Western Australian police officers to learn to identify and respond to elder abuse effectively.

RECOMMENDATION 10

Western Australia Police develop a separate training module for all police officers that specifically covers the forms, signs and risk factors of elder abuse and how to respond effectively.

- 4.32 Whilst not within the scope of this inquiry, the Committee notes that the aged care industry delivers training to staff of care providers and takes an approach of observing changes in an older person as a focal point in their training:

It may be that their behaviour has changed, that they are withdrawing, that they are not eating, they are depressed. What the staff are taught to look for, and it may not be an indication of elder abuse, but generally staff are taught to look for anything in the resident's healthcare status that has changed.

It could be a physical thing, it could be a behavioural thing, or it could be an emotional aspect ... staff are taught in all organisations, particularly care staff who work on the floor with the most intimate level of personal care, those people are trained really well in recognising if there is something that is different that might be cause for alarm, and who to report that to within the organisation.

I believe the sector does that very well.¹⁶⁸

¹⁶⁶ Chris Dawson, Commissioner of Police, Western Australia Police Force, *Transcript of evidence*, 7 May 2018, p 6.

¹⁶⁷ Western Australia Police Force, Answer to question on notice 4 asked at hearing held 7 May 2018, dated 28 May 2018, p 3.

¹⁶⁸ Deborah Rose, Member Advice and Policy Officer, Aged and Community Services Australia, *Transcript of evidence*, 19 March 2018, p 10.

CHAPTER 5

Government agencies and community services that respond to elder abuse

Department of Communities as lead agency

5.1 As part of the Machinery of Government changes, the Department of Child Protection and Family Support, Department of Housing (including the Housing Authority), Disability Services Commission and Department of Local Government and Communities were amalgamated to form the Department of Communities (Department) from 1 July 2017.

5.2 The Committee has heard that, prior to these changes, the response to elder abuse in Western Australia was fragmented and not centred around one specific government agency:

Mr HOLLINGWORTH: I think it would be reasonable to say that now we are the lead agency ... we need to take a leadership role, which in the past, frankly, we did not have. It was more of a diffuse responsibility for acting in relation to elder abuse among the various member constituents of the association for the prevention of elder abuse ...

The CHAIRMAN: Who was dealing with elder abuse previously?

Mr HOLLINGWORTH: All the members of the association for the prevention of elder abuse—the health department, ourselves—all the members that are on that particular group.

Hon ALISON XAMON: But there was no lead agency then?

Mr HOLLINGWORTH: No, there was not a lead agency ... it was diffuse, which I am assuming would have led to the election commitment in relation to appointing a lead agency so there was a particular focus that would look at how all this integrates.¹⁶⁹

5.3 There are currently only two full time equivalent (FTE) staff in the Department who work in the area of developing elder abuse policies, but these two FTE staff also work on seniors issues. The Committee has heard that the number of staff at the Department who are involved in elder abuse policy fluctuates:

We have two people who are particularly focused on elder abuse along with seniors, and we can increase the pool of people working on it or decrease it over time depending on the workload and the importance of the issues we are dealing with.¹⁷⁰

5.4 One of the main areas that the Department does currently take responsibility for is funding other programs and agencies who deal with elder abuse, including Advocare, in particular the Elder Abuse Helpline and the Older People's Rights Service (see further, paragraph 6.8). The Department provided a breakdown of annual recurrent funding that it provides for programs and services that deal with older people (see Table 4).

¹⁶⁹ Scott Hollingworth, Assistant Director General, Department of Communities, Hon Nick Goiran, Chair and Hon Alison Xamon, Deputy Chair, Select Committee into Elder Abuse, *Transcript of evidence*, 9 April 2018, pp 3-4.

¹⁷⁰ Scott Hollingworth, Assistant Director General, Department of Communities, *Transcript of evidence*, 9 April 2018, p 3.

Table 4. *Department of Communities Annual Recurrent Funding 2017-18*

	Additional Recurrent Funding 2017-18	Number of Services
Community and Neighbourhood Development Services: provide opportunities for people to develop skills and knowledge, build on their strengths to manage their own lives, build self-esteem and personal development and enhance interactions within the neighbourhood.	\$6 457 888	52
Individual and Family Support Services: assist individuals and families to respond to specific issues or challenges that are self-identified by working with them one-on-one or in groups to support them to connect with community support networks and other resources within the department.	\$2 524 257	14
Grandcarers Services: provide assistance to grandparent carers in their role of caring for their grandchildren.	\$593 238* <small>*this figure includes a one-off grant of \$125 000 for Grandcarers Services that is due to cease on 30 June 2018</small>	3
Financial Counselling Services: enable people to be more financially capable and improve their ability to manage financial situations. Services include direct support and community education and are provided on a state-wide basis.	\$6 432 254	24
Volunteering: services take a lead role in developing volunteer opportunities in their local community by working with individuals and groups/organisations state-wide.	\$656 214	15
Carers Services: support carers to build their capacity to care, as well as to maintain a balance between their caring responsibilities and their own wellbeing.	\$1 003 458	1
Total recurrent funding for 2017-18	\$17 667 309	109

[Source: Department of Communities, Answers to questions taken on notice, 25 April 2018]

- 5.5 The Committee has heard that the Department funds the Older People's Rights Service to the amount of \$250 000 (for 2017-18), which is due to end on 31 December 2018 and will be put out to tender for a further five years, commencing in 2019.
- 5.6 The Department also provides funding to Advocare in the form of:
- a \$90 000 grant to run the Elder Abuse Helpline, expiring on 31 December 2018
 - \$18 000 to produce the Elder Abuse Protocol document and awareness raising sessions.¹⁷¹
- 5.7 The Committee has heard that the Department does not have an elder abuse policy, along the lines of what other similar departments have in place in other States, but that this is an idea that the Department 'would need to turn [its] attention to'.¹⁷²
- 5.8 As this inquiry has progressed, however, the Committee has noted that the Department has begun to take a greater role in coordinating strategies on a State-wide level to address elder abuse. The Department is co-chair of the Commonwealth's national plan to address elder abuse (see further, from paragraph 10.3) and, as part of that role, held an Elder Abuse Awareness Summit in June 2018.

¹⁷¹ *ibid.*, pp 7-8.

¹⁷² *ibid.*, p 4.

Elder Abuse Awareness Summit

5.9 In June 2018, the Chair of the Committee attended the inaugural Elder Abuse Awareness Summit hosted by the Department.¹⁷³ The Committee notes that the representatives who attended the summit indicate the broad cross-section of community organisations who respond to elder abuse in Western Australia:

- Advocare
- Bankwest
- City of Melville
- Council on the Ageing
- Curtin University (including Curtin School of Law)
- Department of Communities - Regional Services Reform Unit
- Department of Health
- Department of Justice (including A/Commissioner for Victims of Crime)
- Legal Aid
- Mental Health Network
- Murdoch University Southern Communities Advocacy Legal Education Service (SCALES)
- National Seniors Australia Policy Advisory Group
- Northern Suburbs Community Legal Centre (NSCLC)
- Office of Multicultural Interests
- Office of the Public Advocate
- Older People's Peer Education Scheme (SCALES and NSCLC)
- Older People's Rights Service (based at NSCLC)
- Public Trustee
- Relationships Australia WA
- State Administrative Tribunal
- University of Western Australia Law School
- Western Australia Police Force
- WA Primary Health Alliance
- Western Australian Council of Social Service
- Women's Law Centre.¹⁷⁴

5.10 Bringing these community organisations and government agencies together in a forum like the Elder Abuse Awareness Summit is viewed by the Committee as a positive step to developing an effective response to elder abuse.

5.11 Key issues that were discussed at the summit included questions such as: 'How might we make elder abuse prevention everybody's business in Western Australia?' and 'How might we encourage older people and their caregivers to recognise when they are experiencing elder

¹⁷³ Elder Abuse Awareness Summit, Department of Communities, 13 June 2018.

¹⁷⁴ Pearl Tan, Senior Strategy Officer, Department of Communities, Email, 15 June 2018.

abuse and seek assistance?'. Both of these questions have emerged as central themes in the Committee's inquiry and the Committee looks forward to following the progress that the Department makes in developing its elder abuse strategies into the future.

FINDING 26

The Department of Communities is best placed to remain the lead agency to coordinate Western Australia's response to elder abuse.

FINDING 27

The Department of Communities has not prioritised the discharge of its responsibilities as a lead agency for elder abuse and is yet to take definitive steps to develop its elder abuse policies.

The importance of Advocare

- 5.12 In the absence of a coordinated government response to elder abuse, the Committee notes that Advocare has taken the lead in Western Australia to develop protocols, training and raising the community's awareness of the scourge of elder abuse.
- 5.13 Advocare is the preeminent community-based, not for profit organisation that supports and protects the rights of older people and people with disabilities in Western Australia. Advocare collates the National Elder Abuse Annual Report on behalf of all States and Territories and coordinates the work of APEA. Advocare also manages the Western Australian Network for the Prevention of Elder Abuse, comprised of service providers within the aged care sector. The network shares information and identifies trends to promote the safety and wellbeing of older people.¹⁷⁵
- 5.14 Advocare operates on grants provided by the Department of Health: approximately \$1.2 million in 2016/17, plus the grant from the Department of Communities to run the Elder Abuse Helpline.¹⁷⁶
- 5.15 A key initiative that Advocare is responsible for is the Elder Abuse Protocol document, which the Committee has referred to throughout this report and which contains key definitions and statistics about elder abuse in Western Australia.¹⁷⁷
- 5.16 Advocare also has several partnerships in place that enable it to respond effectively to elder abuse, including Memoranda of Understanding with the Office of the Public Advocate and Legal Aid (WA), respectively.
- 5.17 The Elder Abuse Helpline is run by Advocare and provides callers with direct contact with an advocate. In 2016-17, Advocare received 499 calls to its helpline, with this figure increasing already by early 2018:
- we normally get about 45 to 50 calls a month. In January [2018], we had 90. I am sure that is through raising the profile of elder abuse.¹⁷⁸
- 5.18 Advocare has advised that most calls made to the helpline are seeking information, but that often a caller will begin to tell their story and the inquiry will become an advocacy case.¹⁷⁹

¹⁷⁵ Submission 45 from Advocare Inc., 27 November 2017, p 9.

¹⁷⁶ Advocare Inc., *Annual Report 2016/17*, p 21.

¹⁷⁷ For example, refer to paragraph 2.8 and Table 2.

¹⁷⁸ Diedre Timms, Chief Executive Officer, Advocare Inc., *Transcript of evidence*, 12 March 2018, p 3.

¹⁷⁹ *ibid.*, p 16.

- 5.19 The Committee has heard from Advocare that one of the most effective means of reducing elder abuse is to train more volunteers to be advocates in the community and provide information to older people. The Committee supports this initiative and notes that a recurring theme throughout this inquiry has been the lack of community awareness of elder abuse, which impacts prevalence statistics and compounds the feelings of shame associated with experiencing elder abuse.

FINDING 28

Advocare Inc. provides an essential service in Western Australia to address the risks and prevalence of elder abuse and the advocacy and information that the organisation delivers to older people is widely commended.

RECOMMENDATION 11

The Government provide further funding to Advocare Inc. to continue the Elder Abuse Helpline beyond 31 December 2018.

RECOMMENDATION 12

The Government increase funding to Advocare Inc. to enable the organisation to train more volunteers and expand its advocacy services for older people.

CHAPTER 6

Access to justice for older people experiencing elder abuse

Introduction

- 6.1 Older Western Australians who may be experiencing elder abuse may also face difficulties when they try to access legal assistance to end the abuse or to seek compensation for loss. As explored during this inquiry, there are many complex reasons why an older person may not wish to take legal action against a perpetrator of elder abuse, but for those that do, the Committee has heard that there are further barriers that may prevent them from reaching a satisfactory outcome.
- 6.2 The Committee notes that there are positions in society which often operate as gatekeepers to information or services, such as banks, lawyers or police officers. In the context of elder abuse, these professions carry with them greater responsibility and power in terms of providing access to justice for an older person and should be held to a higher standard of accountability to identify the signs of elder abuse and take steps to prevent it happening.
- 6.3 An important theme that the Committee identified during this inquiry is ensuring that older people are made aware of the breadth of services available to them to provide a legal response to elder abuse, ranging from family mediation services to community legal centres and Western Australia Police Force.
- 6.4 Responding appropriately to elder abuse is an important consideration when providing access to legal services for older people. Given the personal and often close family relationships that are involved in cases of elder abuse, the Committee notes that a spectrum of options should be available to a victim, with the criminal justice system sitting at the most serious end of the response.

Community legal centres

- 6.5 The Committee has heard throughout this inquiry that often the first step in accessing the justice system that an older person will take is to be put in touch with a community legal centre. This may occur by referral from Commonwealth service providers (such as Centrelink), or by referrals from Advocare. Community legal centres play a crucial role as gatekeepers of legal and other advice for older people at no- or low-cost to their clients.¹⁸⁰
- 6.6 Community legal centres are usually located in suburban and regional centres, so do not require travel into the city, making them accessible for older people who may have mobility concerns.
- 6.7 NSCLC is the largest community legal centre in Western Australia, part of a network of 25 metropolitan and regional centres throughout the State. NSCLC operates as a generalist legal service with three specialist units: the Older People's Rights Service, Women's Resource and Engagement Network and Tenancy Advocacy and Education Services.¹⁸¹

¹⁸⁰ The Community Legal Centres Association (WA) Inc. compiles a directory of community legal centres in Western Australia, available from: <https://www.communitylaw.net/clc-directory>, viewed 10 July 2018.

¹⁸¹ Submission 47 from Northern Suburbs Community Legal Centre, 1 December 2017, p 6.

- 6.8 The Older People's Rights Service (OPRS) delivers legal advice, education and advocacy services to older people in Western Australia using its network of health-justice partnerships and volunteer staff. OPRS was established in 2007 using government funding.¹⁸²
- 6.9 The Committee notes that, despite serving a catchment area in the Perth metropolitan area that includes 450 000 older people, OPRS operates with only one solicitor and one registered nurse client advocate. Currently, the Department of Communities provides \$250 000 per year to fund NSCLC to deliver the OPRS; this funding is due to expire on 31 December 2018.¹⁸³

FINDING 29

Community legal centres are an essential first point of contact for older people and need to be able to identify cases of elder abuse and refer them to specialist community legal centres.

FINDING 30

The Northern Suburbs Community Legal Centre provides a useful specialised point of contact for older people experiencing elder abuse, however it is only funded to a restricted catchment area in the northern metropolitan area of Perth. There is a need for every older person in Western Australia, regardless of where they reside, to have access to specialised community legal services.

- 6.10 The Committee has also heard about the valuable services that community legal centres provide in Western Australia's regional areas: Albany Community Legal Centre (ALCLC) has delivered legal and advocacy services to the Great Southern since 1995.¹⁸⁴ ALCLC also has well-established links with government and non-government providers, including Albany Health Campus, Albany Community Hospice and with general practitioners in the area.¹⁸⁵
- 6.11 ALCLC operates in an area where 11.3 per cent of the regional population was aged between 65 and 69 years of age in 2017, resulting in a high proportion of ALCLC's work being targeted at older people, including the:
- preparation of wills, enduring powers of attorney and guardianship, advance health directives, grants of probate and letters of administration. In recognition of the specific vulnerabilities facing older people in our community, we also provide a targeted program of community education and development in areas of law that particularly impact on older people and frequently conduct education sessions for older people's community organisations.¹⁸⁶
- 6.12 The Committee notes that specialist legal centres are significant as they develop key partnerships with private practice, government agencies and advocacy bodies to facilitate legal, financial and other referrals.¹⁸⁷ Whether informally established or confirmed via formal arrangements, these partnerships between community legal centres and health professionals are the keystone in developing a holistic response to elder abuse.

¹⁸² Original funding for OPRS in 2007 came from the Minister for Child Protection; Communities; Women's Interests; Seniors and Volunteers and is now funded by the Department of Communities: Submission 47 from Northern Suburbs Community Legal Centre, 1 December 2017, p 6.

¹⁸³ Scott Hollingworth, Assistant Director General, Department of Communities, *Transcript of evidence*, 9 April 2018, p 7.

¹⁸⁴ Submission 20 from Albany Community Legal Centre, 16 November 2017, pp 1-2.

¹⁸⁵ Helen St Jack, Solicitor, Albany Community Legal Centre, *Transcript of evidence*, 18 June 2018, p 5.

¹⁸⁶ Submission 20 from Albany Community Legal Centre, 16 November 2017, p 1.

¹⁸⁷ Susannah Sage-Jacobson, 'Access to Justice for Older People in Australia', in Meredith Blake, Robyn Carroll, Eileen Webb (ed.), *Ageing and the Law*, Law in Context Special Issue, Vol. 33, No. 2, The Federation Press, Leichhardt, 2015, p 147.

- 6.13 The Committee is of the view that promoting and expanding this multidisciplinary approach should be a priority for the Western Australian Government, both in terms of providing funding and increasing community awareness of elder abuse: see further, paragraph 6.59.

RECOMMENDATION 13

The Government ensure that every older person in Western Australia, regardless of where they reside, has access to specialised community legal services which provide advocacy and advice on elder abuse.

State Administrative Tribunal

- 6.14 The State Administrative Tribunal (SAT) has broad jurisdiction under the *Guardianship and Administration Act 1990* (GAA) in relation to many issues related to elder abuse, including the appointment of guardians and administrators where a person is declared to have a decision-making disability. For the Committee's full discussion of SAT's involvement in powers of attorney and guardianship matters, refer to CHAPTER 7.
- 6.15 As a quasi-judicial forum, SAT is not constrained by many of the strict procedural rules that govern Western Australia's court system, such as formal rules of evidence. The Committee has heard that SAT has measures to cater for older people who appear as a represented person, such as:
- actively encouraging the attendance of the represented person at any hearing or, if this is not possible, SAT can request that the Office of the Public Advocate visit the person directly to obtain their views to then pass onto SAT prior to/at a hearing
 - arranging telephone or videoconferencing for hearings for those physically unable to attend
 - arranging for independent interpreters or hearing loops, paid for by SAT
 - hearings in private, where the public is excluded and the SAT Member can 'obtain the wishes and views from the person in a more comfortable and less inhibiting setting'
 - referring a person to legal representation, such as the Mental Health Law Centre or SAT's own Pro Bono Scheme
 - urgent matters can be heard on the same day that SAT receives an application and hearings can be conducted in the evening and on weekends.¹⁸⁸
- 6.16 The Committee had the opportunity to visit SAT during the inquiry and view the facilities that are available for guardianship proceedings. The Committee thanks Justice Jeremy Curthoys, President of SAT, Senior Member Charlotte Wallace and their staff for allowing the Committee access to the building's facilities and for providing a valuable insight into the workings of the tribunal.
- 6.17 The Committee makes the following observations regarding SAT's facilities and what measures are taken to cater to older people who visit SAT.
- SAT employs 14 fulltime members with funding available for two sessional fulltime members, who may be subject matter experts.
 - SAT has 14 hearing rooms available with hearing loops installed and there are no steps or raised flooring in rooms which ensures accessibility.

¹⁸⁸ Submission 14 from State Administrative Tribunal, 8 November 2017, pp 2-3.

- Smaller rooms are dedicated for use during guardianship matters to minimise the risk of parties feeling intimidated or overwhelmed by large rooms.
- Guardianship hearings are conducted differently to other matters that SAT deals with, for example, a hearing may be conducted at a slower pace if the applicant requires it.
- Guardianship matters are presided over by one member only (except in the case of reviews: three members) and SAT staff do not remain in the room during a hearing. Family members may be asked to leave the hearing room if they appear to be causing distress to an applicant.
- Public areas of SAT are designed to be welcoming and non-intimidating.
- Mediation rooms and informal breakout rooms are available when necessary; photocopying and computer facilities are available for the public to use.



Figure 7. *Select Committee into Elder Abuse members at the State Administrative Tribunal*
[Source: Committee site visit, 15 June 2018]

6.18 SAT has recently launched an online resolution tool that provides an interactive way to both obtain information about guardianship and enduring documents and commence an application. The online feature was launched in May 2017 and, after less than 12 months of operation, over 70 per cent of SAT applications are lodged online.¹⁸⁹ The tool is available 24 hours a day and, in the event that SAT is not the appropriate agency, the system redirects the user to the appropriate organisation.

FINDING 31

The State Administrative Tribunal is designed and aspires to provide an accessible and user-friendly forum for older people who may be experiencing elder abuse in Western Australia.

RECOMMENDATION 14

The Government survey older clients of the State Administrative Tribunal to assess if this design and aspiration is effective to the end user.

¹⁸⁹ State Administrative Tribunal, *SAT has a new online resolution tool*, *News*, 8 May 2017.

Western Australia Police Force response to elder abuse

6.19 The key agency with responsibility for responding to the criminal aspects of elder abuse in the State is the Western Australia Police Force (Western Australia Police). The Committee notes that frontline police officers are often the gatekeepers to the criminal justice system for older people who experience elder abuse.

6.20 Western Australia Police currently has 10 FTE in the division that responds to incidents of family violence, honour-based violence and elder abuse.¹⁹⁰ There is no separate team that responds to elder abuse and no research has been undertaken to investigate this as an option, however, the Commissioner of Police advised the Committee that:

I have recently announced an extension ... to provide for, in the restructuring effective from 1 July [2018], 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 ...

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.¹⁹¹

6.21 The Committee understands that since 2013, Victoria Police has operated separate teams to deal with priority communities that were identified as requiring a specialist response. The 'Priority Communities Division' in Victoria Police comprises seven broad community topics: Aboriginal, disability, LGBTI, mental health, multicultural and multifaith, seniors and young people.¹⁹²

6.22 Victoria Police's elder abuse team includes a Community Portfolio Manager - Seniors, who works across the whole organisation and meets regularly with stakeholders to encourage engagement and reporting of abuse by older people. Subject matter experts are assigned to each priority communities team, so that both Victoria Police officers and the community know where to obtain relevant assistance or information. The Committee also notes that Victoria Police publishes numerous factsheets and information on its website for older people to access, including in accessible ('easy English') formats and in languages other than English.¹⁹³

6.23 By contrast, the Committee notes that the information available for older people on Western Australia Police's website is limited to basic information and only a small section in a booklet called 'Safety Advice for Seniors' as follows:

ELDER ABUSE

- Seniors have the right to feel safe in their own home, manage and control their own money and make their own decisions.

¹⁹⁰ Susan Young, Acting Commander Judicial Services, Western Australia Police Force, *Transcript of evidence*, 7 May 2018, p 7.

¹⁹¹ Chris Dawson, Commissioner of Police, Western Australia Police Force, *Transcript of evidence*, 7 May 2018, p 8.

¹⁹² Dahni Houseman, 'Informing and Enhancing Policing Responses to Elder Abuse', Paper presented at the 5th National Elder Abuse Conference, Sydney, February 2018.

¹⁹³ Victoria Police, 22 November 2017, 'Elder Abuse', viewed 19 June 2018, http://www.police.vic.gov.au/content.asp?Document_ID=48513.

- Any type of abuse, be it physical, psychological, financial, sexual, or neglect need to be reported. If this is happening to you or another elderly person you are concerned about, you can contact the police or speak confidentially with an advocate at Advocare’s Elder Abuse Prevention Program Phone: (08) 9221 8599 or 1800 655 566.¹⁹⁴

FINDING 32

An opportunity exists for Western Australia Police to provide more information for older people about elder abuse on its website.

RECOMMENDATION 15

Western Australia Police take definitive action to target elder abuse as a priority and increase its public information and community awareness campaigns.

- 6.24 The Committee has heard that the legal framework in which Western Australia Police is able to respond to elder abuse is limited:

Hon ALISON XAMON: In the case of financial abuse ... what capacity do the police have to intervene if they become aware that financial abuse is occurring?

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

...

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.¹⁹⁵

- 6.25 Witnesses before the Committee have commented on the inconsistent response from Western Australia Police in matters related to elder abuse:

We have had situations where we have recommended that they [Western Australia Police] ask for a welfare check, and sometimes the welfare check has gone ahead and sometimes it has not, so we have had to go back to the police and try to identify why they have not actually done a welfare check in this case but did in another ... Sometimes police will support, listen and act and sometimes they will not.¹⁹⁶

...

They [Western Australia Police] are likely to say, and rightly so, that it is a civil matter and that they cannot intervene.¹⁹⁷

...

¹⁹⁴ Western Australia Police, Community Diversity and Substantive Equality, ‘Safety Advice for Seniors: Preventing Crime is Everybody’s Business’. See: <https://www.police.wa.gov.au/~media/Files/Police/Crime/Victims-of-crime/How-to-reduce-risk/Safety-Advice-for-Seniors.pdf?la=en>. Viewed 19 June 2018.

¹⁹⁵ Hon Alison Xamon, Deputy Chair and Chris Dawson, Commissioner of Police, Western Australia Police Force, *Transcript of evidence*, 7 May 2018, pp 2-3.

¹⁹⁶ Diedre Timms, Chief Executive Officer, Advocare Inc., *Transcript of evidence*, 12 March 2018, pp 19-20.

¹⁹⁷ Helen St Jack, Solicitor, Albany Community Legal Centre, *Transcript of evidence*, 18 June 2018, p 7.

What I will add is that unless you create or have a good relationship with your local policing teams, and for us there are quite a few of them, you are not going to get the best result from the police. It is hard work to make sure that the police know what we do, what we want and why we want it. It is continual and almost regurgitating the same, because police staff change and that is a problem.¹⁹⁸

- 6.26 Given the evidence received above, the Committee has investigated the power of Western Australia Police to restrain behaviour which falls within the definition of elder abuse according to the *Restraining Orders Act 1997*.

Use of restraining orders to stop elder abuse

- 6.27 When elder abuse results in conflict between family members or those in a relationship of trust with an older person, there may be scope to protect an older person through the restraining orders legislative regime. The Committee notes that the *Restraining Orders Act 1997* (RO Act) may become relevant when considering circumstances of elder abuse and how to protect the older person in question.
- 6.28 The Committee notes that there are three main types of restraining order contained in the RO Act: family violence restraining orders, misconduct restraining orders and violence restraining orders. The RO Act provides that these categories of orders may be applied for by the person seeking protection, a police officer on behalf of that person and, relevantly to this inquiry, a guardian of that person who has been appointed under the GAA: sections 24A, 25 and 38 of the RO Act.
- 6.29 Family violence restraining orders (FVRO) are made by an application to the Magistrates Court¹⁹⁹ where the applicant must satisfy the court that:
- the respondent has committed family violence against a person seeking to be protected and the respondent is likely again to commit family violence against that person in the future
 - or
 - a person seeking to be protected, or a person applying on behalf of that person, has reasonable grounds to apprehend that the respondent will commit family violence against the person seeking to be protected.²⁰⁰
- 6.30 Importantly, the definition of ‘family violence’ in the RO Act covers behaviour that falls within the definition of elder abuse, as it refers to violence, a threat of violence or ‘any other behaviour by the person that coerces or controls the family member or causes the member to be fearful’. Examples given in the legislation include the following behaviour which the Committee notes would certainly constitute elder abuse:
- (a) an assault against the family member;
 - (b) a sexual assault or other sexually abusive behaviour against the family member;
 - (c) stalking or cyber-stalking the family member;
 - (d) repeated derogatory remarks against the family member;
 - (e) damaging or destroying property of the family member;

¹⁹⁸ Franca Ottolini, Senior Solicitor, Older People’s Rights Service, Northern Suburbs Community Legal Centre, *Transcript of evidence*, 19 March 2018, p 15.

¹⁹⁹ The same application process and jurisdiction also applies for misconduct restraining orders and violence restraining orders, as outlined in sections 38(4) and 25(3) of the RO Act.

²⁰⁰ *Restraining Orders Act 1997* s 10D(1).

- (f) causing death or injury to an animal that is the property of the family member;
- (g) unreasonably denying the family member the financial autonomy that the member would otherwise have had;
- (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or a child of the family member, at a time when the member is entirely or predominantly dependent on the person for financial support;
- (i) preventing the family member from making or keeping connections with the member's family, friends or culture;
- (j) kidnapping, or depriving the liberty of, the family member, or any other person with whom the member has a family relationship;
- (k) distributing or publishing, or threatening to distribute or publish, intimate personal images of the family member ...²⁰¹

- 6.31 The Committee notes in particular that psychological or financial elder abuse would be captured by the examples above, such as withholding financial support or financial autonomy and preventing a family member from keeping family connections. Whilst not involving violent acts, these are certainly examples of elder abuse and would fall within the definition of 'family violence' in the RO Act.

FINDING 33

The definition of 'family violence' in the *Restraining Orders Act 1997* covers behaviour that falls within the definition of elder abuse, in particular, behaviour that, depending on the facts, could be classified as financial elder abuse (in section 5A(2)(g) and (h) of the *Restraining Orders Act 1997*) and psychological or emotional elder abuse (in section 5A(2)(c) through (f), (i) and (k) of the *Restraining Orders Act 1997*).

- 6.32 Western Australia Police has subsequently confirmed that a FVRO could be used to stop or prevent 'acts that may constitute financial [elder] abuse' when the parties involved are in a family relationship.²⁰²
- 6.33 Conversely, the Committee notes that misconduct restraining orders (MRO) are of no relevance in the majority of instances of elder abuse which are perpetrated by family members, as a court cannot make an MRO where the parties are in a family relationship with each other: section 35A of the RO Act.
- 6.34 An MRO covers behaviour which includes that which could be reasonably considered intimidating or offensive, cause damage or breach the peace (as set out in section 36 of the RO Act). Western Australia Police clarified for the Committee that 'protection from certain acts of elder abuse may be addressed in a misconduct restraining order'.²⁰³
- 6.35 The Committee notes that this type of restraining order could, however, be used to restrain the behaviour of a perpetrator of elder abuse who is not related to the older person. Such perpetrators may fall within the 'befriender' or 'predatory carer' category: see further, paragraph 2.45.

²⁰¹ *ibid.*, s 5A(2).

²⁰² Western Australia Police Force, Answer to question on notice 3 asked at hearing held 7 May 2018, dated 28 May 2018, p 2.

²⁰³ *ibid.*

- 6.36 The third relevant order available under the RO Act is a violence restraining order (VRO), which relates to behaviour that involves personal violence that has been committed against a person seeking protection or reasonable grounds that personal violence may be committed in the future: section 11A of the RO Act. The definition of ‘personal violence’ is outlined in section 6 of the RO Act and refers to acts such as assault or personal injury, kidnapping, stalking, threats or related acts.
- 6.37 Similarly to MRO, however, these types of orders cannot be made against a person who is in a family relationship with the person seeking protection, therefore the Committee notes that their use is limited to perpetrators who are not relatives of the older person.

FINDING 34

Elder abuse that is perpetrated by a person who is not related to the older person in question can be stopped or prevented by an application for a misconduct restraining order or a violence restraining order under sections 11A or 35A of the *Restraining Orders Act 1997*.

- 6.38 Despite the broad powers available under the RO Act outlined above, the Committee has heard of a distinct reluctance on the part of Western Australia Police to exercise these powers where the older person in question does not consent to the order or does not want the orders in place.
- 6.39 The Committee has extracted the following statistics in relation to applications for FVRO, MRO and VRO lodged by Western Australia Police where the person seeking protection is over 65 years of age (see Table 5).

Table 5. *Western Australia Police applications for restraining orders where protected person is aged over 65 years: 2017/18 to 19 June 2018*

	Total applications	Total applications for persons >65 years (% of total)	Total WA Police applications for persons >65 years (% of total)
FVRO	9866	466 (4.7%)	3 (0.6%)
MRO	687	108 (15.7%)	0
VRO	3397	279 (8.7%)	0

[Source: Department of Justice, 27 June 2018]

- 6.40 The Committee is of the view that Western Australia Police face a clear conflict between the duty to protect vulnerable people (older victims in this case) and the duty to respect a person’s autonomy over decisions which affect them:

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 a 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.²⁰⁴

6.41 Whilst the Committee appreciates the difficult position that this tension may create, it is of the view that Western Australia Police's duty to protect vulnerable older people in the community should take precedence where to take no action could result in continued or greater harm.

6.42 According to the Public Trustee, obtaining effective evidence from an older person in order to even commence a prosecution for elder abuse can be difficult:

A lot of times the clients who we deal with do not want to make a complaint; they do not want to escalate it; they do not want the police involved. Those are the clients we are able to have those discussions with because, to be honest, a lot of the clients we are appointed have such a cognitive impairment or a mental disability that they are not always able to assist us with making some of those determinations as well. They may well have really progressed dementia, a brain-acquired injury or are so affected by mental illness through drug abuse or whatever it might be that they are not able to assist us anyway.²⁰⁵

...

In the last 10 years, we have had two situations where people in civil matters, who had been placed under some sort of order restricting their decision-making, gave evidence in defended proceedings ... and in neither case was it a happy experience. The court did not accept the evidence, because obviously when people have a lack of decision-making ability, such as dementia, when they are in the witness box, the first question in cross-examination is, 'Did you agree to this?', and 'Oh yes, sure; no problem'. They will have difficulty understanding an oath or affirmation in some cases as well.²⁰⁶

6.43 The Committee therefore acknowledges the complexities surrounding cases of elder abuse and the difficulty that police officers face in obtaining evidence from the older person at the centre of an elder abuse allegation. Nonetheless, an approach that prefers taking action to protect an older person from continued harm should be adopted.

FINDING 35

The tension between the duty of Western Australia Police to protect vulnerable older people in the community and the duty to respect the inherent dignity and autonomy of adults in terms of the decision to apply for orders under the *Restraining Orders Act 1997* can sometimes result in a lack of appropriate action being taken to protect an older person from continued or greater harm.

²⁰⁴ Hon Alison Xamon, Deputy Chair and Susan Young, Acting Commander Judicial Services, Western Australia Police Force, *Transcript of evidence*, 7 May 2018, p 4.

²⁰⁵ Brian Roche, Public Trustee, Office of the Public Trustee, *Transcript of evidence*, 26 March 2018, p 5.

²⁰⁶ *ibid.*, p 8.

Review of the criminal law to prevent elder abuse

Are new elder abuse criminal offences necessary?

6.44 The Committee has heard that the Western Australian Criminal Code²⁰⁷ does not contain a specific offence of elder abuse, rather the age of a victim is considered to be a circumstance of aggravation for some offences against the person.

6.45 'Circumstance of aggravation' is a legal term that refers to specific factual circumstances that, if proven, increase the maximum penalty for an offence. A victim's age is a relevant factual circumstance²⁰⁸ and the Criminal Code contains categories of offending which will result in a higher penalty where the victim was aged 60 years or over, contained in:

- Part V – offences against the person, including assaults and sexual offences
- Part VI – property offences, including robbery and fraud.

6.46 Western Australia Police drew attention to the following offences in the Criminal Code which will all carry a higher penalty if committed against a victim over the age of 60 years:

Section 297 Grievous Bodily Harm – penalty in circumstances of aggravation ... is 14 years. Mandatory minimum sentences also apply if the offence is committed in the course of aggravated home burglary and in circumstances of aggravation.

Section 301 Wounding and similar acts – penalty in circumstances of aggravation [which includes if the victim is 60 years old or more] is 7 years.

Section 313 Common Assault – penalty in circumstances of aggravation ... is 3 years and a fine of \$36 000.

Section 317 Assault Causing Bodily Harm – penalty in circumstances of aggravation [which includes if the victim is 60 years old or more] is 7 years.

Section 317A Assault with intent – penalty in circumstances of aggravation [which includes if the victim is 60 years old or more] is 7 years.

Section 324 Aggravated Indecent Assault – [which includes if the victim is 60 years old or more] penalty is 7 years. Mandatory minimum sentences also apply if the offence is committed in the course of aggravated home burglary.

Section 326 Aggravated Sexual Penetration without consent – [which includes if the victim is 60 years old or more] is 20 years. Mandatory minimum sentences also apply if the offence is committed in the course of aggravated home burglary.

Section 328 Aggravated Indecent Assault – [which includes if the victim is 60 years old or more] penalty is 7 years. Mandatory minimum sentences also apply if the offence is committed in the course of aggravated home burglary.

Section 338E Stalking – penalty in circumstances of aggravation [which includes if the victim is 60 years old or more] is 8 years.

Section 392 Robbery – penalty in circumstances of aggravation [which includes if the victim is 60 years old or more] is 20 years.

²⁰⁷ *Criminal Code Act 1913*, known as the Criminal Code in Western Australia.

²⁰⁸ The Committee notes that 'aggravating factors' are also relevant when sentencing, according to section 7 of the *Sentencing Act 1995*, as they will 'increase the culpability of the offender'. Section 6(2)(b) of the *Sentencing Act 1992* refers to a victim's 'vulnerability' being part of a court's determination of the seriousness of an offence. Vulnerability can include factors such as the victim's age or relationship to the offender, but will depend on the facts of the case.

Section 393 Assault with intent to rob – penalty if armed and in circumstances of aggravation [which includes if the victim is 60 years old or more] is life imprisonment. Penalty if armed or in circumstances of aggravation [which includes if the victim is 60 years of more] is 14 years.

Section 409 Fraud – penalty where the victim is 60 years old or more is 10 years.²⁰⁹

- 6.47 The Committee notes that the offences listed above represent only a fraction of all offences contained in the Criminal Code. There are, in fact, many offences which do not specify circumstances of aggravation for a victim aged 60 years or more, such as stealing or burglary ('home invasions'). Western Australia Police discussed this 'gap' in legislation, noting that the criminal law as it currently applies to older victims should be 'extended beyond personal offences to those involving property' as not every property offence has circumstances of aggravation attached to penalties.²¹⁰
- 6.48 The view of Western Australia Police is that a new elder abuse offence is not necessarily the answer however and that:
- the creation of a specific criminal offence requires extensive and thoughtful consideration before implementing. Ensuring offences do not extend beyond their intended reach and are able to be prosecuted effectively will be important.²¹¹
- 6.49 The ALRC concluded that 'existing criminal laws generally adequately cover conduct which constitutes elder abuse' and did not recommend the creation of specific offences in its final report.²¹² The ALRC outlined the complexities with specifying new offences, particularly the risk that doing so would risk being paternalistic and diminish the autonomy and dignity of older people. No other Australian State or Territory has specific elder abuse offences in their criminal law.
- 6.50 On the other hand, the Committee has also heard that the creation of a new offence for elder abuse would send a powerful message to the community that elder abuse will not be tolerated:
- I think actually making the statement that this is important enough; this is serious enough; this is criminal conduct. It has crossed the line; it is clearly criminal conduct. A point needs to be made about utilising the criminal law in those sorts of cases. It is a very, very important declaratory kind of function that the criminal law can play and to say that this is criminal conduct.²¹³
- 6.51 Stakeholders have also advised that having clear legislation criminalising elder abuse would enable financial elder abuse to be more easily prosecuted:
- Many times we find that the police turn around and say that it is a civil matter [in relation to financial elder abuse] and to go to the civil court and get it sorted out, when really it is a criminal matter. But because there is nothing in the statute

²⁰⁹ Western Australia Police Force, Answer to question on notice 3 asked at hearing held 7 May 2018, dated 28 May 2018, p 4.

²¹⁰ Chris Dawson, Commissioner of Police, Western Australia Police Force, *Transcript of evidence*, 7 May 2018, p 12.

²¹¹ Western Australia Police Force, Answer to question on notice 3 asked at hearing held 7 May 2018, dated 28 May 2018, p 6.

²¹² Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, p 363.

²¹³ Meredith Blake, Associate Professor, University of Western Australia School of Law, *Transcript of evidence*, 26 March 2018, p 13.

books, of course the police are going to turn around and say that, knowing full well that the client is unable, unwilling and all of the rest to go to court.²¹⁴

- 6.52 The Committee is of the view that, rather than creating new offences outlining the different forms of elder abuse (such as psychological and financial elder abuse), more needs to be done to expand the existing criminal law to provide greater protection for older people who experience elder abuse.
- 6.53 This could be achieved, according to the advice from Western Australia Police, by expanding the circumstances of aggravation in the Criminal Code that include 60 years of age as a factor to other offences that describe potential elder abuse.²¹⁵
- 6.54 The Committee supports the view expressed by the ALRC that specialist elder abuse units should be created within the police and community awareness of elder abuse should be increased (see Recommendation 15) and makes the following finding and recommendations.²¹⁶

FINDING 36

It is not necessary to create new criminal offences of elder abuse, but existing criminal laws should be strengthened in order to effectively protect older people in Western Australia.

RECOMMENDATION 16

Circumstances of aggravation for property offences in the Criminal Code should be broadened to include where a victim is aged 60 years or more.

RECOMMENDATION 17

Specialist elder abuse units should be created within Western Australia Police.

Mandatory reporting of suspected elder abuse

- 6.55 During this inquiry, the Committee has turned its mind to whether incidents of elder abuse should be subject to a similar regime of mandatory reporting as that which applies in the aged care sector. Whilst outside the scope of this inquiry, the Committee notes that aged care providers already face a statutory requirement to report certain assaults under the *Aged Care Act 1997* (Cth) to the Commonwealth Aged Care Complaints Commissioner. For a more in-depth discussion of the aged care regime, the Committee refers to the findings and recommendations of the ALRC in its final report, in particular, Chapter 4: 'Aged Care'.
- 6.56 The Committee notes that many witnesses have very clearly expressed concerns about enforcing a system of mandatory reporting of suspected elder abuse, with privacy issues and the dignity of older people emerging as central themes.

We feel as a society more comfortable to take these sorts of [mandatory reporting] steps with respect to children ... That is because as a society we regard children as

²¹⁴ Franca Ottolini, Senior Solicitor, Older People's Rights Service, *Transcript of evidence*, 19 March 2018, pp 11-12.

²¹⁵ Readers should note that notwithstanding that an 'older person' is ordinarily defined as someone older than 65 years of age (see discussion at Recommendation 2), 60 years of age is the well-established criteria used in the Criminal Code when considering circumstances of aggravation.

²¹⁶ Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, p 369.

warranting and requiring our protection, and it is much harder to apply that same reasoning to older people, and it should be.²¹⁷

...

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 ... I think this matter requires very careful deliberation ...²¹⁸

...

The [aged care] sector and [Aged and Community Services Australia] itself is not supportive of mandatory reporting ... We believe that it is ageist and that all cohorts of the population have a right to make choices and to make decisions for themselves.²¹⁹

...

Older people, unlike children, are deemed to have capacity unless proven otherwise, and in my view their wishes need to be respected at all times ... if you go to mandatory reporting, you are more likely to end up in a legal response, which in my experience is not what most victims want.²²⁰

...

We understand that in some instances mandatory reporting can give rise to a reluctance to report matters for fear of the consequences, which increases the risk to victim safety.²²¹

6.57 The Committee notes that any discussion of mandatory reporting of elder abuse must consider the following issues:

- older people are entitled to privacy, including if they are the subject of mandatory reporting of suspected abuse
- older people are also entitled to decide if they want to take action about suspected elder abuse
- the potential for mandatory reporting of suspected elder abuse to jeopardise an older person's safety
- who should report suspected elder abuse and to whom?

6.58 Whilst condemning abuse in all its forms, the Committee remains mindful that taking a human rights-based approach to elder abuse means that the dignity of older people must be respected as must their right to decide what action to take, if any, if they are being abused. The Committee is of the view that a greater emphasis must be placed on strengthening positive family relationships and promoting the healing of families where elder abuse occurs.

²¹⁷ Meredith Blake, Associate Professor, University of Western Australia School of Law, *Transcript of evidence*, 26 March 2018, p 15.

²¹⁸ Chris Dawson, Commissioner of Police, Western Australia Police Force, *Transcript of evidence*, 7 May 2018, p 11.

²¹⁹ Deborah Rose, Member Advice and Policy Officer, Aged and Community Services Australia, *Transcript of evidence*, 14 May 2018, p 4.

²²⁰ Dr Helen McGowan, Clinical Co-lead, WA Mental Health Network, *Transcript of evidence*, 21 May 2018, p 6.

²²¹ Caroline Hannington, Women's Law Centre of Western Australia, Answer to question on notice 1 asked at hearing held 19 March 2018, dated 6 April 2018, p 2.

For these reasons, the Committee makes the following finding in relation to mandatory reporting.

FINDING 37

It is not desirable to introduce mandatory reporting of elder abuse, as distinguished from that prescribed by the *Aged Care Act 1997* (Cth).

Health-justice partnerships

The importance of a multidisciplinary approach

6.59 The Committee has repeatedly heard that the complexities of elder abuse require a multi-faceted and holistic response to ensure that the dignity and autonomy of older people is respected. The Women's Law Centre of Western Australia notes that:

victims of family and domestic violence, be it violence that falls into the elder abuse category or not, rarely has a single-stranded solution. These are complex, complex issues, often going on for years ... Just seeing a lawyer and going to court is not going to solve the problem.²²²

6.60 In order to best address these complicated situations, legal and medical professionals often come together to form 'health-justice partnerships', a collaborative model, often described as a 'one stop shop' for legal and health issues that arise in cases of elder abuse.²²³ These arrangements, whether formal or informal in nature, represent a multidisciplinary approach to addressing elder abuse.

6.61 A health-justice partnership could involve legal assistance being provided in a healthcare setting (such as a lawyer having an office within a health practice), a private law firm doing pro bono work for a hospital or a social worker being present when a lawyer is giving legal advice to ensure that the older person understands the information. The collaboration between different professions is the key element of a health-justice partnership and this sharing of ideas can lead to broader systemic changes in addressing elder abuse in the community.

6.62 Advocare recommends a multidisciplinary approach to elder abuse, involving strategies which relate to health-justice partnerships, such as:

- implementing a method to follow up older people who are experiencing elder abuse and keep track of referrals to other health and financial professionals
- engaging the medical profession to recognise indicators of elder abuse
- educating the financial/banking industries to enable them to better recognise financial elder abuse
- providing access to individual or family counselling or alternative dispute resolution services if appropriate.²²⁴

6.63 The Committee notes that there are several health-justice partnerships successfully operating in Western Australia that relate to elder abuse:

- NSCLC, in partnership with Legal Aid WA, operates the Women's Resource and Engagement Network (WREN) in the northern suburbs of Perth and provides

²²² Caroline Hannington, Senior Executive Officer, Women's Law Centre of Western Australia, *Transcript of evidence*, 19 March 2018, p 7.

²²³ Law Council of Australia, *ALRC Elder Abuse Issues Paper*, 17 August 2016, p 34.

²²⁴ Submission 45 from Advocare Inc., 27 November 2017, p 15.

wraparound legal and non-legal services for women experiencing family violence (including older women). This service is a Special Domestic Violence Unit and receives Commonwealth Government funding.

- Djinda Services (also known as the Perth Aboriginal Family Violence Prevention Legal Service) is a project undertaken by the Women's Law Centre of Western Australia, funded by the Commonwealth Attorney-General's Department, in partnership with Relationships Australia (WA). Djinda Services provides holistic and specialised legal support for Aboriginal and Torres Strait Islander women in the Perth metropolitan area who have experienced family violence or sexual assault.
- Safe as Houses Project is a partnership between Women's Law Centre of Western Australia, Tenancy WA and Street Law WA, where lawyers from specialist community legal centres together with a social worker and professionals from King Edward Memorial Hospital provide advice on issues surrounding family violence and homelessness in a coordinated manner.
- ACLC has informal arrangements in place with Albany Health Campus and the Albany Community Hospice.

6.64 The Committee has received evidence from stakeholders and from older people that a multidisciplinary, holistic response is the most effective way to deal with instances of elder abuse while preserving the dignity of an older person who may be experiencing abuse.

6.65 The Committee is of the view that agencies that provide assistance to older people who are experiencing elder abuse must take every opportunity to establish a multidisciplinary approach and develop these partnerships where possible.

FINDING 38

Health-justice partnerships are a valuable way to deliver a holistic response to older people experiencing elder abuse who may be seeking legal advice or healthcare and should be supported wherever possible.

RECOMMENDATION 18

The Government investigate further opportunities to develop and fund new health-justice partnerships and expand existing partnerships that are currently being delivered to older people in the community.

New adult safeguarding legislation

6.66 A key recommendation in the ALRC's report into elder abuse was that each State and Territory enact adult safeguarding laws to protect and support 'at-risk' adults.²²⁵ Adult safeguarding laws seek to protect a broad category of 'at-risk' adults who:

- need care and support
- are being abused or neglected, or are at risk of abuse or neglect
- cannot protect themselves from the abuse.²²⁶

6.67 The ALRC noted the variance across Australia of responses by police, public advocate agencies and advocacy services and noted in support of its recommendation that:

²²⁵ Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, p 377.

²²⁶ *ibid.*, p 375.

Harmonising the existing powers to investigate abuse held by state and territory public advocates may go some way towards reducing elder abuse. Inconsistencies between state and territory laws can cause confusion in the community and inhibit nationwide initiatives designed to educate the community about investigating abuse. Inconsistencies may also inhibit cooperation between state public advocates—if their laws were more consistent, they may be in an even better position to learn from each other and cooperate to reduce abuse. However, these benefits of harmonisation must be balanced against one of the benefits of a federation, namely, that different states and territories might try different approaches and later adopt best practice.²²⁷

- 6.68 The Committee notes that the application of these laws extends beyond the scope of this report, as ‘at-risk’ adults includes individuals with poor physical or mental health, regardless of their age. Stakeholders to this inquiry are divided as to the merits of enacting safeguarding legislation in Western Australia:

So [intervention orders under the *Restraining Orders Act 1997*] ... which you can seek to safeguard a vulnerable person, are largely directed at a domestic violence scenario and you see very few provisions of such legislation actually aimed at addressing and safeguarding vulnerable adults more generally. By that, I include not just older people who are vulnerable; I include any vulnerable adult—anyone living with a disability over the age of 18. I think that we need legislation which kicks in after the children’s protection acts stop operating and we need to be able to protect all vulnerable adults. The criminal law should be an avenue of last resort in my opinion ...²²⁸

There would be significant cost implications in respect of establishing and operating a safeguarding agency as proposed by the ALRC. Additionally, widening the powers of existing service provision to include powers to investigate matters that are not criminal offences could expose the State to liability and would be contrary to the current legislative approach as articulated in the Principles stated in the *Guardianship and Administration Act 1990* ...²²⁹

- 6.69 The Public Advocate in Western Australia already has the power to investigate cases that involve a person who has a decision-making disability. Broadening that office’s scope to intervening where an adult still has capacity but has been defined as being at-risk creates a ‘real tension for the Public Advocate stepping into that space’.²³⁰ Submissions to the ALRC’s inquiry also noted that public advocates would require considerable increased funding and resources to take on the role of adult safeguarding agencies effectively.²³¹
- 6.70 The Committee has considered the adult safeguarding legislation currently in place in Scotland for the purposes of illustrating how such a model operates in practice. The Scottish legislation has broad application, covering potential abuse other than just elder abuse, but serves as a useful template for considering whether to create new entities to safeguard adults that are at risk (see Appendix 4 for a summary of Scotland’s legislation). The Committee has not had the time or resources to fully assess the Scottish model.

²²⁷ *ibid.*, p 382.

²²⁸ Professor Wendy Lacey, Dean and Head of School of Law, University of South Australia, *Transcript of evidence*, 26 March 2018, p 12.

²²⁹ Submission 6 from Office of the Public Advocate, 17 November 2017, p 8.

²³⁰ Pauline Bagdonavicius, Public Advocate, Office of the Public Advocate, *Transcript of evidence*, 26 March 2018, p 15.

²³¹ Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, p 385.

- 6.71 The South Australian Parliament introduced a bill to create an office to safeguard at-risk adults in June 2018: the Office for the Ageing (Adult Safeguarding) Amendment Bill 2018 (SA). The Committee notes that the purpose of the bill is to establish a new adult safeguarding unit within the South Australian Department for Health and Wellbeing's Office for Ageing.²³² The bill can be accessed via South Australia's Attorney General's Department legislation page.²³³

RECOMMENDATION 19

The Government monitor and review the Office for the Ageing (Adult Safeguarding) Amendment Bill 2018 (SA) as it progresses through the South Australian Parliament.

²³² Hon SG Wade MLC, Minister for Health and Wellbeing, South Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 20 June 2018, p 529.

²³³ Office of the Ageing (Adult Safeguarding) Amendment Bill 2018 (SA). See: <https://www.legislation.sa.gov.au/listBills.aspx?key=O>. Viewed 27 June 2018.

CHAPTER 7

Powers of attorney and guardianship

Introduction

- 7.1 The misuse of Enduring Power of Attorney (EPA) and Enduring Power of Guardianship (EPG) documents has emerged as a significant theme during the Committee's inquiry into elder abuse in Western Australia.²³⁴
- 7.2 The hidden nature of elder abuse and the lack of a register of enduring documents means that abuse can continue for many years, often increasing in severity, with no outward signs to indicate that an EPA is being misused. The Committee has heard that some banks and other financial institutions have established internal procedures to try to identify the signs of financial elder abuse that may occur even where a valid EPA exists for a customer (see further CHAPTER 8).
- 7.3 There are risks inherent in an older person using an EPA to give a trusted person the power to make decisions on their behalf. Despite this risk, the Committee is of the view that, with the improvements recommended in this chapter, the documents are an effective tool to delegate decision-making in some circumstances.
- 7.4 This chapter will discuss the role of the Public Advocate in elder abuse situations. The Public Advocate is the statutory office holder with responsibility for investigating cases where an adult with a decision-making disability may be at risk of abuse. This role includes inquiring into the potential misuse of EPA (see paragraph 7.37). The Public Trustee also has a role in the protection of the financial assets of an older person who may be experiencing elder abuse (see paragraph 7.43).
- 7.5 This chapter will also discuss improvements that can be made to the current EPA regime and the importance of the statutory review of the GAA that was undertaken in 2015.

Enduring documents in Western Australia—what they are and how to apply for one

Enduring Power of Attorney

- 7.6 The Committee has heard that many instances of elder abuse originate with EPA and it is important to differentiate between these documents and what the community may be more familiar with: the ordinary Power of Attorney.
- 7.7 A Power of Attorney is a written agreement entered into by a person over 18 years of age who has capacity ('donor') for a specific period of time that allows a chosen person ('attorney') to make financial or property decisions on their behalf. An ordinary Power of Attorney and an EPA both deal with financial or property decisions only.
- 7.8 A Power of Attorney can be used, for example, where a person is temporarily incapacitated or overseas and an attorney may deal with their financial affairs during that period of time. An ordinary Power of Attorney will only operate while the person who made the agreement (donor) has legal capacity.

²³⁴ The Committee notes that Advance Health Directives (AHD) may be made by a person who has capacity for any future health care or medical decisions (including palliative or surgical care) that may be necessary when the donor loses capacity. Whilst the Committee has not heard evidence specifically in regard to the misuse of AHD during this inquiry, the same principles apply with regard to the potential for elder abuse where an AHD exists.

- 7.9 An EPA, however, continues to operate (endures) even when the donor loses legal capacity and in this sense, the Committee notes the potential for EPA to be used to perpetrate elder abuse. An older person may lose legal capacity for many reasons, including cognitive disability, trauma or illness and having an EPA already in place can provide peace of mind for the donor of an EPA.²³⁵
- 7.10 A donor creates an EPA by completing a form, with sections to be completed by both the donor and the future attorney(s), and complying with the signature and witnessing requirements set out in the GAA. The Committee notes the publication by the Office of the Public Advocate, 'A Guide to Enduring Power of Attorney in Western Australia' and strongly encourages any person considering creating an EPA to obtain a copy of the free guide.²³⁶
- 7.11 The GAA requires two witnesses to be present when a donor signs an EPA, both over the age of 18 years and of full legal capacity. One of the witnesses must be working in an occupation named in the *Oaths, Affidavits and Statutory Declarations Act 2005* as being authorised to witness statutory declarations while the other witness cannot be an attorney or substitute attorney who is named in that EPA (section 104 of the GAA). The GAA does not specify any witnessing requirements for when an attorney signs an EPA.

Enduring Power of Guardianship

- 7.12 An EPG is a document that enables the donor to appoint a guardian to make personal, lifestyle and treatment decisions on their behalf when they lose the capacity to do so themselves. Similar to an EPA, the intent of an EPG is to endure during a donor's incapacity (whether temporary or permanent, if specified in the EPG).
- 7.13 The Office of the Public Advocate provides some guidance on what kinds of decisions an EPG can delegate to a guardian, for example:
- where the donor will live and with whom
 - what medical treatments they would consent to or refuse
 - what education or training the donor may receive
 - what support services or other information the guardian would deal with on their behalf.²³⁷
- 7.14 Similar to an EPA, a donor appoints a guardian using an EPG by filling out the prescribed form and ensuring that signing and witnessing requirements are met. 'A Guide to Enduring Power of Guardianship in Western Australia' is published by the Office of the Public Advocate and contains comprehensive information and frequently asked questions as well as blank copies of the relevant forms for creating an EPG.²³⁸
- 7.15 Two witnesses must be present when a donor signs an EPG, with one of the witnesses being a person authorised by statute to be an authorised witness, the same as for an EPA (see paragraph 7.11 and note Appendix 5). The guardian(s) being appointed must also have their signature witnessed by two witnesses, at least one of whom is authorised to witness statutory declarations (section 110E of the GAA). Similar to an EPA, a guardian who has been

²³⁵ Cognitive disability is also a risk factor for experiencing elder abuse: see paragraph 3.33.

²³⁶ The guide (including forms) is available for download from the Office of the Public Advocate website: http://www.publicadvocate.wa.gov.au/E/enduring_power_of_attorney.aspx, viewed 11 July 2018.

²³⁷ Office of the Public Advocate, *A Guide to Enduring Power of Guardianship in Western Australia*, 15 February 2010, p 11.

²³⁸ Office of the Public Advocate, 1 September 2016, *Enduring Power of Guardianship (EPG)*, viewed 11 July 2018, http://www.publicadvocate.wa.gov.au/E/enduring_power_of_guardianship.aspx?uid=3339-2085-8696-8396.

validly appointed under an EPG can begin to make decisions for the donor immediately (if the EPG provides for this), without requiring endorsement from SAT.

- 7.16 The witnessing requirements for an EPA and EPG in Western Australia are similar in their basic structure to those prescribed in other jurisdictions across Australia. Other State and Territories, however, have more detailed and arguably stronger protections for attorneys embedded in their statutory witnessing requirements. The ALRC's comparative tables of witnessing requirements is reproduced in this report at Appendix 5.
- 7.17 The witnessing requirements set out in the GAA are not sufficiently robust to provide effective protection for an older person who may create an EPA or EPG. Other Australian jurisdictions impose greater obligations on witnesses in their relevant EPA and EPG statutes, including the following of note:
- *Powers of Attorney Act 2014* (Vic): section 36 provides that a witness to an EPA must certify in the instrument that 'at the time the principal signed the instrument, the principal appeared to the witness to have decision making capacity in relation to the making of the enduring power of attorney'
 - *Powers of Attorney Act 1998* (Qld): section 44 requires a certificate to accompany the EPA certifying that 'at the time, [the principal] appeared to the witness to have the capacity necessary' to make the EPA.
 - *Powers of Attorney Act 2003* (NSW): section 19(1)(c) requires a witness to certify (amongst other things) that a witness 'explained the effect of the instrument to the principal before it was signed' and the principal 'appeared to understand the effect' of the EPA. Section 6C of the *Guardianship Act 1987* (NSW) requires that a witness certify that the donor of the EPG executed the document voluntarily in the presence of the witness and 'appeared to understand the effect of the instrument'.
- 7.18 The Committee is of the view, having regard to the examples above, that the witnessing requirements in the GAA relating to both EPA and EPG should be reviewed and improved along the same lines.

FINDING 39

Witnessing requirements outlined in the *Guardianship and Administration Act 1997* can be improved to provide more robust protection for an older person who creates an Enduring Power of Attorney or Enduring Power of Guardianship.

RECOMMENDATION 20

The Government review the witnessing requirements set out in the *Guardianship and Administration Act 1997* with a view to strengthening the protection for donors of Enduring Powers of Attorney and Enduring Powers of Guardianship.

Attorneys, administrators and guardians—different roles, similar responsibilities

- 7.19 There are many differences in the role and purpose of administrators, guardians and attorneys, however, all must act with the best interests of the donor as their primary consideration.
- 7.20 Section 51 of the GAA requires a guardian to act according to their opinion of the best interests of the represented person and to, as far as possible:
- act as an advocate for the represented person
 - encourage the represented person to live and participate in the general community

- encourage and assist the represented person to become capable of caring for themselves and to make reasonable judgements about personal matters
- protect the represented person from neglect, abuse or exploitation
- consult with the represented person and take their wishes into account as far as possible
- act in a manner that is least restrictive of the represented person's rights
- maintain any supportive relationships that the represented person has
- maintain the represented person's familiar cultural, linguistic and religious environment.

- 7.21 An administrator appointed by SAT has the same obligations as a guardian but with emphasis on the financial duties of an administrator; that is, they must advocate for the represented person 'in relation to the estate' and must act to protect the represented person from 'financial neglect, abuse or exploitation'.²³⁹
- 7.22 The Committee notes, however, that the obligations of an attorney (donee) under an EPA set out in the GAA are significantly less onerous than either an administrator or guardian. An attorney acting under an EPA must comply with four obligations:
- to exercise their power with 'reasonable diligence to protect the interests of the donor' and if they fail to do this, the attorney will be liable to the donor for any loss as a result
 - to keep and preserve 'accurate records and accounts of all dealings and transactions made' using the EPA, with a \$2000 penalty applicable if this requirement is not met
 - to not renounce a power while the donor is legally incapable (unless the attorney formally applies to SAT to do this)
 - to report to SAT if they become bankrupt.²⁴⁰
- 7.23 For further discussion of possible changes to the GAA to strengthen EPA and prevent elder abuse, refer to paragraphs 7.61 to 7.64.
- 7.24 The main differences between the roles and responsibilities of a guardian, administrator and an attorney under Western Australian legislation are summarised in Table 6.

Table 6. *Guardians, administrators and attorneys—key differences*

Guardian	Administrator	Attorney
Appointed by SAT or chosen by donor of the power	Appointed by SAT	Chosen by the donor of the power
Person is not capable of making decisions for themselves or Put in place while donor is capable of making decisions for themselves for the future	Person is not capable of making decisions for themselves	Put in place while donor is capable of making decisions for themselves for specified period. EPA continues when donor is no longer capable of making decisions for themselves
Personal, medical or lifestyle decisions only, and can be limited to specific areas	Financial and legal decisions, including daily bills and expenses and must keep detailed accounts	Property and financial decisions only and must keep records

²³⁹ *Guardianship and Administration Act 1990* ss 70(2)(a) and (d). Schedule 2 of the GAA also lists specific functions that SAT can either carry out itself or may confer on an administrator that it appoints.

²⁴⁰ *Guardianship and Administration Act 1990* s 107(1).

Guardian	Administrator	Attorney
Public Advocate may be appointed if no other willing, suitable or available guardian can be appointed	Public Trustee may be appointed if no other willing, suitable or available administrator can be found	Can be revoked if the donor still has full legal capacity to do so, best practice is to do so in writing, no legal requirement to do so
Requires medical reports to determine capability	Requires medical reports to determine capability	Attorney must apply to SAT to determine capability of donor if power requires this
SAT reviews orders every five years or person with an interest in the person's needs can request a review by SAT	SAT reviews orders every five years or person with an interest in the person's needs can request a review by SAT	Continues in force unless revoked, administrator is appointed by SAT or the donor dies

[Sources: Guardianship and administration information summarised from State Administrative Tribunal factsheets: http://sat.justice.wa.gov.au/G/guardianship_and_administration.aspx, Power of Attorney information summarised from Office of the Public Advocate website: http://www.publicadvocate.wa.gov.au/E/enduring_power_of_attorney.aspx]

Jurisdiction of State Administrative Tribunal

7.25 SAT's involvement in matters related to an older person who may be experiencing elder abuse occurs in three main instances outlined in the GAA:

- when it makes orders to appoint a guardian or administrator for a person who has a decision-making disability (specifically an older person in the case of elder abuse)
- when it reviews a guardianship or administration order already in place
- when it considers intervening into, revoking or amending an EPA.²⁴¹

7.26 The Committee notes that SAT must observe the principles set out in section 4 of the GAA:

(2) The primary concern of the State Administrative Tribunal shall be the best interests of any represented person, or of a person in respect of whom an application is made.

(3) Every person shall be presumed to be capable of —

- (a) looking after his own health and safety;
- (b) making reasonable judgments in respect of matters relating to his person;
- (c) managing his own affairs; and
- (d) making reasonable judgments in respect of matters relating to his estate,

until the contrary is proved to the satisfaction of the State Administrative Tribunal.

(4) A guardianship or administration order shall not be made if the needs of the person in respect of whom an application for such an order is made could, in the opinion of the State Administrative Tribunal, be met by other means less restrictive of the person's freedom of decision and action.

(5) A plenary guardian shall not be appointed under section 43(1) or (2a) if the appointment of a limited guardian under that section would be sufficient, in the opinion of the State Administrative Tribunal, to meet the needs of the person in respect of whom the application is made.

²⁴¹ Part 5 (Guardianship), Part 6 (Estate Administration), Part 7 (Review of orders) and Part 9 (Enduring powers of attorney): *Guardianship and Administration Act 1990*. See paragraph 9.12 for discussion of expanding SAT's jurisdiction.

(6) An order appointing a limited guardian or an administrator for a person shall be in terms that, in the opinion of the State Administrative Tribunal, impose the least restrictions possible in the circumstances on the person's freedom of decision and action.

(7) In considering any matter relating to a represented person or a person in respect of whom an application is made the State Administrative Tribunal shall, as far as possible, seek to ascertain the views and wishes of the person concerned as expressed, in whatever manner, at the time, or as gathered from the person's previous actions.

- 7.27 Section 4 of the GAA makes it clear that the best interests of the person who is the subject of a guardianship or administration order are the highest priority for SAT. The Committee therefore notes that SAT is best placed to potentially remedy a situation where an older person may be experiencing elder abuse as a result of an EPA or EPG being misused. SAT already has procedures in place to deal with these sensitive applications and is familiar with the (additional) needs of people in guardianship or administration applications.
- 7.28 When SAT is considering whether to appoint a guardian, it must be satisfied that the represented person is 18 years of age and meets one of the following requirements:
- the person is incapable of looking after their own health and safety
 - the person is unable to make reasonable judgments in respect of matters relating to themselves
- or
- the person is in need of oversight, care or control in the interests of their own health and safety or for the protection of others.²⁴²
- 7.29 If SAT is satisfied that one of the circumstances above exists and that the person needs a guardian, then it must declare the reasons for making its determination: section 43(2) of the GAA.
- 7.30 When SAT is considering whether to appoint an administrator, the criteria for appointment are more narrow, as administration relates only to the finances and property of a person, that is, that the person:
- is unable to make reasonable judgments in respect of matters relating to all or any part of their estate because of their mental disability
 - needs an administrator for their estate.²⁴³
- 7.31 For guardianship or administration orders that are already in effect, SAT has jurisdiction to implement a review of the orders at any time, but not more than five years after the order has commenced. There are some circumstances in which a review is mandatory (such as where an administrator wishes to be discharged or is bankrupt) and a review can also be commenced by SAT upon application by the parties to the order.²⁴⁴
- 7.32 Finally, the Committee notes that SAT has broad jurisdiction to intervene in matters related to an existing EPA and EPG where a person with a 'proper interest' applies for an order: sections 109 and 110J of the GAA, respectively.²⁴⁵

²⁴² *Guardianship and Administration Act 1990* s 43(1).

²⁴³ *ibid.*, s 64(1).

²⁴⁴ This includes the Public Advocate, Public Trustee, the represented person or the relevant guardian or administrator: *ibid.*, 86(1).

²⁴⁵ 'Proper interest' is not defined in the GAA.

- 7.33 SAT has the power to intervene and make the following orders in relation to an existing EPA:
- that the donee (the attorney) provide copies of all records and accounts made in connection with the relevant EPA
 - that those records and accounts be audited by an independent SAT-appointed auditor
 - that the terms of the EPA be revoked or varied, a substitute attorney be appointed or that a substitute attorney be confirmed as the replacement attorney.²⁴⁶
- 7.34 For EPG, SAT has similar powers to intervene and may: declare an EPG valid or invalid (section 110K), declare the incapacity of the appointer of the EPG (section 110L), make orders connected with the EPG's exercise or construction of its terms (section 110M), or revoke the EPG or the appointment of one or more joint guardians (section 110N).

Problems with Enduring Powers of Attorney

Carol is an 87 year old woman living in the south of Perth who contacted Advocare as she was concerned that her daughter, who was her [attorney], was misusing her money. Carol told the advocate that she was not receiving bank statements any more, had no idea of what was being paid and had received a letter from one of the bill companies stating that she was in arrears, which had never happened before. Carol ... decided it would be best to revoke her EPA and appoint a new one. Carol ... revoked her EPA and appointed a trusted friend instead.

On a follow up phone call, Carol told the advocates that she was so much happier now. Once Carol had told her daughter about the change, her daughter revealed that she was overwhelmed by being the EPA and was relieved to not have to do it anymore.

- 7.35 The Committee has heard evidence that many instances of elder abuse arise from the misuse of EPA and that older people in these situations are often unsure of who to approach for help or what can be done to stop the abuse. The misuse of EPA is often linked to financial elder abuse (see further, CHAPTER 8) and can include:
- forcing parents or older relatives to withdraw money from their savings for the benefit of adult children or other relatives
 - adult children or other relatives pressuring older people to sell their homes so that those children or relatives can access the capital from the home and pay off their own debts
 - forced changes to wills and other legal documents, including EPA, EPG and AHD
 - fraudulent transfer of title or registration of mortgages against title.²⁴⁷

When do the Public Advocate or the Public Trustee intervene?

- 7.36 The Public Advocate has an important role in instances when an older person may be at risk of experiencing elder abuse in relation to an EPA or EPG. The Public Trustee has a more limited role in this regard, as it was not established for the specific purpose of investigating elder abuse, rather to 'provide community services in respect of trusts, estates and related matters'.²⁴⁸
- 7.37 The Public Advocate has a statutory obligation to conduct investigations when a person with a decision-making disability may be at risk, to act as a guardian of last resort (where no other suitable guardian can be appointed) and to provide specialist information and awareness to

²⁴⁶ *Guardianship and Administration Act 1990* s 109(1).

²⁴⁷ Submission 20 from Albany Community Legal Centre, 16 November 2017, p 4. The examples listed above are actual experiences of elder abuse provided by Albany Community Legal Centre.

²⁴⁸ Submission 7 from Public Trustee, 13 November 2017, p 1, quoting section 1A of the *Public Trustee Act 1941*.

the community.²⁴⁹ The Public Advocate will investigate concerns that an adult with a decision-making disability may be at risk of abuse, exploitation or neglect and will advocate for that person as to whether they need a substitute decision-maker appointed by SAT.²⁵⁰

- 7.38 The Committee has heard that the Public Advocate conducts these investigations as a result of referrals from SAT, but also from the broader community, including concerned family members and the Western Australia Police:

A lot of the community referrals we have had over time have come through the police, where they have gone out to see a person in the community and they have had some concerns.²⁵¹

- 7.39 The Committee raised its concerns with the Public Advocate about the possibility of a person making a (potentially false) allegation about an individual having a decision-making disability so that they can gain control over that person. According to the Public Advocate, these situations sometimes happen, but the principles of the GAA ensure that the best interests of a represented person are always the primary consideration:

Ms CASEY: Applications or referrals come from a whole range of people ... it does not matter who makes the application or the referral if there is a concern about the person's capacity and their ability to make decisions for themselves, because what we are going to do is look at the individual themselves, what their needs are ...

We talk about the best interest of the proposed represented person ... sometimes applications come from a person because they think it might be in their best interests to make an application about a family member. As long as what we are doing is focusing on the best interests of the person that the referral is about, it does not matter who made the application ...

The CHAIRMAN: There are enough protections in place in terms of your assessment that if there is an unscrupulous person making the referral, that second phase of your process will capture that and ensure that the right person is appointed?

Ms CASEY: I am fairly confident about that—yes.

Ms BAGDONAVICIUS: Alternatively, if the person actually has capacity, the tribunal will not appoint a person ... At the end of the day, it is about medical evidence being presented to the tribunal to displace somebody's competency.²⁵²

- 7.40 The investigation referred to above involves the Office of the Public Advocate interviewing the person's friends, family and service providers and seeking the views of the person who is the subject of the application or community referral. SAT then relies on medical evidence, such as from a general practitioner or psychiatrist who can determine if the person has a decision-making disability.
- 7.41 In light of the investigation process undertaken by the Office of the Public Advocate, the Committee is satisfied that the scenario where an older person who may be vulnerable to elder abuse has their decision-making ability taken away by an unscrupulous family member

²⁴⁹ *Guardianship and Administration Act 1990* s 97(1) and Submission 6 from Office of the Public Advocate, 10 November 2017, p 4.

²⁵⁰ Pauline Bagdonavicius, Public Advocate, Office of the Public Advocate, *Transcript of evidence*, 26 March 2018, p 1.

²⁵¹ Debra Casey, Manager Advocacy Investigation and Legal, Office of the Public Advocate, *Transcript of evidence*, 26 March 2018, p 7.

²⁵² Hon Nick Goiran, Chairman, Debra Casey, Manager Advocacy Investigation and Legal and Pauline Bagdonavicius, Public Advocate, Office of the Public Advocate, *Transcript of evidence*, 26 March 2018, p 11.

or friend is indeed unlikely. The investigation conducted by the Public Advocate and the involvement of SAT when hearing medical evidence as to a person's capacity are important safeguards in the guardianship system.

- 7.42 In comparison, the Public Trustee does not have as direct an involvement in cases of elder abuse allegations as the Public Advocate, as it:

generally deals with financial elder abuse after the SAT has appointed it as administrator of the estate of an older person under the GA Act, following an application by a third party that a person who lacks the capacity to manage their own financial affairs may have been the victim of financial exploitation or if, upon review of the annual accounts of a private administrator, financial elder abuse is suspected.²⁵³

- 7.43 The Committee notes, however, that when the Public Trustee does become involved in suspected cases of elder abuse by being appointed as administrator by SAT, it will 'immediately secure and safeguard' the financial assets of the represented person (which can include investigating specific transactions) and 'determines if any misappropriation has taken place'. This may also involve reporting the matter to Western Australia Police, but the Public Trustee notes that there are difficulties around quality of evidence, threats being made against the person being abused or the risk of care being withdrawn if the person being investigated is also the alleged perpetrator.²⁵⁴

No penalty when an attorney misuses an Enduring Power of Attorney

- 7.44 The Committee notes that there appears to be a gap in the way that the GAA responds to elder abuse that may occur as a result of an attorney misusing an EPA. It has been a common example cited during this inquiry where a valid EPA is used in such a way that it benefits the attorney and goes against the older person's wishes, even so far as causing them significant detriment:

Heidi lost her life partner and during this period of bereavement, her daughter Katia reconnected with her mother. In a persuasive manner, Katia persuaded Heidi to make her a sole enduring attorney under an EPA commencing immediately. Heidi kept the original document in a safe place with her will. Katia also persuaded Heidi to down size and purchase a home unit with her and to use the remaining proceeds to increase family wealth.

Heidi acted on Katia's advice and sold her country home. She gave Katia a bank cheque for \$250 000 as her contribution towards the purchase of the home unit and a separate bank cheque for \$150 000 to invest on her behalf. Heidi then informed Centrelink about her decisions. Centrelink assessed the first amount of money as funds spent for her accommodation and viewed it as a granny flat arrangement. Centrelink deemed the second cheque as a gift to Katia and Heidi's pension is affected until she can prove she is receiving income from that asset.

Heidi questioned Katia about these matters. She found out that Katia purchased the home unit in her sole name. Moreover, Katia used the cheque for \$150 000 to bolster her superannuation.²⁵⁵

- 7.45 Section 107(1) of the GAA sets out the obligations of a donee (attorney) under an EPA: see paragraph 7.22. The penalty in section 107(1) only applies to the record-keeping duties of an

²⁵³ Submission 7 from Public Trustee, 13 November 2017, p 7.

²⁵⁴ *ibid.*

²⁵⁵ Submission 47 from Northern Suburbs Community Legal Centre, 1 December 2017, Annexure 6, p 8.

attorney and does not apply to section 107(1)(a): the general duty to act with reasonable diligence to protect the interests of the donor.

- 7.46 The Committee notes that a statutory review of the GAA undertaken in 2015 did not address this anomaly, as it only recommended an increase to the penalty for failing to keep accurate records and did not discuss nor recommend expanding the penalty to apply to any breach of a donor's obligations under an EPA (see further, paragraph 7.61 and Appendix 6). The Public Advocate agrees that there should be a penalty for people who misuse an EPA and notes that where a donee or another person misuses an EPA, there may be criminal offences that apply: for example making false statements, providing false information to officials and stealing.²⁵⁶
- 7.47 On the other hand, the Public Trustee notes that:
- if we make things too restrictive with enduring powers of attorney, or if we make the punishments too great with enduring powers of attorney, people will not want to do them. There are a lot of enduring powers of attorney that are working perfectly well, but also they may turn [instead] to other methods of abuse.²⁵⁷
- 7.48 The Committee notes that the ALRC was not persuaded that a specific offence for misusing a power of attorney is needed, based on the fact that:
- Creating new offences risks duplicating existing offences and risks increasing complexity without any assurance of increased prosecution of the conduct.²⁵⁸
- 7.49 Instead, the ALRC's approach was to recommend that State and Territory administrative tribunals be given the power to order compensation for the misuse or abuse of a power of attorney or where an attorney has failed to comply with their obligations.

FINDING 40

The State Administrative Tribunal could be given jurisdiction to hear claims for compensation for the misuse or abuse of a power of attorney.

RECOMMENDATION 21

The Government review the *Guardianship and Administration Act 1990* with a view to giving the State Administrative Tribunal jurisdiction to order compensation for the misuse or abuse of a power of attorney.

- 7.50 Whilst the Committee notes and understands this approach, it is firmly of the view that it would also be beneficial to create an offence within the GAA for an attorney who fails to uphold their statutory obligations as this will go some way to addressing instances of elder abuse connected with EPA.

FINDING 41

The creation of an offence for a donee of an enduring power of attorney who does not comply with their obligations in section 107 of the *Guardianship and Administration Act 1990* will help prevent elder abuse that may occur from the misuse of enduring documents.

²⁵⁶ Office of the Public Advocate, Answer to question on notice asked at hearing held 26 March 2018, dated 4 April 2018, p 1.

²⁵⁷ Michael Bowyer, Principal Legal Officer, Public Trustee, *Transcript of evidence*, 26 March 2018, p 10.

²⁵⁸ Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, pp 365-66.

RECOMMENDATION 22

The penalty in section 107 of the *Guardianship and Administration Act 1990* that currently only applies to a breach of section 107(1)(b) be expanded to apply to the entirety of section 107(1) of the *Guardianship and Administration Act 1990*.

More than one Enduring Power of Attorney document exists: problems with revocation

- 7.51 Having multiple EPA in place can lead to an increased chance that elder abuse can be perpetrated. Even if an older person does want to update or revoke their EPA, there is no clear statutory procedure to enable them to do so. The lack of guidance in the GAA for revoking or updating an EPA can create an opportunity for elder abuse to occur in two ways:
- when a perpetrator coerces or manipulates an older person (in itself a form of elder abuse) to create a new EPA to benefit them
 - or
 - when an older, out of date version of an EPA is used to benefit a perpetrator who is no longer legally an attorney.
- 7.52 There are many valid reasons why an older person may wish to update or revoke an EPA that they have created, but communicating that decision is problematic. The Public Advocate advised the Committee that where a person has notice of the valid revocation of the EPA, the person would no longer have authority with regard to the estate of that person and 'it can be inferred that anyone having received a revocation should cease their use of the power'.²⁵⁹

FINDING 42

The lack of a procedure in the *Guardianship and Administration Act 1990* for revoking an Enduring Power of Attorney creates opportunities for elder abuse, an administrative burden for agencies and confusion for older people who may wish to revoke an existing Enduring Power of Attorney.

- 7.53 The Committee notes that the problems with revoking an EPA were considered in the statutory review of the GAA. Recommendations 2 and 3 of the review would, when implemented, significantly strengthen the revocation process. During the statutory review, the Public Advocate, Public Trustee, Landgate and the Law Society of Western Australia all raised concerns about the revocation of EPA and EPG, noting specifically that:
- the Registrar of Titles does not have the legislative power to require a donor to revoke an EPA that is subsequently found to be defective or invalid *after* it has been noted or to remove such an EPA from the 'section 143(1) book'
 - a person can have a series of EPA that coexist
 - an EPA can be revoked by deed but unless the donor is legally represented, this is unlikely to occur.²⁶⁰

²⁵⁹ Office of the Public Advocate, Answer to question on notice asked at hearing held 26 March 2018, dated 4 April 2018, p 2.

²⁶⁰ Department of the Attorney General, *Statutory Review of the Guardianship and Administration Act 1990*, November 2015, p 3.

Landgate's register of Enduring Powers of Attorney for land transactions

7.54 The lodgement and registration of fraudulent land transaction documents has been raised by Landgate as a potential cause of financial elder abuse. Landgate refers specifically to situations such as:

- where an older person who is not living in their home is the victim of identity theft and attempts are made to fraudulently transfer their title
- where family and friends force an older person to sign land transaction documents that may not be in their best interests.²⁶¹

7.55 The Committee notes the importance of section 143 of the *Transfer of Land Act 1893*, which creates the power to transfer land using an EPA (or an ordinary Power of Attorney). Section 143(2) requires the original document or a copy to be filed with Landgate and it will be in force from the time that it is noted in Landgate's records until it is revoked or extinguished.

7.56 The Committee has heard evidence that there are a significant number of EPA currently registered against properties in Western Australia, but the number of land transfers executed using an attorney (whether EPA or ordinary) is much lower. For the 2017 calendar year:

- 46 552 transfer of land documents were lodged with Landgate
- 5463 (11.7 per cent of total) were executed using a Power of Attorney document, but Landgate data is unable to specify whether the document was an EPA
- 8446 EPA and 481 ordinary Powers of Attorney were deposited at Landgate.²⁶²

7.57 As at May 2018, Landgate advised that it had 155 155 'live' EPA and 45 001 ordinary power of attorney documents on its records. Landgate advised the Committee that:

An enduring power of attorney is often a private arrangement between family members that is designed to keep oversight by government agencies to a minimum. Therefore, Landgate is somewhat limited in what it can do to protect registered proprietors from fraud due to the misuse of an enduring power of attorney.²⁶³

7.58 The Committee has heard during this inquiry that a specific instance of financial elder abuse can occur where the holder of an EPA (whether obtained honestly or through coercion) may register an EPA with Landgate and attempt to transfer property to themselves, against the donor's wishes. Landgate advised that this particular type of transaction will trigger a further investigation in its process:

Basically, if you are acting for the person, you cannot transfer to yourself, because it is a breach of your fiduciary duties. But we have found there are circumstances where the family might need to sell the land because the person needs to go into a home and things like that. If they cannot find a buyer, sometimes the family, doing the right thing, will decide, "Hey, we'll buy the property ourselves because we can't sell it, and then we'll raise the money under mortgage". They will use that money to have the person go into high care or a nursing home.

We do have a process where Landgate is very concerned if this is taking place, so, when the transfer is lodged, they have to give us a declaration. I think in that letter it talks about five dot points, including getting a valuation of the property to prove that they are paying the market value of the property and to prove that they have

²⁶¹ Submission 32 from Landgate, 17 November 2017, p 1.

²⁶² Landgate, Answer to questions on notice 1 & 2 asked at hearing held 21 May 2018, dated 30 May 2018, p 1.

²⁶³ Submission 32 from Landgate, 17 November 2017, p 2.

paid the money into the person's bank account. If they satisfy those requirements, we will let them transfer it. But it is very limited and it goes to our lawyers to have a look at it in those circumstances to see whether we are happy; and, if not, we might ask a few more questions before we process the transfer.²⁶⁴

- 7.59 Apart from the scenario detailed above and ongoing concerns with the misuse of EPA, the Committee has heard evidence that there are surprisingly few inbuilt checks in Landgate's titles register in relation to EPA:

The CHAIRMAN: A person now has—we will say it is an EPA for the purpose of this exercise—two EPAs registered on your book. A transfer of land document appears before you. What alerts you to all of this is that it is accompanied by a note, or even a copy of an EPA. I assume that then triggers a requirement within your office to search on the book and you discover that there are two EPAs, not one. Does that create further inquiries and investigation needed to ascertain which one is correct or do you just go by the most recent?

Mr CRANE: When a person lodges the document, in the execution clause they quote the power of attorney number. Our staff will check the power of attorney number. They will not be looking for any other ones that they might have. So long as it is valid and everything is in order, they will just process it. They would not be thinking about any other powers of attorney.

The CHAIRMAN: What if the number that is provided is the first EPA, not the second one? Will the staff be alerted to the fact that there are two? They would simply search for the first number, the first number appears in the book and it is valid, so no further inquiry?

Mr CRANE: That is right.²⁶⁵

- 7.60 Further, where there may be suspicion that an attorney is not acting to properly discharge their obligations under section 107 of the GAA, Landgate does not conduct any investigation nor delay the transfer and refer the matter to the Public Trustee or SAT:

Hon ALISON XAMON: You would potentially put a transaction on hold if someone were to contact you and raise concerns?

Mr NELSON: In response to outright allegations of fraud, yes, but for the most part, no, we would not ...

Hon ALISON XAMON: But if someone is exercising a transfer of land under an enduring power of attorney, that is not necessarily a fraud, but it may be contrary—

Mr NELSON: No, absolutely not. That is why we will not pick it up.

Hon ALISON XAMON: You are saying that even if that person is doing that inappropriately, and contrary to the wishes of the person whose property it is, unless you can demonstrate that somehow they do not have that enduring power of attorney ... Landgate would not intervene with that transfer?

Mr NELSON: Not normally, no.²⁶⁶

²⁶⁴ Mark Crane, Assistant Registrar of Titles, Landgate, *Transcript of evidence*, 21 May 2018, p 9.

²⁶⁵ Hon Nick Goiran, Chairman and Mark Crane, Assistant Registrar of Titles, Landgate, *Transcript of evidence*, 21 May 2018, p 5.

²⁶⁶ Hon Alison Xamon, Deputy Chair and Shane Nelson, Deputy Commissioner of Titles, Landgate, *Transcript of evidence*, 21 May 2018, pp 2-3.

FINDING 43

The system used by Landgate for registering Enduring Powers of Attorney in relation to land transfers is inadequate and leaves older people who have such documents vulnerable to financial elder abuse.

RECOMMENDATION 23

Landgate urgently review its processes for registering land transfers where an Enduring Power of Attorney is lodged with a view to increasing the safeguards in place to ensure that only one valid and current document may be registered against a land transfer per individual.

Better protection for older people who have an Enduring Power of Attorney

Statutory review of the *Guardianship and Administration Act 1990*

- 7.61 In November 2015, the former Department of the Attorney General finalised its review of the GAA, as a result of the requirement in section 14 of the Act to undertake regular statutory reviews of its operation and effectiveness. The statutory review made 86 recommendations, covering the entire operation of the GAA.
- 7.62 As highlighted throughout this chapter thus far, many recommendations in the statutory review directly relate to elder abuse and would significantly increase the safeguards in place for older people with enduring documents in place. Some examples include recommendations related to revocations of EPA or EPG, increasing penalties for not complying with the GAA, SAT's jurisdiction in relation to EPA or EPG orders and witnessing requirements. The Committee has extracted the main recommendations that it considers are most significant with regard to elder abuse and has reproduced them at Appendix 6.
- 7.63 Given the length of time since the review was completed and the relevance of some recommendations to elder abuse, the Committee wrote to the Attorney General in April 2018 to query the status of the recommendations. The Attorney General advised that the Government supports 77 of the 86 recommendations contained in the statutory review, with nine recommendations not supported.²⁶⁷
- 7.64 The Attorney General also advised that a bill to amend the GAA was approved by Cabinet in December 2017 and that 'it is anticipated that the Amendment Bill will be introduced in the Spring session [of Parliament]'.²⁶⁸ The Committee notes that, at the adoption of this report, no bill to amend the GAA has been introduced into the Parliament.

RECOMMENDATION 24

The Government introduce a bill to amend the *Guardianship and Administration Act 1990* to implement the recommendations contained in the 2015 statutory review of the act as a matter of urgency.

Register of Enduring Powers of Attorney

- 7.65 The Committee notes that the idea of establishing a register of enduring documents was raised as a positive step to address elder abuse as far back as 2013:

²⁶⁷ These were recommendations 10, 32, 33, 34, 35, 37, 39 and 67: Hon John Quigley MLA, Attorney General, Letter, 26 April 2018.

²⁶⁸ *ibid.*, p 1.

For Enduring Powers of Attorney ... there are prominent deficiencies that include the lack of uniform legislation and mutual recognition provisions across States and Territories. This includes a lack of any national (or state) registry of EPAs.²⁶⁹

- 7.66 As noted by the ALRC, Tasmania is the only jurisdiction in Australia that requires both types of enduring documents (EPA and EPG) to be registered and all jurisdictions except Victoria require the registration of enduring documents when dealing with land transfers.²⁷⁰ The Committee has not had the time or resources to fully assess the Tasmanian model.
- 7.67 The Committee notes that a central register of EPA would provide reassurance to support services and other agencies who deal with older people and, often, their attorneys. A register is also an effective means of discouraging the perpetrators of elder abuse and inserting more checks and balances in the way that EPA are created.
- 7.68 The Commonwealth Government is currently working towards its commitment to implement a national register of enduring documents (see paragraph 1.30), but the Committee notes that the nature of nationwide legislative schemes means that an agreement may be many years in the making. In the meantime, the Committee is of the view that Western Australia should take the lead and develop its own State-based register of EPA, tailored to the specific needs of the Western Australian community. Many stakeholders agree:²⁷¹

As long as the transition was fairly smooth and we were not stuck as we are now with family law, yes, I would approve of [a State register].²⁷²

...

Dr WEBB: I do not think anything is wrong with making a start now and getting our house in order and then if it goes national, we are ready to go. Personally, I feel that it is a significant problem. It is a problem in Western Australia, and given that registration does seem to be the most appropriate course, I do not see any reason not to start now.

Ms BLAKE: That could go beyond, of course, powers of attorney to enduring powers of guardianship and advance health directives—those sorts of things. We do not have registers for those.²⁷³

...

Landgate has obviously not visited this issue, but as a solicitor I think it would be a very good idea.²⁷⁴

- 7.69 Other stakeholders raised their concerns with the Committee about the potential duplication of creating a State register of EPA before the national register is implemented, the amount of background work that would need to be carried out and privacy concerns:

²⁶⁹ Scott Johnson, Northern Suburbs Community Legal Centre, *Elder Abuse: the need for law reform – Enduring Powers of Attorney and Family Agreements: To the Department of the Attorney General of Western Australia*, 8 January 2013, p 1.

²⁷⁰ Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, p 163.

²⁷¹ Advocare Inc. and the Women's Law Centre of Western Australia also expressed their support for this idea during their hearings with the Committee.

²⁷² Franca Ottolini, Senior Solicitor, Older People's Rights Service, Northern Suburbs Community Legal Centre, *Transcript of evidence*, 19 March 2018, p 11.

²⁷³ Dr Eileen Webb, Professor of Law, Curtin University Law School and Meredith Blake, Associate Professor, University of Western Australia, *Transcript of evidence*, 26 March 2018, p 10.

²⁷⁴ Shane Nelson, Deputy Commissioner of Titles, Landgate, *Transcript of evidence*, 21 May 2018, p 4.

I do think a register in itself long term is probably going to happen, but I think there is a little bit of work that would need to be done beforehand, which is what the ALRC has recommended. There are also issues of privacy with the register—who accesses the register. If you make an attorney or a lawyer able to access the register, it is going to be pretty easy to get access to who is on the register because you just hire an attorney, I guess, to then access the register for you. That might not always be a good thing.²⁷⁵

- 7.70 The Committee remains of the view that, in order to begin to take meaningful steps to address elder abuse in Western Australia, a State register of EPA should be considered as a matter of urgency.

FINDING 44

There is broad support in Western Australia for the creation of a State-based central register of Enduring Powers of Attorney and that such a register would be an effective means of reducing the potential for financial elder abuse to occur.

RECOMMENDATION 25

The Government investigate the viability and timeframe for creating a Western Australian central register of Enduring Powers of Attorney, with a view to integrating it with any national model that may be agreed to in the future.

Undertakings by private guardians and administrators

- 7.71 The Committee also notes the recommendation made by the ALRC in its report that will provide further protection for an older person who creates an EPA or EPG, namely that:

Newly-appointed private guardians and private financial administrators should be required to sign an undertaking with respect to their responsibilities and obligations.²⁷⁶

- 7.72 According to the ALRC, elder abuse may be perpetrated by a private guardian or administrator who is 'indifferent or reckless as to their legal responsibilities' and therefore signing a document that sets out their obligations in clear terms can reduce the chance of elder abuse in that situation.
- 7.73 The Committee endorses the ALRC's recommendation but is of the view that this undertaking requirement should also be extended to attorneys who operate under EPA. The Committee therefore makes the following recommendation.

RECOMMENDATION 26

The Government amend the *Guardianship and Administration Act 1990* to include a requirement that private guardians, attorneys or administrators be required to sign an undertaking with respect to their statutory responsibilities and obligations.

²⁷⁵ Brian Roche, Public Trustee, Office of the Public Trustee, *Transcript of evidence*, 26 March 2018, p 11.

²⁷⁶ Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, Issues Paper 44, 15 November 2013, p 321.

Supported decision-making

- 7.74 The question of whether an older person has capacity to make decisions for themselves is complex, as explored above, and the Committee has been made aware of the emergence of supported decision-making as a means to reduce the risk of elder abuse.
- 7.75 Supported decision-making is where a person is given support and advice to make a decision for themselves. A person may have a disability or vulnerability where they find it difficult to make decisions on their own, but supported decision-making does not displace their will. It differs from what occurs under the GAA because substituted decision-making is where someone else substitutes their own will (based on the best interests of the person in question) to make decisions on behalf of that person.
- 7.76 Supported decision-making has become important as a result of Australia's ratification of the United Nations *Convention on the Rights of Persons with Disabilities* in 2008. Article 12 specifically recognises the equal rights of persons with a disability to exercise their legal capacity and that people should be helped to make their own decisions wherever possible.²⁷⁷
- 7.77 Supported decision-making therefore has broader application than only in the context of an older person and the Committee has heard that disability, health and community sectors in Australia are moving towards relying more on principles of self-determination, 'person-centred care' and individualised funding models.²⁷⁸ The emergence of a human rights approach (see paragraph 2.12) in relation to elder abuse also applies to guardianship and administration matters. The Public Trustee advised the Committee that this model 'treats people with dignity and recognises people with disabilities as persons equal before the law with the right to make informed choices for themselves'.²⁷⁹
- 7.78 The Public Advocate has advised the Committee that the GAA statutory regime does not include specific provisions for supported decision-making, but it is flexible enough to allow for the various agencies and parties involved to work collaboratively to enable an adult who has a decision-making disability to be supported in their personal, lifestyle and treatment decisions.²⁸⁰ The Committee notes particularly that:
- Supported decision-making emphasises the ability of a person to make decisions, provided they are encouraged to the extent necessary to make and communicate their decisions.²⁸¹
- 7.79 One of the principles that SAT must observe when dealing with proceedings under the GAA is to meet the needs of an adult who cannot make decisions for themselves in the least restrictive way possible.²⁸² The Committee notes that the concept of supported decision-making is one way to adhere to this principle whilst maintaining a human rights-based approach to guardianship and administration matters.
- 7.80 The Public Advocate notes that the use of enduring documents and AHD are actually a means of supporting a person's decision-making rather than substituting their decision-making capacity entirely because 'they are a form of self-determination undertaken by an adult when they have capacity in preparation for a possible loss of capacity in the future'.²⁸³

²⁷⁷ *ibid.*, p 19.

²⁷⁸ Paul Coates, Chief Executive Officer, Carers Australia WA, Letter, 7 June 2018, p 1.

²⁷⁹ Brian Roche, Public Trustee, Office of the Public Trustee, Letter, 18 June 2018, p 1.

²⁸⁰ Pauline Bagdonavicius, Public Advocate, Office of the Public Advocate, Letter, 13 June 2018, p 1.

²⁸¹ *ibid.*, p 5.

²⁸² See paragraph 7.25 for further discussion.

²⁸³ Pauline Bagdonavicius, Public Advocate, Office of the Public Advocate, Letter, 13 June 2018, p 2.

The Committee supports this sentiment, but also notes the potential for abuse of these enduring documents, which can result in elder abuse occurring.

- 7.81 The Public Advocate also cautions against adding additional 'layers of complexity' to the GAA by formalising supported decision-making and reiterates that the best means of protection from elder abuse is to plan ahead and appoint a trusted decision maker using EPA, EPG or AHD.²⁸⁴

FINDING 45

Supported decision-making is an effective means of empowering older people in Western Australia to take control of their decisions wherever possible and enable them to preserve their inherent dignity and autonomy in later life.

FINDING 46

A good way for older people to protect themselves from elder abuse is to plan ahead while they have capacity and make arrangements for later life using Enduring Powers of Attorney, Enduring Powers of Guardianship and Advance Health Directives.

- 7.82 The Committee notes that law reform in the area of guardianship and EPA is ongoing and many positive changes are currently being implemented to better protect older people from elder abuse. Empowering individuals remains an effective way to lower the risk of elder abuse. In terms of considering when to create an EPA, the Committee notes and endorses the advice from the Public Trustee:

The number one thing we would recommend is to choose wisely and if you have any doubts whatsoever, do not appoint that particular person as your attorney ...

There are some people who you would be quite happy for them to make medical treatment decisions for you but they are just bad with money. If they cannot handle their own money, how are they going to handle someone else's money?²⁸⁵

²⁸⁴ *ibid.*, p 6.

²⁸⁵ Brian Roche, Public Trustee, Office of the Public Trustee, *Transcript of evidence*, 26 March 2018, p 16.

CHAPTER 8

Banks and financial elder abuse

Introduction

- 8.1 The Committee has learned that financial abuse is the most prevalent form of elder abuse and of the complex interaction that occurs with psychological or emotional elder abuse: 'grooming' an older person to either hand over money or assets or manipulating them so that they are unaware that they are being abused financially.
- 8.2 The ALRC observed that 'banks are often in a good position to detect financial elder abuse and protect their at-risk customers'.²⁸⁶ The Committee notes that there are professions within the community that act as 'gatekeepers' to information or systems; banks and other financial institutions are clearly gatekeepers for older people to access their savings and other financial assets. As the custodians of the finances of many older people, banks are therefore in a privileged position of trust where they must take greater responsibility to protect their older customers and take steps to detect and minimise financial elder abuse occurring.
- 8.3 During this inquiry, the Committee has heard evidence that the financial elder abuse that banks see can be separated into two broad categories: 'blatant and immediate' abuse that involves large sums of money transferred soon after a power of attorney is put in place or 'occasional transactions' that are justified by the perpetrator as being in line with the older person's wishes.²⁸⁷
- 8.4 Financial elder abuse can be further broken down into the following ten forms:
- abusing a power of attorney
 - pressure, threats and intimidation
 - fraud and scams
 - abusing family agreements
 - improper use of funds
 - theft
 - inheritance impatience
 - guarantors gone wrong
 - failure to provide promised care
 - emotional blackmail.²⁸⁸
- 8.5 The Committee heard from the community that financial institutions may not be doing as much as they could to protect vulnerable customers (specifically, older people for the purposes of this inquiry). Banks can use this opportunity to show leadership and demonstrate social responsibility in how they respond to the scourge of financial elder abuse.

²⁸⁶ Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, p 299.

²⁸⁷ Jo McKinstry, Customer Advocate, ANZ, *Transcript of evidence*, 18 June 2018, p 2.

²⁸⁸ Customer Advocate, Commonwealth Bank of Australia Group, *Safe & Savvy: A guide to help older people avoid abuse, scams and fraud*, June 2018, pp 4-5.

How should banks respond to financial elder abuse?

- 8.6 The action taken by banks to prevent and address financial elder abuse was a significant aspect of the ALRC's inquiry into elder abuse. The Committee notes the following key observations and recommendations that the ALRC made in its final report.
- Banks and other financial institutions should be required to take reasonable steps to prevent the financial abuse of their customers.
 - Staff should be trained to identify the signs of financial elder abuse and this training should be mandatory.
 - In some circumstances, banks should be required to report elder abuse to the relevant authority, such as a Public Advocate or Public Guardian.
 - Banks should increase protections around forms that give third parties authority to operate on an account, such as requiring a witness or a declaration to be signed.
 - Banks should provide more community education and awareness of financial elder abuse and online banking safety.²⁸⁹
- 8.7 The Committee supports all of these recommendations and notes that the banking industry, through the Australian Banking Association, is currently working to respond to the ALRC's recommendations.²⁹⁰

Code of practice and industry guideline

- 8.8 There are two main documents used by financial institutions to regulate the response of banks to the abuse of their vulnerable customers: the 'Code of Banking Practice' (Banking Code) and the industry guideline, 'Protecting Vulnerable Customers from Potential Financial Abuse' (Industry Guideline).²⁹¹ Both of these documents are published by the Australian Banking Association (ABA).
- 8.9 The Banking Code was updated in mid-2018, following approval from the Australian Securities and Investments Commission. The Committee notes that participation in the Banking Code is voluntary. The ABA requires signatory banks to implement the Banking Code by 1 July 2019.²⁹²
- 8.10 During its inquiry, the ALRC heard that 18 banks or '95% of the retail banking market' had signed up to the Banking Code.²⁹³ Once a bank signs up to the Banking Code, it is contractually bound to its obligations and compliance with the Banking Code is monitored by the Code Compliance Monitoring Committee.
- 8.11 The Banking Code contains a chapter that outlines how signatory banks will treat vulnerable customers, including those who are experiencing age-related impairment, cognitive impairment, elder abuse or financial abuse.

²⁸⁹ Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, pp 300-315.

²⁹⁰ Submission 26 from Australian Banking Association, 17 November 2017, p 1.

²⁹¹ Australian Banking Association, *Banking Code of Practice*, 31 July 2018 and Australian Banking Association, *Protecting vulnerable customers from potential financial abuse industry guideline*, December 2014.

²⁹² Australian Banking Association, Media Release, *A new higher standard in Australian banking*, 31 July 2018.

²⁹³ Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, p 300.

8.12 Signatory banks will:

train our staff to act with sensitivity, respect and compassion if you appear to be in a vulnerable situation ... provide appropriate guidance and referrals to help you to maintain, or regain, control of your finances, and refer you to external support, if appropriate.²⁹⁴

- 8.13 The Industry Guideline explains what financial abuse is and outlines what action a bank can take if it suspects that a customer may be experiencing financial abuse. The Industry Guideline is aimed at financial abuse that may occur to all customers, but notes that 'some people may be at greater risk, including older Australians, people with a disability, people with a mental illness or experiencing emotional challenges or people who are socially challenged'.²⁹⁵ The Industry Guideline contains valuable information for banks and their staff on how to identify potential financial elder abuse and what action a bank can take: see further, Table 7.

Table 7. *Recognising potential financial abuse and what can banks do?*

Recognising potential financial abuse
<p>Protecting vulnerable customers and helping them protect themselves is important and banks are committed to exploring this further. To do this, banks should look for signs that could indicate a customer is being financially abused. These include when a customer:</p> <ul style="list-style-type: none">• Withdraws a large or unusual amount of cash while accompanied by a new acquaintance• Appears to be coerced into making transactions by a family member, friend or other person• Remains silent while another party does all the talking (particularly in combination with either of the two above situations)• Appears withdrawn and fearful (particularly of the person accompanying them)• Does not understand or is not aware of recently completed transactions• Gives implausible explanations or is confused about what they are doing with their money• Makes unusual, erratic or uncharacteristic transactions, such as sudden withdrawals from multiple branches or banking channels within a short space of time• Appears to make transactions they would not be capable of doing, such as using an ATM or debit card despite being housebound or in hospital (assuming this is known to the bank)• Registers for internet banking, when all their prior banking has been at a branch• Indicates they should have enough money to pay bills (eg they complain of having no heating despite the fact they can afford it)• Expresses concern about missing funds, or personal or financial documents• Indicates their mail is no longer being delivered to their home.

²⁹⁴ Australian Banking Association, *Banking Code of Practice*, 31 July 2018, p 22.

²⁹⁵ Australian Banking Association, *Protecting vulnerable customers from potential financial abuse industry guideline*, December 2014, p 1.

What can banks do?

If banks want to question a vulnerable customer whom they suspect is being financially exploited, they must do so in a sensitive way. If bank staff suspect a customer might be the victim of financial abuse, they may:

- Consider obtaining consent from customers to have conversations about suspected financial abuse. This might be a way to gain advance 'permission' to have what would otherwise be awkward conversations
- Ask clear, factual and non-threatening questions to learn the reasons for a suspect transaction, transfer, payment or withdrawal (or frequent withdrawals)
- Check the third party's authorisation and documentation to act for the customer. If a third party presents a withdrawal form or instructions, bank staff should verify the third party's authority by directly contacting the customer or checking associated documentation (ie power of attorney document)
- Contact their supervisor or branch manager, who can work with them to review the account history and the transaction to determine if it should be processed, stopped or reported to bank security or a senior bank officer, or whether legal, compliance or advice from the fraud department should be sought
- Talk to their internal compliance or fraud departments if the vulnerable customer is accompanied by their potential abuser. If the customer and abuser are together, a possible response is to separate the customer from their companion so they can speak alone (do not let anyone else speak for the customer unless they have the appropriate legal authority to do so – this can be a red flag that something is wrong)
- Consider offering the customer a fraud alert form once they are separated from the potential abuser
- Consider delaying the transaction, transfer or payment if the customer is in immediate danger of losing money and refer the matter to a senior bank officer or legal counsel
- Notify bank security and contact police immediately if the customer appears to be in immediate physical danger
- Consider seeking advice from the relevant State or Territory agency such as the Office of Public Advocate, Trustee Body or Elder Abuse Prevention Service. If this was to occur, the customer's information should be de-identified.

[Source: Australian Banking Association, *Protecting vulnerable customers from potential financial abuse industry guideline*]

8.14 The ALRC acknowledged the value of the Industry Guideline but noted that it is a non-binding document with no legal force. The ALRC recommended that the Industry Guideline be used to amend the Banking Code to outline the 'reasonable steps' that a bank should take to protect vulnerable customers.²⁹⁶ The Committee supports the ALRC's recommendation regarding the strengthening of the information contained in the Industry Guideline.

8.15 Another industry publication, 'Responding to requests from a power of attorney or court-appointed administrator', contains the following warning to banks in relation to determining the capacity of a customer:

If there is any doubt about the claim of capacity from an enduring power of attorney, or there is concern that the customer is being exploited, banks should consider delaying or refusing the request until there has been further consideration. This might be particularly important if the attorney is attempting to make large transactions from the donor's account(s). Importantly, even where a customer has a power of attorney arrangement in place, they are entitled to know how their affairs are being managed, and that the power of attorney is operating

²⁹⁶ Recommendation 9-1, Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, p 298.

to their instructions. This is ultimately a challenging area for banks, but one that the industry should be sensitive to.²⁹⁷

Examples of action taken by banks to address elder abuse

- 8.16 The Committee sought evidence from the banking industry, but notes that there was reluctance on the part of banks to appear before the Committee to discuss financial elder abuse and what banks are doing to protect their older customers. The Committee wrote to the four major banks that operate branches in Western Australia, but did not receive submissions from them.²⁹⁸ The Committee heard from representatives from ANZ Bank and Bankwest at public hearings.
- 8.17 ANZ appeared before the Committee and outlined some of the challenges that the bank faces in identifying potential cases of elder abuse and how these are being addressed. The following areas of focus emerged during the hearing as being priorities for ANZ:
- training of frontline staff to identify potential red flags which can then be escalated
 - intervening where a suspicious transaction occurs on an account
 - using data analytics to identify patterns of transactions in an account.²⁹⁹

Training of frontline staff

- 8.18 The Committee has heard from many stakeholders that the effective training of frontline bank staff (tellers and other front counter staff) to identify the signs of elder abuse is an important step in preventing financial elder abuse. Bank staff who have direct customer contact are often the 'eyes and ears' of the bank and are in a good position to both identify red flags of elder abuse and provide support or information to a vulnerable older customer. The Committee has heard that Bankwest has two teams that deal with vulnerable customers (which includes older people who may be experiencing elder abuse): 16 FTE staff in the 'Escalation' team and 19 FTE in the 'Hardship' team.³⁰⁰
- 8.19 ANZ has advised that it provides frontline staff with basic induction training, then different themed training, such as a 'vulnerable customer week'. ANZ also has an internal chat forum that staff can access to talk about elder abuse as a topic of discussion and 'they also talk to each other about what they see, what they have done, what works well and what they are concerned about'.³⁰¹ Formal and informal training is also conducted throughout the year, with weekly 'ICARE' conversations held in ANZ branches covering topics related to ANZ's core values.³⁰²
- 8.20 According to evidence from ANZ, banks may meet with community groups that deal with older people, but that it does not appear to be a proactive relationship by the bank. The Committee is of the view that it would be in the interest of banks as well as customers to initiate engagement with the community to raise awareness of financial elder abuse and the warning signs.

²⁹⁷ Australian Banking Association, *Responding to requests from a power of attorney or court-appointed administrator industry guideline*, December 2014, p 3.

²⁹⁸ Commonwealth Bank Group, National Australia Bank Limited, Westpac Group, ANZ Bank Group Limited.

²⁹⁹ Jo McKinstry, Customer Advocate, ANZ, *Transcript of evidence*, 18 June 2018, p 2.

³⁰⁰ Sharifah Cosgriff, Chief Operating Officer, Personal and Business Banking, Bankwest, *Transcript of evidence*, 25 June 2018, p 12.

³⁰¹ Jo McKinstry, Customer Advocate, ANZ, *Transcript of evidence*, 18 June 2018, p 12.

³⁰² Jo McKinstry, ANZ, Answer to question on notice 5 asked at hearing held 18 June 2018, dated 29 June 2018.

- 8.21 The Committee notes that Bankwest uses its own concept of 'brilliant orange conversations' to train its staff to provide personal advice to customers and look at what a customer is 'actually wishing to achieve with their financial goals'.
- 8.22 Bankwest advised at a hearing that the training that it provides to staff is centred around the concept of 'three Cs' in relation to identifying financial elder abuse: confusion, coercion or changes on a customer's account:
- we train our staff to recognise the three Cs: if a person is confused; if we hear that a person is being coerced. Whilst you can appreciate that in a three-minute phone call, that may not be easily identifiable ... we can still get that from the conversation if there are people in the background et cetera. We can also see when it is present in front of us in a branch.³⁰³
- 8.23 Evidence from the Public Trustee reveals, however, that the bulk of financial elder abuse occurs away from frontline bank teller staff:
- 20 years ago you might have had to take mum or dad into the bank and to be able to get them to use their passbook or whatever it might have been and the bank might have been able to identify that something does not look right.
- But these days, to be honest, if you have managed to get mum's password and go online, you can do some serious financial misuse without ever going into a bank. We certainly see examples of that.³⁰⁴
- 8.24 The Committee notes that financial transactions will continue to be conducted away from frontline branch staff and the potential for financial elder abuse to occur through the misuse of online accounts will remain an ongoing challenge.

FINDING 47

The volume of online transactions far exceeds those interactions conducted at a branch level within banks.

FINDING 48

Banks can do more to proactively engage with community groups and legal centres to promote awareness of financial elder abuse and provide more training to frontline staff to help detect elder abuse.

Intervening in suspicious transactions

- 8.25 The Committee has also heard that, where a transaction has been flagged as potentially suspicious, banks may take action to stop the transaction or even prevent an account from being closed. This could even occur where an EPA is in place:

Hon ALISON XAMON: if someone has an enduring power of attorney and they are abusing it, they can just shut down the account with the ANZ and open up another one with another bank.

Ms McKINSTRAY: Not if we had concerns; we would not allow them to ... it is a very hard call to make because if there is no abuse, we are not accepting a valid

³⁰³ Sharifah Cosgriff, Chief Operating Officer, Personal and Business Banking, Bankwest, *Transcript of evidence*, 25 June 2018, p 10.

³⁰⁴ Brian Roche, Public Trustee, Office of the Public Trustee, *Transcript of evidence*, 26 March 2018, p 4.

document. We are trying to prevent the harm to our customer. That is the primary focus for us.³⁰⁵

- 8.26 Financial Ombudsman Service Australia (FOS), sometimes referred to as the banking ombudsman, recommends that banks and other financial service providers consider 'declining or delaying' suspicious transactions and even reporting the activity to the police or, where it involves an enduring document, to the relevant authority (refer to paragraph 8.35).
- 8.27 In light of the position of FOS, however, the Committee notes the concerning situation raised by Bankwest where the bank has taken steps to verify a transaction involving a power of attorney:

there have been instances when we have raised matters with the customer about account activity that they have then complained to the Financial Ombudsman and we have been found against for pointing out what we thought was strange activity on the account ... It would be found as an invasion of privacy. For example, a person has a power of attorney over an account and then we have gone out of our way to contact the person or the customer and when the person who is holding the power of attorney finds out and indeed the elderly person, both parties can complain [to FOS] about that, in us using our power ... to question the conduct of the account.³⁰⁶

- 8.28 The Committee notes the consequences for a bank that receives an adverse finding by FOS (see paragraph 8.33) but also observes that the risk of these consequences do not appear to have dissuaded Bankwest from continuing to take this sort of action to identify elder abuse:

One of our core values in Bankwest is how we care for both our colleagues and the community ... You should not underestimate the actual impact of behaviours like this that we witness in the call centre and in the branch network and how that actually affects our colleagues. I could only say that [the ruling from FOS] makes our colleagues more determined to look out for the broader community, not less.³⁰⁷

Using data analytics to identify potential elder abuse

- 8.29 The Committee has heard that much of the work that banks can do to identify signs of potential elder abuse depends on the ability to have a face-to-face relationship between staff and a customer. ANZ advised that bank staff may initially notice a change when a customer attends the bank, such as showing signs of confusion, which relies on staff's ability to recognise a customer's usual behaviour and make observations.
- 8.30 The increasing shift to online banking and the closing of bank branches, however, removes the opportunity for direct interaction with a customer and requires a more innovative way to spot the signs of elder abuse. ANZ advised the Committee of its recent approach to using data analytics to interrogate bank transactions to try to identify patterns of customer behaviour:

For example, if there is a power of attorney loaded on the account and there is gambling, that will flag out for us to see. It might be that the older person is gambling and has capacity, and that is absolutely fine, but we would say that that

³⁰⁵ Hon Alison Xamon, Deputy Chair and Jo McKinstry, Customer Advocate, ANZ, *Transcript of evidence*, 18 June 2018, pp 13-14.

³⁰⁶ Sharifah Cosgriff, Chief Operating Officer, Personal and Business Banking, Bankwest, *Transcript of evidence*, 25 June 2018, p 4.

³⁰⁷ *ibid.*, p 5.

is an example that is often an indicator that there might be abuse happening ... we are building different cases and trialling them through our fraud system, the same way that a credit card used overseas when you are in Perth might flag a call from your bank.³⁰⁸

- 8.31 The Committee notes that this automated profiling of banking red flags operates as only the first step in a process of identifying potential elder abuse. Further action by a staff member is required to then query the suspicious transaction with either a customer or an authorised third party (for example, a holder of a power of attorney). ANZ advised the Committee that the response from customers to this process of using analytics to raise flags is generally well-received:

The customers themselves, unless they are in the process of being scammed, usually are quite happy. They will say, 'Thank you for calling. Thank you for being concerned. Everything is all right', or, 'Yes, I am worried'. Or it may become clear that they might not have capacity.³⁰⁹

- 8.32 As this is an emerging area of technology, the Committee notes that the success or otherwise of its ability to identify and perhaps prevent financial elder abuse from occurring is yet to be evaluated. However, the Committee is of the view that innovative methods of interrogating data to protect vulnerable older people should be encouraged and are part of a multidisciplinary approach to addressing elder abuse in the community.

FINDING 49

Banks have the potential to play a crucial role in identifying and taking steps to prevent financial elder abuse in the community, by both effectively training frontline staff and using data analytics to raise red flags on suspicious banking activity.

Compensation for financial elder abuse

- 8.33 The situations described in this chapter refer to steps that banks should take to identify and prevent financial elder abuse from occurring, but the Committee notes that there are instances where a bank may not flag a suspicious transaction or may not do enough to prevent loss to a customer.
- 8.34 The Committee notes the importance of FOS in providing recourse for a customer where a bank has not exercised its duty of care to prevent financial elder abuse. FOS provides information on its approach to elder abuse that is aimed at consumers and financial service providers.
- 8.35 The 'FOS Approach to Financial Elder Abuse' sets out what is expected of a bank that might have concerns about a customer experiencing financial elder abuse. FOS sets out thirteen steps that it expects banks and their staff to take when a red flag for potential elder abuse is identified:

We expect an FSP [financial services provider] to talk to the elderly person separately and in private about the financial transaction. We consider a conversation must be more than one question.

A third party should not be present during this conversation.

When the customer is alone an FSP should be willing to have a conversation with them about the reason for the financial transaction.

³⁰⁸ Jo McKinstry, Customer Advocate, ANZ, *Transcript of evidence*, 18 June 2018, p 6.

³⁰⁹ *ibid.*, p 8.

FSP employees should listen carefully to what the customer says.

FSP employees should discreetly discuss the financial transaction to test the credibility of the explanation. However, the conversation should not be an interrogation.

FSP employees should check the elderly person's account records, account operating instructions and who is authorised to operate the account. If there is more than one account holder or person authorised to operate the account, the FSP should contact the other account holder or authorised person before allowing the financial transaction to occur.

Where a Power of Attorney (POA) is acting on behalf of the elderly person, check the POA to see if there is another attorney who can verify that the financial transaction is appropriate and not to the detriment of the elderly person.

Has a Guardian been appointed? If so, is the person accompanying the elderly person the Guardian? If not, the FSP should take steps to contact the Guardian and not perform the financial transaction until it has been confirmed by the Guardian.

FSP employees should escalate their concerns to the appropriate senior person before conducting the financial transaction.

An FSP may consider declining or delaying the transaction, for example by asking the customer to come back the next day if they still want to proceed.

FSP employees should feel free to ask the customer if there is another family member or friend the FSP can talk to about the financial transaction before proceeding with it.

If there is no other family or friend, a referral to a relevant support service might be appropriate.

FSP employees should follow their internal policies and procedures whenever they see warning signs of financial abuse. If there are no policies and procedures in place, we expect the FSP to explain why.³¹⁰

8.36 In the Committee's view, all of the steps outlined in the FOS document extracted above are reasonable courses of action that a bank should take to protect its vulnerable older customers.

8.37 Where a bank does not take reasonable steps to protect a customer from financial elder abuse, FOS has the power to award compensation for financial, consequential and non-financial loss. These remedies can include the reinstatement of funds to an older person's account, interest on the amount being added, or releasing a guarantee or mortgage that was given by an older person as the result of elder abuse. The Committee notes the following example of where FOS will intervene in financial elder abuse to support an older person:

Mr & Mrs Cannizzo [not their real names] were in their 90s and although they were not separated, they lived in different nursing homes. In 2014, they signed a power of attorney providing Mrs Cannizzo's daughter and Mr Cannizzo's son with authority to access online banking to view statements only.

In April 2015, Mrs Cannizzo's daughter rang the bank to report suspected unauthorised transactions on the account by Mr Cannizzo's son.

³¹⁰ Financial Ombudsman Service Australia, *The FOS Approach to financial elder abuse*, FOS Approach document, November 2017, pp 7-8.

Five days after Mrs Cannizzo's daughter reported the suspected unauthorised transactions, Mr Cannizzo's son took his father in his wheelchair to a bank branch. Mr Cannizzo closed the joint account and transferred the funds into a different account, in his name only, without Mrs Cannizzo's daughter's knowledge. The closing balance of the joint account was almost \$140 000.

Following this, Mrs Cannizzo's daughter lodged a dispute with FOS.

We found that the bank had failed to exercise appropriate care in response to a number of 'red flags' and that signs of undue influence should have been recognised.

Our determination required that the bank transfer half the funds, plus interest, into an account nominated by Mrs Cannizzo.³¹¹

- 8.38 ANZ has also advised the Committee that where a debit card with payWave capability is used fraudulently (noting the limit of \$100 per transaction without a personal identification number), that money would be completely refunded by ANZ.³¹²
- 8.39 As gatekeepers to the finances of many older customers, the Committee is of the view that banks have a responsibility to ensure that vulnerable older people are protected from financial elder abuse where it is in the bank's power to do so.
- 8.40 Financial abuse has been identified as one of the most common forms of elder abuse. The Committee is therefore of the view that greater collaboration between the Government and the financial sector can help reduce the risk of elder abuse and provide greater protection for older people in Western Australia.

RECOMMENDATION 27

The Department of Communities, acting as lead agency for countering elder abuse in Western Australia, engage with the banking sector to develop safeguards and processes to reduce the risk of older people experiencing financial elder abuse.

³¹¹ Phillip Field, Lead Ombudsman – Banking & Finance, Financial Ombudsman Service Australia, 'Financial elder abuse', Paper presented at the 5th National Elder Abuse Conference, Sydney, February 2018.

³¹² Jo McKinstry, Customer Advocate, ANZ, *Transcript of evidence*, 18 June 2018, p 9.

CHAPTER 9

Assets for care arrangements

Introduction

- 9.1 One of the most common scenarios involving elder abuse that the Committee heard during this inquiry is the situation where an older person (usually a parent) enters into an arrangement where their savings or assets are used to fund a new house or renovations for their family, in exchange for the older person(s) being permitted to live there. These arrangements are known as ‘assets for care’ or ‘family accommodation arrangements’ or even ‘granny flat agreements’ and they are potentially a form of financial elder abuse.³¹³
- 9.2 The essential feature of an assets for care arrangement is the transfer of money or an asset in a manner that is recognised by law (whether or not a formal contract exists) in exchange for a promise for care. Examples that the Committee has heard include a parent building a granny flat on the child’s land or paying an adult child’s mortgage in exchange for care and accommodation as the parent grows older.

My daughter purchased a five-acre block of land. She persuaded us with good arguments: ‘We can help look after mum and if you want to go away in the caravan, we can look after the house’. She persuaded us to sell our house and build, along with her, a house on the block that they owned.

When building commenced, my daughter said to me, ‘To avoid us borrowing the money right at the start, why don’t we use your money first?’ – I should have clicked then and I did not because I am stupid – so we agreed to that. My initial investment was \$350 000. It was not exceptionally cheap and it took two and a half years to finish and move in.

Eventually an altercation occurred – she lost it and threw us out. She said, ‘You have to leave. I don’t want you here anymore’. I said, ‘I’m not going. It’s my home; I paid for it’ and she said ‘Yes, you’re going, because it’s my land, and if you don’t go, I will get you thrown off’. So we packed a few clothes, and took the caravan, then rented a home.

I know it was a stupid thing to do, there are no written contracts, no nothing, but why would you do something like that to your parents? I do not know. I would probably be stupid enough to do it all again, when I think about it really, even after all the hurt and everything. But they are your children; you do not think that. You would never think of saying to your daughter, ‘Yes, I’ll come and live with you, but you have to put it in writing’. You know in the back of your mind you just know that this is not quite right, but it is family after all. Now, I know that family does not mean everything.

You have to talk to people. Because if this will help somebody else not fall into this situation, then something at least will have been achieved. That is important to me.

No contract exists

- 9.3 The Committee notes that the relationship of trust that exists between an older person and their relative (usually an adult child or children) that encourages them to enter into an assets for care arrangements can sadly also be the very factor that leaves them vulnerable to elder abuse.

³¹³ Submission 9 from Australian Research Network on Law and Ageing, 15 November 2017, p 16. The Committee will refer to these situations as ‘assets for care’ arrangements in this report.

- 9.4 Many older people may not feel comfortable with formally recording an assets for care arrangement with a child in a contract, or may not think it necessary to do so. The Committee has heard evidence that this oversight can result in a devastating situation for the older person:

With the assets for care, it is quite a unique situation, because the actual arrangement itself is not abusive ... The problem is that the older person in that scenario puts themselves in a vulnerable situation, usually in the context of a relationship of trust because they do not feel that they need to protect [themselves]. So it is not the arrangement itself that is abusive. Not even the breakdown is abusive ... There does not have to be fault.

It is the point at which there is a denial of the reciprocity of the agreement and where the older person is left in a legal position where they have very little recourse to get those assets back. So it is that denial that there has been an arrangement that does not get to be contractual, but it is an understanding and that is not honoured in that situation.³¹⁴

- 9.5 The ALRC also noted that, where a written agreement does exist, it may have been prepared by a party to the agreement, without legal advice and with no provision made for what may happen if the relationship breaks down.³¹⁵
- 9.6 The Committee notes that, while an assets for care arrangement often appears initially mutually beneficial to an older person and their child, when the relationship breaks down or other issues arise that adversely affect the arrangement, it is often the older person who suffers the most.
- 9.7 From a legal perspective, legal title to any property held by a relative or money transferred is rightfully theirs and the absence of a written contract severely reduces the prospects of a successful case being made in favour of the older person. The concept of indefeasibility of title means that, where the older person's child is the registered proprietor of a property (that is, the land/house is in the child's name), then the child's interest is indefeasible.
- 9.8 ARNLA has advised the Committee that the legal presumption of advancement which operates in a property transfer 'presumes the property was a gift rather than held on trust'.³¹⁶ In Western Australia, the *Property Law Act 1969* provides that, even when no consideration is paid, no resulting trust will arise on the conveyance, therefore the interest of an older person is not protected.

Limited remedies available when relationships break down

- 9.9 The Committee notes that our legal system requires the existence of some sort of agreement to create a right and therefore a cause of action. In the absence of a contract, the options available to an older person when an assets for care arrangement breaks down are limited to equitable remedies to establish their interest in the property, such as unconscionable conduct, undue influence, estoppel or a failed joint venture.³¹⁷

³¹⁴ Teresa Somes, Lecturer, Macquarie University, *Transcript of evidence*, 26 March 2018, p 5.

³¹⁵ Australian Law Reform Commission, *Elder Abuse—A National Response: Final Report*, ALRC Report 131, May 2017, p 203.

³¹⁶ Submission 9 from Australian Research Network on Law and Ageing, 15 November 2017, p 18.

³¹⁷ Teresa Somes and Eileen Webb, 'What Role for the Law In Regulating Older People's Property and Financial Arrangements with Adult Children? The Case of Family Accommodation Arrangements', in Meredith Blake, Robyn Carroll, Eileen Webb (ed.), *Ageing and the Law*, Law in Context Special Issue, Vol. 33, No. 2, The Federation Press, Leichhardt, 2015, p 32.

- 9.10 The threshold problem with considering an action in equity, however, is that the very forum for resolving these disputes raises issues for older people seeking justice. Applications for equitable remedies can be heard in either the Supreme Court or the District Court³¹⁸ and witnesses have noted the following barriers for an older person when commencing an action in a superior court:

Ms SOMES: The onus is on the elderly person to commence proceedings to actually get that property back. It is very expensive and it takes a long time and it is their children ...

Prof. LACEY: That is not an effective form of redress for anyone, particularly if you are towards the end of your life and it is a complex family matter.³¹⁹

- 9.11 The Committee supports the ALRC's view that, where an older person is already in a vulnerable position because an assets for care arrangement has faltered, there should be a better option available to them to access justice than a potentially bankrupting and traumatic application to the Supreme or District Courts.

Jurisdiction of State Administrative Tribunal should be expanded

- 9.12 The ALRC recommended that State and Territory tribunals be given jurisdiction to resolve family disputes that involve residential property under assets for care arrangements as an alternative to an action in higher courts.
- 9.13 SAT's jurisdiction in relation to elder abuse concerns only extends to orders made under the GAA and enduring documents.³²⁰ The use of SAT as the forum for these types of matters is, in the Committee's view, a positive outcome for older people who are experiencing elder abuse.
- 9.14 Throughout this inquiry, the Committee has heard that extending SAT's jurisdiction to include assets for care arrangement disputes would be a positive step in providing access to justice for older people experiencing financial elder abuse:

I really think that something needs to be done to give older people who have one of these agreements that goes wrong, to have some kind of legal pathway. At the moment it really is not realistic ... SAT would be perfect for that. They already have the elder mediation programs going. They are experienced within the guardianship administration stream, and they are very experienced with dealing with older people and family conflict and so on ... it would be a good fit and there are structures in place already.³²¹

- 9.15 The Committee is of the view that giving SAT jurisdiction to determine a remedy in the case where a dispute arises involving an assets for care arrangement would provide an alternative pathway to justice for an older person. The Committee makes the following finding and recommendation in relation to assets for care arrangements.

FINDING 50

Assets for care arrangements carry great potential for an older person to experience financial elder abuse and older people are often left vulnerable to abuse when such an arrangement exists within a family.

³¹⁸ *Supreme Court of Western Australia Act 1935 s 24; District Court of Western Australia Act 1969 s 57.*

³¹⁹ Teresa Somes, Lecturer, Macquarie University and Professor Wendy Lacey, Dean and Head of School of Law, University of South Australia, *Transcript of evidence*, 26 March 2018, pp 5-6.

³²⁰ See paragraph 7.25.

³²¹ Dr Eileen Webb, Professor of Law, Curtin University, *Transcript of evidence*, 26 March 2018, p 8.

RECOMMENDATION 28

The Government direct the Law Reform Commission of Western Australia to inquire into the possible expansion of the State Administrative Tribunal's jurisdiction to cover disputes that involve assets for care arrangements.

CHAPTER 10

A plan for Western Australia

National Plan on Elder Abuse 2018

- 10.1 Soon after the ALRC commenced its inquiry into elder abuse in 2016, the Council of Attorneys-General (CAG, previously known as the Law, Crime and Community Safety Council) agreed to establish a working group to consider how to develop a national approach (National Plan) to elder abuse and to consider the findings and recommendations of the ALRC's report when completed.³²²
- 10.2 The development of the National Plan was a key recommendation in the ALRC report and the Commonwealth Attorney General, Hon Christian Porter, announced in February 2018 that CAG had agreed to the scope of the plan, to:
- promote the autonomy and agency of older people
 - address ageism and promote community understanding of elder abuse
 - progress national consistency
 - safeguard at-risk older people and improve responses
 - build the evidence base.³²³
- 10.3 The National Plan will be developed by a working group, co-chaired by the Department of Communities, known as the Working Group of Protecting the Rights of Older People (Working Group). The Working Group has been tasked with the following, due for completion by the end of 2018:
- prepare a draft National Plan on Elder Abuse
 - consider the recommendations of the ALRC report.³²⁴
- 10.4 The Committee understands that the National Plan will not address every recommendation contained in the ALRC's report and that it is expected that State and Territory governments will 'continue to progress other policies and programs on healthy ageing, aged care and elder abuse'.³²⁵ In light of the work that is currently underway at the national level, the Committee makes the following recommendations.

RECOMMENDATION 29

The Government advocate strongly on behalf of all older Western Australians to the Commonwealth's peak body, Elder Abuse Action Australia, to ensure that the situation faced by older people in this State is recognised and addressed in any future action or policies relating to elder abuse.

³²² Law, Crime and Community Safety Council, *Communiqué*, 21 October 2016, p 1.

³²³ Hon Christian Porter MP, Attorney-General for Australia, *National plan to address elder abuse, Media statement*, Sydney, 20 February 2018.

³²⁴ Department of Communities, *Consultation Paper: Developing the National Plan on Elder Abuse*, June 2018, p 3.

³²⁵ *ibid.*

RECOMMENDATION 30

The Government actively collaborate with Elder Abuse Action Australia to ensure that progress is made to address elder abuse in Western Australia and to contribute to a nationally consistent legal framework to address elder abuse.

RECOMMENDATION 31

The Government actively contribute to the National Plan to Combat Elder Abuse to ensure that the plan adequately reflects the needs of Western Australia's older population.

RECOMMENDATION 32

The Government scrutinise the National Plan to Combat Elder Abuse when it is released with particular emphasis on whether it adequately addresses our Western Australian experience of elder abuse.

RECOMMENDATION 33

After it has scrutinised the National Plan to Combat Elder Abuse, the Government report to the Parliament of Western Australia on whether or not the plan adequately addresses the Western Australian experience of elder abuse.

- 10.5 Whilst the Committee notes that the National Plan seeks to develop a long term, nationally-consistent approach to addressing elder abuse, there is still scope for action at the State level. The release of the National Plan later in 2018, with a four-year implementation period, and a review to occur in 2021, means that there is ample opportunity for Western Australia to take steps to develop its own approach to elder abuse and make changes in line with the recommendations contained in this report.

Action at the State level

- 10.6 The Committee is of the view that the greatest impediment to addressing elder abuse in Western Australia at the moment is inaction. Noting the previously fragmented response prior to the Department being named as the lead agency for elder abuse, the Committee is certain that making key changes as outlined in this report will lead to a better system to protect vulnerable older people from abuse. In summary, the Committee recommends action along the following themes:
- greater emphasis on community awareness, similar to public education campaigns about family violence, with increased funding from the State Government
 - funding for the work of community legal centres in order to ensure State-wide services are able to be provided
 - ongoing funding for peer work projects
 - more funding for advocacy services, especially Advocare's Elder Abuse Helpline
 - increased training for police officers on what elder abuse is, particularly where it does not involve physical violence against an older person
 - delivery of training on how to identify elder abuse to those professions who are 'gatekeepers' in the community: lawyers, health professionals, banking staff and real estate agents
 - more funding and/or grants for the establishment of health-justice partnerships

- legislative amendments to better protect older people who are experiencing elder abuse: increasing penalties for breaches of enduring documents, better access to justice through SAT rather than the court system, extending circumstances of aggravation to offences that involve an older person's property and creating a register of enduring documents.

Elder Abuse Community Action Plan for Victoria

- 10.7 The Committee notes that Victoria has recently taken definitive steps to address elder abuse by developing an action plan to identify priorities and gaps in its elder abuse response framework.
- 10.8 The National Ageing Research Institute (NARI), together with Seniors Rights Victoria, the Victorian Office of the Public Advocate and various community service providers, developed the 'Elder Abuse Community Action Plan for Victoria' report (Action Plan for Victoria) with funding from Gandel Philanthropy, to address the complexities of elder abuse and take steps to address the growing problem.³²⁶
- 10.9 The Committee notes that the gaps identified in the Action Plan for Victoria and the associated priorities for action for Victoria serve as a useful template for Western Australia and the Committee strongly supports the implementation of a similar undertaking in this State. Elder abuse is a complex issue that requires a multi-faceted and multi-agency response and the Committee is of the view that the Action Plan for Victoria is a strong tool that both government and community agencies can use to bring about improvement.
- 10.10 The Action Plan for Victoria identified 10 priorities for action to address elder abuse in Victoria: see Table 8. The Committee notes that these 10 priorities are tailored to the experience of older people in Victoria, but share some common themes with Western Australians, which have been identified throughout this report, such as:
- the relationship between family violence and elder abuse and how the former can transition into the latter as time passes
 - the importance of raising community awareness of elder abuse and fighting ageist attitudes
 - the development of a holistic approach to responding to elder abuse
 - the importance of education and training in elder abuse for health professionals
 - the importance of culturally safe responses to elder abuse for Aboriginal and Torres Strait Islander and CaLD communities.

Table 8. *Priorities for action to address elder abuse response in Victoria*

1	Clarify the relationship between family violence and elder abuse
2	Raise community awareness of elder abuse and promote a positive image of older people to reduce ageism
3	Increase availability of 'older person centred' alternatives to disclosing elder abuse
4	Standardise tools for recognising abuse and develop and implement a common framework for responding to elder abuse
5	Increase availability of family (elder) mediation services including for people living in rural areas and CaLD communities

³²⁶ National Ageing Research Institute, *Elder Abuse Community Action Plan for Victoria*, February 2018. Available from <https://www.nari.net.au/policy/elder-abuse-community-action-plan-victoria-report>. Viewed 30 May 2018.

6	Provide education and training on elder abuse for all health professionals in health and aged care services
7	Improve data and increase evaluation
8	Clarify whether carer stress is a risk factor for elder abuse
9	Improve understanding and response to elder abuse in CaLD and Aboriginal and Torres Strait Islander communities
10	Improve housing options for both perpetrators and victims of elder abuse

[Source: Elder Abuse Community Action Plan for Victoria, February 2018]

10.11 Building upon this important work in Victoria, the Committee therefore makes the following finding and recommendations in relation to an action plan for this State.

FINDING 51

The Elder Abuse Community Action Plan for Victoria is a useful starting template to focus attention on, and begin to take action to address elder abuse in the community.

RECOMMENDATION 34

The Government develop and fund a comprehensive plan to prevent and address elder abuse in Western Australia using a human rights based approach that upholds the inherent dignity and autonomy of older people.

RECOMMENDATION 35

The Government urgently develop a State action plan to complement or improve the National Plan to Combat Elder abuse and to identify gaps and priorities in agency responses and create a more effective framework to address elder abuse in Western Australia.

Conclusions

- 10.12 The issue of abuse committed against older people is complex and deeply-rooted in ageism and therefore requires a multi-faceted and careful approach.
- 10.13 The Committee has heard throughout this inquiry that respecting the dignity of an older person who may be experiencing elder abuse is the most important aspect of an effective response. Any decisions made about how to best respond to elder abuse should, as a central consideration, preserve the dignity of older people. The Committee observes that ageing will affect all of us in the community one day, if we are fortunate enough to reach that stage in our lives.
- 10.14 For this reason, a comprehensive and holistic response that addresses all the complexities of elder abuse and acknowledges the varied cohort of older people in Western Australia is required to address elder abuse. The Committee looks forward to decisive action being taken at the Commonwealth level, but in the meantime, it anticipates that this report will provide a good starting point for changes to be made in Western Australia to better protect our older generations from now on.



Hon Nick Goiran MLC
Chair

APPENDIX 1

Stakeholders contacted, submissions received and public hearings

STAKEHOLDERS INVITED TO MAKE A SUBMISSION

Number	Name
1	Advocare Inc.
2	Alliance for the Prevention of Elder Abuse: Western Australia
3	Office of the Public Advocate
4	Public Trustee
5	Legal Aid Western Australia
6	Aboriginal Legal Service of WA
7	Derbarl Yerrigan Health Service Inc.
8	Western Australia Police Force
9	Victims of Crime Reference Group
10	Equal Opportunity Commission
11	Dr Eileen Webb, Associate Professor, Curtin Law School
12	Department of Communities
13	Office of Multicultural Interests
14	Alzheimer's Australia WA
15	Carers Australia WA
16	Relationships Australia WA
17	WA Council of Social Service
18	Home and Community Care Program
19	University of Western Australia Centre for Vulnerable Children and Families
20	University of Western Australia Centre for Indigenous Peoples and Community Justice
21	University of Western Australia Hub for Health Law and Ethics
22	Department of Communities Disability Services
23	GLBTI Rights in Ageing Inc.
24	Wheatbelt Community Legal Centre
25	Northern Suburbs Community Legal Centre (incorporating Elder Law Services and Older Peoples Rights Service)
26	Fremantle Community Legal Centre
27	Sussex Street Community Law Centre
28	Welfare Rights and Advocacy Service
29	Women's Law Centre of Western Australia
30	Mental Health Law Centre (WA)
31	Peel Community Legal Service
32	SCALES Community Legal Centre
33	South West Community Legal Centre

Number	Name
34	Albany Family Violence Prevention Legal Service
35	Albany Community Legal Centre
36	Pilbara Community Legal Service
37	Kimberley Community Legal Service
38	African Women's Council of Australia
39	Chung Wah Community and Aged Care
40	Ethnic Communities Council of Western Australia
41	Filipino Australian Multicultural Association Inc.
42	Greek Orthodox Welfare Association of Western Australia
43	Hellenic Community of Western Australia
44	Islamic Council of WA, specifically Medina Village Community Services Limited
45	Italo-Australian Welfare and Cultural Centre Inc.
46	Latin American Association
47	Pilbara Multicultural Association Inc.
48	Vietnamese Community in Australia—WA Chapter
49	Western Australian Multicultural Association
50	WA Department of Health
51	WA Department of Health Mental Health Sub Network – Older Adult
52	Office of the Chief Psychiatrist
53	Western Australian Local Government Association
54	State Administrative Tribunal
55	People with Disabilities (WA) Inc
56	Council on the Ageing Western Australia
57	Dr Helen McGowan, Older Adult Program for the North Metropolitan Mental Health Service
58	Mental Health Commission
59	Suicide Prevention Australia
60	Seniors Australia
61	Association of Independent Retirees Ltd
62	Returned & Services League of Australia – WA Branch
63	Cullen McLeod
64	Professor Wendy Lacey, Dean of Law, University of South Australia
65	Lise Barry, Senior Lecturer, Macquarie University
66	Teresa Somes, Associate Lecturer, Macquarie University
67	Consumer Credit Legal Service WA
68	Associate Professor Meredith Blake, Associate Dean, University of Western Australia Law School
69	Professor Robyn Carroll, University of Western Australia Law School
70	Aged & Community Services Australia
71	Age-friendly Interagency Group, Department of Communities

Number	Name
72	Leading Age Services Australia
73	WA Primary Health Alliance
74	Seniors Recreation Council of WA Inc.
75	National Seniors Australia WA
76	Country Women's Association of Western Australia Inc.
77	Befriend
78	Western Australian Men's Shed Association
79	Act Belong Commit
80	Red Cross (telecross service)
81	Landgate
82	Hon Mick Murray MLA, Minister for Seniors and Ageing
83	Australian Institute of Family Studies
84	Law Society of Western Australia
85	National Aboriginal & Torres Strait Islander Legal Services
86	National Ageing Research Institute Limited
87	National Disability Insurance Agency
88	National LGBTI Health Alliance
89	Department of Human Services
90	Hon Ken Wyatt AM MP, Minister for Aged Care and Minister for Indigenous Health
91	Greysafe Inc.
92	Office of the Director of Public Prosecutions
93	Commonwealth Bank Group
94	National Australia Bank Limited
95	Westpac Group
96	Australia and New Zealand Banking Group Limited
97	Aegis Aged Care Group
98	The Bethanie Group Inc.
99	Silver Chain Group WA
100	Opal Specialist Aged Care
101	MercyCare
102	Brightwater Care Group
103	Independent Living Centre WA
104	Juniper
105	Australian Banking Association Inc.

SUBMISSIONS RECEIVED

Number	From
1	Private submission
2	Private submission
3	Private submission
4	Private submission
5	Professor Robyn Carroll, University of Western Australia Law School
6	Office of the Public Advocate
7	Public Trustee
8	Greysafe
9	Australian Research Network on Law and Ageing
10	Lise Barry
11	Council on the Ageing Western Australia
12	Aged & Community Services Australia
13	National Seniors Australia
14	State Administrative Tribunal
15	Women's Council for Domestic and Family Violence Services
16	Private submission
17	LJ Goody Bioethics Centre
18	Private submission
19	Relationships Australia (WA)
20	Albany Community Legal Centre
21	Julius Lewin
22	Australian Association of Gerontology and National Ageing Research Institute
23	Legal Aid Western Australia
24	Silver Chain Group WA
25	Equal Opportunity Commission Western Australia
26	Australian Banking Association
27	MercyCare
28	Private submission
29	Carers Australia WA
30	Western Australia Police Force
31	Private submission
32	Landgate
33	People with Disabilities Western Australia
34	Private submission
35	Department of Communities
36	Catholic Women's League of Australia
37	Retirement and Lifestyle villages in Swan Hills
38	Private submission

Number	From
39	Country Women's Association of Western Australia Inc.
40	Dr Barbara Blundell, Professor Mike Clare and Amy Warren
41	Office of Multicultural Interests
42	Office of the Commissioner for Victims of Crime
43	Older Adult Mental Health Sub-network
44	GLBTI Rights in Ageing
45	Advocare Inc.
46	Women's Law Centre of Western Australia
47	Northern Suburbs Community Legal Centre
48	Professor Eileen Webb
49	Private submission

PUBLIC HEARINGS HELD

Date	Participants
12 March 2018	Advocare Inc. Diedre Timms, Chief Executive Officer
19 March 2018	Northern Suburbs Community Legal Centre Karen Merrin, Manager, Older People's Rights Service Gaynor Noonan, Client Advocate, Older People's Rights Service Franca Ottolini, Senior Solicitor, Older People's Rights Service
	Women's Law Centre of WA Caroline Hannington, Senior Executive Officer
26 March 2018	Office of the Public Advocate Pauline Bagdonavicius, Public Advocate Debra Casey, Manager Advocacy Investigation and Legal
	Public Trustee Brian Roche, Public Trustee Michael Bowyer, Principal Legal Officer
	Legal Aid Western Australia Justin Stevenson, Director Civil Law Division
	Australian Research Network on Law and Ageing Meredith Blake, Associate Professor, University of Western Australia Law School Professor Wendy Lacey, Dean and Head of Law, University of South Australia Dr Eileen Webb, Professor of Law, Curtin University Law School Teresa Somes, Lecturer, Macquarie University
9 April 2018	Department of Communities Grahame Searle, Director General Scott Hollingworth, Assistant Director General
7 May 2018	Carers WA Paul Coates, Chief Executive Officer Sean Gardyne, Program Manager
	Western Australia Police Force Chris Dawson APM, Commissioner of Police Susan Young, Acting Commander Judicial Services

Date	Participants
14 May 2018	Aged & Community Services Australia Deborah Rose, Policy and Member Advice Officer
	Office of Multicultural Interests Kim Ellwood, Executive Director Helen Maddocks, Manager Strategy and Planning Dr Rita Afsar, Senior Strategy Planning and Research Officer
21 May 2018	Older Adult Mental Health Sub-Network Dr Helen McGowan, Clinical Co-lead, WA Mental Health Subnetwork
	GLBTI Rights in Ageing Inc. June Lowe, Chair
	Landgate Shane Nelson, Deputy Commissioner of Titles Mark Crane, Assistant Registrar of Titles
18 June 2018	ANZ Jo McKinstry, ANZ Customer Advocate
	Albany Community Legal Centre Helen St Jack, Solicitor
25 June 2018	Bankwest Sharifah Cosgriff, Chief Operating Officer, Personal and Business Robert Cory, Head of External Communications

APPENDIX 2

United Nations Principles for Older Persons

Adopted by General Assembly resolution 46/91 of 16 December 1991

The General Assembly,

Appreciating the contribution that older persons make to their societies,

Recognizing that, in the Charter of the United Nations, the peoples of the United Nations declare, inter alia, their determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,

Noting the elaboration of those rights in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and other declarations to ensure the application of universal standards to particular groups,

In pursuance of the International Plan of Action on Ageing, adopted by the World Assembly on Ageing and endorsed by the General Assembly in its resolution 37/51 of 3 December 1982,

Appreciating the tremendous diversity in the situation of older persons, not only between countries but within countries and between individuals, which requires a variety of policy responses,

Aware that in all countries, individuals are reaching an advanced age in greater numbers and in better health than ever before,

Aware of the scientific research disproving many stereotypes about inevitable and irreversible declines with age,

Convinced that in a world characterized by an increasing number and proportion of older persons, opportunities must be provided for willing and capable older persons to participate in and contribute to the ongoing activities of society,

Mindful that the strains on family life in both developed and developing countries require support for those providing care to frail older persons,

Bearing in mind the standards already set by the International Plan of Action on Ageing and the conventions, recommendations and resolutions of the International Labour Organization, the World Health Organization and other United Nations entities,

Encourages Governments to incorporate the following principles into their national programmes whenever possible:

Independence

1. Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help.
2. Older persons should have the opportunity to work or to have access to other income-generating opportunities.
3. Older persons should be able to participate in determining when and at what pace withdrawal from the labour force takes place.
4. Older persons should have access to appropriate educational and training programmes.
5. Older persons should be able to live in environments that are safe and adaptable to personal preferences and changing capacities.

6. Older persons should be able to reside at home for as long as possible.

Participation

7. Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.

8. Older persons should be able to seek and develop opportunities for service to the community and to serve as volunteers in positions appropriate to their interests and capabilities.

9. Older persons should be able to form movements or associations of older persons.

Care

10. Older persons should benefit from family and community care and protection in accordance with each society's system of cultural values.

11. Older persons should have access to health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness.

12. Older persons should have access to social and legal services to enhance their autonomy, protection and care.

13. Older persons should be able to utilize appropriate levels of institutional care providing protection, rehabilitation and social and mental stimulation in a humane and secure environment.

14. Older persons should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and the quality of their lives.

Self-fulfilment

15. Older persons should be able to pursue opportunities for the full development of their potential.

16. Older persons should have access to the educational, cultural, spiritual and recreational resources of society.

Dignity

17. Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse.

18. Older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.

APPENDIX 3

Elder Abuse Helpline Posters

When Susan stopped coming to Friday lunch, her friends got suspicious.



Susan never felt comfortable becoming a guarantor for her son's mortgage. And now that he was unemployed and pressuring her for money, she was spiralling into depression. If you know someone like Susan who may be a victim of financial elder abuse, speak up.

**Elder Abuse Helpline:
1300 724 679**



Government of **Western Australia**
Department of **Communities**

Help stop elder abuse

Having to wash Mum's dishes doesn't give you the right to clean out her savings.



Margaret gave up her job to look after her Mum when the arthritis got really bad. In some strange way, she thought this entitled her to spend her Mum's money like it was her own. When somebody pointed out how wrong she was, Margaret was devastated because she realised she had been stealing.

**Elder Abuse Helpline:
1300 724 679**



Government of **Western Australia**
Department of **Communities**

Help stop elder abuse

**Your children don't automatically
have control over your money.**



No matter how old you are, if you are of sound mind, you still have full say over how your money is spent. If someone in your family is pressuring you about money, you don't have to accept it.

**Elder Abuse Helpline:
1300 724 679**



Government of **Western Australia**
Department of **Communities**

Help stop elder abuse

APPENDIX 4

Adult Support and Protection (Scotland) Act 2007

Scotland has three key statutes that create the legal framework for the support and protection of adults at risk of harm: the *Adults with Incapacity (Scotland) Act 2000*, the *Mental Health (Care and Treatment) (Scotland) Act 2003* and the *Adult Support and Protection (Scotland) Act 2007* (ASPSA).

ASPSA created Adult Protection Committees, separate and independent entities that investigate situations where adults may be at risk. ASPSA creates a legal duty for a local authority to step in and take action ('intervention') if they believe that an adult at risk is being harmed or is at risk of harm, as described in the statute.

The general principle underlying ASPSA is contained in section 1: that a public body or office holder must intervene in an adult's affairs only if satisfied that it will provide benefit to the adult, which could not reasonably be provided without intervening in the adult's affairs, and the intervention is the least restrictive option available that will be successful.³²⁷ These principles apply to any social worker, care provider or health professional performing a function under ASPSA.

The term 'adult at risk' is defined in section 3 of ASPSA as:

- (1) "Adults at risk" are adults who—
 - (a) are unable to safeguard their own well-being, property, rights or other interests,
 - (b) are at risk of harm, and
 - (c) because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.
- (2) An adult is at risk of harm for the purposes of subsection (1) if—
 - (a) another person's conduct is causing (or is likely to cause) the adult to be harmed, or
 - (b) the adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm.

The legislation therefore is not limited to older people and is quite broad in scope.

All three elements of section 3(1) must be met for an intervention to occur, so it would apply to an older person who suffers from a disability and is at risk, but it would not apply to an older person being abused merely due to the fact of their age.

'Harm' is defined in section 53 of ASPSA as including all harmful conduct and, in particular, includes:

- conduct which causes physical harm
- conduct which causes psychological harm, for example, by causing fear, alarm or distress
- unlawful conduct which appropriates or adversely affects property, rights or interests, for example, fraud, theft, embezzlement or extortion
- conduct which causes self-harm.

³²⁷ East and Midlothian Adult Protection Committee, *Adult Support & Protection: Ensuring rights and preventing harm Information Booklet*, p 3.

ASPSA introduced new duties and powers to safeguard adults who may be at risk of harm and places a duty on specified organisations to cooperate in investigations into suspected or actual harm. ASPSA also requires all local authorities across Scotland to establish Adult Protection Committees. Councils (local government authorities, such as the City of Edinburgh) are therefore the lead bodies in charge of coordinating a multi-agency response to adults at risk through Adult Protection Committees and council officers are generally the ones who will carry out visits, make assessments, applications and lead the work.

A council must make inquiries about a person's wellbeing, property or financial affairs if the council knows or believes that they are at risk and that it might need to intervene: section 4 ASPSA. A council also has the power to involve other organisations in its determination of whether an adult is at risk and action needs to be taken:

Public bodies listed in section 5 of ASPSA are also under a duty to cooperate with a council in its investigations. Care providers, health professionals, police officers and other relevant public officers have a duty to report to their local council where they know or believe that someone is an adult at risk and that action is needed to protect that adult from harm.

A unique feature of the ASPSA regime is the requirement outlined in section 42 for councils to create Adult Protection Committees, that will be responsible for the following duties under the act:

- review and monitor safeguarding and adult protection policies for the council area
- ensuring appropriate and effective cooperation between agencies
- improving skills and knowledge of relevant public officers.

The Adult Protection Committee must be led by a council-appointed, independent convener and must have representatives from police, the local health board, the Scottish Commission for the Regulation of Care and any other public office ordered to be included.

Each Adult Protection Committee is independent from the council and is free to regulate its own procedures: section 44(1) ASPSA. Notwithstanding this freedom, the committees must report biennially on their activities and provide this report to all relevant public agencies and relevant Scottish Ministers.

ASPSA introduces the concept of Protection Orders, which are only to be implemented in the most serious cases of harm and involve quite onerous intervention in the adult's life. Orders such as:

- Assessment Order: where an adult at risk of serious harm is taken to a more suitable place in order to conduct an interview and/or medical examination in private.
- Removal Order: where an adult likely to be seriously harmed is moved to a suitable place for up to seven days (will also need an entry warrant for this).
- Banning Order/Temporary Banning Order: where a person other than the adult at risk is banned from being in a specified place, for up to six months.

APPENDIX 5

Witnessing requirements across Australia

[Source: Australian Law Reform Commission, *Elder Abuse—A National Legal Response*, May 2017, Appendices 1 and 2]

Jurisdictions where enduring powers are combined

Jurisdiction	Signatory	Combined enduring power of attorney (or equivalent)
Vic	Principal	Two witnesses—one person must be either authorised to witness affidavits or a medical practitioner. The witnesses must certify that the principal appeared to freely and voluntarily sign the enduring document and that the principal appeared to have decision-making capacity in relation to making the enduring document.
	Attorney	Any person over 18 years. No witness required if attorney is a trustee company.
Qld	Principal	One witness being a justice, commissioner for declarations, notary public or lawyer. Witness must certify that the principal appeared to have the legal capacity necessary to make the enduring document.
	Attorney	No witness required.
NT	Principal	One witness being a JP, Commissioner for Oaths, police officer, legal practitioner, health professional, accountant, CEO of a local government authority, social worker or school principal. Witness must certify the identity of the principal, that the principal understands the nature and effect of the advance personal plan; and that in making the plan, the principal adult is acting voluntarily without coercion or other undue influence.
	Substitute decision maker	No witness required.
ACT	Principal	Two witnesses—one who must be authorised to witness statutory declarations. One witness may be a relative of the principal or the attorney. Witnesses must certify that the principal signed the power of attorney voluntarily, and appeared to understand the nature and effect of making the power of attorney.
	Attorney	No witness required.

Jurisdictions where EPA and EPG (or equivalent) are separate documents

Jurisdiction	Signatory	Enduring Power of Attorney	Enduring Guardianship (or equivalent)
NSW	Principal	One witness being either a registrar of the Local Court, a barrister or solicitor, a conveyancer, certain employees of the NSW Trustee and Guardian or a trustee company, or certain foreign qualified lawyers. The witness must certify that the person explained the effect of the instrument to the principal before it was signed and that the principal appeared to understand the effect of the power granted.	One or more eligible witnesses being either a registrar of the Local Court, a legal practitioner, certain employees of the NSW Trustee and Guardian or Service NSW, or certain foreign qualified lawyers. Witness(es) must certify that the signing was voluntary and that the person signing appeared to understand the effect of the instrument.
	Attorney/Guardian	No witness required.	Same requirements as for the principal.
SA	Principal	One or more witnesses, one of whom must be qualified to sign affidavits (being either a JP, certain police officers, certain judicial officers, certain court registrars and deputy registrars, and legal practitioners).	One suitable witness. A suitable witness is broadly defined. Witness must certify that: they explained to the person giving the advance care directive the legal effects of giving an advance care directive of the kind proposed; and in their opinion the person giving the advance care directive appeared to understand the information and explanation given by the witnesses; and did not appear to be acting under any form of duress or coercion.
	Attorney/ Substitute decision maker	No witness required.	No witness required.
WA	Principal	Two witnesses with at least one eligible to take declarations.	Two witnesses and at least one must be eligible to take declarations.
	Attorney/ Guardian	No witness required.	Two witnesses and at least one must be eligible to take declarations.
Tas	Principal	Two witnesses neither of whom is a party to the document or a close relative of a party.	Two witnesses neither of whom is a party to the document or a close relative of a party. Witnesses must certify that the principal signed freely and voluntarily and that the principal appeared to understand the effect of the instrument.
	Attorney/ Guardian	No witness required.	No witness required.

APPENDIX 6

Statutory review recommendations

Recommendation 2: That the GAA be amended to provide that a person who makes an EPA, EPG or an AHD can revoke an existing power upon completion of a relevant revocation form that should be included in the Guardianship and Administration Regulations 2005. The person revoking any of the powers should have their signature witnessed by an authorised witness and the revocation will not be in effect until the person or persons appointed are notified.

Recommendation 3: That the GAA is amended to provide that:

1. Where a donor revokes their EPA and that power has been lodged with Landgate, the donor is responsible for lodging the revocation with Landgate.
2. Where a donor revokes their EPA that has not been lodged with Landgate, they are not required to lodge the revocation with Landgate.
3. That when SAT makes an order revoking any EPA the order is sent to the Registrar of Titles to check if the EPA is lodged with Landgate and, if so, remove from the book referred to in section 143(1A) of the *Transfer of Land Act 1893* with no further process required.

Recommendation 18: That the GAA be amended to give SAT jurisdiction for giving directions to enduring guardians and attorneys, jurisdiction in relation to EPG and jurisdiction in relation to AHD.

Recommendation 41: That the GAA be amended to increase the penalty to \$5000 for failing to submit accounts or other relevant documents to the Public Trustee as required under section 80.

Recommendation 44: That section 82 of the GAA be amended to provide that where a person is declared under section 64(1) to be a person in need of an administrator of their estate, SAT may set aside a transaction that the person has entered into in relation to a disposition of property in the six months before the administration order is made, rather than the current two months.

Recommendation 48: That the GAA be amended to provide that when the Public Advocate is undertaking an investigation under section 97(1)(c), the Public Advocate may apply to SAT for a warrant authorising entry to any premises to determine if there is evidence that a person with a decision-making disability is experiencing abuse.

Recommendation 52: That Part 9 of the GAA be amended to provide similar detail in explaining an EPA as is provided in Part 9A regarding EPG.

Recommendation 53: That the GAA is amended to provide that all requirements for making an EPA are included within the GAA to alleviate the need to refer to the *Property Law Act 1969* for clarity.

Recommendation 54: That the GAA is amended to state that an EPA ceases to have effect on the death of the donor and to provide protection for the donee of an EPA if the donee makes transactions while unaware of the death of the donor.

Recommendation 57: That the GAA is amended so that the witness referred to in section 104(2)(a)(ii)(1) must be a person who is not a person appointed to be a donee or substitute donee of the EPA other than a staff member of the Public Trustee or a trustee company that is the donee.

Recommendation 60: That the GAA is amended to allow the donor of an EPA to apply to SAT for interstate recognition of an EPA made in another jurisdiction.

Recommendation 61: That the GAA is amended to provide that the tests and procedures for EPA align, where appropriate to do so, with EPG.

Recommendation 62: That the GAA is amended so that section 107 is worded similar to section 72(3) to provide that:

- a. The donee shall not make gifts on behalf of the donor unless the donor still has capacity and has given direction about the gift, or unless specified in the EPA, or is authorised by SAT.
- b. The donee shall not make gifts to themselves unless the donor still has capacity and has given direction about the gift, or unless specified in the EPA, or is authorised by SAT.

Recommendation 63: That the GAA is amended to provide that a donee of an EPA must act according to his opinion in the donors best interests of the represented person.

Recommendation 64: That the GAA is amended to increase the penalty for a donee who fails to act properly under section 107 from the current \$2000 to \$5000.

Recommendation 65: That the GAA is amended to state that the donee of an EPA should not make a payment in respect of a debt or demand that the donor is not legally obliged to pay, similar to section 72(3)(b) in the GAA in relation to administrators, unless:

- a. The donor still has capacity and directs that the payments be made
- b. The payments are specified in the EPA
or
- c. The payments are authorised by SAT.

Recommendation 66: That section 109 of the GAA is amended to provide that SAT is provided with the power to:

- a. Temporarily suspend an EPA where an EPA is subject to review.
- b. Declare an EPA invalid if it is found that it is not being properly executed.
- c. Declare an EPA invalid for other reasons (such as lack of capacity of the donor at the time the EPA was made).

Provide that a copy of such orders are to be forwarded by SAT to the Registrar of Titles to check if the EPA is lodged with Landgate and, if so, provide for removal from the book referred to in section 143(1A) of the *Transfer of Land Act 1893*.

Recommendation 71: That the GAA is amended to provide that SAT is given the same power to revoke or vary an EPG when making a guardianship order as is provided under section 108 in regard to EPA, but the power to revoke or vary is to be limited to the function or functions that are given to the guardian under the guardianship order.

Recommendation 73: That section 110E of the GAA is amended to require that both witnesses of an EPG are to be independent of the power.

Recommendation 79: That the implications of providing information in the letter from SAT to a person for whom an application guardianship or administration orders are sought that identifies the applicant and the nature of their relationship with the person and the nature of orders sought is examined to ensure vulnerable persons are protected from abuse.

Recommendation 82: That the GAA is amended to provide that SAT may dispense with personal service of a notice or serve the notice in a form other than personal service where SAT considers that the person in respect of the application of an order by SAT is considered to be at risk of abuse, or is incapable of understanding the notice or where it is reasonably believed that the person is incapable of understanding the order or an explanation of the order will cause distress or confusion and that

reference to section 76 of the *Interpretation Act 1984* is repealed and that giving of notice otherwise fall within the provisions of the *State Administrative Tribunal Act 2004*.

[Source: Department of the Attorney General, *Statutory Review of the Guardianship and Administration Act 1990*, November 2015]

GLOSSARY

Term	Definition
ABA	Australian Banking Association
ABS	Australian Bureau of Statistics
Advocare	Advocare Inc.
AHD	Advance Health Directive
AIFS	Australian Institute of Family Studies
ALRC	Australian Law Reform Commission
ARNLA	Australian Research Network on Law and Ageing
CaLD	Culturally and Linguistically Diverse
Committee	Select Committee into Elder Abuse
Department	Department of Communities
EPA	Enduring Power of Attorney
EPG	Enduring Power of Guardianship
FOS	Financial Ombudsman Service Australia
FVRO	Family Violence Restraining Order
GAA	<i>Guardianship and Administration Act 1990</i>
GRAI	GLBTI Rights in Ageing Inc.
LGBTI	Lesbian, Gay, Bisexual, Trans, Intersex
MRO	Misconduct Restraining Order
NSCLC	Northern Suburbs Community Legal Centre
POA	Power of Attorney
RO Act	<i>Restraining Orders Act 1997</i>
SAT	State Administrative Tribunal
SCALES	Southern Communities Advocacy Legal Education Services
VRO	Violence Restraining Order
WHO	World Health Organization

Select Committee into Elder Abuse

Date first appointed:

13 September 2017

Terms of Reference:

On Wednesday 13 September 2017, the Legislative Council ordered that a select committee be established to inquire into elder abuse with particular reference to:

- a) determine an appropriate definition of elder abuse;
- b) identify its prevalence;
- c) identify the forms of elder abuse, including but not limited to neglect;
- d) identify the risk factors;
- e) assess and review the legislative and policy frameworks;
- f) assess and review service delivery and agency responses;
- g) the capacity of the Western Australia Police to identify and respond to allegations of elder abuse
- h) identify initiatives to empower older persons to better protect themselves from risks of elder abuse as they age;
- i) consider new proposals or initiatives which may enhance existing strategies for safeguarding older persons who may be vulnerable to abuse; and
- j) consider any other relevant matter.

The select committee is to report by no later than Thursday 13 September 2018.





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