

*Select Committee into Elder Abuse — Final Report —
“‘I never thought it would happen to me’: When trust is broken”*

Resumed from 13 September.

Motion

Hon NICK GOIRAN: I move —

That the report be noted.

I wish to make some remarks, but I will not do so at this stage. By way of explanation to members, one of the unique differences in the processes and procedures of our chamber is that, whether it is a standing committee or a select committee, the chair or deputy chair has three minutes at the time of the tabling of the report to make a statement that has been agreed to by the committee. I had the honour and privilege of doing that last Thursday on behalf of the committee. The difference with the other place is that it allows 20 minutes for the chair, and 10 minutes for any other member, including anyone who was not even on the committee, to speak at the time of tabling. Our processes are different. We have three minutes at the time of tabling, and then we have the benefit of days like today, when members can speak for, in effect, unlimited portions of 10 minutes. Members may have a view as to the superior system, but that is the system before us. I am quite keen for my fellow committee members to have the opportunity to contribute to this debate—as I did on Thursday—but I will certainly contribute at a later stage.

Hon ALISON XAMON: I rise as deputy chair of the committee to make a few comments. The substance of this report is such that it is absolutely worthy of ongoing debate through the process of consideration of committee reports. I hope members choose to engage in the debate.

I begin my comments by thanking my fellow members of the committee. It was a pleasure to work with Hon Nick Goiran, Hon Tjorn Sibma and Hon Matthew Swinbourn. I thought it was a very effective committee, and without wanting to reveal the committee’s deliberations, it was extraordinarily collegiate and very respectful. I wish to particularly note and thank for his contribution Hon Nick Goiran, who was a really good chair who enabled a quite fulsome discussion around a whole range of matters. I thank the committee staff for their hard work; they were, as usual, phenomenal. I also thank and acknowledge the witnesses who came forward—those who gave evidence during the closed hearings, and those who were brave enough to make submissions on their personal, often very painful and distressing, stories. It was very helpful to the committee that people were so courageous in coming forward with their stories of having experienced elder abuse.

I will comment on issues that arose that did not fit firmly within the purview of elder abuse. There is considerable disquiet and concern around the issue of unconscionable contracts, particularly with retirement villages. That is often perceived as being part of the continuum of elder abuse, but members are aware that part of the task of the committee was to come up with a universal definition of elder abuse. As such, the issue of unconscionable contracts does not fall within the scope of elder abuse. But I think it is very fair to say that it is disproportionately older people who are captured by what is a very genuine concern. Clearly, this issue will only be exacerbated; given our ageing population, there will be a large cohort who will seek to move to retirement villages. I understand this area has the potential to be looked at by government; it will need to be, because it is of quite considerable concern.

The other area of concern we need to be mindful of is the increasing concern around the vulnerability of old people living in park homes. Successive governments have tried to grapple with that problem, but it is important that members are aware that these sorts of issues came to the attention of the committee through the course of the inquiry. Of course, how could we possibly not note it, particularly with the shocking coverage this week of what is happening in some of our aged-care facilities? Concern is increasing about particularly the rate of physical abuse within some of our aged-care facilities. This issue will clearly get quite a bit of attention as we move forward, particularly with the announcement of a royal commission into this area; we are yet to see its terms of reference to see exactly what that will cover. One thing that tells us that is we finally have a great deal of attention being paid, by both levels of government, to what is happening to older Australians and, effectively, how we are not really servicing them well or doing the right thing by them.

This report was able to shine a light particularly on those areas of elder abuse that pertain to the state and its responsibilities, where we can do so much better. One thing that became clear is that we do not have a comprehensive picture of the prevalence of elder abuse within our community. The best estimates we can get, based on the data available, is that one in 10 older Australians are subject to some form of elder abuse. I note that the federal government is yet to report on its inquiry into the prevalence of elder abuse. It will be interesting to see what those figures are when that report finally comes down. In any event, one in 10 older Australians—one in 10, members!—are experiencing some form of elder abuse. That is a shocking figure that unequivocally shows us that we need to be taking this issue very, very seriously. The indications are that the level of elder abuse will increase, not lessen,

whether because of an increase in the population or, disturbingly, because some of the characteristics of certain types of elder abuse lend themselves to prevalence.

One of the most disturbing elements is that it is clear that the largest areas of elder abuse are financial abuse and emotional abuse. It is very clear that the two are often interlinked—people will emotionally abuse older people for the purposes of financial gain. I would just like to make a few comments about the issue of financial abuse. One of the most concerning things about financial abuse is the sheer number of people who engage in financial elder abuse who do not set out to abuse older people. We tend to focus very heavily on the issue of fraud; for example, when people have deliberately set out to trick someone into an enduring power of attorney or have ownership of a home inappropriately transferred to them and those sorts of things. One thing that really struck me through the course of this inquiry was the issue of inheritance impatience. That came up over and over again in the evidence presented to us. Effectively, children and sometimes grandchildren just cannot wait to get their money from their parents or grandparents. They are not happy to wait until their parents pass away and they inherit their money in the normal course of things. They seem to think that if the money is there, it is theirs to take. Far too often people will take on an enduring power of attorney in particular. It is done in good faith; there is no fraud involved. It is often done at the request of the parents, who find it a little more difficult to get to the bank or to keep up with bills and who say, “Is it possible for you to maybe help me to manage my finances?” Everything will be established in good faith, but before long, the child—the son, the daughter—starts taking \$100 here, maybe paying a bill there, or saying, “Oh, we are going out. Mum would have liked it. We will just pay for it out of mum’s account.” What alarms me is how prevalent that sort of conduct seems to be, yet the people who have been entrusted with an enduring power of attorney do not recognise that what they are doing is actually abusive and is theft of their parents’ money. One thing that is very clear is that there is a lot of work to be done around enduring powers of attorney. More about that is in the report. I have no intention of going through all that today; I will have many opportunities to speak on elements of this report into the future.

I wanted to particularly talk about the role for the government, the Department of Communities, the Public Trustee or the Public Advocate, to run education campaigns.

The CHAIR: Hon Alison Xamon.

Hon ALISON XAMON: Those education campaigns could be specifically around the responsibility and roles that are required when someone takes on an enduring power of attorney. It seems like such a simple thing that we should be doing, but it is clearly not happening. I am aware of people even within my own family who have just not understood the level of responsibility that comes with holding an enduring power of attorney. When someone takes that on, they are effectively committing to not treating that money as their own. What people often just do not understand is that the legal obligation, apart from the moral obligation, that flows from that is to always act in the best interests of the person whose money they are managing, and to not give money to themselves. One thing that people will often say is, “I asked mum and mum said she was happy for me to take the \$200 for petrol or whatever.” That is a lot of money for petrol, by the way. But that is not the point; legally, they are not allowed to do that. Legally, the issue is that they have to be standing there and asking, “What is in the best interests of my parent when I am managing their money?” That is just not understood.

I am aware that other members of the committee want to say quite a lot about this report, so I do not want to go through every single thing, although I am tempted to read out the entire report from beginning to end—I promise members that I will not! As we move forward, it will be worthwhile starting to unpick some of the elements of this report, just as we are doing with the end-of-life choices report, and to talk about them and think about the ways in which we can start handling some of this.

The issue of inheritance impatience was the one that resonated with me and really annoyed me, to be perfectly honest. Some people have a sense of entitlement to other people’s money. There is the idea that mum or dad, who, by the way, will have worked really hard for that money, do not need it anymore—“I need it more, so I’m just going to help myself.” That really enrages me. The reality is that people need to be protected and they need to have their money protected. It is a genuine issue if what we end up seeing is that people’s life savings are depleted simply because other people have effectively broken the law and have not done the right thing by them. I have also alluded to the fact that this is sometimes done deliberately. That is a serious matter. The report goes on about how we need to not only tighten up the way in which enduring powers of attorney are undertaken in the first place, but also the criminal penalties that should potentially flow if people set out to do the wrong thing in the first place. I will have more to say about that in the future.

I want to give other members a chance to speak. I ask members to consider reading the report. All of us have constituents who are elderly and we all undoubtedly have constituents who are subject to elder abuse. It is worthwhile members getting a handle on this issue and making sure that we are across the proposed remedies.

Hon TJORN SIBMA: It gives me great pleasure to speak to the Select Committee into Elder Abuse’s final report. I reiterate the remarks of Hon Nick Goiran and Hon Alison Xamon about the collegiate fashion in which

the committee went about its investigations. I also convey our thanks, as always, to the committee staff, who supported us in an exemplary fashion. I also thank those members of the public who were prepared to share with us their private and personal stories, which certainly informed our deliberations. I thank many of those witnesses who appeared before us in public hearings to give us the benefit of their direct lived and professional experience in dealing with the issues that this report canvasses. I also implore members to make best use of their social media platforms and promulgate this report among their followers and constituents. It is a report that is readable. It is slim. It is not nearly as confronting in scope or in scale as the report of the Joint Select Committee on End of Life Choices. I also suggest that it is a good idea for members to read those two reports together, because even though they deal with different dimensions of life in its latter stages, fully informed contemplation requires at a minimum that both those reports be considered before members deal with the legislation that is to be brought on.

I want to say something that is not controversial but may have been controversial to me before I was informed by the work of this committee; that is, that elder abuse is a largely hidden scourge in our community that is underestimated and under-reported. One frustration that the committee had, and one frustration that the commonwealth government is attempting to deal with, was getting baseline data on the prevalence of elder abuse. The committee's conservative estimation is that up to 75 000 seniors in the Western Australian community are at risk of elder abuse in one or more of its forms. As Hon Alison Xamon mentioned, the most frequently occurring form of abuse is that of financial abuse. Financial abuse takes many forms from the surreptitious garnishing of \$20 or \$40 out of mum's bank account because she would approve of that to obvious criminal conspiracy. There is a broad scale involved. That abuse is not isolated. Comorbidity in the kinds of abuse that is transacted and intersected makes for a very complex and dispiriting situation. However, there are things that we can do. The issue has attracted national focus. I congratulate the commonwealth government for effectively agreeing to work on a national plan, but that national plan has come about from the advocacy of a number of concerned groups throughout most Australian jurisdictions. In many respects, Western Australia is a laggard in the way it deals with elder abuse as a serious issue. I do not think any one jurisdiction really sets a gold standard in performance, but in various jurisdictions there are things that are done well that we can look at and adopt at limited expense and which would be easily implemented.

I think, though, this issue gets to the heart of who we are as a society and how we treat people who are vulnerable for a range of reasons. I think it gives some insight into the nature of our own soul, to be perfectly honest. If a lesson is to be learnt, it is that there is much we can do as individuals, as families, as legislators and as a community to deal with this situation with the seriousness that it demands. One of the first things we can do is to bring broader focus to the issue in the same way that we run other community service or public health campaigns. We have a level of comprehension around this issue that would be at the same level, I suggest, that domestic violence or child abuse may have been at 30 or 40 years ago. That is a personal view, but we have a long way to go in comprehending the scale of the problem.

Despite the fact that we are dealing with people in vulnerable situations, it is important to not infantilise older people. It would be a mistake to effectively adopt the same sort of child protection framework that we have for minors and then transpose that, implement it and apply it to people who are 55, 60 or 65 years of age. That is obviously the wrong thing to do. In terms of interpreting this report, which I am strongly imploring members to read, please understand that the committee formed the view that we viewed this issue through the framework of the inherent dignity and autonomy of the individuals concerned. That is important, because it informs what the committee recommended and also what it did not recommend, or what it recommended against, and I will get to that in some more detail.

Notwithstanding that there is a national plan on foot, it would be a mistake and an abrogation of our responsibilities to not do anything in the Western Australian jurisdiction to deal with this issue until the national plan is brought down. I think that would be an abrogation of responsibility. Some early wins and some easy gains are to be garnered if we deal with this issue with the seriousness it demands.

The recommendations, about which I will not go into in detail but which attracted initial media attention, were around law enforcement training and the resourcing of the WA Police Force to deal with allegations of elder abuse. The committee certainly thinks that there is room for improvement there, and those recommendations are canvassed in the report. However, I want to speak to legislation, particularly recommendations 20, 21, 22, 24 and 26 as they apply to the Guardianship and Administration Act 1990. It is important to note that the report does not recommend the creation of any new criminal offences, but recommends amendments to legislation to tighten up performance in a number of areas, particularly the way that instruments such as enduring powers of attorney are utilised in this state. One sad outcome of the committee's consideration is that these instruments—enduring powers of attorney, enduring powers of guardianship and the like—which are devised as instruments of protection of vulnerable people and which are agreements entered into on the basis of trust, unfortunately become, in practice, instruments of exploitation, which unerringly occur with great regularity. We need to

increase penalties for the abuse of those kinds of instruments. As well, we need to improve the way those kinds of instruments are administered. I will not dwell too much on this, other than to say that a consistent request for advice, particularly out of the finance sector and from the banks, is for the creation of a central register of enduring powers of attorney.

The CHAIR: Hon Tjorn Sibma.

Hon TJORN SIBMA: Thank you very much, Mr Chair; I will continue my remarks. I always get a bit nervous when the clock runs down.

Enduring powers of attorney proliferate. One great frustration that banks face when they try to prevent financial abuse in the first place is having no clear line of sight to what a person is enabled to do under an enduring power of attorney. Enduring powers of attorney can be fraudulently presented. They can be redundant and have been overtaken by new documents and new agreements that have been entered into. There is a great push for a national register of these instruments. We sought to understand whether there might be an appetite or whether it might be desirable to create a similar register in this jurisdiction. Quite frankly, that is achievable and desirable, but we would want a system. There is no point having a register if that register is then poorly administered. I refer members who are inclined to read this report to the section about the effectiveness of Landgate's register of enduring powers of attorney against land title in this state. It was one of the most terrifying aspects of maladministration in this state that I have come across. To put members in the picture, there can be competing EPAs on the same title of land in this jurisdiction and Landgate cannot tell us which of those agreements should apply—that is, which agreement actually imposes the caveat on the title. That is sloppy. That is appalling administrative hygiene. It is a lack of hygiene. When gaps like this open up, people get exploited. I do not think we need to wait for a national plan to tell us to do that or to implement that. I think we have the wherewithal in this jurisdiction to implement it and probably at very little cost.

I want to make two further observations as they relate to the Department of Communities and the banking industry and what responsibilities they have in preventing or mitigating elder abuse in this jurisdiction. First of all, the Department of Communities presents itself as the lead agency for the coordination of government action on elder abuse. We found that it is best placed to be that lead agency. However, it was not readily apparent that the agency is equipped to discharge, or is focused on discharging, that responsibility in a way that the term “lead agency” would have us believe. The agency has around 5 500 FTE personnel. There is but a handful of those people actively engaged on issues of elder abuse. I am not here to determine what the appropriate balance of resources might be, but I will say that it is completely and utterly inadequate. Furthermore, I formally register my lack of appreciation for the rather defensive way in which the Department of Communities—I am not reflecting on the minister here—responded to the release of this report last Thursday. I think there is an opportunity for that department, if there is one department in this state, to take some responsibility for coordinating action and dealing with this issue. It is something for which we all have skin in the game. We all are related to someone who is older. We all hope to become older ourselves. We are creating a system that we will inherit personally. If that is not enough motivation for action, I do not know what is.

Secondly, the banks—these are personal reflections on the report tabled—are hopeless in this space. I think there has been an abrogation of moral responsibility by the Australian banking industry as it relates to financial abuse of the elderly. It is clearly the case. I understand that they require system support in creating a register so that they can validate whether or not a transaction conducted on behalf of one of their customers is reasonable or lawful. That is very good, but it is not sufficient. It is not good enough to kick the can down the road and to put responsibility onto governments across Australia, be they state or federal or Labor, Liberal or otherwise. They have a responsibility to their own customers. The quantum of investments under management held by WA seniors, let alone seniors across the length and breadth of this nation, is in the tens of billions of dollars. We are talking about significant sums of money. Banks will say that they rely on personal relationships formed at branch level as effectively their first line of defence against elder abuse. I do not need to interrogate that claim much further. I think we all understand that that claim should be treated with a degree of practical suspicion. Nevertheless, in attempting to protect customers from abuse, they face privacy issues that may be reasonable but have, I think, been overstated.

In their move to encourage all customers, including elderly customers, into online and digital transactions, they have a moral and corporate responsibility to harness the power of their data analytics to better protect people from frauds committed online. Banks can do that with a credit card if they notice some strange foreign transactions. That has happened to me. I have had my credit card frozen when it did not need to be and when I required it, so they have the power for constructive intervention for the protection of customers in certain respects, but I think largely they are choosing not to do it. I hope that the shared collective experience from the royal commission process might prompt them to rethink the way that they at least manage this issue. I hope so. I might be living in hope for a very long time, but I do not think this matter can go unaddressed. They are the first line of defence; they are just choosing not to defend. There will be a broader problem in the future with financial abuse, and that

will concern the utilisation of self-managed superannuation funds. Tens, if not hundreds, of billions of dollars are at threat of being misappropriated and misused. That is not focused on in this report, but it is coming down the pipeline.

I understand that at least one other member of the committee who is presently detained on urgent parliamentary business might also like to make a brief contribution to this report, so it is not my intention to drone on ad nauseam.

The CHAIR: Hon Tjorn Sibma.

Hon TJORN SIBMA: I look forward to an open-minded and positive government response to this report. I am not naive enough to think that every recommendation will be accepted and implemented fully. I would hope that to be the case, but I implore the government to take this seriously. I think that we can make some legislative amendments, some administrative improvements and some very modest increases in resourcing for the vital service provided by groups like Advocare—it was remiss of me not to congratulate it for its community service—as well as a number of community health and legal centres, particularly in the metropolitan area, which do fabulous work advocating for clients who are desperate and which have informed our deliberations in a very significant way. I mentioned them in passing at the outset of my contribution, but I want to end on that same note.

There is a requirement for a collective effort here. There are recommendations I would like to provide to individuals and families, but that is beyond the scope of a report like this to a degree. I want to re-emphasise the need to take seriously the rights and the quality of life of seniors in Western Australia. During the past 12 months, I do not think I have heard a victim of elder abuse wanting to press criminal charges against their abuser, because in most cases it was a close family member—a son or daughter, a niece or nephew or a grandson or granddaughter. Those people wanted the abuse to stop, the scale of that abuse to be recognised for what it was and the family relationship to be repaired. In terms of the legal processes or access to legal mediation that are provided to people—this is also a recommendation in this report—we can better use tribunals such as the State Administrative Tribunal to facilitate that kind of intra-family repair and compensation without proceeding down a criminal pathway, because I think that will beget more problems than it will solve. I once again implore members of this chamber to take the time to read and reflect on this report and, if possible, to share it among as many of their colleagues, constituents and stakeholders as they can reasonably be asked to do.

Hon MARTIN PRITCHARD: I thank the Select Committee into Elder Abuse for this report. It is an issue that is close to the bone for me because I lived through the passing of my two parents last year. In previous discussions in this house I have raised that and the issues they faced as their competency declined. I want to pick up on a couple of issues that Hon Tjorn Sibma raised. One is that it is likely that we will all face issues with parents dying or friends of parents dying as we get older; it is a natural experience of our ageing. The issue is growing as the population gets older. This report is timely in that regard, with the possibility that many elderly people are abused. I want to turn my mind to that abuse as well.

I have raised this matter previously. Not all abuse is intentional. As people get older, obviously their competency declines. I raised the prospect of charging myself with, not abuse, but maybe not always knowing what the best interests of my parents would be. As my parents got older and more feeble, they still liked to go to the casino. That was a weekly trip out for them. I could never work out whether it was kind of me to take them to the casino, because they lost money there, as most people do. Also, just being out, particularly with my father, created its own challenges and distress. I could not work out in my own mind whether facilitating their trip to the casino was a good thing and helped them interact, or whether it was a bad thing and put pressure on them financially and physically. Children face those dilemmas all the time with regard to whether the action they take is in the best interests of their parents. I always justified it to myself by saying that I believed they made competent decisions and that facilitating those competent decisions was respecting them. That is how I justified it in my own mind.

Another issue as they lose competency, and they do, is an enduring power of attorney and an enduring power of guardianship, because they are not constant in their capacity either. Their capacity is stronger while they are physically stronger, and if they get ill, their capacity diminishes. The decisions they make also may not be constant and in their best interests. At one stage my parents relied more heavily on the determinations of my elder sister and at other times they deferred to me more. Therefore, paperwork they had signed at one stage may not have reflected their desire at another stage when they may have been less or more physically fit and mentally competent. This committee report is very timely. Whether all the recommendations are accepted or not, it is still timely to turn our mind to this issue and to make determinations for our constituents in Western Australia. I commend the committee.

Hon ALANNA CLOHESY: I do not have the report of the Select Committee into Elder Abuse in front of me but I wanted to make a brief initial contribution. Two important reports have been tabled in this place in as many weeks. Both of them warrant substantial consideration by members in this place. I thank the committee for this

Extract from *Hansard*

[COUNCIL — Wednesday, 19 September 2018]

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Hon Nick Goiran; Hon Alison Xamon; Hon Tjorn Sibma; Hon Martin Pritchard; Hon Alanna Clohesy

report on elder abuse. I understand that this is probably the first time that this issue has been considered by this place in any great detail. The committee took a good 12 months to conduct the inquiry and consider its recommendations. Through my cursory preliminary consideration of this report, the committee has done an important and thorough task. Elder abuse is raised with me on a personal level in my electorate office, and quite often I hear feedback from a range of quarters about the prevalence and the type of abuse. It is also an issue that has not been well understood by the people who are experiencing abuse and also the perpetrators.

Consideration of report adjourned, pursuant to standing orders.

Progress reported and leave granted to sit again, pursuant to standing orders.