

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

Resumed from 20 March on the following motion moved by Hon Nick Goiran —

That the report be noted.

Hon TJORN SIBMA: It gives me great pleasure to again make a contribution to consideration of this select committee report. I do so with a sense of responsibility and also a profound sense of disappointment at the way in which the government has responded to this committee report. I say that by way of introduction, and with the full acknowledgement that there is actually no political salve for the corruption of human hearts and minds. There are limitations—practical limitations and moral limitations—on a parliament’s or a government’s capacity for, or even the desirability of, intermediation in human affairs, particularly affairs or relationships that occur within families.

That said, I believe there are solutions that may protect vulnerable older people from abuse. There are avenues for risk mitigation, harm reduction and support for those people who find themselves so victimised, that find at their core, at the engine, political will. That political will manifests itself through government policy, the scrutiny of chambers such as this one, and the implementation of suitable changes to laws and regulations that will provide practical and beneficial support to the most vulnerable members of our community, who go largely unacknowledged. At a minimum, that should be our aim.

Indeed, those measures of policy change and reconfiguration, legislative amendments and the ways in which we deal with legal instruments will not be a cure-all. They do not create the conditions necessary to eradicate this social scourge; however, they are necessary first steps. It is my view that those necessary first steps are not being taken with the gusto that they should be within the state of Western Australia. It is my view—and, indeed, the view of my committee colleagues—that the greatest impediment to dealing with elder abuse in Western Australia is inaction, indifference and passivity in the face of this challenge. It does not surprise me—although it disappoints me—that, to a large degree, those fears have been realised, after assessing the way in which the government has responded to the committee’s recommendations. At a later stage I will highlight the response of the minister concerned, and it is with great concern and great reluctance that I do so.

I will just remind members of this chamber how the committee, after considering the issues, suggested remedial action. We did so in a thematic way, and I refer those of my colleagues in this chamber who are so inclined to pages 107 and 108 of that select committee report. I will take this opportunity—because I think it will be beneficial—to canvass those thematic points. The first one was that we saw a need for greater emphasis on community awareness, similar to the public education campaigns on family violence, with increased funding from the state government. Just by way of explanation, it has been mentioned before that elder abuse is effectively a third wave of social dysfunction—similar to but different from the ways in which the scourges of domestic violence and the institutional abuse of children have been discussed within our community over the last few decades. What is profoundly absent is an awareness of this problem.

The second thematic suggestion that drove recommendations was funding of the work of community legal centres to ensure that statewide services can be provided. I think there is actually consistency here in respect of dealing with elder abuse with what we have just heard about the provision of palliative care. This is an unfortunate function of demographic reality when we have a state of 2.5 million people, of whom two million reside in the Perth metropolitan area; there are half a million Western Australians who frankly, and sadly, go largely unserved. They go unserved in the palliative care domain, and I think they also go unserved and generally unsupported with regard to elder abuse.

The committee recognised that there is a lot of valuable work happening on the ground. We were encouraged by peer work and peer support projects and we made a number of recommendations to provide for ongoing funding to those sorts of arrangements. When we deal with a problem like this, we are largely guided by practitioners at the coalface, and anything we can do to support the generation of their corporate knowledge and intellectual capital is to be commended, and that is indeed what we did.

To continue the theme of education and broader public awareness, the committee also sought and recommended more funding for advocacy services, and especially noticed the exemplary service provided by Advocare’s elder abuse helpline. It is an exceptional service that fills a profound gap. It is my view that it is not dissimilar to many of the mechanisms through which state governments have chosen to fund the not-for-profit or community services sectors. There is a degree of uncertainty about contractual length; I think we probably do a disservice to these organisations by requiring them to resubmit for funding every 12 or 24 months, as the case may be. We should provide them with a bit of security in their capacity to deliver services that the government sometimes cannot and, frankly, should not, provide. I think it is a very easy kind of investment to make, even on economically rational grounds, to provide a greater degree of certainty rather than just having people run around the bureaucratic mouse

wheel, time and again, to no discernible outcome. That is an important point; I think we need to reconfigure the way in which we address the community services sector, but that is a debate for another time.

We also recommended increased training for police officers on what elder abuse actually is—particularly on the fact that elder abuse takes many different forms, and not always the form of physical violence, which is an unfortunately more tangible or concrete measure of assault. Elder abuse is highly dynamic and multidimensional and does not always present itself in those kinds of physical terms. Frankly, members will probably be aware that the majority of elder abuse is conducted in the financial domain. There are comorbidities, but, effectively, not everything is physical. Having our police officers understand that is another line, or adjunct, to a first line of defence. The other thematic series of recommendations—again, along this line of awareness—was the delivery of training to those professions that are the gatekeepers for the community on how to identify elder abuse. We are talking about the lawyers, health professionals, and even banking staff and real estate agents, who deal with and transact with older people on a daily basis.

Hon PIERRE YANG: I would like to make a few remarks on the final report of the Select Committee into Elder Abuse, “‘I never thought it would happen to me’: When trust is broken”. The report noted that there is no universal definition of elder abuse; however, the widely accepted definition by the World Health Organization reads —

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.

The select committee looked at this very important issue in our community. The World Health Organization stated that this is a universal problem across the world in many countries and many cultures.

I would like to thank Hon Nick Goiran for moving the motion to establish the select committee. I also want to thank Hon Alison Xamon, Hon Matthew Swinbourn and Hon Tjorn Sibma for their work and contribution to the committee, and I mean it. I also want to thank the advisory officer, Ms Irina Lobeto-Ortega, and the committee clerk, Ms Carolyn Malouf, for their contribution and hard work in the committee.

As I stated, this is a very important issue and a very personal issue for all of us, because we all have an expectation to grow old in a lovely country in which the life expectancy has risen. As recorded in 1890, a male in Australia would expect to live to the age of 48 and a female to the age of 50.8. A few years ago, in 2016, the life expectancy for a male in Australia was well over 80 years and a female was a magnificent 84.6. As there has been great improvement in our public health and our people’s life expectancy, more and more people are living into old age. As we heard during the previous session in today’s sitting, many people in their old age will require palliative care towards the end of their lives. Old age can be a vulnerable time for all of us who will be lucky enough to live that long. A lot of the things that we do as young people will no longer be easily achieved, like driving, housework and shopping. That is why we will rely on others to assist us in our day-to-day activities. More often than not, it is a close relative such as a son, daughter or other relative who will have to care for us.

From time to time, we have heard wonderful stories of a daughter or son doing the right thing by their elderly parents and caring for them during their twilight years. We have also heard stories in which people did not do the right thing by their parents and perpetrated elder abuse against them. It is particularly disappointing and upsetting to hear those stories, because as a parent I know how much effort, time and energy a parent puts into raising their children. We give unconditional love to our children. These stories in which people give unconditional love to their children only to be subjected to elder abuse by them are just upsetting. It is indeed very tragic to hear those stories.

Finding 7 of the report reads —

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.

Page 15 of the report reads —

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.

I think it is very true that the committee has noted this situation. A lot of abuse happens in a family situation, sometimes in the family home, behind closed doors. A lot of people feel embarrassed to talk about it so they endure the abuse for a very long time. It is very disappointing to read this unfortunate finding in the report. As I have mentioned, parents have unconditional love for their children. Parents would expect to be repaid with their children’s love and care for them in their old age; however, sometimes this is not the case. As the committee noted in the report, the feelings of parental love, responsibility and concern over their potential failing as parents have deterred a lot of people from reporting elder abuse. In paragraph 2.39, the committee mentions fear of retribution as another potential hindering factor in people reporting abuse.

I want to also note that for people from the culturally and linguistically diverse community, elder abuse can pose another layer of complexity in reporting, given the different cultural understandings that people may have. They may be unfamiliar with the system in the country. The second-language factor may also hinder them from reporting elder abuse.

In concluding my brief contribution today, I would like to thank the committee members and staff for their work and also for bringing this very important issue and report to the Legislative Council.

Hon TJORN SIBMA: I want to acknowledge the excellent contribution by Hon Pierre Yang to the debate on this committee report. I do so because this matter should be absolutely free of partisan politics. This is a matter in which we all have skin in the game. We all have, or have had, elderly parents, and, all things going well, we will age in such a way that it will unfortunately make us as individuals vulnerable to predation. That is the sad reality. It is with that sad fact in mind, and noting the contribution made by Hon Pierre Yang, that I note a similarity in which the broader issues manifest. But there are particular facets or dimensions in which older people find themselves in a vulnerable position or being abused that are different for specific cultural groups. I want to recognise in particular the unique disadvantage that plays out in that dimension. That is why the committee made a thematic series of recommendations that lay out the platform upon which we can provide better community services to these people. As I have explained, it is largely along the lines of increasing community awareness, the facilitation of support both within and to those frontline providers and raising the level of awareness among community gatekeepers within the legal profession, the health profession, the banks and the real estate fraternity.

The committee also formed the view that additional funding or the availability of grants for the establishment of particular health–justice partnerships was desirable. However, the key thematic point that does it for me is making legislative amendments to better protect older people who experience elder abuse. This includes increasing penalties for breaches of enduring documents; better access to justice through the State Administrative Tribunal rather than the expensive and, frankly, sometimes unreachable court system; extending the circumstances of aggravation to offences which involve an older person's property; and creating a register of enduring documents. Irrespective of the many ways that this abuse manifests itself at the human-to-human level, particularly within families, we have to be clear-eyed about some of the underlying issues that give rise to—not necessarily intentionally, but also inadvertently—the perpetuation of this abuse. It was with that in mind that the committee adopted a very pragmatic, considered approach to not only its findings, but also its specific recommendations. Recommendations were drafted in such a way that a government, irrespective of its political hue, could find them acceptable and implementable. We did it that way because of two factors. The first is the issue that I addressed earlier about limits to the capacity for Parliaments or governments to intervene into individual human action or to mediate human relationships. But there is another facet to this, which Hon Pierre Yang touched on. This is an issue that is pervasive across the community. I want to underscore that it is something that does not discriminate on age, gender, ethnicity or sexual orientation, which is not to say that some groups within our community are not more vulnerable than others. That is certainly true, but I do not want to contribute to the misperception that this is such a wicked problem that it cannot be untangled and there are no practical avenues for mediation that would provide a better level of coverage and support to all affected groups. I wish we could neatly compartmentalise this issue and have those unfortunate people who are abused on the one hand, and those who are the abusers on the other. I wish it was that easy because that would provide for a clearer avenue of policy action. But I am reminded of Solzhenitsyn's line about how the line dividing good and evil does not separate people but runs through the heart of every individual. I mention that because many abusers do not understand that they are committing abuse. That to me was a staggering finding, but nevertheless that was the case.

Hon Alison Xamon: The other disturbing finding was that a number of children in particular who were abusing their parents had themselves been subject to abuse as a child. I think that goes to a lot of the complexity around this issue.

Hon TJORN SIBMA: It certainly does. As the honourable member pointed out, an argument of justification was utilised by offenders: "My childhood was so irredeemably tragic. I was the victim of such abuse that I waited for a time that you, my parent, have become as vulnerable as I was as a child, and this is my time to take my revenge on you." We cannot say that it does not happen. This is what happens. How do you deal with it? How do you deal with that kind of motivation? Perhaps in that case there is no possible solution. However, in cases people can easily justify to themselves the defrauding of their parents: "Mum is too old to get down to the bank so I will do her banking for her and I will take \$20 out for myself. I need to buy a coffee or a sandwich. Mum wouldn't mind." That is that is fine, but this is the slippery slope towards this pernicious entitlement mentality. That is the bit before the full-blown inheritance impatience and outright entitlement to a parent's asset that manifests itself in a way that almost does not even cover itself, but there is an issue here. I mentioned this broadness and this whole-scale human tragedy because we have to be conscious of the challenge here for governments and us as parliamentarians, which is found in the title of the report "I never thought it would happen to me". That was a direct quote from one of the witnesses: "I thought I raised my children well. My family was solid. We all shared values. We all loved one another and then I was a guarantor for the development of a property." No family is free from this. We want to say that this will not happen to our family—not me, not my children. Unfortunately, it does happen to those families and

those individuals and it is their children who do it. Bearing in mind these complexities, the committee was focused on what we can do that is practical, that is realistic, and that understands that we cannot deal with the challenges and with the darkness within the minds and hearts of individuals, but we can provide broader protections at an institutional level, which will at least cut off avenues of abuse. That is where the committee focused its attention.

The CHAIR: Hon Tjorn Sibma.

Hon TJORN SIBMA: I want to underscore this point, because it is important. The committee was very sensible. It took its work and dealt with the issue with a degree of seriousness, and it provided serious recommendations. I think the test of the committee's goodwill is the John West test—it was the recommendations we rejected that made this the best. I do not mean to be facetious. However, a particular issue that was raised around elder abuse was whether we should institute a mandatory reporting regime similar to the prescriptions that apply to the mandatory reporting of suspected child abuse. In the field, there is a view that a mandatory reporting regime for elder abuse is desirable. The committee took evidence from all the practitioners in the field and came to the view that that kind of recommendation is undesirable. It is undesirable for a range of reasons, but the principle that underpinned the committee's decision to reject that suggestion was that we are dealing with adults who have lived full lives. If we adopt a human rights-based approach, we have to respect the inherent dignity and autonomy of people who are being victimised. As Hon Pierre Yang noted, quite sensibly, risks are attached to a mandatory reporting regime. One of the risks of implementing such a regime may be the very reasonable expectation that reprisal will be taken against the person who is being victimised. The other factor is that the majority of victims, at least to my recollection, are not seeking to press criminal charges. They are seeking an awareness and understanding on the part of their children that what they are doing to their parent and victim is wrong and was harmful, and they want that abuse to stop. We need to bear in mind, too, that because of the family dynamics, for many victims, their next of kin, and, in fact, sometimes their only kin, may be their abuser. They do not want to go down the line of criminal prosecution. They want that relationship to be repaired. If police were involved and they went to court, that kind of reparation is unlikely to occur in the way that it should, or with the expedience—by which I mean speed, not a cavalier disregard—by which it should. For that very reason, the committee took the view that although that was an interesting suggestion, it was one that we were not inclined to support.

I put that in there because this kind of wicked social problem could have tempted the committee to make all kinds of recommendations that would be completely impractical on legal grounds, unworkable, and unrealistic. This bipartisan committee wanted to interrogate this issue and say to government, as honest brokers, “We have dealt with this issue. We have spent 12 months looking at it. In our professional opinion as parliamentarians, this is what we believe you should do.” Never at any stage did I believe, and nor do I think any of us believed—I will chance that I speak on behalf of each individual committee member—that the government would accept all our recommendations. However, we did expect, and we should expect, that the government would take seriously that report and the findings and recommendations that flowed from it.

The challenge for government, therefore, is to respond to the committee's 50 recommendations and 35 findings in a way that is considered, deliberative and reasonable, and gives some expectation that suitable action will be taken. As I mentioned earlier, my personal view is that the government has not responded to this report in the way one would have hoped. I will just note, in the time available, which has run out —

The CHAIR: Order! There is no time available, because our consideration of that committee report now has to be postponed under temporary order 4.

Consideration of report postponed, pursuant to standing orders.