

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

Resumed from 3 April on the following motion moved by Hon Nick Goiran —

That the report be noted.

Hon TJORN SIBMA: Thank you very much for this opportunity. When I last talked about this issue, I went to some effort to explain the underpinning logic of the series of thematic recommendations and findings that this bipartisan committee made on this issue, which I think remains tragically under-reported and un-remediated. I did so in a way to better assess the government’s response to those recommendations, and I note that this response was delivered coincidentally at the same time as the generation of a national plan, which has only recently been published. I do this to give some credit where possible to the government’s response, and to give the issues addressed within the committee’s report some due justice. If I get the opportunity at a later stage, I want to go into the detail of the government’s responses to a certain suite of recommendations, and some comments that have been made in public and through Parliament by the responsible minister in this jurisdiction, Hon Mick Murray, Minister for Seniors and Ageing.

Before I do that, I want to reinforce that this phenomena of elder abuse is a third-wave social scourge that affects the hearths and homes of Western Australian citizens. It is a multi-dimensional phenomena that cuts across intra-familial relationships. It is informed by and contributes to a suite of cultural attitudes, which have been amplified by demographic changes, particularly lengthening life spans and the quality of life in one’s later decades.

Elder abuse is an issue that is informed by and—I must confess, I am disappointed—probably exacerbated to some degree by an institutional deafness or blindness to some of the real challenges. That disappointment is made a little more palpable for me because I think there would be some easy, practical remediation to that institutional blindness, if there was an organisational will to do something about it. I speak here specifically about the banks. It might surprise some people to know that I am not a proponent of the big end of town; I am a proponent of ordinary people. I think that banks have done a gross disservice to their customer base in ways that have been well ventilated by the royal commission, but this committee process has given us further insights into their practices and lack of regard. I am also dismayed at the continual bureaucratic indifference, and deficiencies in policy, legislation and regulation in a way that could be remediated if only there were a will to do so, and if this state jurisdiction dispenses with the notion that this is a commonwealth area of responsibility. The commonwealth will be important here, but it does not absolve the state government from responding to this issue in an appropriate way.

Hon KYLE MCGINN: I thank honourable members who were involved in the Select Committee into Elder Abuse: Hon Nick Goiran as chair, Hon Matthew Swinbourn, Hon Alison Xamon and Hon Tjorn Sibma. The committee must be commended from the get-go because it sounds as though it was quite a difficult report to put together. To be honest, some of the information in the report is hard to read. Personally, I have never turned my mind to elder abuse occurring to any of my grandparents or to elderly family members.

Part of the report definitely caught my eye. Page 38 refers to posthumous abuse. Reading about that was interesting. The report sets out an aspect of elder abuse that appears to be unique to the LGBTI community—that is, the concept that the sexuality or gender identity of a person is erased upon their death. Somebody could live their life as a transgender person, and be recognised as transgender their entire life, but not be presented as transgender after they pass away. This opens up a whole can of worms, which, to my mind, is scary. I will read from page 38 of the report the story of 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’.

That is deeply concerning. I am sure all of us live our lives the way we want to and do what makes us feel good for who we feel we are. We are surrounded by people who see us for that person, support us for being that person and love us for being that person. However, due to not being accepted for being trans, close family have the ability to then give one final insult after that person’s death. That to me is a gap and we need look closer at how we can close that. It triggers the broader issue that we do not have rights when we are dead and we do not have the right to be represented for who we are. I cannot imagine being represented differently after I died to the way I was and what I stood for when I was alive. It is an insult to the memory of that person.

Finding 16 on page 39 of the committee report states —

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.

It is disturbing to read that the committee came to that finding. I am glad the committee looked into that side of the issue. By the sound of it, it managed to at the very least get a finding out of it. I hope that we do not just leave it at that, and that we continue to look further into what we can do to assist those vulnerable people and ensure that we do not see those things happen again. I will leave further comment on this matter to another time. I again commend the committee for doing a great job. It has delivered a powerful document.

Hon PIERRE YANG: I will continue with my remarks on the final report of the Select Committee into Elder Abuse, “‘I Never Thought it Would Happen to Me’: When Trust is Broken”. We looked at the definition of the issues when we last considered this report. It is a pertinent issue, given that the first term of reference of this committee was to determine an appropriate definition of elder abuse. The Alliance for the Prevention of Elder Abuse WA defines elder abuse 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.

That is the same definition given by the World Health Organization. The committee’s report states that during the committee’s inquiry, the definition given by the Alliance for the Prevention of Elder Abuse WA changed to the current definition. During my time in the legal profession, I had a little bit to do with Legal Aid Western Australia and also Relationships Australia. I am very pleased those two organisations made submissions to the inquiry. In particular, I note the submission from Legal Aid WA dated 16 November 2017, which supports the definition given by the World Health Organization and states that it is important to adopt a broad definition of elder abuse. In a subsequent part of its submission it states —

The age at which someone is considered to fall into the category of “elder” is usually about 65, however this should not necessarily be applied in an inflexible way.

The committee’s final report recommends an age of 65 years for non-Aboriginal and non-Torres Strait Islander people and 55 for Aboriginal and Torres Strait Islander people. I am pleased the submission by Legal Aid WA was considered in a positive light.

The submission from Relationships Australia states —

We support an approach that protects human rights, and a definition that identifies both the effect on the victim of abuse and the intention of the abuser. When considering whether elder abuse should include negligence, we could look to other similar social issues where there are particular vulnerabilities, care relationships, and expectations of trust, such as in cases of child neglect.

Child neglect, which is a form of child abuse, is inherently abhorrent. Elder abuse is also abhorrent. I am pleased that Relationships Australia suggests in its submission that in searching for the definition of elder abuse, similar social issues were looked at. The two social issues, child abuse and neglect and elder abuse, are essentially human rights issues. It may be noted that not many submissions gave a preferred definition, or referred to an established definition of elder abuse, but they all mentioned the need to look at the human rights approach. The Australian Research Network on Law and Ageing, in its submission, stated —

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.

In conclusion, I want to refer to the website of Legal Aid Western Australia, which contains a lot of legal information and resources. The website includes a section on elder abuse. At the top of the page, it states —

If you are an older person who is being harmed by the actions of someone else, such as a family member, friend, neighbour or carer, you may be experiencing **elder abuse**.

The page provides some examples of behaviour that could be elder abuse, and I think it is pertinent to quote them in full, so that they are on the record. The webpage states —

Some examples of behaviour that could be elder abuse include:

- Financial—using an older person’s money or property without their permission, taking control of bank accounts, selling property and keeping the proceeds, repeatedly asking for ‘loans’ or access to an expected inheritance, pressure to sign legal documents or Powers of Attorney without proper explanation.

- Emotional or psychological—verbal or physical threats, threats of abandonment and intimidation, threats to harm others or pets, withdrawal of love and support.
- Social—restricting someone’s social freedom, cutting off phone services, hiding mail, and isolating the older person from family and friends.
- Physical—any deliberate act resulting in physical pain or injury, including being hit, kicked, pushed, spat on or restrained.
- Sexual—sexually abusive or exploitative behaviour, including sexual assault, making obscene phone calls, or watching obscene DVDs in the presence of an older person who does not want to see this.
- Neglect—not providing life’s necessities, such as adequate food, shelter, medical care and emotional support.

These, indeed, are all violations of the human rights of an older person. I am of the view that not only should older people’s human rights be protected, but also older people should be respected and cherished in our community. They have spent their entire adult lives building this nation.

The CHAIR: Hon Pierre Yang.

Hon PIERRE YANG: I wish to very quickly conclude my remarks by saying that our older people should be cherished and respected because they have spent their entire lives building the beautiful nation that we know now. They spent their time and effort caring for their children when they were young, and they should be cherished rather than subjected to elder abuse.

Hon ALISON XAMON: I would like to continue the remarks I have been making since this important report was tabled. I would also like to thank members who are contributing to discussion of this report. It is very heartening for me that people in this place, across the chamber, seem to be taking the issue of elder abuse seriously. It is an issue that should receive support from every party, and I am pleased that members are seeing the merits of this report. I remind members that the establishment of the select committee received unanimous support in this chamber. I am very pleased. I think it is a really important issue that we need to continue to keep a very close eye on.

I have spoken about a number of issues in the report already, but today I want to make some remarks about the issue of access to justice for older people experiencing elder abuse. This was a really important part of the report. We heard about the prevalence of elder abuse, the different ways in which elder abuse manifests itself and the way that particular populations can be particularly affected by elder abuse. However, some serious issues also arose around what people can do to seek redress when elder abuse has been perpetrated against them, or, indeed, if they are at the point of just needing the elder abuse to stop. A strong piece of evidence that came out time and again through the submissions and the hearings was the recurrent theme that, for a lot of people experiencing elder abuse, the last thing they want to do is go through any sort of legal process. That really needs to be emphasised. In our culture, we tend to leap to the idea that there is a legal remedy that people will automatically go to when a wrongdoing has occurred, but when we are talking about sensitive family relationships, or about situations for older people who are desperate to maintain relationships with the very people who are perpetrating abuse against them, we must recognise that the decision to go down a legal path to address that abuse is extraordinarily painful and difficult. Of grave concern to the committee, reflected in the recommendations of this report, was the evidence that it is also really difficult for people to get any sort of legal recourse should they decide to go down that path.

We need to be talking about two types of legal approach when we refer to legal recourse. The first is just letting people find out their legal rights. Where do they even stand in relation to a range of matters? Often people will have a feeling that something is wrong, but they will not know what is potentially available to them as recourse. The second factor, if people realise that they do have some sort of legal recourse, is the best way to bring this to the attention of the perpetrator. Sometimes, a very gentle approach is required—receiving the advice that affirms that the person has a remedy, and then raising the issue in an appropriate way with the person who has been perpetrating the abuse against the person, to make it clear that it is not okay and needs to stop.

I ask members to bear in mind the comments made by my colleague Hon Tjorn Sibma, who was on the committee, in his contribution to this debate last week. He highlighted the evidence that had been presented to the committee that showed that, in many instances, perpetrators of elder abuse have no idea that they are perpetrating elder abuse. They are simply unaware that what they are doing is illegal or even unethical. There is a great need to try to educate people about that and to have accessible legal structures that can facilitate the retention of those relationships in a way that lets everybody know the legal situation and where people stand legally.

Then we have the third situation in which people clearly just have to go to court. Property matters can be very complicated civil matters, and it can be very difficult for people to get the appropriate level of support to enable them to make the difficult decision to proceed with going to a lawyer. Many older people, particularly older people

who may have lost all, or a huge proportion of, their assets due to financial elder abuse, will simply not have the resources to retain a private lawyer and commence proceedings. Indeed, it can be extraordinarily difficult even to find a private lawyer with an understanding of elder abuse. One thing that became very clear through the course of the inquiry was the critical role that our community legal sector plays in not only educating members of the community on how to recognise elder abuse and what sorts of remedies might be available to them if they are subject to elder abuse, but also supporting people to pursue legal remedy when elder abuse needs to be addressed. We found that, quite frankly, the services are not being made available in the state to the degree that we would expect.

We have previously spoken about the incredibly important role that Advocare plays in this space as often the first port of call for people who are concerned about elder abuse. Its helpline receives federal funding. Advocare also receives some state funding. People can ring up and get some idea about where they should potentially go for assistance. That is a separate discussion that I will revisit at some point in the future, but the appropriate funding for Advocare and the important service it provides is an ongoing issue. Advocare needs a legal referral pathway for people who need further legal advice. Really, there is only one community legal centre that has a specialised service that can provide support for older people who are experiencing elder abuse—that is, the elder law service provided by the Northern Suburbs Community Legal Centre. I once again acknowledge the marvellous work that was done by the late Karen Merrin, who was integral in ensuring that this service was established.

The committee found that the Northern Suburbs Community Legal Centre's elder law service has a unique role to play in the overall CLC landscape. However, it can service only people who fall within the catchment area of the northern suburbs. For people who live elsewhere in the metropolitan area and for everyone who lives in regional Australia, there is no access to specialist older people CLC services. I think this should be of grave concern to everybody in this chamber. We do not have to be a regional member, although I imagine our regional members are particularly concerned; we just have to care about human rights and people to know that this problem needs to be addressed. One of the things that we need to look at is how to ensure statewide services are provided through the community legal centres so that if an older person needs advice or assistance to navigate complex, or even simple, legal matters to address elder abuse, they are able to do that no matter where they live. At the moment, that is not available.

Consideration of report adjourned, pursuant to standing orders.

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

Sitting suspended from 4.15 to 4.30 pm