

SELECT COMMITTEE INTO ELDER ABUSE

INQUIRY INTO ELDER ABUSE



TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 21 MAY 2018

SESSION THREE

Members

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

Hearing commenced at 12.49 pm

Mr SHANE PAUL NELSON

Deputy Commissioner of Titles, Landgate, sworn and examined:

Mr MARK RAYMOND CRANE

Assistant Registrar of Titles, Landgate, sworn and examined:

The CHAIRMAN: This is the fifteenth public hearing for the Select Committee into Elder Abuse. This afternoon we have representatives from Landgate. Gentlemen, welcome to this afternoon's public hearing. Before we begin, I must ask you to take either the oath or affirmation.

[Witnesses took the oath.]

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

The WITNESSES: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard and broadcast on the Internet. Please note that this broadcast also will be available for viewing online after this hearing. Please advise the committee if you object to the broadcast being made available in this way. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of the hearing for the record. Please be aware of the microphones in front of you and try to talk into them, ensuring that you do not cover them with papers or make noise near them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. The committee has a number of questions for you this afternoon. Before we commence, would either of you like to make an opening statement to the committee?

Mr NELSON: I do not believe so. We have obviously provided the letter for the committee's consideration. We understand we are not central to these proceedings. We would like to assist where we can.

The CHAIRMAN: Thank you very much. That letter is dated 17 November 2017 and it has been accepted as one of the submissions to the inquiry.

It has been the normal practice of these committee hearings to take witnesses through each of the 10 terms of reference. The first three I will probably just group together and invite any comment, if you wish, from Landgate. The first is to determine an appropriate definition of elder abuse; secondly, to identify its prevalence; and, thirdly, to identify the forms of elder abuse, including, but not limited to, neglect. In general, the evidence that has been provided to the committee to date has encouraged the committee to be cognisant of the definition provided by the World Health Organization, and WA's own Alliance for the Prevention of Elder Abuse has recently shifted its definition in accordance with the World Health Organization. You would also probably be aware that the federal government has announced a prevalence study, which is currently underway. Generally, the evidence to the committee is that the two most common forms of elder abuse are

financial abuse and psychological abuse. To the extent that Landgate wishes to comment with respect to any of those three terms of reference, I would welcome your comment.

Mr NELSON: Yes. The first one in particular, and this is obviously probably the most controversial and most difficult, is the definition of elder abuse. I can say we have had discussions at Landgate as to what that should amount to. We have had one fraud in particular, which is public—the Mercer decision—which was children against their parents on a fraudulent power of attorney. We have debate as to whether that is elder abuse or not. The senior person who owned the property was of capacity, but there were other issues with English as a second language. But simply siblings against the parents, whether that amounts to elder abuse, is a question. Whether we entertain a broader definition such as that, or whether it is some form of legal disability that we are talking about, as you said, with health being at issue, or whether we are simply talking intergenerational, our preference would be the narrower definition, for certainty. But we are open to discussion, and I presume that is why you are here—to resolve that issue in particular.

Hon ALISON XAMON: Can I get an idea of whether there is any sort of anecdotal set of numbers that Landgate might have about the potential prevalence of elder abuse occurring around transactions? You have already alluded to the idea that it may be inappropriate transfer of an elder person's property to another party, not necessarily a child—it could be anyone who is trying to take advantage of that particular elder person. Do you have any thoughts on that?

Mr CRANE: We do not really have any facts and figures. People do phone us in and we talk to people and they talk about a sort of power of attorney that family might have. They tell us, "You know, my brother or sister is doing something wrong and they are misusing it." We do not know the ages of the people that are ringing in or the age of the person who has the actual power of attorney.

Hon ALISON XAMON: How common would that be?

Mr CRANE: There is not a lot of land fraud. It is very, very robust. We are only talking about a few cases. But there is a potential for it to be done, because as people get older and they put an enduring power of attorney in place, if they have Alzheimer's or something like that, they cannot keep an eye on what is actually happening with their property and other assets, and someone else, maybe some other family member, has the power to deal with those things through a power of attorney.

Hon ALISON XAMON: Is it around the misuse of an enduring power of attorney that you are principally concerned?

Mr NELSON: In terms of the processes we administer, yes.

Hon ALISON XAMON: That is what we are focusing on today.

Mr NELSON: I would add that our processes actually do not identify elder abuse as such. They are not really geared towards that. But we are cognisant of any fraud or improper dealing.

Hon ALISON XAMON: If someone were to contact you and say, "I am concerned about what is going to be happening with mum's property, which has been inappropriately given to my brother", or whatever, do you have any processes in place within Landgate to recommend to people that they contact the Office of the Public Advocate or any other entity, or are you limited to pretty much saying, "Sorry to hear that"?

Mr NELSON: The first thing we would do is check if transactions or dealings have gone through and if we have got them sitting there, and if anything can be done.

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. If it is just somebody unhappy, that is not sufficient grounds for us —

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—I just want to confirm—you are saying that Landgate would not intervene with that transfer?

[1.00 pm]

Mr NELSON: Not normally, no. We might write to the person and suggest that they get independent legal advice, and maybe the public advocate or somebody could assist.

Hon ALISON XAMON: When you say you will intervene in selected cases of fraud, it would be if someone is saying they have an enduring power of attorney and perhaps they do not actually have that or it has been superseded?

Mr NELSON: Exactly—an outright fraudulent document where there was no power of attorney granted. If there is one in our system, we would be very interested.

Hon ALISON XAMON: Does that happen very often?

Mr NELSON: No.

Mr CRANE: No, fortunately.

Hon ALISON XAMON: Do you have instances where someone has an enduring power of attorney but that has subsequently been superseded by another enduring power of attorney and the original is still the one that you have on record?

Mr NELSON: In that case, it would need to be formally revoked with us.

Hon ALISON XAMON: But if it has not been formally revoked?

Mr NELSON: Mark actually deals with the customers directly, so Mark could respond.

Mr CRANE: If there is an enduring power of attorney in place and they lodge a further one, they are both in our system. They should really revoke the old one, but there is no legal requirement to do that. It would be much cleaner if they revoked the old one and lodged a new one, but we have no control over having multiple powers of attorney in place.

Hon MATTHEW SWINBOURN: Does Landgate keep a record of the number of land transactions that are performed under a power of attorney or an enduring power of attorney? Can you generate that to give us a number per year?

Mr NELSON: I am certain we hold that information. Whether we can produce reports, and how easy they would be to produce, I am not sure. We would have to take that on notice and get back to you.

The CHAIRMAN: Let us take that as a question on notice 1. I should indicate at the outset that we will write to you with regards to these questions.

Hon MATTHEW SWINBOURN: The corollary to that is, are you able to identify in those circumstances whether the owner of the land or property is aged over 65?

Mr NELSON: No, we are not. We do not record age on the land register, on titles in particular.

Hon TJORN SIBMA: This might be jumping ahead a little but this is largely about your policy responses to effecting transactions made under an enduring power of attorney and like instruments. Would it be beneficial for Landgate if you had a register of current enduring powers of attorney and guardianship to match against?

Mr NELSON: A central register would be good. The only government register for powers of attorney—both enduring powers of attorney and regular powers of attorney—is section 145 of the Transfer of Land Act, which we administer for our purposes, but that is specific to land. All the other enduring powers of attorney and powers of attorney out there we do not see.

Hon ALISON XAMON: There has been some conversation about moving towards the establishment of a national register. That can, of course, take a while and the states would have to work together to get parity of that. What would be your thoughts about the value or otherwise of the state potentially establishing its own state-based registry for enduring powers of attorney and guardianship in the interim, or do you think that would constitute unnecessary duplication?

Mr NELSON: Landgate obviously has not visited this issue, but as a solicitor I think it would be a very good idea.

Hon ALISON XAMON: To have a state one even if we do not have the federal one?

Mr NELSON: Yes, ideally with links, because obviously a lot of people operate in more than one jurisdiction and have powers of attorney that stretch over more than one jurisdiction.

The CHAIRMAN: How many enduring powers of attorney would you have on your section 145 register at the moment?

Mr NELSON: I will clarify a specific point. It is actually a book kept separate to the register. It is not part of the land register. That is a technical legal question.

The CHAIRMAN: So if we call it the enduring power of attorney book, not register?

Hon ALISON XAMON: Because it is not listed on the title at all.

Mr NELSON: No, it is not. But they need it in order to deal on the title if there is a power of attorney.

Hon ALISON XAMON: Of course.

Mr NELSON: Section 145 does not distinguish between enduring powers of attorney and powers of attorney. They all get put in together.

The CHAIRMAN: In the same book?

Mr NELSON: Yes.

The CHAIRMAN: How many would be on the book at the moment?

Mr NELSON: Another question on notice, I think.

Mr CRANE: There are thousands of them. We can do a search and find that out very easily, if you want that, for powers of attorney.

The CHAIRMAN: Let us take that as question on notice 2.

Hon ALISON XAMON: Let us say you have an enduring power of attorney that is on the book. The owner of the property may have diminished capacity. If they were to contact you and initiate a transfer of land proceedings, regardless of whether an EPA is already set up that may be somebody else, would you still honour their wishes regardless of an EPA being in place?

Mr CRANE: If there is a power of attorney in place, we do not know whether the person is incapable or not at that time. Of course, a person can actually sign their own documents. Powers of attorney can come into force straightaway or they can come into force later if the person becomes incapable. Because you have those two situations, it is very difficult to say, because they can, while the power of attorney is in place, do their own transactions. Of course, if we got notice that the person —

Mr NELSON: That would be the key.

Mr CRANE: Because we get SAT orders and things like that, so we would put a note on our power of attorney index and we would monitor that in that circumstance.

Hon ALISON XAMON: That is what I want to confirm. Theoretically, even if someone has put in place an EPA, if pressure is being brought to bear on them by someone who they have not set up to take on the enduring power of attorney, they could still be put in a position of transferring the land?

Mr NELSON: Yes.

Mr CRANE: Yes.

Hon MATTHEW SWINBOURN: Do you purge the book that you have of powers of attorney? Do you have a mechanism for removing them? You said you had thousands on there. Do you ever review to say, “The land has been transferred and is not dealt with anymore”?

Mr NELSON: We have no mechanism to do that. It needs to be applicant driven. They need to revoke their power of attorney. That is a problem with the legislation that sets it up—section 145. We do not have any mechanism by which we can revoke them ourselves.

The CHAIRMAN: If an applicant writes to you and says, “I have registered on your book a power of attorney or an EPA and I have now revoked that”, you would then remove that from the book?

Mr NELSON: Yes. They can fill out a form.

Mr CRANE: They have to lodge the revocation document.

The CHAIRMAN: At that point it would no longer appear on the book?

Mr NELSON: Correct.

Hon MATTHEW SWINBOURN: But if someone lodges another one without revoking the original, they both sit on your book?

Mr NELSON: They both sit there.

Mr CRANE: Of course, they can do powers of attorney for different things.

The CHAIRMAN: Let us take that example. 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: Let us tease that out for a moment. 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.

The CHAIRMAN: It is not really desirable.

Hon ALISON XAMON: No.

Mr CRANE: There was a review of the guardianship act going back a few years. One of the recommendations that Landgate made was that when an EPA is lodged, it automatically revokes the

previous one. That did not go through as far as I know; it has not happened. But that has been flagged as an option—that it automatically revoke the previous one.

The CHAIRMAN: That would be better from Landgate's perspective.

Mr NELSON: Yes.

Mr CRANE: It would be very helpful.

The CHAIRMAN: That a second power of attorney or EPA registered automatically revokes the first one.

Mr CRANE: It is very confusing to have several in place at the same time. Different people could go off and do things on behalf of the donor that are contrary to their wishes and to the other donee of the power.

The CHAIRMAN: What would be the process in the event that a person lodges a document? They have lodged with you a power of attorney or an EPA, but they are signing in their own capacity. The transfer of land document does not mention anything about an EPA number and so forth. I take it, on the evidence I am hearing so far, that there would be no automatic provision to be searching as to whether this person has —

Mr CRANE: That is right. It would just go through.

Mr NELSON: A straight transfer, I assume.

The CHAIRMAN: If that person at the time of signing does not have capacity, you would not know whether the EPA ought to have been triggered or not and whether the person is being coerced to sign this document?

Mr NELSON: No, we would not, and that is a significant problem. It is one of the reasons we wrote to you.

Hon TJORN SIBMA: I have a question around the process of the data coming into the book in the first place. You will have to forgive my ignorance about that process. Could it be the case that there are enduring powers of attorney or enduring powers of guardianship which would ordinarily pertain to a property transaction but which you would not have because they are not included in that book?

Mr NELSON: Yes. They only need to own a property in WA for us to put it into the book. They do not need to nominate specific property. They just need to be a proprietor of some description.

Hon TJORN SIBMA: Probably a more elementary question for me is: How does data get entered into that book? From whence is the source? Is it the State Administrative Tribunal? Are they individuals? Are they legal counsel? How does that database get compiled?

Mr NELSON: People lodge power of attorney documents with Landgate, with the registrar, under section 145 of the TLA.

Hon TJORN SIBMA: That is the process of data coming in?

Mr NELSON: Landgate is the only government agency to record powers of attorney.

The CHAIRMAN: Is there a fee for lodging?

Mr CRANE: Yes. there is.

The CHAIRMAN: What is the fee?

Mr CRANE: It is \$168.70.

The CHAIRMAN: Can any other government agency access that book?

Mr NELSON: Yes, it is a public book. It is treated administratively as if it is part of the land register. The powers of attorney are publicly searchable. That is one of the deliberate functions that anybody looking to transact—if you have a question, you can look at the powers of attorney.

The CHAIRMAN: If anyone outside of Landgate wants to search the book, are they required to pay a search fee?

[1.15 pm]

Mr CRANE: Yes.

The CHAIRMAN: How much is that?

Mr CRANE: It would be \$25.20.

The CHAIRMAN: Are there any exemptions to that search fee?

Mr CRANE: No.

The CHAIRMAN: So another government department would have to pay Landgate \$25?

Mr CRANE: Actually, if I could just qualify, we have lawyers and banks and things like that, and if they are on our online searching, they can go on the internet and do a cheaper search to get the records, and if there is a power of attorney they can get the names and numbers and the powers. If they want to physically search the actual document, they pay the \$25. But it is much cheaper just to do a search to find out that there is a power of attorney in place and who the parties are.

The CHAIRMAN: Let us call that the preliminary search rather than the full search.

Mr NELSON: Yes.

The CHAIRMAN: Is the preliminary search able to be done by any Western Australian or only those who are registered to use the system?

Mr CRANE: It is a public register, but to go online and search, you have to be a subscriber to our online Landgate searching facility, so it is much easier to get it that way.

The CHAIRMAN: I am not a subscriber, for example, so I would have to subscribe in order to do the preliminary search; otherwise my alternative, as a non-subscriber, would be to do the full search at \$25?

Mr CRANE: Actually, a private person cannot be a subscriber, but you can go through settlement agents, lawyers or banks.

The CHAIRMAN: Who certainly will charge a fee for their services?

Mr CRANE: Yes, that is right; they will. A person can make an inquiry, but to get a photocopy of a document, then they pay the fee.

Mr NELSON: To clarify, government agencies have exemptions for fees, and I presume that is the case with searching power of attorney documents. We actually have a schedule, which we can take notice as well and confirm.

The CHAIRMAN: We will take that on notice. Let us get a copy of—what is it—the exemption schedule?

Mr NELSON: Which agencies, yes.

The CHAIRMAN: That will be question on notice 3.

Mr CRANE: With the question you asked about whether a private person could do the cheaper search online, they might be able to go onto our website as a normal person and do a power of attorney search. I am just not quite sure if they can, because the functionality of the searches for the public is less than for a person who is authorised through our system to get it.

The CHAIRMAN: It might assist the committee if again you would like to take that on notice.

Mr NELSON: Yes, I think we should. I will find out the cost of that as well.

The CHAIRMAN: It is to identify what searches are available to be done by a member of the public and what searches are able to be done by subscribers, and what are the criteria for being a subscriber. That will be question on notice 4.

Hon TJORN SIBMA: Call me up, Mr Chair, if this is better asked at some other place during this hearing, and you may have to take this on notice, but I am interested in the recurrent costs that Landgate bears in maintaining this kind of service provision and whether your charging regimen is geared towards a full cost recovery or there is an operating surplus as well that goes into maintaining the system?

Mr NELSON: We will have to take that on notice in terms of we are not financial people.

The CHAIRMAN: That will be question on notice 5.

We are interested to know about the liaison between Landgate and WA police, in particular their major fraud squad, and what is the nature of the rapport between those two organisations, particularly in relation to allegations of financial abuse?

Mr NELSON: We can confirm that the fraud squad are investigating several matters; only one of which is possible elder abuse, and that comes back to the definition question we talked about where we have adult children and their parents are involved. It will come back to the definition of elder abuse whether those matters are in fact elder abuse at all—whether they fall under the scope of this inquiry.

The CHAIRMAN: If they are not elder abuse, is it just generally fraud?

Mr NELSON: Family, broadly.

Hon ALISON XAMON: How does the police fraud squad become aware of these matters?

Mr NELSON: There have been allegations of fraud.

Hon MATTHEW SWINBOURN: Is this matter ongoing?

Mr NELSON: Yes, it is, so we do need to be careful.

Hon MATTHEW SWINBOURN: I think we need to be very careful.

Hon ALISON XAMON: I am trying to get an idea of the degree to which it may have been picked up from Landgate, or the degree to which third parties have contacted Landgate and that is how the referrals have come about?

Mr NELSON: Yes, third parties. The other systems will not pick it up.

Mr CRANE: In the case of the ones on foot, it was the fraud squad that contacted us to tell us. Of course, when they do that, we try to be as helpful as possible to them in providing information and guidance on our procedures.

The CHAIRMAN: That would be an example, presumably, of an agency that could do a search and there would be no fees associated?

Mr NELSON: Yes, I am certain of that, but we will get back to you.

Mr CRANE: Yes, that is right. We do not charge them for that information.

The CHAIRMAN: Your submission refers to situations where a holder of a power of attorney may try to transfer land owned by the donor to themselves. Can you explain what action Landgate takes when this occurs and how it identifies this? Is this action ever acceptable to Landgate?

Mr NELSON: It is a process issue.

Mr CRANE: 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 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 we are not, we might ask a few more questions before we process the transfer.

The CHAIRMAN: Is that an example where there is a system in place that picks it up?

Mr NELSON: Yes. We would clearly identify any such transfer.

The CHAIRMAN: And then make further inquiries at that point?

Mr NELSON: Yes, that is right.

Hon TJORN SIBMA: You may have to take this on notice, too, but would you have records of the number of these kinds of transactions that occurred last year or are forecast to perhaps occur this year, and what proportion of those transfers or attempted transfers under these provisions were knocked back by Landgate because you were not satisfied with the justification provided to you?

Mr CRANE: I think I can answer that. There were very, very few, fortunately, because it is a difficult thing to make a judgement on. We have only had one or two and they would usually be referred to me. I can recall at least one in the last six months and that got through because they satisfied the requirements. There are a handful of them that go through.

The CHAIRMAN: Your submission refers to a new verification of identity system that Landgate will introduce to verify identity in property transactions. What is the status of the rollout of that system?

Mr NELSON: Yes, verification of identity has been rolled out, and straight powers of attorney are included but enduring powers of attorney are not. There are complications before we can roll it out that we are looking into.

The CHAIRMAN: So the system is up and running?

Mr NELSON: Verification of identity has been up and running since 2012 and powers of attorney are part of that.

The CHAIRMAN: But not EPAs?

Mr NELSON: No, not EPAs, and obviously there is a different legal head of power and different issues to address.

Hon ALISON XAMON: Can you explain a little bit about what that looks like—the verification of identity system?

Mr NELSON: Actually, I do not know if you are aware of Mr Mildenhall? We had a couple of frauds back in 2010 and 2011 —

Hon ALISON XAMON: Were they the overseas transactions?

Mr NELSON: Yes, that is right, so verification of identity was introduced as part of the response to that.

Hon ALISON XAMON: Much to the relief of all of us, I think.

Mr NELSON: Yes. It was also introduced as part of the introduction of national electronic conveyancing. It was coming anyway—it was just that we happened to go first because we had those couple of frauds. So verification of identity came about because of the ability to transact in a faceless, electronic environment.

Hon ALISON XAMON: Is this where you go to the post office and you have to go through all of that? Is that effectively it?

Mr NELSON: Yes. Australia Post is one of the people that conducts verifications of identity.

Mr CRANE: Also, too, if you have a lawyer who is making the power of attorney on your behalf, they can do the verification of identity. The post office is if you are doing the transaction yourself so you do not have any legal representation. You cannot identify yourself, so the post office is the one that does that.

The CHAIRMAN: What about settlement agents?

Mr CRANE: They can do many transactions but they cannot do EPAs —

Mr NELSON: They can do.

Mr CRANE: — on behalf of their clients. They can do ordinary powers of attorney but not EPAs. They either have to be lawyers, or you can do them yourself.

The CHAIRMAN: Can a settlement agent perform the verification of identity?

Mr NELSON: Yes, they can. Some choose to refer people to Australia Post, but they can do it themselves.

The CHAIRMAN: Presumably if there is a problem or it has not been done properly, the recourse that is available to a person would be to sue the lawyer or the settlement agent?

Mr NELSON: Yes, that is correct.

Hon ALISON XAMON: But you cannot get your house back?

Mr NELSON: It depends on the circumstances.

The CHAIRMAN: Are there any other new initiatives that Landgate is considering to prevent financial elder abuse and title fraud?

Mr NELSON: Not officially. We are continually looking at improving our systems.

The CHAIRMAN: Is there any specific education and training to Landgate staff to help them identify elder abuse?

Mr NELSON: Not specific to elder abuse. We do have processes that might identify an improper dealing or outright fraud, but elder abuse specifically is not targeted as part of any training.

Hon ALISON XAMON: In terms of changes to the law, do you have preferences off the top of your head for what you would like to see that you think would mitigate instances of fraud or elder abuse?

Mr NELSON: Mark mentioned one earlier, which is the ability to revoke. Why it has not happened, I think it is because the circumstances in which revocation could or should occur can be quite complicated. So we need to be clearly on notice, at the very least, before we could undertake any unilateral revocation.

Mr CRANE: Something else that we have at the moment, which is not as robust as we would like, is TitleWatch. If you want to monitor a certain property, you can do that and Landgate will send you an email if there are any transactions on that property. That is something that we have at the moment but we want to make it a better service so that we can give an early warning on transactions. If you were in a family situation and your elderly parents had a property, and say they

were in high care or something like that, you could watch their property and keep track of what is happening.

[1.30 pm]

If some fraud was going on, or you thought there was, you could jump in and take some action, rather than finding out it has already happened and it is all too late.

Hon ALISON XAMON: You have TitleWatch now, do you?

Mr NELSON: That is a subscription service; it is not actually guaranteed. There are problems, again in the digital space, and we will send an email but we do not know whether it has been received or whether people are actually looking.

Hon ALISON XAMON: But do people pay to have TitleWatch?

Mr NELSON: Yes, it is a subscription, voluntary service.

Hon ALISON XAMON: How much is it?

Mr CRANE: I thought it was \$20 for 12 months.

Hon ALISON XAMON: I am wondering whether I should put it on my property.

The CHAIRMAN: For 12 months?

Mr NELSON: Yes, it is an annual subscription.

Mr CRANE: I think it gets cheaper if you want to monitor more titles. Anyone can monitor titles if they want to subscribe, and if there are any transactions going through, you get an email to tell you that there is a transaction that has been lodged at Landgate. What we would like to do is to make the service a bit more robust to get it at the point of settlement or earlier, to get even earlier warnings of transactions. If you were monitoring your property and you saw something come up, you could take some kind of action to stop the fraud.

Hon ALISON XAMON: Do you have to have a particular status over a property to be able to put in your application for TitleWatch?

Mr CRANE: No.

Hon ALISON XAMON: For example, could I get a title over my colleague, the Chair's property?

Mr CRANE: Yes, you could if you pay the fee, you could do a TitleWatch. Family members could watch the property of their parents or other family members if they thought they needed to.

Hon ALISON XAMON: If they thought there was a possibility of a family going broke?

Mr CRANE: Yes.

Hon ALISON XAMON: How well is this particular service advertised? I have never heard of it.

Mr CRANE: It is on our website.

Hon ALISON XAMON: I do not visit your website—no offence.

Mr CRANE: It is a product that has been around for a few years. I am not sure how long it has been around for.

Mr NELSON: Yes, but because it is not a guaranteed service, we do not promote that people rely on that and nothing else.

Mr CRANE: Yes.

Mr NELSON: Particularly with the changed processes that we have had. For example, for a straight transfer—DTM as we refer to them: discharge transfer of mortgage—the turnaround times used to

be, in the paper world, 30 days; now, it is 1.3 days. So the chance to redact when you have got notice is much significantly reduced. We are looking at other ways of enhancing the systems.

Mr CRANE: It might not be called TitleWatch anymore; it will be something along those lines but, hopefully, better.

Mr NELSON: As Mark said, earlier on in the process.

Mr CRANE: Because if somebody is going to sell your home, the first thing they have to do is check on the rates—the shire and the water rates—and get payouts and valuations before settlement. If it could be triggered in those earlier days —

Mr NELSON: Before it gets to Landgate.

Mr CRANE: — before it gets to Landgate, that is the best thing. The other thing about a fraud, a fraudulent transfer, is they have already had the settlement; the money has changed hands. When it is lodged at Landgate, it is all too late, because it is all done and dusted, so it is an early warning.

Hon ALISON XAMON: Picking up on your concerns earlier that you have no way of telling whether a landowner has any diminished capacity, do you think there is scope for a future TitleWatch program to be linked in with the State Administrative Tribunal, for example, so that when orders are issued, there is some way to automatically ensure that somebody has been identified as not having capacity?

Mr NELSON: Ideally, yes; but there is no mechanism even on the horizon at this point.

The CHAIRMAN: What is the nature of the communications at the moment between SAT orders and Landgate?

Mr CRANE: If they are served on Landgate, then we deal with them. We did have some meetings with the Public Advocate's office going a back a few years, where we talked about the fact that very often SAT orders are made even to revoke EPAs and we do not get told about them. Sometimes it is up to a person who is interested to lodge the court order at Landgate.

The CHAIRMAN: There is no memorandum of understanding or something like that between SAT and Landgate to say every time there is an order, you will be notified or anything like that?

Mr NELSON: No, there is no formal mechanism or even informal.

Mr CRANE: We would like to have that because it would be good to know. Certainly, we see SAT orders, but they do not necessarily come straight from SAT; they come from other parties who are interested in having it dealt with.

Hon MATTHEW SWINBOURN: In your submission, the second last paragraph, you make an assertion —

Frauds (or attempted frauds) involving real property are on the increase and the elderly are in a category of persons that are likely to be the target of such frauds.

You have not provided any reference to support that statement. On what basis are you making that statement?

Mr NELSON: In terms of public information, we had Mercer a couple of years ago. As I said, even the discussion about whether that is elder abuse—it is certainly fraud.

Hon MATTHEW SWINBOURN: It seems here that you are saying that they are on the increase. I am interested to know why you make such an assertion as to say that there has always been an element of fraud with respect to land?

Mr NELSON: That is correct.

Hon MATTHEW SWINBOURN: But why is it on the increase?

Mr NELSON: It is probably over the top, to be frank, to say it is an increase when it is something that has always been there behind the scenes, and there has been no increase that we are aware of.

Mr CRANE: The comment was made because, as we know, scams and all sorts of frauds are on the increase in a general way. We are just talking about the potential for this to become more prevalent if we do not do something. It was not to say that it is really bad, because it is not in the register, but it is identified as a way that people could use to perpetrate fraud.

Hon MATTHEW SWINBOURN: I take it that it is more in your view that the attempted frauds are probably on the increase; whether or not they are ultimately successful seems to be testament to the robustness of our overall land registry system in that we are not seeing the eventual fraud being perfected, if I can put it in those terms. But there are some very public cases that you have already referred to where it has happened in recent years. I suppose the thing is that it is that old known knowns and unknown knowns thing.

Mr NELSON: No, we know we are not geared towards identifying elder abuse. If the documents are correct, then they will go—people are entitled to have them go through.

The CHAIRMAN: Anything further you wanted to bring to the committee's attention?

Mr NELSON: No, I do not think so. We are interested in what the committee is looking at and would like to contribute, but we are also acutely aware that we are only a small part of the picture.

The CHAIRMAN: Nevertheless, it has been a valuable session for the committee.

I take this opportunity to thank you both for attending this afternoon. A transcript of this hearing will be forwarded to you for correction. If you believe that any corrections should be made because of typographical or transcription errors, please indicate these corrections on the transcript. You did take a number of questions on notice. We will write to you about that. We request that you provide your answers to the questions taken on notice when you return your corrected transcript of evidence. If you want to provide additional information or elaborate on particular points, you may provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence.

Once again, thank you very much.

Hearing concluded at 1.39 pm
