

# SELECT COMMITTEE INTO ELDER ABUSE

## INQUIRY INTO ELDER ABUSE



TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
MONDAY, 18 JUNE 2018

### SESSION ONE

#### Members

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

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**Hearing commenced at 9.50 am****Ms JO McKINSTRAY****ANZ Customer Advocate, sworn and examined:**

**The CHAIRMAN:** On behalf of the committee, I would like to welcome you to today's public hearing. Before we begin, I must ask you to take either the oath or the affirmation.

[Witness took the affirmation.]

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

**Ms McKINSTRAY:** Yes, I have, thank you.

**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 this hearing for the record. Please be aware of the microphones in front of you, talk into them and ensure 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 you 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. We have a number of questions for you this morning, but, before we do so, would you like to make an opening statement?

**Ms McKINSTRAY:** Yes, thank you.

Thank you for the opportunity to speak with the committee today. My name is Jo McKinstry, and I am the ANZ Customer Advocate. Part of my role involves providing support and guidance to ANZ regarding vulnerable customers, including our older customers who may be at heightened risk of financial abuse. Banks are in a unique position to help identify and act upon suspected elder financial abuse, and today I would like to talk through four topics: ANZ's observations; structural change; opportunities for the banking industry; and, practical protective measures. When I talk about ANZ's observations, the types of scenarios we see are similar to all the banks but I will talk about ANZ's approach to how we manage them.

While we have seen examples of elder financial abuse perpetrated by friends, neighbours, carers and clergy, by far the most common is family. ANZ supports the appropriate use of properly executed powers of attorney and enduring powers of attorney. We receive over 1 000 of these per month, and in the majority of cases they are effective instruments used by an attorney acting in the best interests of the principal. We have, however, experienced a number of instances when an attorney has used these instruments for their own benefit. The consequences on the wellbeing of the principal, as well as on the broader family, can be devastating. The financial abuse we see typically presents as either: blatant and immediate, where large sums of money are withdrawn or

transferred soon after an attorney is appointed; or, occasional transactions that the attorney justifies are in line with the principal's wishes. They tend to increase in amount and frequency.

While banks are well placed to identify potential abuse, it is often very difficult to reach a satisfactory outcome. There can be a real tension between respecting the customer's autonomy, and trying to prevent harm. Customers may reveal concerns about financial abuse to bank staff, but also advise staff they do not want the perpetrator removed from their bank accounts because they are concerned the situation will be exacerbated. Customers tell us they do not want to give funds to family members, but they are fearful of losing their accommodation or have been told they will be prevented from seeing their grandchildren. Customers also tell us they do not want to report matters to the police.

Effectively managing these situations can involve very challenging discussions with customers and potential perpetrators, as the bank is often interposing itself in a difficult family dynamic. For these reasons, ANZ trains its customer-facing staff in branches and contact centres to identify potential red flags and escalate their concerns to a central internal point for investigation. Some examples of red flags that staff are trained to identify include: withdrawing large or unusual amounts of cash while accompanied by a new acquaintance; remaining silent while another party does all the talking; appearing withdrawn and fearful, particularly of the person accompanying the customer; not understanding or not aware of recently completed transactions; and, concerned about missing funds or missing personal or financial documents. Customers who are the subject of potential financial abuse may have diminished capacity, and may not be able to provide the bank with clear instructions about potentially concerning transactions.

Customer-facing staff are also well placed to identify customers who may not be victims of financial abuse, but are considered to be more broadly at risk. This includes older customers with diminishing capacity where there is no attorney or guardian, and where the customer has no family or carer. Staff are trained to assume a customer has capacity, unless the bank is on notice otherwise. This includes respecting a customer's right to make autonomous decisions. This can also present difficulties if family members disagree with the financial decisions of the older person.

If the bank becomes aware of a transaction that may not be for the customer's benefit, we can take a number of steps, including: delaying the transaction; seeking clarification from the customer—principal—or another attorney; querying how the transaction is for the benefit of the principal; speaking to the customer alone; and, offering to assist the customer to contact the relevant seniors rights service.

In addition to the more common forms of elder abuse perpetrated by a family member or friend, we are seeing increasing evidence of older customers also being targeted in financial scams. ANZ has recently implemented a scam unit that is focused on detecting potentially fraudulent transactions and educating customers about scam risks.

I turn to some of the opportunities for the banking industry. While general technology-based fraud controls detect some instances of elder abuse, at the moment we place significant reliance on frontline staff identifying red flags when assisting older customers with their banking transactions. We know, however, that it is common today for attorneys to assist the principal via electronic banking channels. ANZ is trialling a number of methods to leverage its data analytics and fraud detection capability. This includes identifying transactions that are not generally consistent with an older person's account, or not consistent with an account which has an attorney linked to it.

I turn to structural change. ANZ believes four key structural changes would assist with the prevention, detection and mitigation of elder financial abuse. These comments are made in the context of us being a national organisation. The first of these is the introduction of nationally

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consistent enduring powers of attorney. While the laws in each jurisdiction are broadly similar, there are differences that add to the complexity of reviewing and accepting or rejecting these instruments. It is not uncommon for a principal to reside in one state or territory, while the attorney resides in a different state. We have also seen instances where joint attorneys are appointed, however the attorneys live in different states. Some states and territories require the registration of a power of attorney, while others do not. These complexities increase the risk that an instrument will be accepted that has not been properly constructed or executed.

The second change is the introduction of a national register of enduring documents. We welcome the Australian Law Reform Commission recommendation in respect of a national register as a positive development. Ideally, this register would operate in real time, such that banks and other parties with an interest in the currency of a particular instrument could be notified immediately a revocation occurs. A real-time register that alerted banks that an instrument had been revoked would enable banks to terminate the outgoing attorney's access to the principal's accounts immediately. Absent this, banks are reliant on the principal, new attorney or outgoing attorney to advise us of the revocation.

The third change we support is the introduction of protection for bank staff who report suspected financial abuse to the relevant authorities. Currently, staff are exposed to potential privacy breaches, and this can act as a barrier to effective reporting. The fourth change we support is the introduction of consistent powers for state and territory public advocates or public guardians to investigate elder abuse. I understand that in Western Australia the Public Advocate has broad investigatory powers. That is not the case in all states and territories, and we have experienced matters where ANZ has had to bring an application to the relevant administrative tribunal to request a review of potential elder abuse be undertaken. This can take up to six months, and at times leaves the bank in the difficult position of effectively managing the customer's accounts.

I would like to close with some practical protective measures. The first is with respect to the power of attorney instrument itself. We have seen examples of instruments where the principal has included a clause to the effect that copies of their bank statements must be provided to their accountant or another trusted adviser. This can have the effect of deterring potential abusers because of the increased likelihood of detection. The second is to refer to a consumer fact sheet that is attached to the copy of my submission, published by the Australian Banking Association, which provides consumers with practical guidance on protecting their financial documents, chequebooks and PINs, reading contracts, talking to a trusted family member or adviser, and planning ahead in the event of future incapacity. Thank you for your time today and I welcome your questions.

[10.00 am]

**The CHAIRMAN:** Thank you very much; we appreciate your opening statement. It has been the committee's standard practice to take witnesses through each of the committee's terms of reference, so I will start at the outset with the first one, which is the definition of elder abuse.

Are you aware of any definitions of elder abuse and, if so, what definition does ANZ use in its policies or guidelines?

**Ms MCKINSTRAY:** We talk more in terms of vulnerable customers, and this is one example of a vulnerable customer. There may be others: customers from a non-English speaking background; from remote communities; victims of family violence, more traditional family violence. So we do not have a particular term that we use. We term it as a vulnerable class of customer.

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**The CHAIRMAN:** The term “vulnerable customer”, is that defined somewhere in a policy manual or training manual?

**Ms McKINSTRAY:** There are examples rather than a strict definition. It is fairly broad.

**Hon ALISON XAMON:** In terms of coming up with this definition of “vulnerable customer”, who was it intended that it would be for the use of? Is it for people who are on the front line, or what sort of —

**Ms McKINSTRAY:** Yes, so it would be in their procedural guides and manuals that are available for frontline staff initially, and that would have evolved over a number of years historically. There is a lot more attention that has happened in the last two or three years from ANZ around different classes of vulnerable customers, particularly being Victorian-based, our head office, there has just been the royal commission into family violence, so a lot of work was done talking about what do we do when we come across customers of ours that are impacted.

**Hon ALISON XAMON:** I imagine we will go into that in a bit more detail, but to be very clear, it was anticipated that by doing this activity, you would be looking to have people at the front line to be the first eyes and ears as to what might be happening?

**Ms McKINSTRAY:** I think that it has evolved that way, and if we look at banking 10 or 15 years ago, these are not new issues. I think we are seeing events play out in a different way with the use of technology now, and technological banking, but these are things that would have happened 10, 15, 20 years ago. There would have been broad guidelines, I imagine, for frontline branch-based staff in those days, particularly for customers who lacked capacity. We see financial abuse happens when there is capacity and when there is no capacity, it happens across the board, but initially it would have been where the customer has no capacity, there is a power of attorney instrument in place, these transactions do not look right, or we know this customer really well, it seems strange that they had a lot of money and now they do not, or someone is asking for something but that does not sound like something that our customer would have asked for. So that is where it has evolved from: the front line, effectively, or guidelines for the front line.

**The CHAIRMAN:** The second term of reference asks the committee to investigate the prevalence of elder abuse. Conscious of what you have just said, that ANZ is not using a specific definition of elder abuse and instead is looking at vulnerable customers, has there been some data collection or is there a view from ANZ in terms of the prevalence of financial abuse to vulnerable customers?

**Ms McKINSTRAY:** If I talk specifically, older customers.

**The CHAIRMAN:** That would be our preference.

**Ms McKINSTRAY:** I can talk in practical terms. We have not done a prevalence study, but we are supportive of one that has been funded nationally. From personal experience, the escalation point is, for branches, if they have concerns, they will refer things through to my office for review, and I would say that I probably have between five and 10 active matters per month that we are running with. I also think, though, from a true prevalence perspective, that is the tip of the iceberg, because there will be people in supported accommodation with one child, and the bills are still being paid, but potentially no-one is saying “What’s happening to mum?” So I think that the stuff that we are seeing, there is a significant under-reporting.

**The CHAIRMAN:** So the five to 10 active matters that get referred to your office per month, how long have you been in that role?

**Ms McKINSTRAY:** Four years.

**The CHAIRMAN:** In that four years, has that five to 10 stayed pretty static?

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**Ms McKINSTRAY:** It has increased to that number. It was very ad hoc early on. I think that is because we have been more formal about having a referral channel, and that in part is to protect branch staff, because the discussions we have are quite challenging with the potential perpetrators, and we are asking questions that are very intrusive, and that can cause issues within the family, so we need to be really mindful about how we do that.

**The CHAIRMAN:** That central unit that you are involved in, you have been there for the last four years. Did it exist prior to your arrival?

**Ms McKINSTRAY:** Yes, the Customer Advocate has been at ANZ for about 15 years, but this has not been something that they have always done.

**Hon ALISON XAMON:** How are those conversations initiated with—I think you are suggesting—primarily family members? Is it sent as a formal correspondence or is it done informally? How do you begin that?

**Ms McKINSTRAY:** Initially it is informally, because it might just be a suspicion or a concern, so the branch might contact my office and say, “We have concerns about this customer, she has broken her term deposit twice recently and that is really unusual for her to do”, or “She is starting to seem confused.” We will talk to the branch staff initially to understand what more they know about the particular customer. We will do a review of the accounts: is there an instrument in place, is there not; have things changed over time? As part of my investigation I can look to see if a bank cheque has been drawn, who it has been paid to, where money has been transferred to. I am usually armed with quite a bit of internal information about how the money has been spent, and then I will speak to the person who has actually done it.

**Hon ALISON XAMON:** So you will actually call them directly and begin that?

**Ms McKINSTRAY:** Yes, me or a senior case manager in my team, yes.

**Hon ALISON XAMON:** Right. Is there anything that formally comes out of that, if you —

**Ms McKINSTRAY:** Potentially somebody might say, “Yes, we took \$100 000 out, and that went to the nursing home for a bond”, and that might be fine. We see a lot of false positives as well. The fact that we see that many cases does not mean that there are necessarily that many things that are going wrong. It just depends. A different scenario, a person might say, “Mum wanted me to buy a car so I can go and visit her at the nursing home”, and we will say, “Under the power of attorney, I have it here, referring you to what you are able to do and what you can’t do, you’ve got obligations to the principal, you might want to go and seek legal advice.” Depending on the state, there are some states where we can refer those concerns directly to an investigatory body. There are other states, New South Wales, for example, where we need to make an application to NCAT. We really try, and in the conversations, we try to be very conciliatory with the potential perpetrators, and we say, “We understand it’s difficult managing other people’s money. We are here to protect our customer, which is your mum or your dad. We can see that you are trying to help them as well, we just need to understand some more.” Based on the information we see there, that helps guide whether we refer it on somewhere else or not.

**Hon ALISON XAMON:** When you say you will refer it on to an investigatory body, you are meaning the equivalent under the public advocate, those sorts of entities, where they exist in a state?

**Ms McKINSTRAY:** Where they have the power in the state, yes.

**Hon ALISON XAMON:** But you do not always refer it through; sometimes it is just a conversation with the family?

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**Ms McKINSTRAY:** No, because we might do an investigation, it might be quite clear that there is no issue there.

**Hon ALISON XAMON:** It strikes me that that is very dependent on you being able to have a face-to-face relationship between staff and customer.

**Ms McKINSTRAY:** Absolutely, yes.

**Hon ALISON XAMON:** Of course, we are seeing more and more branches in every bank around the country closing and the shift to electronic banking. Is there a possibility that in fact we have increased levels of financial elder abuse occurring but we are just not picking it up because of the shift away from face-to-face banking?

**Ms McKINSTRAY:** Yes, and that is why I talked about the opportunities, about leveraging the fraud tech and data analytics that we have. We have put in some new cases that we are running at the moment. For example, if there is a power of attorney loaded on the account and there is gambling, that will flag out for us to see. It might be that the older person is gambling and has capacity, and that is absolutely fine, but we would say that that is an example that is often an indicator that there might be abuse happening.

[10.10 am]

So we are building different cases and trialling them through our fraud system, the same way that a credit card used overseas when you are in Perth might flag a call from your bank. So we are trialling those capabilities at the moment.

**Hon TJORN SIBMA:** Thank you for that. Not to dwell too much on definitions and prevalence, but I would be interested to know whether ANZ has readily available the proportion of its retail customers aged 65 and over, and the value of the deposits or funds under management as they relate to that cohort. That might be one that you have to take on notice.

**Ms McKINSTRAY:** There would be a very precise answer that someone can provide for that.

**Hon TJORN SIBMA:** Yes, I am sure there is.

**The CHAIRMAN:** Do you want that just for Western Australia?

**Hon TJORN SIBMA:** Well, if you could just have it relevant to this jurisdiction, that would be useful, but I would also be interested in a national figure.

**Ms McKINSTRAY:** Will somebody give me questions or should I take notes?

**The CHAIRMAN:** Yes, but let us just be clear on what we are taking on notice. This is question on notice 1, and it is going to be the number of ANZ customers in Western Australia over the age of 65 and the amount of funds under management. That is question on notice 1.

**Hon TJORN SIBMA:** Correct. Related to those conditions, would it be possible also to provide data concerning those customers who operate online accounts, or a registered —

**Ms McKINSTRAY:** Potentially. Certainly the first, possibly the second. I am not so sure on that by age, but possibly, yes.

**Hon TJORN SIBMA:** That is fine.

**The CHAIRMAN:** The second question is whether they have online access or not.

**Hon TJORN SIBMA:** Yes, because I just want to get a sense of what—the justification being which proportion of this cohort are more likely to do their transactions at the branch level compared to —

**Ms McKINSTRAY:** Just anecdotally, and we will give you the proper figures, but it is a real split, and there are certainly some very traditional customers who value going into a branch with a passbook

and a traditional banking relationship, but also one of the fastest growing take-ups of internet banking is in that older group as well.

**The CHAIRMAN:** We will put that as question on notice 2, and we will write to you about that, and if you can answer, you can.

**Hon TJORN SIBMA:** Third question on this theme, if you do not mind. Again, I draw you to your opening statement. I would just like to seek a little bit of clarity, please, over, I suppose, the management of the presentation of powers of attorney and like documents. You said that the bank receives over a thousand per month?

**Ms McKINSTRAY:** Yes, that is for all of Australia.

**Hon TJORN SIBMA:** Again, if it is possible to have a Western Australia component of that, that would be useful for the committee.

**Ms McKINSTRAY:** Yes.

**Hon TJORN SIBMA:** But, more to the point, how do you record these things?

**Ms McKINSTRAY:** What do we do when we get that, sure. So I guess the start point to the chain is either the customer or the attorney will present it to a branch, generally, and that will then be scanned and sent to a central processing team in the head office in Melbourne. That has been in place for less than 12 months. Up until then they were loaded by branches who would do their own checks. If it was complex or they were unsure, it was a different state, they would go to a particular unit for legal guidance. So of that thousand or so, they are checked by a team of eight to 10 people in a compliance team, and then they are uploaded in the bank's system so that if the customer or the attorney goes into the branch, that will be noted on the customer's account.

When the document is presented, the attorney needs to sign a non-revocation notice confirming that here is the document, and I confirm to the best of my knowledge that it has not been revoked. But that is why we would really like to see a real-time register, because we can absolutely validly give somebody internet banking access or a card or pin access or a chequebook, and if that is revoked a week later, we will not know. We have no way of knowing.

**The CHAIRMAN:** All right, so the third question taken on notice is the number of powers of attorney and enduring powers of attorney by Western Australian ANZ customers. Anything further?

**Hon MATTHEW SWINBOURN:** I might have missed it, but when this person presents you with the enduring power of attorney, do they require a 100-point —

**Ms McKINSTRAY:** Yes, to be able to transact. If it is presented, the customer would already have been identified. If this person is an ANZ customer already, they do not, because we can link that to them. If they are not an ANZ customer, they are set up on our system and the access they have is the power of attorney, which is effectively what the customer has.

**Hon MATTHEW SWINBOURN:** And they have to prove their identity, of course.

**Ms McKINSTRAY:** Yes. There are some attorney documents that of course do not come into play until someone has lost capacity, for example. We then require medical evidence to support that.

**The CHAIRMAN:** We will move to the next item, which is forms of elder abuse. You have touched on this already a little today, particularly in terms of the change to online banking and people "assisting" the elderly with their online transactions at home and the capacity for that to manifest in abuse. You also talked about it in terms of powers of attorney being misused. Are there any other forms of financial elder abuse that you have come across?

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**Ms McKINSTRAY:** Not so much in the financial space. As I think I mentioned, we are seeing that older customers are more targeted for scams. That has been recognised more broadly. That is often somebody outside of the family. There is some suggestion that older people are specifically targeted. As well, there is potentially a higher likelihood of people trusting a person who calls them on the phone and giving them access to their computer, for example, and then their password is taken and transactions are done.

**The CHAIRMAN:** I was going to ask about that, because when you get sensitive matters referred to you in your office and you do a bit of investigating, obviously you are contacting people. You might contact them yourself. I know if somebody rang me and said, "I'm Joe from ANZ," I would immediately be suspicious: "Are you really Joe? Are you really from ANZ?" How do you deal with that situation?

**Ms McKINSTRAY:** I would be ringing and saying, "I'm ringing about the person whose account you are the attorney on. I have the document here in front of me. I can see it was signed on blah, blah date and it was lodged on this date. I have questions about these three cheques that have gone to BMW finance." That would be the conversation.

**The CHAIRMAN:** Okay.

**Hon MATTHEW SWINBOURN:** What sort of reaction to you get?

**Ms McKINSTRAY:** Usually very defensive. It depends. Sometimes there is a very clear reason. As I said, we get a lot of false positives. We find that with the fraud detection we are doing at the moment. There are people who are elderly and who gamble. If they have capacity, that is absolutely fine. Some of those are conversations we have with the customer: "Is it you doing the transactions? Are you comfortable with the transactions? Are you aware that those transactions are happening?" We look at things like ATM use after 10 o'clock at night. That is absolutely fine for somebody in their 70s to do that, but it might not be them. That might be an indicator. It is imprecise.

**Hon MATTHEW SWINBOURN:** When you raise those with the customers, because they are flagged through your analytics and all that sort of stuff, what kind of reaction do you get from them?

**Ms McKINSTRAY:** The customers themselves?

**Hon MATTHEW SWINBOURN:** Yes. If the issue is of agency or empowerment and all that sort of stuff, or that people are older or elderly and are not necessarily capable, are you getting a positive reaction when you say to them, "Look, this has been flagged"?

**Ms McKINSTRAY:** It really depends. Usually it is very positive and they thank you for caring and say, "No, I know what is happening. It's okay. I don't want help. It's private. I don't want to talk about it." We try to keep engaging with them to try to understand. We suggest that perhaps there is somebody else in the family they could talk to if they have concerns, or somebody at church they could talk to, to try to see if they will get some advice. The customers themselves, unless they are in the process of being scammed, usually are quite happy. They will say, "Thank you for calling. Thank you for being concerned. Everything is all right," or "Yes, I am worried." Or it may become clear that they might not have capacity. With the scams, they are very beguiling. We have customers sending \$10 000 overseas, "Because my daughter's stuck there," or "Someone's had a heart attack." Next week it will be, "I need to send another \$10 000." We will question them: "Where are you sending it? Do you know the person you are sending it to? Have you met them? Did you only meet them online? Have you only met them over the phone?" Our scam team can spend an hour or an hour and a half with people walking them through the ACCC website. They are trying to normalise it: "Don't be embarrassed. We see this all the time. This is what we see. Those transactions are

concerning.” In some cases, people take that on board. In other cases they will go to another branch or they will close the account and we know they go to another bank and still do the transfers.

**The CHAIRMAN:** Have you come across a situation where there is no power of attorney in place but there are transactions for an elderly customer which seem suspicious, you investigate, you contact the customer and you conclude that the customer does not have capacity? What do you do then?

[10.20 am]

**Ms McKINSTRAY:** It probably depends a little state by state. For example, we have had Veterans' Affairs involved. I look at their accounts and their transactions. We had one customer recently who was receiving a Veterans' Affairs pension. We spoke to Veterans' Affairs because they have got some social workers. We said, “We've got a mutual client. I cannot talk about his transactions but I see he receives a pension from you. Are you able to provide support?” We will do that. In certain areas we have links into various support agencies. Again, we are very careful what we say. If there is nobody at all and we are really concerned, we will call the police for a welfare check if we are critically concerned. I have been able to find customer's doctor's names in their banking records. I might again have a conversation: “I'm from the bank. I cannot talk about the banking and I don't want to know about their health, but do they have a next of kin? Is there somebody we can talk to?” We do some digging around to see what can be put in place. That is hard. It is an area where our branch staff know these customers and have known them for a really long time. Often they know the family situation. A partner might have passed away and it can become clear over time that the customer is becoming isolated and perhaps losing capacity.

**The CHAIRMAN:** We will move forward, then, to risk factors. Are you in a position to outline for us what you see as some of the risk factors? You just mentioned one there—increasing isolation. Are there other risk factors that you want to draw to our attention?

**Ms McKINSTRAY:** The single power of attorney is very common. Often that works really, really well for people, but more often than not where there is a problem it is a single attorney appointed. Where we have family members approach us and say, “I don't want mum or dad to spend any more money. They're spending too much money,” that is a flag for us, because that is mum and dad's money to do what they choose. They might not like what they are doing, but provided they know what they are doing and nobody is preying on them, that is for them to manage. I think there is some there. I think just with general financial literacy. As I said, the guidelines I have attached to the statement you have there just has some really good basic things—do not sign something without reading it; protect your card and pin. They are things that are really basic financial hygiene matters.

**The CHAIRMAN:** In terms of protecting the card and pin, what about payWave?

**Ms McKINSTRAY:** PayWave usually has a \$100 limit on it. If it is being used fraudulently, certainly at ANZ that would be completely refunded. The technology for payWave is actually safer. Your card cannot be cloned; it cannot be skimmed. Going slightly off topic now, but if you use your traditional card at an ATM that has a skimming device and a pinhole camera, your card can be cloned. With tap and pay, that cannot happen.

**The CHAIRMAN:** What happens if the customer has lost capacity, you do not know about it, and the customer's card is being used by a family member?

**Ms McKINSTRAY:** It would only be if we knew that the account behaviour was different, really. Given the small dollar value usually for those transactions, that might be hard. That is what I talked about: there is either something really blatant, like a big lot of money going out really, really quickly, or there are the small transactions. You know, “I took mum to the supermarket and bought her some oranges and I just bought stuff for the kids' lunches because she'd want me to do that.” Or, “I went

to see dad at the nursing home and he would want me to fill my car up with petrol.” That then becomes a matter of doing it every week, and then they would also want the school fees paid. There are a lot of these creeping transactions, where people think, “Mum’s got enough. She doesn’t need much money. She sold the house. She’s going to be all right, so she would want me to have this now or support me now.”

**The CHAIRMAN:** So it is pretty hard to detect.

**Ms McKINSTRAY:** When it is smaller increments like that.

**The CHAIRMAN:** So you are relying really heavily on the effectiveness of the data analytics to pick up some of these things.

**Ms McKINSTRAY:** Yes. You again might have some false positives, but you might have payWave use at a bottle shop four times a week; that is probably not nanna doing it, but it might be. If that is what she wants to do, that is fine. That is where it becomes difficult, because you do not want to form value judgements about people’s choices with their own money, provided that they are the ones spending it and they have capacity.

**The CHAIRMAN:** It keeps reminding me just how difficult this whole area is. The fifth term of reference talks about assessing and reviewing the legislative and policy frameworks. During your opening remarks you talked about structural change. You talked about the benefit of a nationally consistent enduring power of attorney, and that the laws in each jurisdiction are broadly similar but there are differences. Does ANZ have a view on which jurisdiction has, if you like, the best model of enduring power of attorney?

**Ms McKINSTRAY:** I have not turned my mind to that, so it is not something I could answer.

**The CHAIRMAN:** Is that something that somebody else within ANZ will have considered?

**Ms McKINSTRAY:** Probably not.

**The CHAIRMAN:** Okay. Your response may be the same on this, but in terms of a national register, are you in a position to indicate which states have a register already, if any?

**Ms McKINSTRAY:** Different states have things. I do not want to give you the wrong information, but I know that some require registration of all attorneys and some require it if they are going to be used for land transactions, so there is a mixture across the states.

**The CHAIRMAN:** Would someone in the ANZ have a table that would set that out?

**Ms McKINSTRAY:** Yes, definitely. The team that does that would have had all of their processes reviewed by compliance and the legal team and they would have that in place.

**The CHAIRMAN:** Would that be something that could be provided to the committee?

**Ms McKINSTRAY:** I believe that could be.

**The CHAIRMAN:** Let us take that as question on notice 4, to see what can be provided there in terms of a template or a reconciliation table of the different systems in the different states. That would be most helpful.

You did mention that you can refer to advocates or public guardians to investigate elder abuse. Has ANZ had the need during your four years to refer to WA’s Public Advocate?

**Ms McKINSTRAY:** Not WA, no. We have a small number of matters in WA, which is good.

**The CHAIRMAN:** Or we do not know about it.

**Ms McKINSTRAY:** Well, yes.

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**The CHAIRMAN:** The system and the methodology you are using to try to pick up financial elder abuse is the same that you are applying —

**Ms McKINSTRAY:** It is national. The behaviour of perpetrators is national.

**The CHAIRMAN:** Yes. Members, are you happy for me to move on?

**Hon TJORN SIBMA:** Just with respect to registers, and this might sound like an elementary question, but precisely what kind of information would a bank find useful to have registered? Is it just the fact that a document is valid?

**Ms McKINSTRAY:** That it remains current, absolutely. If you are buying a car, you will do a search to see if someone has an interest in the car. One model for a register might be that an attorney comes to the ANZ and perhaps we can register an interest in that instrument, so that if that instrument changes, we might get an alert. We could then remove the attorney. That would be one worth considering. I am sure there are other models, but that is one.

**Hon TJORN SIBMA:** The reason I ask is that there is a uniform position that the major banks and the ABA have adopted, which is about consistency in these instruments and also a central repository.

What I am trying to get a sense of is what kinds of information do the banks need to discharge their responsibilities; I suppose as well, whether ANZ would have a view on the utility of an individual jurisdiction building something for that purpose, even though it would not necessarily be a national rollout, it would nevertheless be useful for customers, for example, if the Western Australian, if that would be useful —

[10.30 am]

**Ms McKINSTRAY:** It would be. As I said, I am talking from a national organisation's—it is another layer of complexity, but I think it is a good thing anyway.

**The CHAIRMAN:** Term of reference 6 requires the committee to assess and review service delivery and agency responses. What type of training is provided to frontline staff in relation to identifying account fraud and suspicious behaviour from customers?

**Ms McKINSTRAY:** There is basic induction training that is done to frontline staff. We do different themes at the banks. We might do a vulnerable customer week. That is something that would be done so all staff would see stuff that is on our intranet.

**Hon ALISON XAMON:** Do you find that following that sort of splurge of activity internally, it does go up?

**Ms McKINSTRAY:** Absolutely.

**Hon ALISON XAMON:** For the interests of Hansard, there was an indication by the witness of going up.

**Ms McKINSTRAY:** Yes, the arrow went up.

**Hon ALISON XAMON:** It really is about making sure it is at the front of mind.

**Ms McKINSTRAY:** Front of mind and who to go to when you have got something—we talk to our frontline staff. You know your customers really well. This is something that staff respond to really well because they really care about those customers. They want to make sure that everything is okay; so we certainly do. We run topics through the year as well. That might be the huddle of the week and they might talk about different classes of vulnerable customers. We certainly see spikes come up there. We have also got quite an active internal chat forum that staff can jump into and talk about. We know that when we put that up as a topic, that always gets a lot of queries and suggestions from frontline staff and they also talk to each other about what they see, what they

have done, what works well and what they are concerned about. But predominantly it is awareness raising so that then they can refer it through and get guidance on the best way forward.

**Hon TJORN SIBMA:** Might I just ask with respect to this particular training, no doubt like any large organisation, your staff are continually being trained. My interest is on whether or not all staff at each branch receive consistent training in this domain and then is there a follow-up? You could well do a module on an online intranet sort of thing, but is that it or is there recurrent —

**Ms McKINSTRAY:** There are supportive things. The branch network is national. There is absolutely a team that coordinates all of the training that happens across the 12-month period for that group and the contact centres as well. They will drop things in and schedule them. Yes, there might be an online module but then, in the next quarter, there will be a morning tea in the branch for the team meetings and they will talk about it. Then there might be something in the next quarter; so yes.

**Hon TJORN SIBMA:** To what degree is this kind of training a mandatory component of an employee's contract?

**Ms McKINSTRAY:** Would it be helpful if I came back with some more specific information?

**Hon TJORN SIBMA:** That would be pretty useful.

**Ms McKINSTRAY:** Certainly compliance training is absolutely mandatory, yes.

**Hon TJORN SIBMA:** Because you can understand that our staff do training—all staff in all organisations do some training. My interest is on what specific training, how regular is it and what —

**Ms McKINSTRAY:** Yes, certainly. I can come back with an outline.

**The CHAIRMAN:** Question on notice 5 is the regularity and the content of training. Are you happy with that?

**Ms McKINSTRAY:** Yes.

**The CHAIRMAN:** We are talking about communication with staff. What about communication with customers? What kind of information is given to customers on how to identify financial elder abuse if it happens to them?

**Ms McKINSTRAY:** Less than ideal at the moment. I think that that is an area we can do a lot more. We are focusing on how we can communicate the scam risks and how we can get that information out to customers that might not use ANZ as a Facebook friend, for example—what are the other forums that we can do that will be effective? When a customer brings in their power of attorney, we will talk to them about what this means from an ANZ perspective, but I think that that is something that we can do more in that space.

**The CHAIRMAN:** To the extent that there is proactive, if you like, education of elderly customers, it is more at the moment around the scams?

**Ms McKINSTRAY:** Yes, and when we start to have concerns about a particular account or customer. It is quite an intensive piece but perhaps not —.

**The CHAIRMAN:** But not so much in respect of protecting against maybe family members and financial abuse in that space?

**Ms McKINSTRAY:** Yes.

**The CHAIRMAN:** What liaison is there with community groups or legal centres in terms of elder abuse and the like?

**Ms McKINSTRAY:** We do quite a bit of work with Seniors Rights. I appeared at the elder abuse national conference in Sydney a few months ago, spoke with my counterpart from the CBA about

what we see in the banking space. We speak quite regularly with various legal centres—the banking ombudsman as well; we work closely with them when matters come before them that might not have come to us because perhaps the family member has gone down that route. We work with them to resolve matters.

**The CHAIRMAN:** That is encouraging. Just to test that from a Western Australian perspective, how much liaison is ANZ having with community groups and legal centres in Western Australia?

**Ms McKINSTRAY:** Only so far as it is by a national conference where there would have been delegates from Western Australia and Western Australian legal centres there. For example, in South Australia, for World Elder Abuse Awareness Day last week, they had a campaign through SA Health and we put in brochures from their campaign in all of our tearooms in all of our branches in South Australia. We are certainly very responsive if there is a request to engage.

**The CHAIRMAN:** But there has been no request made at a WA level?

**Ms McKINSTRAY:** Not to me. There may have been to other people in the bank, but not that I am personally aware of, no.

**The CHAIRMAN:** It sounds like an opportunity. Compensation: you have touched a little bit on that, I think, where fraud is detected.

**Ms McKINSTRAY:** The payWave?

**The CHAIRMAN:** Yes; and then compensation is provided. The general question from the committee is: what compensation, if any, do you provide to customers who may have lost money or assets as a result of financial elder abuse committed through a bank?

**Ms McKINSTRAY:** It would really depend on whether the bank had done anything wrong as part of that. If you had an attorney who has signed a cheque to do something that we would not know was not for the principal's benefit, the liability would then rest with the perpetrator. If the bank had taken out an improperly executed document and relied on that as the authority, that would be a different situation. Hypothetically, if we were on notice that there were concerns and we did not pause transactions on the account, potentially we would have a liability there.

**Hon ALISON XAMON:** When you say if you were "on notice" there were any concerns, would that be internally generated concerns, externally generated concerns like —

**Ms McKINSTRAY:** Potentially observations we had ourselves internally. Where we have seen particularly concerning situations, we have said to the customer and the perpetrator, "We're actually going to stop that kind of transaction on the account until the investigatory body can give us more clarification about whether this is okay to continue or not." That might mean if the customer typically takes out \$500 every pension day, we might let that continue. Other than that, anything else we would like to see the invoice from the nursing home or we would like to see the chemist bill and we will arrange a bank cheque to pay that, until we have clarity about the operation of the accounts.

**Hon ALISON XAMON:** As you have already identified, if someone has an enduring power of attorney and they are abusing it, they can just shut down the account with the ANZ and open up another one with another bank.

**Ms McKINSTRAY:** Not if we had concerns; we would not allow them to.

**Hon ALISON XAMON:** You would not allow them —

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**Ms McKINSTRAY:** If we had concerns, no. But it is a very hard call to make because if there is no abuse, we are not accepting a valid document. We are trying to prevent the harm to our customer. That is the primary focus for us.

**Hon ALISON XAMON:** How often would you take that course of action?

**Ms McKINSTRAY:** Fairly regularly.

**Hon ALISON XAMON:** When you say “regularly”, how often?

**Ms McKINSTRAY:** For cases that we would have running, there would be at least a couple a month where we would do that.

**Hon ALISON XAMON:** Are they primarily the children of elderly people?

**Ms McKINSTRAY:** Yes, or new acquaintances.

**Hon ALISON XAMON:** Or new acquaintances?

**Ms McKINSTRAY:** Yes, which is much more likely to be coming in with a—not having an instrument in place, coming in with a customer and saying, “Bill wants to take the money out because he is getting his car fixed, aren’t you, Bill?”

**Hon ALISON XAMON:** Where will those new acquaintances frequently come from?

**Ms McKINSTRAY:** The community. Potentially tradesmen that they have met, potentially carers, potentially people they know from the pub. There is a whole range. There is not a particular flag there, I think. It is just that it is unusual for the customer to do it. We treat the customer really respectfully and say, “We’d like to have a chat with Bill about his banking over here. We can’t talk to you about it. So, Bill, do you know what’s going on? Are you getting your car fixed? I thought you had sold the car.” You know, have that chat.

**Hon ALISON XAMON:** What do you do if the other person refuses to leave? How do you handle it at the time?

**Ms McKINSTRAY:** Call the police.

**Hon TJORN SIBMA:** With respect to one other structural change that ANZ has proposed, and it is a consistent theme throughout the evidence attended today—this perennial problem of respecting the agency but protecting the customer. The suggestion is: the third change we support is the introduction of protections for bank staff who report suspected abuse and currently staff are exposed to potential privacy breaches. Can I just get a sense, please, of what or which particular protections are being sought through what legislation and in which jurisdiction? I will leave it there for now.

**Ms McKINSTRAY:** It is very complex. Perhaps I can provide more clarification in writing. If I look at it from a national perspective, this is one of the reasons why we centralise it, so that we do not have branch staff having that call to the doctor, having that call to one sibling but not the other sibling because they are exposed. It is better that I make those calls, balancing the risk to the customer and potential harm to the customer. Certainly that has been accepted and supported by the ALRC review that there would be some protection for various people who make concerns known, provided they are made in good faith. That is really all that is. It would simply allow us to go to those bodies. I will give you a concrete example. It is New South Wales. I am going through NCAT at the moment. I have had to wait for a number of months for a directions hearing before the member could direct me to provide the bank statements, which I had four months earlier. I cannot provide them until I am given a notice. If I had protection from a privacy breach, I could have provided that with my brief and it would have been much easier to do the investigation.

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**Hon TJORN SIBMA:** That is helpful to know. Another issue: it is not, the best I can detect, provided in your statement or in any of the evidence you have provided at this hearing. It relates instead to a position adopted by the Australian Banking Association. It is a claim that bank staff, or banks generally, feel that there is no one place to go and report suspected abuse.

**Ms McKINSTRAY:** That would be the fourth point that I am making. Perhaps I have not been particularly clear there. There is no one place, so in some states it will be go to the Public Advocate or the Public Guardian. In other states, they have no investigatory power until it has been referred to them by the administrative tribunal, which would probably happen with my NCAT matter, for example. Generally, those bodies will say to us, “Has the customer lost capacity?” That is a threshold that has to be met. That customer may never have been to the branch but we may know that there is an issue. We cannot say that they have lost capacity. We can say, “This is a really unusual transaction pattern for this customer, we don’t know the customer at all. We’ve been unable to clarify matters over the phone with them. We think something is going wrong.”

[10.45 am]

But there is no clear one place for us to report that to. When it comes to making those value decisions, I do not think that is the role of the banks to make. Maybe mum always paid the school fees for the last 10 years for all the other grandchildren—maybe that is okay. But that should not be a decision for the banks to say it should be or should not be. That should be for some properly constituted investigatory body to have a view on that.

**Hon TJORN SIBMA:** As a follow-up, these are all potential acts of fraud, I would assume—potential fraud-like behaviour. In the instance in which a person’s age is not the issue and where the bank detects or suspects the commission or the intent to commit an act of fraud, where would ANZ report that? Would it be to the police in the relevant jurisdiction?

**Ms McKINSTRAY:** Potentially the police, but there is a big variance in their receptiveness to complaints around elder financial abuse.

**The CHAIRMAN:** What is the receptiveness in WA?

**Ms McKINSTRAY:** That is really hard; I knew you were going to ask me that! I do not know that I have had any that have gone to the police here. I know that I have referred police to do welfare checks and they have been very responsive to do that, so that is a really good sign. I know certain states are investing in this area. I know South Australia is sort of well known as having a strong police awareness. I spent a day last week with Victoria Police, with 100 police, along with Seniors Rights and the State Trustee, talking about what the banks see, and the message that I was hearing from the commanders to the police was, “Don’t ask whether this is a criminal or civil matter, because if it’s money, it’s a civil matter. Go off and sort it out. Go to court.” It is a community member that is at risk, and that is the mindset. I know that in Victoria they were looking to feed that into their stations, and they have a special unit now. I understand that has come primarily out of their Royal Commission into Family Violence.

**The CHAIRMAN:** At the end of the day, stealing is a criminal offence.

**Ms McKINSTRAY:** Yes.

**The CHAIRMAN:** So it is a cultural mindset.

**Ms McKINSTRAY:** Yes, it is, and we will support customers who want to go to the police, and we will say, “We’re concerned. We think you need legal advice. We think you need to go to the police.” If it is a family member, there is a very big barrier there from people wanting to do that because that can be something that their family cannot come back from.



**The CHAIRMAN:** Thank you for attending today. 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 on notice five questions, which we will write to you about. Please provide your answers to those question 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 for your time this morning.

**Ms McKINSTRAY:** Thank you.

**Hearing concluded at 10.48 am**