

# SELECT COMMITTEE INTO ELDER ABUSE

## INQUIRY INTO ELDER ABUSE



TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
MONDAY, 26 MARCH 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 12.48 pm**

**Mr JUSTIN STEVENSON**

**Director, Civil Law Division, Legal Aid Western Australia, sworn and examined:**

**The CHAIRMAN:** On behalf of the committee, I would like to welcome you to this afternoon's meeting. Before we begin, I must ask whether you will take the oath or affirmation?

[Witness took the oath.]

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

**Mr STEVENSON:** Yes.

**The CHAIRMAN:** These proceedings are being recorded by Hansard and broadcast on the internet. 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, and please be aware of the microphones and try to talk into them, ensure 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 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. Before we proceed with the questions that we have for you today, would you like to make an opening statement to the committee?

**Mr STEVENSON:** No, I do not have one.

**The CHAIRMAN:** I indicated to you that the normal practice of the committee has been to go through each of the different terms of reference and so in that respect, I note that we did receive your written submission dated 16 November 2017, which is publicly available and which does touch on the various terms of reference. I will start with term of reference (b), simply because we note that in term of reference (a) there is a definition of "elder abuse". You have indicated your support for the World Health Organization definition and this has been captured in the most recent protocol published by APEA. Moving on to the prevalence of elder abuse, can you indicate to the committee whether Legal Aid keeps its own data on cases that may involve elder abuse?

[12:50 pm]

**Mr STEVENSON:** We do have a flag for elder abuse cases, but in our case it would be for the incidence of legal advice or minor assistance provided to someone. We do not necessarily provide grants of legal aid for full representation, so the stats that we would be collecting would be in relation to the advice that we provide.

**Hon ALISON XAMON:** How long have you been keeping those stats specifically pertaining to elder abuse?

**Mr STEVENSON:** Probably for a couple of years, possibly back to 2015–16. I would have to double-check.

**The CHAIRMAN:** I note that the civil law division of Legal Aid considers financial elder abuse a priority area, so what proportion of your budget is allocated to that priority area?

**Mr STEVENSON:** I would not have the exact figure. It is miniscule. With government funding reducing, civil law has become less of a priority. So it is a priority for Legal Aid and a priority for the civil law work that we do, but civil law work has fallen off the priority list overall because we have to priorities criminal law and state family law, especially where it involves children. I am not sure whether that is the answer you really —

**The CHAIRMAN:** If you need to take it on notice, that will be fine. Are we able to get from you at a later stage a sense of the overall legal aid budget, the proportion of that that is allocated to criminal law matters, the proportion that is allocated to family law matters and the proportion that is allocated to civil law matters?

**Mr STEVENSON:** Yes. I can do that.

**The CHAIRMAN:** Let us make that question on notice 1.

**Hon ALISON XAMON:** Just following through on that, you have obviously started keeping statistics fairly recently, and I understand that it is because for many people elder abuse is really a fairly new understanding. You have found there is a trend that there is an increasing level of elder abuse?

**Mr STEVENSON:** Absolutely; without a doubt.

**Hon ALISON XAMON:** I just want to be clear. You are saying that now you are keeping statistics, you are finding it is trending up—I will ask you in moment a little bit more about what types of abuse—but the funding has diminished at the same time?

**Mr STEVENSON:** Absolutely.

**Hon ALISON XAMON:** In terms of the types of elder abuse that you are primarily seeing, is there a particular type of abuse that has come to your attention?

**Mr STEVENSON:** It is really only financial elder abuse at Legal Aid. It is almost always after the event and almost always family arrangements, care arrangements. It could be where there are property transactions that have gone awry involving granny flats or shared living arrangements; but also where the older person reports that, for example, a document has been put in front of them; they have signed it, either not knowing what they have signed or not realising that they have signed something like a transfer of land or a power of attorney.

**The CHAIRMAN:** Further to this, when in due course you provide us a breakdown of those three areas, does criminal injuries compensation fall under the civil law division?

**Mr STEVENSON:** It does, yes.

**The CHAIRMAN:** To what extent when you provide that response back, with regard to the civil law division, will it be able to be further broken down to indicate the elder abuse component of that division?

**Mr STEVENSON:** Possibly.

**The CHAIRMAN:** If you can, can you incorporate that into question on notice 1 and the committee may have further questions at a later stage.

**Mr STEVENSON:** That is in relation to the proportion of funding?

**The CHAIRMAN:** Yes.

**Mr STEVENSON:** If I cannot get it that specific, I will attempt, but if I cannot, I will ensure that I can try to include some figures as to the numbers of services provided.

---

**The CHAIRMAN:** By the civil law division?

**Mr STEVENSON:** Yes. I will definitely try to respond.

**The CHAIRMAN:** At least that way we will have some indication as to how much of the Legal Aid budget is going to that division, and then that division is capturing a number of areas of law, and what proportion of that is elder abuse related, and then the rest is the other matters.

**Mr STEVENSON:** Certainly.

**Hon ALISON XAMON:** Of course, what I am assuming you are not necessarily keeping statistics on is the number of people who need assistance who are not receiving assistance or are you keeping statistics on that as well?

**Mr STEVENSON:** No, we do not keep those.

**Hon ALISON XAMON:** So because of the drop in your funding, you are not able to quantify how many people are requiring assistance that are just not getting it?

**Mr STEVENSON:** No; it is difficult. I could not, because when we experience a drop in funding like we are now, there is a degree of self-rationing that occurs. It may even occur at the information line. The information line deals with about 70 000 calls a year, but they know which taps I have to turn off and on in civil law to be able to provide whatever service I can, prioritising according to staff capacity. They may be telling people, "I'm sorry but we don't have capacity."

**Hon ALISON XAMON:** Are they keeping, to the best of your knowledge, they are not keeping statistics?

**Mr STEVENSON:** No; I do not think that they would, but I can check.

**Hon ALISON XAMON:** Yes, it would be good to know if they are keeping that too.

**The CHAIRMAN:** Let us make that question on notice 2.

In terms of these referrals, if you receive a matter and it is simply the case that there is not capacity to deal with it, do you then refer on to other places?

**Mr STEVENSON:** Yes, we do. Law Access is a principal place to refer matters. Obviously, the older person's rights service at the Northern Suburbs CLC. With Law Access, we try to package a matter up so that even if we cannot provide any sort of intensive level of assistance, we can at least find out what the main issues are and perhaps get some instructions and present it to Law Access so that they can try to refer it to a pro bono lawyer.

**The CHAIRMAN:** What criteria do you use to determine which matters you will take on in-house and which ones you will refer either to Law Access or to Northern Suburbs Community Legal Centre.

**Mr STEVENSON:** First of all, it will depend on capacity. We have recently had solicitors from our area go to family and crime to bolster numbers there, and we have had a redundancy. We effectively have only three FTE lawyers providing state civil law assistance for the whole state in all civil law matters. Elder abuse is a really small fraction of all the civil legal need that exists in the state. Sorry, what was your question?

**Hon ALISON XAMON:** How do you prioritise which matters you take on?

**Mr STEVENSON:** We look at urgency. If, for example, someone contacted me and said, "A 90-year-old client's house is going to be sold from underneath her. She's going to be made homeless," something like that would be in straightaway as a priority matter. We are prioritising matters that are in courts where there is existing litigation and ongoing litigation. Although we might not be able to appear for the person, if there is a court date coming up or there are pleadings that need to be

filed, we would prioritise those people because they are already in a formal process. Someone else who was perhaps in SAT or had a SAT hearing that was upcoming, we would prioritise that because we might be able to represent them on a grant of legal aid in SAT.

[1.00 pm]

**The CHAIRMAN:** Clearly you are representing the alleged victim of elder abuse, not the alleged perpetrator of elder abuse —

**Mr STEVENSON:** That is right. Exactly; yes.

**The CHAIRMAN:** — but are you in the SAT situation representing them because they might dispute whether they have capacity or not?

**Mr STEVENSON:** Exactly. We have also had situations where the adult son or daughter or someone not even in a family relationship but in some sort of relationship with the older person has commenced proceedings in SAT to try to obtain guardianship or administration orders over the older person. We have seen it actually happen and then we have gone back and sought a review of the decision because of the instructions we received from the older person. So those proceedings can sometimes be used to get an unfair advantage over the older person.

**The CHAIRMAN:** So in some of those proceedings would you then be in a different position to say, for instance, the Public Advocate? The Public Advocate might have investigated a matter and suggested that there needs to be an order made by SAT, and yet you are representing a client who still wants to resist that and potentially wins their case.

**Mr STEVENSON:** That is right, yes. There are slightly different interests at play.

**The CHAIRMAN:** We will move then to term of reference (c), which looks at forms of elder abuse. I think you have really touched on that you are really only dealing with financial elder abuse.

**Mr STEVENSON:** That is right.

**The CHAIRMAN:** Unless there is anything you want to add to that, we will then move to term of reference (d) on the risk factors. You touch on this on pages 10 and 11 of your submission. With respect to page 10, your submission refers to traditional gender roles being a complicating feature of clients who are subject to financial elder abuse. What are some of the measures that older women can take to protect themselves against this form of elder abuse?

**Mr STEVENSON:** Certainly there could education and awareness. I might have mentioned here or somewhere else that a website like the ASIC MoneySmart website has really approachable and fairly easy to understand information. But if it is internet-based, it does not necessarily mean that an elder person would—I know my mother does not access the internet. Although there is a wealth of information, getting to it is the key. I think that awareness and programs like the programs that Northern Suburbs CLC is undertaking are really valuable—that peer-to-peer support. So trying to go to where the people are. That is why the outreach work is so effective. I have always found that with something like this, it is really key to try to approach people through other people like GPs or allied health workers or social workers, because that is where a lot of these older people may be going for their other problems; for example their health problems. If at least those types of workers have an understanding of some of the key legal issues and we, as legal assistance providers—“we” meaning Legal Aid or a CLC—have those relationships with those GPs or allied health workers in the community, then there is a much better sort of referral network in operation as well.

**The CHAIRMAN:** Yes. Presumably doctors, like lawyers, need to have some form of ongoing continual professional development and education. I note that Legal Aid is one of the 12 members

---

of APEA. Is there any engagement by APEA with for example the AMA or with the UWA Medical School, to look at tapping into medical professionals?

**Mr STEVENSON:** I am not exactly sure what APEA has done, but an example would be something like WREN—the health–justice partnership in the northern suburbs. They are based in a hospital. It is something that I would like to do as well, and I have made approaches to social workers at King Edward and also to the aged-care directorate at the Department of Health. There may be a bit of reluctance to embark on some of those health–justice partnerships, so it is a bit of a hard nut to crack. That is my experience, so I need to persevere with that. It does come back to I only have three lawyers for the whole state for every civil law matter, so I do not want to put myself out there that we can provide this sort of assistance and this networking referral when we actually do not have the capacity to provide the assistance. That is the catch.

**Hon ALISON XAMON:** But as a model?

**Mr STEVENSON:** As a model, fantastic, because you are actually doing the outreach work. Another idea is if you go to a GP’s office and you have the TV screen, just to have some ads or a little video or something to give people an idea about services or issues, to even know that this is elder abuse, even if you do not use the word “abuse”, but you could say, “If this is happening to you, you can talk to someone at Legal Aid or a CLC.”

**The CHAIRMAN:** Who from Legal Aid represents on APEA?

**Mr STEVENSON:** That is me.

**The CHAIRMAN:** Would you have a view as to which of the 12 members of APEA would be best placed to lead the charge on this education and awareness building?

**Mr STEVENSON:** Probably Communities.

**Hon ALISON XAMON:** Okay.

**Mr STEVENSON:** Yes, I would say Communities. But Health is also a key contender for that role because that is the intersect for a lot of older people, with aged care or with health providers. That is where the vulnerability, as well, comes into it, because as people age and they have more medical conditions and need treatment and care, then that is where they become dependent on other people, which leads to elder abuse at times.

**The CHAIRMAN:** In terms of page 11 on risk factors, are you in a position to comment on what some common features of perpetrators of financial abuse look like in your experience?

**Mr STEVENSON:** Perpetrators in our experience are adult children who need funds or need somewhere to live. One of our priority areas is mortgage stress, and it is obviously people who are in mortgage stress who, if they are at risk of losing their own house, “Mum’s got a house, let’s move in with mum”, or, “Let’s get mum to sell her house and use the proceeds to build the house and mum can live out the back.” You know the stories. So it is adult children with their own financial stressful situations. There are accelerated inheritance cases where they want it now rather than waiting for it, so impatience. It could be that there are adult children with special needs, whether it is because they have their own physical disability or mental or cognitive disability. They may have special needs and they are not prepared to wait any further. They have enough cognition to know that there is a slice of the pie, but they need it now and they are not prepared to wait.

**The CHAIRMAN:** Anything further on this?

**Hon TJORN SIBMA:** With respect to the observation made about perpetrators undergoing mortgage stress or any other sort of financial tension, are you able to identify where that might be more prevalent in terms of the Perth metropolitan area or is it more evenly spread?

**Mr STEVENSON:** I could not say with any precision where it is. But something that does come to mind is, say, farming families in a regional context. That is often mixed in with adult children and their partners and their families doing a lot of work on a family farm and not necessarily being rewarded appropriately for the work. That is what we have seen.

**Hon TJORN SIBMA:** Interesting.

**The CHAIRMAN:** We will move then to term of reference (e), which is for the committee to assess and review the legislative and policy frameworks. Are you aware of any avenues for remediation or compensation that exist for victims of financial elder abuse?

[1.10 pm]

**Mr STEVENSON:** There could be a remediation through the banking code of practice; I am not an expert on that. But what I know is that the banks appear to be continually developing their response to elder abuse.

We have seen cases where money has been withdrawn from an account and the bank has actually compensated the account holder. An example is an elderly man who relied on a younger neighbour to assist him. He gave the PIN to this person, and she withdrew \$5 000. But the bank actually repaid, if you like, or compensated him the \$5 000, even though he had given her the PIN. My take on it is the banks seem to be much more aware of where there could be a situation involving abuse or misuse and made remediation.

**The CHAIRMAN:** In that particular instance, that was really quite generous on the part of the bank.

**Mr STEVENSON:** Very generous, yes. I was very surprised.

**The CHAIRMAN:** It makes for a welcome good news story for the banks in the current climate!

**Mr STEVENSON:** You will not hear that in front of the royal commission!

**The CHAIRMAN:** No! Do you have any views on how misconduct restraining orders might be used, or better used, to respond to this scourge of elder abuse?

**Mr STEVENSON:** I have not considered that.

**The CHAIRMAN:** Is that something that you would be willing to take on notice?

**Mr STEVENSON:** Yes.

**The CHAIRMAN:** Okay. Let us make that question on notice three.

**Hon ALISON XAMON:** I think it is particularly pertaining to persistent requests for money and whether misconduct restraining orders might be a way to manage that sort of inappropriate persistent behaviour.

**Mr STEVENSON:** My sort of off-the-cuff comment would be that we fall into the difficult situation which always arises where the older person is very reluctant to take any types of proceedings in a court against their children. I realise this is different, but that is one of the hurdles we have.

**The CHAIRMAN:** The main barrier, yes. At page 13 of your submission, you state —

... statutory exceptions to indefeasibility of title should be given further consideration, to protect the interests of older people who have entered in assets for care arrangements.

Are you in a position to advise us of the types of statutory exemptions that you think should apply for older people in these situations?

**Mr STEVENSON:** Certainly where there is fraud, it is not necessarily so much of an issue. What concerns me is the starting point of presumption of indefeasibility of title. I appreciate that it is a

longstanding fundamental concept which it is dangerous, perhaps, to disturb. But where equity is not necessarily accessible in the Supreme Court for older people who are victims of fraud involving transfer of land, I think that is where an exception should lie, where there has been abuse through some misuse of an enduring power of attorney, fraud, unconscionability, or undue influence regarding the signing of paperwork and transfer of land documents.

**Hon ALISON XAMON:** You are right. That is a very slippery slope, because you cannot put the onus on the purchaser to examine all those provisions.

**Mr STEVENSON:** That is right.

**Hon ALISON XAMON:** I mean, how practical is that really? I understand what you are saying, but this has been fully examined already where we have had cases of property that has been sold by fraud. What would be your thoughts on that?

**Mr STEVENSON:** I suppose it is a different situation where the purchaser is, and remains, the perpetrator of the fraud.

**Hon ALISON XAMON:** Are you talking here about a specific provision for a land swap, effectively, simply within that family structure?

**Mr STEVENSON:** That is right.

**Hon ALISON XAMON:** In that case, you could also look at recovering that land in that instance?

**Mr STEVENSON:** Where the perpetrator of the fraud is the holder of the title.

**Hon ALISON XAMON:** Okay. That makes it much more specific and a bit narrower. I was concerned that if you were talking generally, it would potentially wrap up a lot of innocent and well-meaning purchasers.

**Mr STEVENSON:** Yes. Where a third party purchaser was purchasing in good faith, I do not think we could discourage that.

**The CHAIRMAN:** Further on page 13 of your submission, you state —

... the law in relation to caveatable interests should be better clarified by statute, again, to increase the range of protections available to older people who have entered into assets for care arrangements.

I am inviting any further comment or elaboration you might have on that point. Presumably, what you are talking about there is the capacity for a caveat to be lodged in that instance to protect varied interests.

**Mr STEVENSON:** In my experience, caveats are not always lodged where there is a lawful authority to lodge them. I think if the statute law was very specific, and fraud as well, to be able to capture these types of situations to ensure that the older person had a specific statutory caveatable interest, rather than trying to find an interest as defined through common law, where it might depend on an equitable interest, at least if there was a very specific provision, that could help quite a subset of people.

**The CHAIRMAN:** You would not call them this, but effectively a granny flat caveatable interest.

**Mr STEVENSON:** Yes, something like that.

**Hon ALISON XAMON:** That was very helpful.

**The CHAIRMAN:** Yes. We move now to term of reference (f), “assess and review service delivery and agency responses”. I think you have a protocol in place between Legal Aid and the State Administrative Tribunal?



**Mr STEVENSON:** That is correct.

**The CHAIRMAN:** For how long has that protocol been in place?

**Mr STEVENSON:** It has been in place for a few years now.

**The CHAIRMAN:** Okay, and subject to regular review?

**Mr STEVENSON:** Honestly, probably not, but it could be!

**The CHAIRMAN:** Okay. From your experience, the protocol is working well?

**Mr STEVENSON:** It is working very well. One of the principal difficulties that we had at the outset when matters were referred was having access to documentation. We were not getting all the documents that we relied on at the tribunal, and obviously we cannot give advice unless we have all the medical reports and other statements. The protocol addressed that. That was one of the issues that it addressed.

**The CHAIRMAN:** The circumstance it is looking at addressing is the tribunal has a matter before it, it is concerned that some elder abuse is potentially occurring, and it is concerned that the person who is before it is unrepresented and therefore would like Legal Aid to provide some assistance?

**Mr STEVENSON:** That is right. Under the schedule to the Guardianship and Administration Act, SAT can make an application for legal aid on behalf of the represented or proposed represented person.

**The CHAIRMAN:** How frequent are those applications?

**Mr STEVENSON:** Lately, very few; again, I think they know that we do not have the capacity that we once had. But there was a time a couple of years ago when they were every week.

**The CHAIRMAN:** Would any of those applications made by SAT ever be refused?

**Mr STEVENSON:** Very rarely. It may be that the person had assets that were way beyond, and even if we tried to make some allowances under our means test and our assets test, they were still way over our assets test.

**The CHAIRMAN:** The assets test is a guideline?

**Mr STEVENSON:** It is effectively a guideline, yes.

**The CHAIRMAN:** In terms of matters before the State Administrative Tribunal, it will be called upon from time to time to make an order for who might be a guardian or administrator. Are you aware of whether SAT makes a capacity assessment on the person who might become the guardian or administrator?

[1.20 pm]

**Mr STEVENSON:** No, I am not aware that they would undertake that.

**The CHAIRMAN:** Clearly, they are doing that with regard to the person in question. Perhaps we would be better off asking SAT.

**Mr STEVENSON:** Yes.

**The CHAIRMAN:** Page 13 of your submission also talks about a memorandum of understanding between yourselves and Advocare. Can you just unpack for us what that memorandum of understanding is all about?

**Mr STEVENSON:** That is to streamline referrals both ways and also to streamline processes for training, so to embed for Legal Aid to provide training on legal issues to Advocare—to come and talk to their staff—and, likewise, for Advocare to come and talk to us about different issues affecting older people. They were the principle reasons for putting that in place.

---

**The CHAIRMAN:** What types of matters would Legal Aid refer to Advocare?

**Mr STEVENSON:** It could be where someone needs support for finding the right housing or the right types of support services.

**The CHAIRMAN:** So, it is where nonlegal assistance is needed.

**Mr STEVENSON:** Nonlegal, yes.

**The CHAIRMAN:** You also make mention of informal referral arrangements between Legal Aid and the Department of Health. Has it got to the point where it is time to formalise those referral arrangements?

**Mr STEVENSON:** Possibly. On what I touched on earlier about a health–justice partnership, that is where I make contact with a colleague on the APEA group at the aged-care health directorate and that is where the referral arrangement is. That has come about because of APEA. But, as I said, I would love to have a health–justice partnership arrangement. I think that one of the concerns was whether we would be providing advice to people regarding complaints they had about their health care. We have made it very clear that we are not interested—“interested” is not the right word. The purpose of our involvement is not to advise people about suing the Department of Health and suing the healthcare provider. It is about a whole range of other legal issues that are not just civil law issues. They also could be family law issues or possibly criminal law, but probably more family law and civil law.

**The CHAIRMAN:** So what happens in that instance when you know that there is a case to be made against the Department of Health? Do you on-refer them somewhere else?

**Mr STEVENSON:** Yes. We would have an obligation to refer them—to tell them they may have a claim against the state. We would give them a list of three lawyers whom they might wish to contact, and that is really as far as we would go.

**Hon ALISON XAMON:** You would not refer to HADSCO?

**Mr STEVENSON:** We could if there was a complaint, yes.

**The CHAIRMAN:** So those three lawyers, they are private firms that the person might go and seek advice from. Would they be precluded from then making an application for a grant of aid?

**Mr STEVENSON:** There are two different types. They could apply for a disbursement-only grant of legal aid or they could apply for a grant under the civil legal assistance scheme—CLAS. That is another opportunity. Under CLAS—that is a scheme that I administer—I negotiate a fee arrangement with the private practitioner which is in respect to their professional fees and the disbursements.

**The CHAIRMAN:** I think, as you have already foreshadowed, it is a very minuscule proportion of the budget, so there is limited scope for all of those things.

**Mr STEVENSON:** Limited scope for advice by civil lawyers at Legal Aid. The disbursement-only grant of aid is not necessarily limited in the same way because it is money in and money out over time, because once the matter settles, we expect that the disbursement is repaid to Legal Aid. It is a different pot of money.

**The CHAIRMAN:** When you respond to that first question on notice, that will not be capturing that scenario there; that will be a different portion?

**Mr STEVENSON:** I could actually break that down so you get a picture of those disbursement-only grants, if you would like to see it.

---

**The CHAIRMAN:** I think it would be helpful, yes, just to get a picture of how it all works. You did highlight earlier that there are some barriers to having these health–justice partnerships. What is causing these barriers?

**Mr STEVENSON:** From Legal Aid’s point of view, it is simply having the capacity to provide the service. Other barriers may be that allied health workers such as social workers have so much to do without trying to think of a new type of service and fitting that in. Other barriers may be getting support from the executive—the higher levels of administration in hospital settings—and the bureaucracy of health administrators, I think. I would say they are some of the key issues.

**Hon ALISON XAMON:** It would really need to be an all-of-government commitment, would it not, to creating these partnerships?

**Mr STEVENSON:** That is right. My experience has been that the social workers I speak to love the idea, and we still have the informal referral arrangements where they will just ring us and refer people to us, but that changes when staff change and people move and go somewhere else. It is trying to embed that relationship where there is a deep understanding that people with health problems also have legal problems. I think it is also an awareness of what is a civil law problem. It is a housing problem, an employment problem, a debt problem, a credit problem, an elder abuse problem—to identify that that is something that can be addressed through a referral for legal advice, because they might think, “Where am I going to get accommodation for this person?”, but they may not realise that we can advise if there is some sort of legal issue that is involved. If someone is in financial hardship, we can provide assistance, provide advice, refer people to the right place, and negotiate with financial services or credit providers. I think it is having that deeper understanding of what can be done to address other issues apart from health issues.

**The CHAIRMAN:** Page 14 of your submission, I think, touches on signing an undertaking with respect to responsibilities. Apart from that, what kind of training or education do you think private guardians or administrators should be given to better understand their role?

**Mr STEVENSON:** Something that could work well is a short video presentation that is loaded onto the internet which goes through the different obligations and roles and responsibilities. I think people learn things in different ways. You could read something, but I think having it in video form might be quite useful as well, and they could always go back and refresh themselves.

**Hon ALISON XAMON:** Surely you could do that as a one-off grant to develop something like that?

**Mr STEVENSON:** Absolutely, yes.

**Hon ALISON XAMON:** How much money do you think it would be to create something like that?

**Mr STEVENSON:** Possibly \$50 000 or so.

**Hon ALISON XAMON:** As a one-off to create a recurrent resource?

**Mr STEVENSON:** Yes. It is very hard for me to just —

**Hon ALISON XAMON:** I am interested in knowing. There is a difference between \$50 and \$500 000, so that is why I am trying to get an idea.

**Mr STEVENSON:** And we do have experience because we provide a lot of community legal education resources. If you go to the website, there are resources that are now online to do with mortgage stress, violence restraining orders, separation, families and divorce.

**The CHAIRMAN:** What about the Office of the Public Advocate? Might they be another source of providing this type of education?

---

**Mr STEVENSON:** Definitely. It probably falls more within their remit than perhaps ours. Our remit would be more about the actual elder abuse than the work that we can do to assist people.

**The CHAIRMAN:** Yes, after the fact.

**Mr STEVENSON:** After the fact. Something that is very important is that early intervention. That is why I mentioned something like the video in the GP's waiting room, because you have a captive audience and people are just sitting there waiting. I think that is a really important role for, say, videos or other types of early intervention or community legal education.

**Hon ALISON XAMON:** How many of your elder abuse matters are resolved by mediation as opposed to going to full hearing?

**Mr STEVENSON:** I can only recall one matter that went to mediation and it did not resolve. Again, it is really hard to get people in a family relationship where there is a power imbalance between the vulnerable older person relying on the younger person—the adult child. They need that care, that closeness, the relationship. They want to see their grandchildren. They do not want to be prevented from seeing their grandchildren. They are socially isolated. It is really awkward to be involved in. I still think there is room for mediation. That is why I think SAT might have a role in mediation if matters could be other types of matters, whether a failed shared living or assets for care arrangements, if it is by SAT it could have a role to play in those types of matters and why the mediation work that is done under the umbrella of SAT could be something that is useful to park in SAT's jurisdiction.

**The CHAIRMAN:** But it would currently be prevented from looking into matters like that because they would be matters in which everyone has capacity.

**Mr STEVENSON:** Yes.

**The CHAIRMAN:** So they only engage if there is a question on capacity?

**Mr STEVENSON:** Yes. There might have been an Australian Law Reform Commission recommendation around state tribunals having a jurisdiction for shared-care arrangements to deal with the fallout from those arrangements.

**The CHAIRMAN:** On page 15 of your submission—we are still dealing with term of reference (f), to assist and review service delivery and agency responses. What has been Legal Aid's experience with older clients who commence proceedings against family members in circumstances of suspected elder abuse?

**Mr STEVENSON:** They are petrified of court proceedings. They do not want to go to the Supreme Court. They do not understand what it means to go to court, although it is very difficult to judge capacity.

**Hon ALISON XAMON:** Do you ever have problems being able to take instruction?

**Mr STEVENSON:** Sometimes yes, and it changes. It fluctuates. Even though someone appears to have capacity, it is fine to have all these legal tests for capacity, but when you are face to face with someone or visit them in their house, I ask a lot of questions and make those observations. I remember a client recently invited me to listen to her play the piano and she was fantastic. She was 90 years old and played it, but although she had the capacity to perform that particular task, which she probably had been doing for a long time, whether she really understood what she was doing in terms of the legal proceedings is still not 100 per cent clear. I do not know whether she would be able to give evidence on the stand in the Supreme Court against her adult son, and she does not want to. It is almost a gamble to commence proceeding, and you should never gamble with legal proceedings, but how else do you get redress if you do not? And she wants redress, so you are

stuck. But she is lucid and she can give you a history of what happened. She can give you a statement, a proof, about what the son did and what the sequence of events were, and it sounds logical, but there is real trepidation for older people in starting any type of court proceedings, in my experience. Obviously there is the cost. If we do not do it, then —

**Hon ALISON XAMON:** No recourse is available.

**The CHAIRMAN:** So does that same anxiety still occur if the forum is SAT rather than the Supreme Court? Would they have any appreciation of the difference?

**Mr STEVENSON:** Not initially, but we could talk to them about what the forum is like. It is more relaxed. As soon as they walk into a SAT hearing room—at least you see courtrooms on TV and you get an idea of what it is all about or might be about, but as soon as you walk into a SAT hearing room, it is so very different. You can take them into the SAT hearing room before their matter came up. It is less formal and a less rigid structure. Not having formal or structured rules of evidence is, I think, much more helpful to the older person.

**Hon TJORN SIBMA:** May I ask, in respect of your clients, is there a consistency in actually what they want from undertaking the action? It appears to me, through other hearings and other evidence, that it is not always financial recompense or redress; it is some other outcome, be it a cessation of the abuse or an acknowledgement. Would you be able to elaborate on that? I think it gets to what then might be the best fora for dealing with these disputes.

**Mr STEVENSON:** Part of the answer depends also on some of the cultural norms as well. My experience is that in some cultures the family relationships are very, very different and support is very different from some other cultures. What you see in Aboriginal communities around sharing money and assets would be very different at times as well. I recall a lady—I went to her house to try to get a feel for what was going on. The house itself was a new build and she was already living in her part of the house; it was contained under the one roof. She did not really know what she wanted, but she did know that she wanted a good relationship with her daughter, and that was deteriorating. She wanted a really good relationship with her grandkids, but the daughter was preventing her from having that relationship. She wanted to be able to have some sort of freedom of movement, but the way the house was designed she could not really access outside the house because she had a lot of physical disabilities and she could not even open the garage to get out. Sometimes they do not always know what they want, but when they do know what they want, it revolves around maintaining the family relationships and maintaining some independence, some level of freedom, but still that closeness with family.

**The CHAIRMAN:** Members, if you are happy, I am going to move to term of reference (h), which is to look at initiatives to empower older persons to better protect themselves. At page 16 of your submission I note there, and I quote —

When a grant of legal aid is not available, our civil law in-house practice provides assistance through our Social Inclusion Program.

What is the social inclusion program, and are there criteria that need to be met to be included in it?

**Mr STEVENSON:** When I had more money it was created for staff, legal staff, and a coordinator, non-legal. The idea of the social inclusion program is to provide more targeted minor assistance. The traditional model has been a full-service grant of legal aid for representation or legal advice, one-off legal advice. The big gap is what we call minor assistance, so it is that un-bundling of legal assistance where you are doing some negotiation, advocacy, you might write some letters. You are not representing someone on a full-blown service agreement, but it is discrete task assistance. They have a mandate to do that discrete task assistance. I have always said, “Take as much time as you

need to, balanced against obtaining the best result.” You need to obtain an outcome. The problem with just giving someone advice is that they walk away and they might not do anything with it, but at least you provide that minor assistance and try to get an outcome and try to get the most impact for that particular service. The social inclusion program also, when there were more staff, did a lot of community legal education and outreach work, so having a lot of relationships with other non-legal service providers and triaging. We used the coordinator to triage a lot of the calls.

**Hon ALISON XAMON:** You said when there were more staff —

**Mr STEVENSON:** There are only two, and they are doing —

**Hon ALISON XAMON:** So it is effectively not really happening anymore?

**Mr STEVENSON:** It is happening, but not as much because people have left, so we are trying to plug a lot of holes. It is not happening like it was, but it still does happen.

**The CHAIRMAN:** Is there a criteria to have access to this? As I understand what you are saying, if I can access the social inclusion program component, I have someone who can assist me with minor matters. They are not going to be my, effectively, full-time solicitor. Equally, I am not just going for a one-off piece of advice. Probably like a personal trainer, I am going there from time to time and they are doing some things with me. Do I still have to meet certain criteria?

[1.40 pm]

**Mr STEVENSON:** The key criteria are people who are more vulnerable and more disadvantaged and where providing the advocacy will probably or more likely lead to an outcome that is a positive outcome. It is subjective as well. Even if it means that we can have a debt of \$15 000 or \$10 000 waived, that means a lot to someone who is on the pension or in Homeswest accommodation with a disability—that is a huge amount of money—or if they have been in a car accident. The other criteria is around the type of skills that the solicitors in that program have. It is a lot of that credit-debt work, financial hardship. That is why elder financial abuse is a really good fit because of the financial aspects of it and also because of the SAT jurisdiction—the guardianship and administration work that we have been doing for some years. We have quite a good skill set for elder financial abuse.

**The CHAIRMAN:** Would that type of work be done by Northern Suburbs Community Legal Centre—this minor matters-type of work?

**Mr STEVENSON:** That is right. If I could add, one other thing about the service provision feature is there are, say, social workers or psychologists or other types of non-legal support workers who assist, so it is that wraparound service. That is why that is an effective model.

**The CHAIRMAN:** It is sounding more and more like a Health–Justice partnership.

**Mr STEVENSON:** Exactly.

**The CHAIRMAN:** Term of reference (i) refers to new proposals or initiatives. We have already touched on the Health–Justice partnerships. At page 18 of your submission, there is talk about elder-caring coordination. What exactly is elder-caring coordination?

**Mr STEVENSON:** To be honest, I do not know. I saw it on the internet and I thought, “That sounds good.”

**The CHAIRMAN:** No problem. In fairness to you, in your submission it states —

Although we have very little information about Eldercaring Coordination , the concept may be worthy of investigation.

So that is a matter for the committee to take on.

---

**Mr STEVENSON:** Yes.

**Hon ALISON XAMON:** We thought you might be able to point us in the right direction.

**Mr STEVENSON:** Sorry—no.

**The CHAIRMAN:** Members, any further questions?

**Hon ALISON XAMON:** It sounds like you need more money.

**Mr STEVENSON:** Yes, that is right. For us, it is about being able to provide the service. It is really challenging with a mandate to provide a huge and very broad scope of legal service in the civil law arena, where elder abuse is just one of many, so we have to ration what we do. It is very difficult.

**The CHAIRMAN:** Do you have anything further you want to raise with us at this point?

**Mr STEVENSON:** The questions on notice—is there a particular time frame or is it as soon as possible?

**The CHAIRMAN:** Basically after today, we will write to you, identifying those things, including the transcript and so forth. Of course, if you need more time, do not hesitate to come back to us. We are very approachable in that sense.

**Mr STEVENSON:** Thank you very much.

**The CHAIRMAN:** We want to 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. As you have already indicated, you did take some matters on notice. The committee requests that you provide your answers to those questions when you return your corrected transcript of evidence or subject to any extended period that you might request. 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.

**Mr STEVENSON:** Thank you.

**Hearing concluded at 1.44 pm**

---