

SELECT COMMITTEE INTO ELDER ABUSE

INQUIRY INTO ELDER ABUSE



TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 26 MARCH 2018

SESSION ONE

Members

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

Hearing commenced at 9.54 am

Ms PAULINE BAGDONAVICIUS

Public Advocate, Office of the Public Advocate, affirmed and examined:

Ms DEBRA CASEY

Manager Advocacy Investigation and Legal, Office of the Public Advocate, affirmed and examined:

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

[Witnesses took the affirmation.]

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

The WITNESSES: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard and broadcast on the internet. 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?

Ms BAGDONAVICIUS: Yes, I will make an opening statement, thank you, Chair. As a statutory officer with the functions legislated in section 97 of the Guardianship and Administration Act, I took the opportunity to make a submission to inform the committee on the role of the Office of the Public Advocate and what we do in relation to elder abuse where adults may have a decision-making disability. The office investigates concerns that an adult with a decision-making disability may be at risk of abuse, exploitation or neglect, and advocates for that person in regard to whether they need a substitute decision-maker appointed if applications are made to the State Administrative Tribunal. When an investigation is undertaken by the office and it involves alleged abuse, exploitation or neglect and the adult is 65 years or older, this information is captured as a case and reported in our statistics in our annual report each year. When the State Administrative Tribunal appoints the Public Advocate as guardian of an adult with a decision-making disability and the case involves allegations of abuse and the person is 65 years or older, again, we record that the allegations of elder abuse were a factor at the time of the Public Advocate's appointment in our annual report. The office also has an informative website that provides information about guardianship and administration, including the options people have to make an enduring power of attorney or an enduring power of guardianship, and a link to the Department of Health's website or advance health directives. These instruments assist adults to protect themselves from the risk of abuse if they were to lose capacity in the future. We also provide education to community members and service providers, and provide a telephone advisory service during business hours.

As a member of the Alliance for the Prevention of Elder Abuse WA, we work with a range of key stakeholders in regard to elder abuse. In addition, we are currently assisting the director general and, in turn, the Attorney General with the work of the Council of Attorneys-General on progressing recommendations arising from the Australian Law Reform Commission inquiry, “Elder Abuse—A National Legal Response”. As part of that work we are also working with the Department of Communities, which has the lead role in developing the national plan on elder abuse that has recently been announced by the commonwealth Attorney-General.

The CHAIRMAN: Thank you very much. I indicate at the outset that it is the committee’s standard practice during the course of these public hearings to work through each of the committee’s terms of reference. I note that you have kindly provided to the committee a submission, which is publicly available, dated 10 November 2017. It covers terms of reference (a), (b), (e), (h) and (i). That will be where the majority of the questions are this morning. But of course, if you wish to comment on any other terms of reference, there is no limitation there.

I will start at the outset with term of reference 1, which asks the committee to determine the definition of elder abuse. Your submission refers to APEA:WA’s definition of elder abuse from the 2013 protocol document. The 2018 elder abuse protocol has been released—in fact, I think it was publicly released before the committee’s hearing last week or the week before. Does the Office of the Public Advocate support the broader World Health Organization definition on elder abuse as quoted in the new protocol?

Ms BAGDONAVICIUS: Yes, we are supportive of that broader definition because it also has come through from the Australian Law Reform Commission’s report. I think there is still potential for that definition to be enhanced. One area of work that is currently being undertaken is through the Attorney-General’s department at the commonwealth is work by the Australian Institute of Family Studies. They are doing further research in relation to elder abuse, both in terms of the definition and its prevalence. There may be something else that needs to be taken account of. One of the issues for the Office of the Public Advocate is that we capture statistics on anyone who is over 65, as I said before, when there have been allegations of abuse. One of the difficulties for us is that sometimes it is not a person of trust. Most of the cases in which we capture or identify elder abuse is when there is a trusting relationship, be it of family, friends, neighbours, or a professional person in the person’s life or a carer. However, for us, there are sometimes other people who take advantage of people because of their decision-making disability. Although it is a very small number of people, we also capture those people as and when we are counting our elder abuse. I think in general terms, in terms of moving forward, I think the World Health Organization’s definition gives us a very good broad platform and a better platform from which we can work in identifying elder abuse.

Hon ALISON XAMON: Can I just follow up on that point a little? You are talking about other people who are able to take advantage of them, specifically because they are vulnerable, though, that if it had not been for that vulnerability, it would just be a normal interaction as per anybody within the community. Is that the sort of thing? For example, if someone gets to know me and keeps hassling me for money, I am capable of telling them to go away, but if I have started to become impaired, there is an inherent vulnerability. Is that the sort of thing that you are referring to?

Ms BAGDONAVICIUS: Yes, it is. Debra might like to add comment in terms of our work, because she is on the investigation team, on how this arises in relation to investigations.

Hon ALISON XAMON: Before you get to that, there is an element of this that I am particularly interested in. I am also aware that you are really talking about people who have reached a point of quite critical mental impairment, which means that, effectively, they are able to be covered by

guardianship orders. It strikes me that within the law, there is a gap. That would be those people who would otherwise apply for misconduct restraining orders or a whole range of things who may have family who are managing an enduring power of attorney for them, but there is a lack of capacity to protect themselves from those sorts of scenarios. As I understand it, someone with an EPA cannot make application on behalf of that person for a misconduct restraining order—for example, against a third party who might be stealing money. I am just flagging that and wonder whether you have any comments about that, as well as what you were going to respond to?

Ms CASEY: Just getting back to the concept of who is doing the abuse or how people meet people, we did have a community-referred investigation, so that is the capacity for the Public Advocate to investigate matters that are referred by community members. A person had been abused by someone who met her on the bus and over a period of time identified her vulnerability and that she was quite isolated in the community. That was not the definition of a person of trust that we would generally consider; it is broader than that. We are looking at broader notions of how people come into contact with people.

Hon ALISON XAMON: I am interested in where the legal holes may lie that prevent us from being able to adequately protect older people from those sorts of interactions.

Ms BAGDONAVICIUS: From our point of view, our intervention would be a focus on whether that person has a need for a guardianship or administration order to be made on their behalf so that they have another person involved in making critical decisions for them if that is required. That is the focus of our community-referred investigations. It is about: is there a need for intervention here? If an enduring power of attorney or an enduring power of guardianship is not working effectively, again it is about: is there a need for the tribunal to be involved in intervening in this matter and potentially appointing a guardian or administrator, as relevant to the person's circumstances?

Hon ALISON XAMON: So someone could still be at the point of being competent, but be vulnerable, and it sounds as though there really is not recourse for them to be able to prevent that behaviour, because if they are competent, a guardianship order —

Ms BAGDONAVICIUS: If they are competent, they will not come into the guardianship and administration scheme.

Hon ALISON XAMON: That is right.

Ms BAGDONAVICIUS: It would come back to what other supports are around that person to help them take action to protect themselves.

Ms CASEY: Just to add to that, when we do investigations of those community-referred matters, which are generally matters where we do not have capacity information to start with, if we are not able to find information about capacity but there is still vulnerability, the investigators will generally try to link people back into appropriate services that can assist them. I can think of a banking example. It was an overseas scam situation, where the person was having money taken out of their account but they were deemed to have capacity. Through our involvement and engagement in the process, they were able to understand what had happened to them, and the bank engaged to put locks on their account so that they could not put money into an overseas account. So although no appointments were possible to be made, that was an intervention that worked because we had been able to engage some other services into that process.

The CHAIRMAN: Just back to this issue of the definition, you indicate support for the World Health Organization definition. I note that the Office of the Public Advocate is a member of APEA and obviously signed off on the new protocol. You said there is room for enhancement. Is that an active

conversation among APEA at the moment, that the incremental iteration in the definition that you have just signed off on is still to be worked on?

Ms BAGDONAVICIUS: I think it is about a work in progress all the time, because although you sign off on a document, that is at a point in time, and there is always capacity to change it. As I understand it, APEA is not going to be producing huge numbers of this publication. So we are looking to circulate it and make people aware of it, but mainly, though, online. So as and when more information becomes available and more discussion occurs around the definition, taking into account what comes out of the further work that is done on the prevalence and definition for the Council of Attorneys-General, I think that will influence that and be something that we will revisit.

The CHAIRMAN: That probably leads in nicely, members, to the second term of reference, which is on the prevalence of elder abuse. Is the Office of the Public Advocate involved in the commonwealth elder abuse working group?

Ms BAGDONAVICIUS: I am on the working group, supporting the director general with that work, and we are also assisted by a senior policy officer from the Department of Justice with that work. However, we are consulting with others more broadly as required, and the Department of Communities and the acting assistant director general is also on that working group.

The CHAIRMAN: That is a Western Australian working group for the director general?

Ms BAGDONAVICIUS: No. I am sorry. I am thinking of the Council of Attorneys-General working group on elder abuse. That is the membership of that group.

The CHAIRMAN: You are participating in that?

Ms BAGDONAVICIUS: Yes, in terms of the ongoing discussions where they are working up documents for the Attorney Generals' consideration.

The CHAIRMAN: Okay. In your submission at pages 3 and 4, you helpfully set out some of the statistics for 2016–17. That is obviously a snapshot of a particular financial period. Are you able to make any comments about trends generally pursuant to some previous statistics?

[10.10 am]

Ms BAGDONAVICIUS: Yes. In our last annual report, I changed the format to actually identify numbers of people, because historically we talk about numbers of investigations. For instance, if we are referred a matter from SAT to investigate and it is about looking into whether or not someone needs a guardian or an administrator, that is actually two investigations technically, in terms of counting rules. I thought that given the interest in elder abuse, and everyone would want to know how many people is this, I brought it back to talking about people in this year's annual report. But we have produced similar statistics, and apart from that change, we have not made any other changes. So in our annual reports in recent years, you will find that information is always presented in the same format. I think there is a gradual increase. It is not an overwhelming increase, but in terms of the numbers of matters being referred to our office, there is an increase in investigations in the last financial year, and I think that is also borne out in our statistics to date in relation to the current year of an increase in the numbers of referrals being made by the tribunal. That is the bulk of where our referrals come from. We also undertake community-referred investigations. There is an increase, but in terms of the incidence in the wider community, in other research that has already been undertaken, which I am sure the committee is familiar with, there are estimates of between about two per cent and higher and up to 10 per cent. Fifteen per cent is the biggest figure I have heard quoted in terms of incidence in the wider community, but I think the work that AIFS is currently doing for the Attorneys General is going to be really informative in giving a better idea of some of that prevalence.

The CHAIRMAN: When you say that you think that there is an increase, is that an increase in matters involving elder abuse —

Ms BAGDONAVICIUS: Yes.

The CHAIRMAN: — because obviously you are looking at a broader range of matters?

Ms BAGDONAVICIUS: But the extent of the increase, that is just in terms of our sphere and the nature of our work.

The CHAIRMAN: I note that in those statistics that you provided for 2016–17, there is a large proportion of matters involving financial abuse. It makes me wonder how does the Office of the Public Advocate determine when to involve the Public Trustee.

Ms BAGDONAVICIUS: That determination is made purely by the State Administrative Tribunal.

Hon ALISON XAMON: Really?

Ms BAGDONAVICIUS: Yes. Our role is investigating in terms of the orders made to us by the State Administrative Tribunal. The State Administrative Tribunal receives applications around guardianship administration or around concerns about enduring powers of attorney and enduring powers of guardianship. Those referrals will come to us to investigate. Sometimes the tribunal purely wants us to attend a hearing; sometimes they want us to do written reports on our investigation. But whatever our role is where we have had a referral by the tribunal and they are anticipating our attendance, we would seek to always see the person about whom the application is being made so we can take account of what their views and wishes are separately from and independent of anyone else's advocacy for them at any tribunal hearing. There are a number of times when we make applications back to the tribunal based on the information that has been presented to us where we might go back and make a section 65 application to the tribunal if we have immediate concerns from what becomes more evident to us in the course of our investigation that some action needs to be taken quickly in terms of protecting somebody's estate. Then the tribunal will make a determination if they are going to hear a matter urgently and make a section 65 order, which will then be followed up by further administration review hearings as a matter of course after a period of time.

The CHAIRMAN: Just assist the committee in understanding the delineation of jurisdiction between your office and that of the Public Trustee.

Ms BAGDONAVICIUS: The Public Trustee is appointed only by the State Administrative Tribunal at a hearing. It does not have a role otherwise at this point in time. It is only through an appointment arising from that hearing.

Hon ALISON XAMON: So it has no capacity to self-refer or investigate or anything like that; it is merely a responsive agency?

Ms BAGDONAVICIUS: It also does refer matters to us to investigate at times.

Hon ALISON XAMON: Yes, because it cannot.

Ms BAGDONAVICIUS: It may be something for you to explore further with the Public Trustee later. Certainly, if they have particular concerns arising, they can refer to us. I see no reason why they cannot also make application to the tribunal in their own right if they think there is a particular need. But usually they will be limited in their information on the financial situation; hence, they will make the referral to us to go out and do a fuller assessment, because if they are already appointed, it is because of those reasons. I am also thinking there are times when they are also appointed as an administrator by the person themselves under an enduring power of attorney. So there are circumstances where they would refer for that reason as well.

The CHAIRMAN: On that, I note in your submission that your office is the only office with statutory responsibility to conduct investigations to determine whether a guardian or administrator may need to be appointed. But your office can also act as a guardian of last resort for adults with decision-making disabilities when appointed by SAT. Is there ever a circumstance where there is a conflict between those two things?

Ms BAGDONAVICIUS: In my view, there is not. In fact, it actually provides us with rich information when I become appointed as the guardian. But what we do in the office is we have structured the office so we have two teams—one to do the investigation and advocacy in relation to matters where the Public Advocate is not appointed and then our other structure is a guardianship teams where the Public Advocate is appointed as guardian of last resort. Certainly, all the information that has been made available to us through the course of our investigation is available to the incoming guardian. Whoever is the delegated officer has all the information, so the file transfers over. Any perceived conflict of interest, because sometimes we are dealing with hostile family situations and families who really resent the fact that the Public Advocate has been appointed, because, to do that, they have to have been deemed to be not suitable for appointment in some way or other by the tribunal —

The CHAIRMAN: Which you might have investigated.

Ms BAGDONAVICIUS: Which we might have investigated. There are times when people are unhappy about that, but then they have a different person that they are dealing with as the incoming guardian. That person establishes their own relationship with the key stakeholders and the represented person.

The CHAIRMAN: Yes. So they would never be the investigator.

Ms BAGDONAVICIUS: No.

The CHAIRMAN: Are there circumstances, then, where your office conducts investigations and SAT then, as a result of those investigations, appoints the Public Trustee?

Ms BAGDONAVICIUS: Yes, that happens in a number of matters. We are not appointed around financial matters unless there is a potential particular conflict of interest for the Public Trustee being appointed. It is very rare for the Public Advocate to be appointed as administrator of last resort. Currently, I might be appointed for three people, on my latest reckoning, for whom I am appointed as administrator of last resort. It is the Public Trustee in cases where there needs to be an independent person and the tribunal has determined again that there is not anyone else suitable that would take on that role around financial matters.

The CHAIRMAN: As an administrator?

Ms BAGDONAVICIUS: Yes.

The CHAIRMAN: But when the need is for a guardian, it would be yourself?

Ms BAGDONAVICIUS: Yes.

Can I just come back and clarify one other little point that I just made? I made a very categorical statement; I said never can the investigator make a decision. Debra, as a manager, has made a decision. She is the manager of the investigation team, but under my delegation she is also able to make guardianship decisions. Sometimes there have been urgent matters before the tribunal in relation to treatment decisions, for instance. We have had an urgent hearing and rather than actually trying to get someone else up to speed with what that decision is, in very few cases Debra has retained that matter for the first immediate decisions that need to be made, simply because they have been critical treatment decisions and ones that she has been able to make. If we had seen

that there would be value in terms of immediately appointing another guardian to do that, then we would do so, of course, if there had been a particular conflict. But in the matters that I am thinking about, it was more for consistency for the medical professionals where we were dealing with some end-of-life decisions that needed to be done quickly and Debra had a full appraisal of those matters. Just to clarify, it is unusual, but it does happen, but other staff do not.

Hon TJORN SIBMA: Can I just ask one clarifying question, Chair? Just with respect to again the statistics provided at page 3, I think, there were something like 1 496 investigations undertaken by the OPA in 2016–17, and 211 of those cases involved allegations of abuse. That is, obviously, self-evidently, a high proportion. Is there any means to validate whether those allegations of abuse are upheld in any substantive way, because there is obviously a difference between the quantum of allegations and the quantum of actual damage or abuse which is undertaken? Is there any way that you can capture that?

[10.20 am]

Ms BAGDONAVICIUS: On a point of clarification for you, the allegations of abuse for the 211 people related in fact to the referrals by the tribunal in the year, so it is actually a lesser figure; it is not the 1 496, just to clarify that.

I have had a background of working historically in child protection, so I am very aware, for instance, in that department, people will substantiate abuse and there is quite a process around doing that and there are also natural justice principles that have to apply to people where they have actually been substantiated as being the abuser, so a raft of work needs to happen to actually say, “This is substantiated.” I guess for us, I am very careful in the annual report to talk about allegations because, at the end of the day, there is enough information that the tribunal makes a decision that there are concerns about this person and they need protecting in terms of the Guardianship and Administration Act. We do not come back and then substantiate abuse in terms of our records, because for me it is about what is the outcome in terms of guardianship and administration. Once we move in terms of substantiation like a police investigation, I think it is quite a different area.

The CHAIRMAN: Okay. So in effect there are enough alarm bells going off that the tribunal engages and makes a decision. It is not necessarily the case that you then, in addition to that, substantiate all the different parameters and components?

Ms BAGDONAVICIUS: Yes, exactly, and we are not doing any forensic analysis of all the financial information that might become available to us. Our role is to look at the information, the picture, but our focus is always on the person and what needs to happen to protect the person and if it is required.

Hon ALISON XAMON: Do you refer to police very often?

Ms BAGDONAVICIUS: In terms of our investigation role we actually receive some matters coming to us from police. I endeavour —

Hon ALISON XAMON: I am thinking more about physical abuse matters rather than financial abuse.

Ms BAGDONAVICIUS: In terms of my role as Public Advocate, as guardian, there are other matters that get referred to the police, certainly, so the two things are different. Debra, do you want to make comment in terms of the investigation role with police in terms of reporting? Your experience might be helpful.

Ms CASEY: A lot of the community referrals we have had over time have come through the police, where they have gone out to see a person in the community and they have had some concerns. That might include concern about the person not having capacity and being vulnerable. What we

have done in those situations is, obviously, go out and try to engage with the person, see whether or not they are someone that the guardianship or administration order could be made for, and then look at what their supports are in the environment. Some of those cases, again, by the investigator getting involved, have identified some natural supports within the community for the person, so we have been able to advise the police of those contact details and perhaps some of the dynamics around the family situation, which has enabled them, if they then go back into that situation, to respond more easily. One example that had a good outcome was the police being involved in a situation that they referred to our office because they were concerned that the elderly person was vulnerable to neglect within the home, so it is that kind of neglect–abuse scenario. What happened when we looked into that further was that at the point where the police were engaged, there was a lot of family stress and the person who was providing the care and support to the elderly person was under carer’s stress and needed some extra support. Through that process of engagement, we were actually able to make sure that ACAT went in to do an assessment of the person, some home help services came in and some extra carer services came in, so that gave some respite for the family. So when we moved a few months down the track, the person who was vulnerable was actually being well supported—again, as they were prior to the issue of stress arising within the family. So some of those referrals have had positive outcomes in giving the police more information, as well as positive outcomes for the person that the concern is about.

The CHAIRMAN: We might move to term of reference (e), which requires the committee to assess and review the legislative and policy frameworks. At page 5 of your submission, you make a number of remarks in respect of this term of reference. What does the Office of the Public Advocate do to discharge its statutory function to promote and protect the human rights, dignity and autonomy of adults with impaired decision-making abilities, especially in the context of older people at risk of elder abuse?

Ms BAGDONAVICIUS: The primary way in which we do this is by having an informative website so that people can access information about our role, and good information about enduring powers of attorney, good information about enduring powers of guardianship. At the time that enduring powers of guardianship were implemented in Western Australia, which was from 15 February 2010, our office had a budget of \$1 million over four years, so we were actually able to employ two staff who went out and did a lot of community education at that time, until June 2013, and produced a lot of booklets, giving the enduring power of guardianship guide and widely distributing that. We did some of the presentations in conjunction with the Department of Health on advance health directives and we talked more generally about enduring powers of attorney, because there were a lot of misconceptions about what sorts of decisions people could make under an enduring power of attorney. So we did a rollout of community education across the state, and my memory is that we did about 360 community education sessions in that period of time. It was really good in the sense of being able to penetrate very small country towns. Debra was actually the senior policy officer at that time and she was one of the two staff who were involved in doing that rollout of education across the state. That was a really good way in which we worked with a lot of agencies around promoting awareness of those new powers within the act and of the act itself. We continue to do community education, but we are on a limited budget, so it is about as opportunities arise, where we can do a lot of community education in conjunction with other people who might have a particular interest in hosting a community education event. We do a lot of education also jointly with the Department of Health, for instance.

The CHAIRMAN: Two questions arise from that. First of all, was there a review or an assessment done on the effectiveness of that four-year education campaign?

Ms BAGDONAVICIUS: No, because it was a low-key campaign. It was not one of putting out lots of media messages per se. The targeting was to older people, particularly people over 50, so we worked with a lot of community groups. We certainly had a lot of anecdotal feedback that was positive and we always ask people to fill in information on community education sessions. My impression of that education was that people were very receptive, responsive, happy—good feedback.

Being one of the people who did all of those 360 sessions, I do not know if you have a comment to make, Debra, in terms of what you thought people's impressions were?

Ms CASEY: Anecdotally, the feedback was very positive from people. We might go and do a talk with a Probus club or a Lions club and get someone else coming up and saying, "My friend said you came out and talked to their Probus club, so can you come and do a talk with us?" So, that was anecdotal evidence that it was a positive process.

The CHAIRMAN: Sure. I think you said there was \$1 million allocated over four years for that, which enabled you to employ two people. Obviously, that is not in place anymore. That vacuum that exists, has that been filled by Advocare or APEA? Is somebody else doing that work that was obviously valuable at the time?

Ms BAGDONAVICIUS: There is a range of us who are always involved in doing some community education. Advocare certainly received funding from a range of state and commonwealth agencies, and part of their role is around promotion and education. There is work happening now at a national level through the Knowledge Hub, which the commonwealth Attorney-General's Department has funded and is funding Advocare and its equivalents to do more work around this. There is work still happening; it is just happening in a different way. The materials that become available from that, we will all be promoting as we can. We also have a telephone advisory service so that the public can contact us and discuss situations of concern where they think someone may require a guardian or administrator, or they want to find out more information about the operation of enduring power of attorney or enduring power of guardianship.

[10.30 am]

Hon ALISON XAMON: Are you feeling confident right now that you are receiving enough money to be able to meet the need?

Ms BAGDONAVICIUS: The reality is, in terms of my budget, our priority is addressing the increasing demand of the numbers of people for whom I am appointed. To the extent that we have capacity within that budget, we will do it. I guess, at the end of the day, it is a government policy determination in terms of what our budget allocation is. From there we will work out what we can do within that constraint.

Hon ALISON XAMON: I suppose I was asking if you need more money.

Ms BAGDONAVICIUS: Community education will be done with what resources we have, depending on what our priorities are. It comes back to what is possible.

Ms CASEY: Because we did a lot of sessions over that period of time, we built up some really positive relationships with other agencies. The Department of Health had the lead role in education for advance health directives. We have maintained, since 2013, a really positive working relationship with the Department of Health so we are able to engage in sessions with them. We have a couple of sessions—we have done this annually—where they link up across the state through video link plus a face-to-face training session within Perth. We have a couple coming up in April and we have probably done two of those every year. Some of the sessions they have recorded and put onto DVD for their staff in the regions to be able to access that information. That has been an enduring and

positive relationship that means we can do a lot of community education and reach a lot of critical people in a very easy way. We have also developed a really good relationship with the justices of the peace department within the Department of Justice. Again, they are developing a DVD-based resource that can go out to GPs and other people to be able to access information without having someone there in the room. I think those have been positive outcomes.

Hon TJORN SIBMA: Can I ask, with respect to the suite of instruments, including enduring powers of attorney and guardianship, what the largest misconceptions there are around these instruments, their utilisation, both on behalf of the person who seeks to have that protection or the person who assumes those powers?

Ms BAGDONAVICIUS: Can I just make one comment? The biggest misconception at the time we were implementing enduring powers of guardianship was the common belief of people that an enduring power of attorney enabled them to make all decisions for the person. That was something that we really did need to tackle, continue to tackle and always comment upon in our community education just to debunk that. I think there is a growing awareness now that, in fact, it is not. Certainly, it is not.

Debra, do you have any additional comment from your sessions with people?

Ms CASEY: I think that is the key point—that the EPA covered all decision-making. As the powers come into effect, some of the conflict that arises within families that we might see coming through the tribunal as an application is where people are appointed as the attorney and enduring guardian and then do not share information with other family members and there is an expectation from other family members that they should be doing that. Of course, if someone has always kept their financial or their personal information private, the mere fact that they have lost capacity and somebody else is standing in their shoes does not mean that they should be sharing that information. That is sometimes a misconception that we need to work through with family members, either on our telephone advisory service, in sessions or when investigators are talking to family about how an EPA or and EPG is operating.

Hon ALISON XAMON: The advantage of an EPA is that it can be implemented very quickly. If a family identifies there is an issue, they can intervene swiftly to address that. Do you think there are any issues associated with the length of time it takes to get a guardianship order in place?

Ms BAGDONAVICIUS: I just make the comment that if the matter needs to be urgently dealt with by the tribunal, we will certainly advocate to the tribunal to list the matter urgently. Certainly, other people, particularly the Department of Health, when they are making applications which may have some urgency about them, particularly for treatment reasons or in other cases where there may be, as we talked about before, issues relating to financial abuse that people are concerned about—if people are able to articulate the case as to why a matter is urgent, the tribunal will determine if an urgent hearing needs to be made. In some cases the tribunal has heard matters within hours of an application being made. Most matters, if they are of a more routine nature, particularly where family members have made them and there might be a lot of conflict, the tribunal might in fact want to refer that to the Office of the Public Advocate so we can investigate and get more information for them, rather than necessarily rushing in to a hearing. It really depends on the circumstances of each case.

The CHAIRMAN: Noting the time, as is typical with this committee, we are about three-quarters of the way through the hearing and about one-third of the way through our questions, so I ask committee members and witnesses to keep questions and answers concise and we will see how we go with the rest of our questions.

Does the Office of the Public Advocate ever receive allegations that a person may have a decision-making disability from a person who is trying to gain control over that person? If so, how do the office staff identify those cases?

Ms BAGDONAVICIUS: I will ask Debra to talk to that one.

Ms CASEY: Applications or referrals come from a whole range of people. What I generally say is that it does not matter who makes the application or the referral if there is a concern about the person's capacity and their ability to make decisions for themselves, because what we are going to do is look at the individual themselves, what their needs are, and then, more broadly, who should be the person making their decisions. We talk about best interests. We talk about the best interests of the proposed represented person. The best way of looking at it is that sometimes applications come from a person because they think it might be in their best interests to make an application about a family member. As long as what we are doing is focusing on the best interests of the person that the referral is about, it does not matter who made the application. I think some people get confused about who they are representing, but, at the end of the day, it does not matter because if it needs to be before our office or before the tribunal, at least that is where the application is and that can be investigated.

The CHAIRMAN: There are enough protections in place in terms of your assessment that if there is an unscrupulous person making the referral, that second phase of your process will capture that and ensure that the right person is appointed?

Ms CASEY: I am fairly confident about that—yes.

Ms BAGDONAVICIUS: Alternatively, if the person actually has capacity, the tribunal will not appoint a person.

The CHAIRMAN: In that first instance—yes.

Do you have the power to investigate alleged or suspected cases of elder abuse of people with impaired decision-making capacity?

Ms BAGDONAVICIUS: Yes, that is our role.

Ms CASEY: That is what we do. It might not be named as elder abuse in the application. Sometimes it is named as elder abuse and it might be bound up with other aspects of financial abuse or neglect but, yes, we are investigating matters for people with a decision-making disability who are over 65. Yes, we investigate elder abuse.

The CHAIRMAN: Equally, if somebody has a concern about a case of elder abuse but there is not a concern about the individual having an impairment with respect to their decision-making capacity, then you have no capacity to deal with that case of elder abuse?

Ms BAGDONAVICIUS: Yes, that is not our role. Although, as Debra outlined in one of her early examples, there may be situations where we link them to other services which could assist them.

Ms CASEY: We do have referral policies to Advocare and the Northern Suburbs Community Legal Service, which helps that flow of information.

The CHAIRMAN: Does the office assess the capacity of the person who is being appointed as a guardian? You obviously make an assessment as to the capacity of the person who needs a guardian. Do you also make an assessment about the capacity of the person proposed to be the guardian?

Ms BAGDONAVICIUS: That is a decision for the State Administrative Tribunal to be making. They are the ones making those appointments—not our office. At the end of the day, it is about medical evidence being presented to the tribunal to displace somebody's competency. The tribunal will rely

on some expert evidence, be it a general practitioner, a psychologist or other person who can show that somebody has an impaired decision-making ability.

The CHAIRMAN: Does your office make recommendations to the tribunal as to who should be the guardian?

Ms BAGDONAVICIUS: There are situations where we may. We often, again, in investigations, because we are involved with the life of a particular situation over what is a relatively short period of time, so, I guess, at the end of the day it may appear to us that it is logical because of the conflict that it is a case where it would be a recommendation that the Public Advocate be appointed, if the tribunal determines there is no one else suitable, available or willing. Debra, would you like to comment in terms of what you think investigators are saying in their reports around recommendations?

[10.40 am]

Ms CASEY: In terms of recommendations, just to the capacity, the tribunal often asks these guys to look at who would be willing and suitable to be appointed, and obviously if you are working with an elderly person, sometimes we get information that their elderly relatives also have got capacity or cognitive impairments, and sometimes that leads me to ask the investigators to check out that person's situation as well as the person that the application is about, so there will be times when we can identify that whilst a spouse might be willing to be appointed, they are not suitable, because when the investigator has gone out to talk to the proposed represented person and their spouse, the spouse might not have been able to give a good understanding of someone's medical treatment or their financial affairs, so then we would make a recommendation that perhaps a son or daughter be appointed instead. I am aware of some matters before the tribunal where they have asked for the person who is seeking to be appointed to actually come back with capacity information before they will consider that person.

The CHAIRMAN: Okay, so there are two factors there—there is the willingness and there is the suitability, and when you are asked, you look at both of those aspects and equally your experience is that the State Administrative Tribunal does likewise.

Ms BAGDONAVICIUS: Yes, absolutely.

The CHAIRMAN: Are you aware of any avenues for remediation or compensation that exist for victims of financial elder abuse?

Ms BAGDONAVICIUS: This is really going to be more of a judgement call for the administrator, rather than our office. It is not an area in which we are the experts. I would suggest that is something more appropriate referred to the Public Trustee.

The CHAIRMAN: Okay, they are the next witness.

Just finally on the telephone advisory service, how do you measure the success of the advisory service?

Ms BAGDONAVICIUS: It is very difficult to measure success. Ours is merely a quantitative measure in terms of the nature of the things we have, and we probably have a good number of calls—about a third of the calls, I think—relating to enduring powers of attorney. A lot also relate to guardianship matters, and a lot also relate to enduring powers of guardianship. We can relate success, I guess, to—sometimes we may receive some follow-up correspondence where people are very satisfied with the service they have been provided, but again, it is all very individual in terms of any of that feedback that comes back to us.

The CHAIRMAN: Before I move off this topic, do you have any views on whether there should be a central registry for enduring powers of attorney or enduring powers of guardianship?

Ms BAGDONAVICIUS: This is a matter which is being examined further at the national level at the moment. One of the recommendations of the Australian Law Reform Commission's report was in that regard, and their recommendation, as I am sure you are probably aware, related very much to, in the first instance, getting some commonality around enduring powers of guardianship and enduring powers of attorney at a national level, which would then enable consideration to occur as to whether or not there would be a national register. That work is proceeding at the moment, so I am waiting to be informed by that, in terms of our ongoing consideration.

The CHAIRMAN: One further thing on this, before members ask questions—it troubles me that a person can present with an authentic document, which is an enduring power of attorney, use it in the full knowledge that actually it is now an old enduring power of attorney, and there really is no mechanism available to the receiver of that enduring power of attorney, whether that be a bank or some other agency, to have any idea whether this is the latest version or not. It seems like the only solution is a central registry, but I will just invite your comment on that.

Ms BAGDONAVICIUS: A central registry will give you better information about that. Debra, would you like to make comment, because this is something that also comes up in our community education?

Ms CASEY: I think the education part is the key part, so a person can only make an enduring power of attorney or guardianship if they have got capacity, so we always stress when we are talking to people about the documents that if you make a new one that you want to supersede the original, then you need to revoke it. We recommend written revocation. We recommend that people get their revocation witnessed by an authorised witness to enhance that document, and that they then take the new document to anywhere that they have lodged the original document with, and we also recommend that people keep a list of who they lodge their documents with, so if they do make a new one further down the track, they can address that themselves, and then that they keep a copy of the original EPA that they have revoked with the new EPA, and the written revocation, so that there is some paper trail and evidence. The critical place to take it to is the bank, and if someone has got capacity they should be able to put those things in place for themselves.

The CHAIRMAN: Okay, I think that is helpful, obviously if they lodge it with their own bank. Okay, further on this, members?

Hon TJORN SIBMA: Bearing in mind the time, obviously we have met you at an interesting point in how this matter is being addressed nationally. There has been a consistent recommendation that a central nationally consistent register is formulated. Bearing in mind that that might take some time, do you see an advantage in a state-based register of these documents as an interim measure?

Ms BAGDONAVICIUS: At the end of the day, from my perspective, that is a government decision, whether or not the government wishes to pursue that on an interim basis, because obviously there will be cost implications as well as resource implications, and potential duplication if then something is developed nationally. It would take some time to work up such a system as well.

Ms CASEY: In terms of, probably, people's key assets, a key concern is the sale of the house. An attorney cannot do a property transaction unless the EPA has been lodged and registered with Landgate—they do not call it lodgement or registration. If there was an original EPA that was lodged at Landgate, and that was the one that should be in force, that would be the only attorney that could operate that land transaction, so Landgate has some requirements around the use of EPAs for property transactions.

The CHAIRMAN: Who lodges that with Landgate?

Ms CASEY: Again, it comes down to the person who makes the document. It is their responsibility who they want to give it to and whether they want to lodge it with Landgate or not at the time they make it.

The CHAIRMAN: Could the attorney lodge the EPA with Landgate? What is the term—is it the donee?

Ms BAGDONAVICIUS: The donee.

The CHAIRMAN: Yes, could the donee lodge it?

Ms BAGDONAVICIUS: My recollection is that the donee could, but I think Landgate is very thorough in its checking of these things, and they would be looking for some order.

The CHAIRMAN: Fair enough—the people you need to ask this question of is Landgate.

Ms BAGDONAVICIUS: Yes.

Hon ALISON XAMON: But there would be no way for Landgate to be able to confirm that there is not a more current EPA that might be in place.

Ms CASEY: If an EPA is lodged more than three months after it was made there has to be a statutory declaration made by the person lodging it that it is the EPA that is enforced. Obviously, if you make a statutory declaration and you are lying, there are penalties for that.

Hon ALISON XAMON: So that is one of the safeguards. Thank you.

The CHAIRMAN: Is there any specific penalty for a person who uses an EPA in the knowledge that it has now been superseded?

Ms BAGDONAVICIUS: I am not aware of any at the current time.

The CHAIRMAN: If there is not one, should there be one?

Ms CASEY: There are some penalties within the legislation, but I think that goes to, if an administrator was then appointed, that they would look at the actions of the person on someone's finances.

[10.50 am]

The CHAIRMAN: Is that something you would be willing to take on notice? I would be interested in your considered view as to whether there should be a penalty for people misusing EPAs.

Ms BAGDONAVICIUS: I am happy to take that on notice.

The CHAIRMAN: We will make that matter on notice 1.

Just in the last remaining time that we have, you have touched on term of reference (h) —

... initiatives to empower older persons to better protect themselves ...

You have spent some time this morning talking about education and training, so I think that we have covered off on that. Just in terms of new proposals, page 8 of your submission, it appears you do not support enacting adult safeguarding legislation. In accordance with my notes here, that seems to be contrary to the recommendation of the ALRC report. Can you just elaborate on that?

Ms BAGDONAVICIUS: Where I was coming from in relation to this respect is that the ALRC in their discussion paper prior to formulating their final report were floating that Public Advocates/Public Guardians should become people doing the adult safeguarding. It was a major expansion of potential roles because we are talking about people from the age of 18. It is not just talking about elder abuse. It is about people who simply have a disability and there might be concerns that they

need protecting. It was very broad and in the final report that was done, the ALRC left it more open as to who the best agency would be to take on that role and just framed it in the sense of it could be the Public Advocates/Public Guardians. Clearly, it is a state government decision if the state governments want to pursue having an adult protection role as proposed in that report. I was just highlighting that from my perspective—making a submission that I think there is a real tension for the Public Advocate stepping into that space, particularly in view of our role, which is focused on people with decision-making disability. If it becomes broader, it takes us away from the mandate within which we are currently operating. It really is quite a new role for this office.

The CHAIRMAN: Okay. In other jurisdictions in our nation, do you have other counterparts some of which are called Public Advocates, some are called Public Guardians, but effectively are they all fulfilling the same role?

Ms BAGDONAVICIUS: No, it is very different. It is quite different. Public Trustees are more alike, but Public Advocates, Public Guardians are very different.

The CHAIRMAN: I note that the New South Wales committee, the iteration of our committee, actually recommended the establishment of a Public Advocate with the power to investigate. It appears that that is redundant here because we already have your office.

Ms BAGDONAVICIUS: That is right, and in that state the Public Guardian does not do investigations.

The CHAIRMAN: They just act as guardian of last resort.

Hon ALISON XAMON: They want to do what you do.

Ms BAGDONAVICIUS: Yes.

The CHAIRMAN: Any further comments?

Ms BAGDONAVICIUS: No, thank you. That is fine.

The CHAIRMAN: We thank you for attending before the committee 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 one matter on notice. The committee requests that you provide your answers to questions taken on notice when you return your corrected transcript of evidence. We will write to you in any case. 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. Thank you both very much.

Hearing concluded at 10.53 am
