

SELECT COMMITTEE INTO ELDER ABUSE

INQUIRY INTO ELDER ABUSE



TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 19 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 9.46 am**Ms KAREN MERRIN****Manager, Older People's Rights Service, Northern Suburbs Community Legal Centre, sworn and examined:****Mrs GAYNOR NOONAN****Client Advocate, Older People's Rights Service, Northern Suburbs Community Legal Centre, sworn and examined:****Ms FRANCA OTTOLINI****Senior Solicitor, Older People's Rights Service, Northern Suburbs Community Legal Centre, sworn and examined:**

The CHAIRMAN: On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I do need to ask you to take either the oath or affirmation.

[Witnesses took the oath.]

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

The WITNESSES: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard and broadcast on the internet. 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. At the outset, I would like to invite any of you to make an opening statement to the committee should you wish to do so.

Ms MERRIN: Thank you very much for inviting us here today to give evidence at the really important elder abuse committee hearing. We welcome the opportunity to give evidence where we can. The Northern Suburbs Community Legal Centre has been funded since 2006 by the Department of Communities to deliver a wraparound legal and related service for older people over the age of 60, and 55 if they are Indigenous, who are at risk of elder abuse. We have several programs now that we would like to address today if possible. They are the Older People's Rights Service direct, which is funded by the Department of Communities. Gaynor and Fran are members of that team. We also have an older people's peer education scheme, which is funded from the criminal confiscation grants program and Lotterywest. It is a two-year pilot project, which is about to come to an end. That pilot project was to set up a peer education project to deliver education to older people. We do that in partnership with SCALES Community Legal Centre in Rockingham.

We currently have 29 senior volunteers, aged from 60 to 85. All of them have been taught, if they did not already know, how to use iPads, which is another skill we have managed to get into the program. They all have iPads and they go out and deliver education to the community. I am sure you have probably read about it. Out of that has come another program, which is the Purple Road, which is now seven metres long and growing and becoming very heavy, so it was becoming very difficult to carry around. That is a learning tool that goes to libraries and centres. Currently, I am not sure where it is. Last week or the week before it was in Gosnells. It has gone out of our area. It is a really good tool. The third program that we have is one that we inherited from the WA police. When Mirrabooka Police Station was being rebuilt, they asked us to take it on and we said, "Okay, we'll take that." It is another volunteer program. We said we would take it for the time that the station was being rebuilt, but they never took it back. They said, "You can have it now. It's yours."

That is an unfunded program, but that is what we call the seniors at risk register. With the seniors at risk register, every Monday seniors come in, and they ring and have a conversation with older people who are considered to be at risk and have been put on the register by the police or by us or by our older persons' rights team, or by others who may wish them—hospitals—to be on the list. They ring up and they might talk about anything; they can talk about football, they can talk about shopping, they can talk about current politics or whatever they choose to talk about, but in amongst that we quite often will pick up a signal that there is something wrong and so we will be able to refer them on and then they will refer to the team, and then the team will manage that and work out what we do with that. So we actually have the three programs. I do not know what else you need to know.

The CHAIRMAN: Thank you so much. What I propose to do this morning, because we are somewhat time constrained, is just to take you through each of the committee's terms of reference. We have a number of questions in respect of each of them, and I will typically ask a few questions then my colleagues might jump in, but do not hesitate to provide any clarification as you deem fit. If you need to take anything on notice, do not hesitate to indicate that as well.

Ms MERRIN: Okay. Thank you.

The CHAIRMAN: I will start with the first term of reference, which is the definition of "elder abuse". Just referring to your submission at page 9, where the following comment is made —

The concept of older is complicated and can be difficult to define; is it an age or a state of health or wellness?

You pose that question in the submission. I just ask you to elaborate on the concept of ageing, through your experience with your clients.

Ms OTTOLINI: If I may, I will answer to that. For us, elder abuse is a matter of vulnerability and not age. If you start considering elder abuse by boxing it into an age bracket, there will be even more disadvantage to those who are vulnerable. In answer to your question, we need to broaden and possibly not even use a limitation of age, but consider it as a need in vulnerability.

The CHAIRMAN: Sure. Is it important to have some form of guideline with respect to age?

Ms OTTOLINI: Yes.

The CHAIRMAN: Obviously, in the extreme scenario children are also vulnerable and we are not talking about them in this context.

Ms OTTOLINI: Exactly. At Northern Suburbs Community Legal Centre we use a cut-off age of 60, and that has worked extremely well. Earlier, younger, if it happens to need a younger age bracket, so we are not constricted but we do have a cut-off-line.

Ms MERRIN: That is the government cut-off line.

Hon ALISON XAMON: Obviously for things like early onset dementia, that is an ageing disease but it can be before you are 60. So do the current funding arrangements allow flexibility, or are you just taking that on because you need to? Is the money there?

Ms MERRIN: It is our current funding arrangements, 60 —

Hon ALISON XAMON: It is your funding arrangement? So if someone comes to you aged 55 with early onset dementia, you are not funded to be able to assist that person?

Ms OTTOLINI: Let us say technically we are not; out of compassion we do.

Hon ALISON XAMON: But you are not funded to do that.

Ms MERRIN: We are not funded to, no, but we did negotiate with the department 55 for Indigenous.

Hon ALISON XAMON: For Aboriginal people, okay.

The CHAIRMAN: In your submission at page 10 you categorise a group of clients “capable but highly vulnerable”. Can you just explain that a little bit for us?

Ms OTTOLINI: That is the mainstay of our clients. That is, that they may well be legally competent in making decisions for themselves and working out what is fair and just for themselves, but they are vulnerable because of their family relationship and because of the undue influence they may feel. They are also vulnerable in the sense that they have reached a stage where they know that things are not going to get better, but if anything it is going to progress and get worse, and for that reason many decisions are made on an emotional level instead of a pure, “What’s right and what’s wrong for me at this point in time.” They predict that they will be in need and they want their family to take care of them. Because of that environment that they are in, that makes them a little more vulnerable—individuals who are separate from any emotional environment or outside an emotional environment. That is the reason why we consider that they need a holistic or a multidisciplinary approach and a wraparound approach.

The CHAIRMAN: In terms of the definition of “elder abuse”, I understand that the older persons’ rights service is part of APEA, and last week the committee had the opportunity at its first hearing to have Advocare present. They provided us with the hot-off-the-press new elder abuse protocol. In that document it appears that APEA has shifted its definition of “elder abuse” to be consistent with that of the World Health Organization.

Ms MERRIN: Correct.

The CHAIRMAN: I take it that, as a signatory or member of APEA, you are comfortable with that definition?

Ms OTTOLINI: Yes.

The CHAIRMAN: Which does not specifically deal with the issue of age.

Ms OTTOLINI: Yes.

The CHAIRMAN: We might move to the second term of reference, which is the prevalence of elder abuse. The question the committee has for you is: what are some of the barriers to reporting elder abuse that you have witnessed with your clients?

[10.00 am]

Ms OTTOLINI: Probably the largest barrier of all is the fact that there is this emotional tie to the other side and the victim is not keen. The word often used is “punish”. They do not want to punish and they see any kind of reporting as somehow negatively impacting on the other side. That is

probably the biggest. There are lots of other smaller we will call them disadvantages, and that is that it may be health, unwellness, finances, a level of incapacity but not quite legal incapacity. I have listed some of the major ones that we come across. Lack of education is also a fairly significant one but, as I have said here, cognitive impairment, isolation also from family, lack of awareness or knowledge about elder abuse and, unfortunately, a history of domestic violence can continue as elder abuse.

The CHAIRMAN: On this group of perpetrators who have an emotional tie with the victim, in your experience what are the other types or groups of perpetrators out there? Presumably, those ones with the emotional tie are most probably family members.

Ms MERRIN: I think there are clearly two types of abuse. There are carers as against family members. We probably need to separate those two in terms of elder abuse. I would say that a high percentage of the clients we see are actually family members. Where there is a great deal of trust within that family, the child will do the right thing by the parent, and that is not what happens in our experience. Sometimes I think it is possibly just misguided behaviours in some cases, but certainly not always. If you are in family violence, and my background is working in family violence, you have around you groups of other people. You leave that family relationship, if you are lucky enough to leave that family relationship after some time, but you build other relationships. With a parent, it is very difficult. If I am a parent and I have a falling out with my children or my child, that is it; that is the end. I think the difficulty with that is that parents fear that they will lose their whole family. They not only lose their children; they lose their grandchildren. They lose a connection with the community that is really important to them.

The CHAIRMAN: In terms of these two groups—the carers as one and the family members as another—do you have a sense as to which is the larger proportion of elder abuse that takes place?

Ms OTTOLINI: Many of our clients have carers that are children. That issue is interlaced.

Ms MERRIN: But they are family members.

Ms OTTOLINI: That is right.

The CHAIRMAN: The biggest proportion in terms of prevalence is family members?

Ms OTTOLINI: Is family members.

Hon ALISON XAMON: How often will you see people external to the family, such as neighbours or fellow parishioners?

Ms MERRIN: The professionals are another issue.

Hon ALISON XAMON: But that is different again.

Ms OTTOLINI: We do have examples of what we call befriending cases. Yes, we have had quite a few, but we lump them into “friends” there because that is what they have done; they have befriended so that they can take the advantage of a vulnerable individual or vulnerable older person.

Hon ALISON XAMON: Will that primarily be financial abuse?

Ms OTTOLINI: Yes. Primarily, it looks first as emotional abuse, but the underlying reason for that emotional attachment is financial gain.

The CHAIRMAN: We have three categories—the carers; family members, appreciating that sometimes there can be overlap between them; and then what we are calling the professional perpetrators. Is that right?

Ms OTTOLINI: Or what we call befriending cases, yes.

Ms MERRIN: I think there is also something that we have not addressed, and probably no-one has thought about addressing really—the actual professionals. There is some evidence of that also around accountants and lawyers.

Ms OTTOLINI: And lawyers.

Hon ALISON XAMON: Again, is that primarily around financial abuse?

Ms MERRIN: Financial abuse.

The CHAIRMAN: Irrespective of whether we have an additional category, whether it is befriending or professionals—whether they are one or two categories—ultimately the family members are the highest proportion of perpetrators?

Ms MERRIN: Yes.

Ms OTTOLINI: Fundamentally, that is number one.

The CHAIRMAN: I know I am probably asking you to look into a crystal ball here—you know only of the cases that come before you—but there is probably, like an iceberg, a whole range of cases that none of us knows about. To the extent that you are able to comment, do you think it is still fair for us to say that the largest proportion are family members, even of the unknown?

Ms OTTOLINI: Yes. Would you say that?

Mrs NOONAN: Yes.

The CHAIRMAN: Okay; that is important.

I will move to forms of elder abuse, which is the third term of reference. I take you to page 20 of your submission where you refer to the fact that psychological abuse may be a process of grooming the victim for financial gain. The committee would be interested to know how often you see this with clients. What action do you take when giving advice to clients who may be groomed in this way?

Ms OTTOLINI: The first part of that question relates to what we consider the befriending cases. A lot of grooming happens in those. Although it is not restricted to only those types of cases, it will happen even between siblings to get to mum or dad for a particular reason. It is prevalent. It is obvious and prevalent. The second part of that question was: what do we do about it? We do an awful lot of education and gentle nudging of the client into realising that they may even have favoured one child over another that has led to the outcome that they have come to see us for. Can I ask my colleague what else we do on the social side of it?

The CHAIRMAN: Certainly, yes.

Mrs NOONAN: It is a very, very difficult situation because often in the clients that we see, there are interlinked health-related problems and there may well have been an admission to hospital and an acute episode of illness that can leave that person feeling quite vulnerable and quite frail. We do have family members who step in at that time and say, “Come and live with us, mum and dad; we can look after you”, which, on the surface, looks really, really lovely and rosy. But there is that whole baggage of the relationship between those people and when you go through it all with that person, you can see that maybe it was not always the best decision-making that was made at that time, but they were in a state of crisis for them. They have gone along with it, hoping it would improve and get better, but it actually gets a lot worse to the point where, by the time they get to coming to a community legal centre, they really are in a very difficult position at that time, because they have not realised they have relied on that person. They have put their trust in them, so by the time they get to seeing us, a catalogue of events has generally occurred to the point where the relationship

has almost deteriorated to the point where there will be loss of contact. That generally involves grandchildren as well. It is this whole history of events that goes on. We pick them up at the very end, but there is a massive story that has gone on beforehand.

[10.10 am]

Ms OTTOLINI: One of the things that we really home in on is taking a good family history of the matter, because without understanding the family dynamics, we are unable to provide those both legal and non-legal services that are aimed at bettering that particular client and the family. What else do we do to help these clients? One of the ways that we consider is ideal if to see if we can get them to mediate, to come together and open up and talk. It is not just me negotiating with the other side, but mum and dad mediating in a professional manner, and it is more than just the problem that has been highlighted, because, as we have mentioned, it can go back many, many years. It can go back to emotional hurts that are brought up out of the blue.

Hon ALISON XAMON: You have talked about when it gets to crisis point, which is when they come to you. What sorts of programs or interventions or advice do you think could be delivered, and how would it be delivered, to enable people to contemplate all these scenarios before they enter into this?

Ms MERRIN: You are a smart lady, I think! I have a great commitment to education, and to preventative education. I think it is the most important part of this whole subject that we are talking about. People when they are educated to take the right steps will probably take them sooner or later. But one of the things that we have found in delivering education is that the words “elder abuse”—we have got a little story about that—are not liked by older people at all. They do not like the words “elder abuse”. They do not like the word “abuse”. In fact, we have been to a house where they have actually torn the words off one of the slips of paper, because they do not want their family to see something that says that they could be an elder abuse or they are preventing elder abuse. Our way of dealing with it is with a calendar. I do not know whether you have copies, and I can leave copies here for you. We have calendars that we have designed over a number of years and that are now partially funded by WA police and by us. They do not talk about elder abuse at all. They just suggest that people make a will, do an EPA, do guardianship, and get advice on how they can set themselves up for the future as they are getting older. This is the last of the calendars for this year. We kept these ones for you. There were 7 000 of them distributed throughout WA this year. They are very popular. They are non-invasive. People can hang them up and look at them and read them. We have also found that the peer education scheme that we run is another tool that is non-invasive. Recently we did it with our member of Parliament. There were 70 old people in a centre, and our volunteers went there, they sat down and they made purple flowers with people, and they would just have a conversation about anything and then they would start talking about elder abuse or talking about have you organised this. It is very engaging but it is non-threatening. The whole point about preventative education is that we have to be non-threatening in our behaviour. We cannot treat it like we do every other form of violence.

The CHAIRMAN: I am quickly flicking through this calendar now. This is the first I have seen of it. It certainly looks like an excellent publication. A couple of questions immediately spring to mind. How many years has this calendar been going for?

Ms OTTOLINI: Four years.

The CHAIRMAN: So it is a relatively new initiative in that sense, which I commend you for. The second thing is you mentioned, I think, that 7 000 have been distributed. What is the need in terms of getting something like this out there?

Ms OTTOLINI: There is a lot more than that. The 7 000 went within the first month and a half, two months. We considered reprinting it only a couple of months ago, but we cannot because by the time it gets done, it will be too late in the year. We have had to find the funds for that because we could not get funding to do it. But the WA police this year decided they would pay for half of it, and on the back page they have got a scam page as well—I think that is really important—and little tips.

Hon ALISON XAMON: I was going to ask about funding. You are saying 7 000 only just touches the surface in terms of need?

Ms OTTOLINI: Yes.

Hon ALISON XAMON: I recall in your opening statement you basically indicated that your funding will be wrapping up shortly.

Ms MERRIN: For the older person's peer education scheme. That is a two-year pilot project that is funded under criminal property confiscation grants.

Hon ALISON XAMON: You just spoke then about how you feel that that is an important part of doing your education program?

Ms MERRIN: Absolutely. We have 29 committed volunteers. They are amazing people. Some of them are ex-bank managers—the other day we had an ex-bank manager helping us with one of our cases; one is a psychologist; two or three of them are teachers. They are really good.

Hon ALISON XAMON: Are you managing to deliver any of those training programs in the regions?

Ms MERRIN: No. This program for the two years was restricted to five local government areas, Joondalup, Wanneroo, Stirling, Rockingham and—I am going to go blank—

Hon ALISON XAMON: So strictly the councils covered by the Northern Suburbs Community Legal Centre and SCALES?

Ms MERRIN: Yes, those two.

Hon ALISON XAMON: In terms of the opportunity for preventative education elsewhere, to the best of your knowledge, nothing like that is occurring?

Ms MERRIN: None; correct.

Hon ALISON XAMON: Yet you also might not have ongoing funding for your program?

Ms MERRIN: We do not have ongoing funding. It finishes in probably July.

Hon ALISON XAMON: You said it was a pilot program. Has an assessment been done of its effectiveness?

Ms MERRIN: It is about to be done.

Hon ALISON XAMON: It is about to be undertaken?

Ms MERRIN: Yes.

Hon ALISON XAMON: Thank you.

Ms OTTOLINI: I just wanted to add something else, that not only do we take in-depth histories of our clients to benefit them, but we also listen to what they actually want or need. This is an example of what has come out of a need. Our calibre of clients at the moment would be an average age of about 85 —

Mrs NOONAN: Yes, 75–85.

Ms OTTOLINI: But I am seeing a change in age, getting a little younger. That means that this calendar, this example of how to get across to the clients who need it, will have to change with the

different changes that our clients will have, the different needs. It is a constant almost churning of what is necessary out there, to make sure that our clients' needs are met.

Ms MERRIN: It is not just our clients. It is the community. We do not want them to be clients. We want them to be good, happy community members.

Hon TJORN SIBMA: Just a quick question, please, regarding page 20 of the submission, just focusing again on financial elder abuse. There is an interesting observation that you make that a more comprehensive or a stronger definition of that term is required, and you have reflected on what is the case in the state of Maine in the USA. Can you just elaborate a bit more on that, please, and how such a concept might be applied in Western Australia?

Ms OTTOLINI: "Elder abuse" is a global cover for all claims of elder abuse. There are various types of elder abuse. The most significant one for us is financial. Financial, though, even under the new guidelines, the protocols, for us is not as wide as it should be, because we have a variety of types of financial abuses. Nevertheless, each one of them involves some form of undue influence, some form of unconscionable conduct. Again, I have got them highlighted—and for the life of me I cannot find the page. The main definition of "financial elder abuse" seems to encompass those concepts. So, I am opening it for discussion as to: what is it that WA wants when we look at financial elder abuse?

[10.20 am]

The CHAIRMAN: Correct me if I am wrong, but I do not think the protocols specifically define "financial elder abuse". They just talk about elder abuse generically. You do make an interesting remark in your submission, saying that the definition of financial elder abuse should be broadened to include concepts of undue influence and unconscionable conduct.

Ms OTTOLINI: Yes.

The CHAIRMAN: The note I made was, "Isn't that already the case? Doesn't that already happen?" But it is not clear, obviously.

Ms OTTOLINI: It is not. Let me put it this way: the law is there to protect these clients, these types of financial elder abuse issues. The problem with the law as it stands is that if you want redress through the courts, (a) it is costly; (b) it is not constructive for the calibre of client that we have to actually go through a court system; and (c) it is lengthy. Sometimes our clients do not have the robustness, but do not even have the time, because issues may take years and they may not be here. We have one of those at the moment.

Ms MERRIN: We have definitely got one at the moment. We have got a very big one at the moment. I always hark back to one that we had, which was financial elder abuse in our first year of operation, which went to the fraud squad and they did prosecute the other party. Our client died before the prosecution, but they actually went on with it. He died of old age by the time this had come to pass. The person was prosecuted, but that is what happens.

Ms OTTOLINI: It can happen that the prosecution will carry the case to the end, but it is more likely that it will be suspended or revoked if they do not have sufficient evidence. Therefore, if the client deceases before all that is tied up, then we are not going to get anywhere. The other thing is that in that particular case it was a carer. The emotional distance between the carer and the client is—well, we will say it was wider than the present case that involves a son. The husband wants to go ahead with the police action; the mother does not. So, there are those —

Ms MERRIN: Considerations —

Ms OTTOLINI: — as well. But if we had a piece of legislation that said, "Well, these are the boundaries regardless. We're going to take it out of your"—like we do in criminal law. It is a matter

for the state; it is not a matter for the client. That may well give a different perspective, but I open it that it needs a lot more discussion.

Hon ALISON XAMON: So we are contemplating moving it out of the civil realm.

Ms MERRIN: Into the criminal realm.

Ms OTTOLINI: There are many law reforms that are necessary, and that is one very needed area.

Hon MATTHEW SWINBOURN: Can I take you back to mediation? You mentioned that earlier. I am quite interested in the circumstances in which you end up putting these people into mediation. How does that come about through your service?

Ms OTTOLINI: Let me put it first to you that we are lucky in community legal centres that we can home in on expertise right across the CLC system. So, there are community legal centres that have expertise in mediation and so we can access that for our clients. But we also use family—what is it?

Mrs NOONAN: Relationships Australia.

Ms OTTOLINI: Relationships Australia. They have piloted an elder abuse mediation program, and I am this close to actually getting one of our clients to consider that as well as the other mediation services within the CLC.

Hon MATTHEW SWINBOURN: How do you get the other party to agree?

Ms OTTOLINI: A lot of gentle negotiations.

Hon MATTHEW SWINBOURN: And who conducts the mediations? Who is the mediator?

Ms OTTOLINI: Yes, it will be handed across.

Hon MATTHEW SWINBOURN: Who is the mediator, though? Is it a trained mediator is it or a volunteer or —

Ms MERRIN: No, they are trained.

Ms OTTOLINI: No, it will be a trained mediator with, hopefully, some property law expertise, because that is what it involves. It involves property, both real and personal.

Hon MATTHEW SWINBOURN: Do you have any feedback about how successful these mediations are or can be?

Ms OTTOLINI: Let us say they are 50–50. Coaching is the wrong word, but if we have both sides on side about wanting to mediate and wanting not to go to court, then it is more likely that mediation is going to succeed. I am going to put my head on the chopping block here. If we have not done our grooming with the other side, showing them the benefits of mediation in comparison to going to court, or the level of conflict between parent and child we will say is so great that they are going to say no, then mediation is not going to work.

Ms MERRIN: The other side to mediation—having known a bit about mediation in my background—is that quite often when there is a violent situation involved in this or a history of violence involved in this, mediation is not appropriate. So, you need to be very careful about how you mediate and that you do not put your own client at a disadvantage. So you have places like Legal Aid where they can do shuttle mediation, and it would be really good if they were funded to do some of that.

Hon MATTHEW SWINBOURN: These alternative dispute resolution—type procedures, my view is that they should be more readily available if they are going to deliver more tangible outcomes because critically here, what we hear all the time is about the relationship, and alternative dispute resolution is so much better than traditional dispute resolution where you have to maintain a relationship, where you do not want to burn the bridge. It seems to me that one of the overriding

issues for elderly people is not wanting to ruin the relationship notwithstanding the abuse. Now, it is not always going to be appropriate for them to be —

Ms MERRIN: Yes, as long as we are aware of that.

Hon MATTHEW SWINBOURN: That is right. If there is criminality involved, mediation is completely inappropriate, and if the power imbalance is so great, then again it is not. I think one of these issues is coming back to the societal issue about: how do we fix the relationship the best that society can do, and having people getting the opportunity to get between the two parties seems to me to be one of those measures, rather than ending up further down that path. I guess where I am coming to is: would you support the provision of, for example, perhaps the ability to make orders out of mediation for education, for training and those sorts of things, particularly where people also have a formal role in a relationship, such as an enduring power of attorney?

Ms OTTOLINI: Most certainly. And if it could go one step further—our vision is that there is, for example, the State Administrative Tribunal with jurisdiction over elder abuse, because presently it does not have that. Then such things as you have mentioned can be ordered. That is one of the drawbacks—that we can do as much as we can to make sure that all parties, including the other side, fully understand the benefits of mediation compared to litigation, but it is still their decision. There are no teeth involved with that. If we could get some teeth behind it, like family law, then there may well be. But, again, this is open to discussion on the evidence that we can present and others like ourselves can present.

The CHAIRMAN: Now, I am conscious of the fact that we are two-thirds of the way through our hearing and we have got through a third of our questions.

Ms MERRIN: We apologise.

The CHAIRMAN: We will put our skates on in the remaining third and see how we go. I will move to the fourth term of reference, which is the risk factors. You touch on the issue of ageism at page 26 of your submission. Can you help the committee better understand how ageism is a risk factor for elder abuse?

[10.30 am]

Ms OTTOLINI: We find that the definition as per APEA does not include ageism. We consider that ageism really comes about within organisations and institutions. It is a conditioning that the responses to certain situations are: “We know better than you.” It is not wilful; it just happens. Again, I am putting my head on the chopping block here, but I find that social workers are probably the ones who in their keenness to get things sorted for the older person say they know best, and to me that is ageism.

The CHAIRMAN: Is that a function of time pressure on the individual?

Ms OTTOLINI: Yes. It is also conditioning from their education, yes.

Ms MERRIN: I think for instance social workers in a hospital have an older person who is extremely ill. We have many examples of the first thing they say to them is, “Have you got an enduring power of attorney?” Then it gets organised. There is no advice to the older person; it just gets organised. You download them, fill them out and then you have an EPA. We have seen so many examples of that. It is done in the best interests of the older person.

The CHAIRMAN: Out of good intent.

Ms MERRIN: Good intent, but good intent is often —

Hon ALISON XAMON: But it is legal advice.

Ms MERRIN: Yes, it is legal advice, and that is the problem we have with non-legal people giving legal advice. If there was a way in which we could have people actually getting legal advice about how they prepare the EPA—even I did that, you know. I have recently done an EPA. Fran said, “You did it wrong”, but nevertheless! You have to have that legal advice. If you do not have it, you can make those mistakes and that is where they go wrong.

Hon ALISON XAMON: Do you have any models where you might be able to look at how you ensure that the legal advice has been made available in those instances when social workers become aware of people?

Ms MERRIN: We educate. We do education in the hospitals with the social workers. We do education in the community. We work with all of the groups—all the men’s groups and all of the different groups around, the new age groups; we just work with everyone to try to get that education out there. Unfortunately, it does not always work. I am not sure what sort of model we would use, but one of the issues we have too is there is no register, and that is a big issue.

The CHAIRMAN: That is probably a good segue into the fifth term of reference, which is to assess and review the legislative and policy frameworks. One of our questions there is: do you support the creation of a central register for EPAs?

Ms OTTOLINI: Yes, of course we do. We also consider that it should be national, not just Western Australian. The reason behind that is that we have a lot of interchange between the states, and the various types of forms do not necessarily meet the requirements of ours to the requirements of other states and other states requirement of ours. There is also the cumbersome exercise of having to go to SAT to verify an outside document. If there was one that everybody understood, that everybody followed, there was one register that all proper persons could look up, it would be far better.

Hon ALISON XAMON: Setting up a federal scheme ensuring that we have the same EPA legislation nationally, this would take some time. Do you think it is still worthwhile pursuing a state-based registration in the interim, or do you think that it would be better focusing the energy on trying to develop a national scheme?

Ms OTTOLINI: As long as the transition was fairly smooth and we were not stuck as we are with family law, yes, I would approve of that.

The CHAIRMAN: Sorry, approve of?

Ms OTTOLINI: A state register.

The CHAIRMAN: You mention at page 45 of your submission that you advocate for reforms to the Criminal Code to provide for mandatory reporting of suspicious transactions of a prescribed amount. I have in the back of my mind that there is already some form of law with respect of transactions over \$10 000, so that would not cover this situation you are talking about?

Ms OTTOLINI: Not adequately. Centrelink has a requirement whereby anything over \$10 000 should really be reported, and the banks have the same duties. We know that that falls by the way, and if we had the criminal law—our Criminal Code—reformed, it would really stick. It would act as both a stick and a carrot.

The CHAIRMAN: Are you saying that there are transactions happening of more than \$10 000 that are not being reported, or are they being reported but no-one is doing anything with the report?

Ms OTTOLINI: Many times we find that the police turn around and say that it is a civil matter and to go to the civil court and get it sorted out, when really it is a criminal matter. But because there is

nothing in the statute books, of course the police are going to turn around and say that, knowing full well that the client is unable, unwilling and all of the rest of it to go to court.

Ms MERRIN: But a lot of the exchanges—when you are talking about money, particularly with banks—are about loans, aren't they? A lot of them are about very large loans that can put the older person in a great deal of difficulty with Centrelink as well, because it is gifting and they do not realise they are gifting as well. We have a particular case at the moment, and at some time when we are able to we would like to give it to you to look at because it is probably worth the read and it touches on nearly every avenue. It is criminal, it is civil, it is banking. But we cannot at the moment, but if you were interested we would be happy to do that.

Hon MATTHEW SWINBOURN: I would be interested.

Hon ALISON XAMON: I would be interested too.

Hon MATTHEW SWINBOURN: Is \$10 000 too high? I mean, a lot of this, from what I can pick up, abuse happens through smaller regular transactions.

Hon ALISON XAMON: Fifty dollars, yes.

Hon MATTHEW SWINBOURN: Obviously, \$50 is probably too low but \$10 000 seems like it would be pretty easy to game the system if you were intent on essentially defrauding someone from their money, so you would have it in regular payments.

Ms MERRIN: It is quite often very much in those smaller amounts. The one I was talking about where there was the prosecution and he died, that particular case was all done at the casino ATM. They were all \$100 bills; it was \$120 000-odd in the end, wasn't it? It was a lot of money. It was all at the casino ATM. Every single transaction was a casino ATM.

Hon MATTHEW SWINBOURN: Who do you propose the reporting be made to?

Ms MERRIN: It would have to be the police.

Ms OTTOLINI: There still needs to be a discussion around that, because it goes all the way back to what is elder abuse and then who is responsible for it. Technically, there should be a body responsible for elder abuse and also responsible for amending the various laws, or even creating a new piece of legislation or having input into a new piece of legislation. We are at the ground level here and a lot of discussion still needs to be had.

The CHAIRMAN: I want to look to try to wrap up this fifth term of reference by just touching on one of the comments you made about enduring powers of attorney, and that such documentation should not be freely available and that lawyers well trained in this area should do the witnessing of such instruments. I understand the thinking behind that. My concern is then the impact of it in practice. Is that going to then result in fewer people having EPAs? Is there another category of person who might be appropriately qualified to witness such documents; for example a justice of the peace or someone like that?

[10.40 am]

Ms OTTOLINI: Can I put it this way? I firmly believe there is a need for EPAs in the community. I also firmly believe there is a need for PAs—powers of attorney—in the community. The enduring power of attorney is well and truly overused, for the wrong purposes, at times. There is also a need, and I firmly believe this, that there is a time when no power of attorney or enduring power of attorney should really be offered to the client, as any kind or form of future planning tool. There are other ways of making sure that the client is protected, and one of them is the SAT application for both guardianship and administration. It is not understood as well as it should be, even by lawyers. The other one is the ability to have small payments done directly—direct payments—or have a nominee

on one bank account for a limited amount of money. All those are examples that we talk about with our client, that we offer to our clients, that we ask them to think about and discuss in the family, and then to come back and tell us whether they really want an enduring power of attorney or not. We do it, but much of it is not even known out in the community, and again we go back to educating.

If you are a lawyer out in the public, the first thing you are going to say is, “Have you considered your future needs? An enduring power of attorney will do this, in the event of this”, without telling them the history that is necessary with regard to an enduring power of attorney. Are there other options open to them? They have not got enough time anyway. That brings me to the point that a unit like our own that specialises in this particular area has advantages over a private firm. That is why I am saying those lawyers that are particularly skilled in this area—and I am here really talking about ourselves and other CLC units that may well spring up from this, which are free or at least very low cost—and well trained in what is going to happen and the history around the client.

The CHAIRMAN: If somebody over the age of 60—any Western Australian, irrespective of where they live, over the age of 60—wants to have an EPA drawn up for them, are they able to access your service?

Ms MERRIN: Let us confine this. No, metropolitan area only. Fran breaks rules, but it is really the metropolitan area only. I will be very clear about this. There is only one lawyer, and so it becomes problematic, but we do have a lot of people coming in about EPAs.

The CHAIRMAN: Okay, so someone in regional and rural Western Australia rings your services and says, “I really want an EPA, I am very concerned that if I don’t have an EPA drawn up, someone’s gonna take advantage of me.”

Ms OTTOLINI: There are two ways of getting that. They come and see me —

Ms MERRIN: No, not regional.

Ms OTTOLINI: Well, as I said, I do break —

Hon ALISON XAMON: It is important for us to get an idea of what is being funded and what is not.

Ms MERRIN: It is not funded. The bottom line is it is not funded.

Ms OTTOLINI: Alternatively, the CLC closest to them is their link, and their link to me.

Ms MERRIN: I need to qualify that, because not all CLCs actually would be able to do it, or would have the expertise or the desire to do it, because it does not fit into whatever their plan is, and they might all be family law or family violence, or whatever.

The CHAIRMAN: Whether at your CLC or another one, is there a fee associated with the drawing up of the EPA for this client over 60?

Ms MERRIN: It is \$20.

The CHAIRMAN: Nominal fee?

Ms MERRIN: Nominal fee, but it can be waived, and it is often waived.

Hon ALISON XAMON: I am interested in restraining orders. How often do you need to make application on behalf of a client for restraining orders against people who may be perpetrating abuse?

Ms OTTOLINI: I have a hearing problem; I heard only part of that question.

Ms MERRIN: Restraining orders—how often do we have restraining orders?

Ms OTTOLINI: There are three big groups, if you like, that, for our benefit, we put our clients in. One of them is enduring power of attorney and breaches of that, and care agreements; the second is

family agreements; and the third is boomerang kids. The boomerang kids are the ones that have restraining—well, we try not to use them, but that is where the restraining orders are often used.

Hon ALISON XAMON: Do you only assist with restraining orders where there has been physical violence, or do you also assist with restraining orders, for example, where there has been persistent harassment over demands for money? Is it also the financial abuse element as well?

Ms MERRIN: All of those. It is not always easy either. I always recall a case that we had where a person lived out in Swan somewhere, and she had a little dog, and she wanted to come out of the house, because I think in actual fact it was his house. She could not get out of the house, and he had all her stuff; he had taken everything, and so she had no access to her documents; she had no access to anything. We had to arrange with the neighbours so that when she was suffering violence, or threatened with violence, she used to put a little book in the window, so that the neighbours knew, so they would ring us and tell us. But the issue around that was housing. We had nowhere to put her; that was the big issue. The big issue is that there is nowhere for old people, particularly older people, to go in terms of housing. If there is an issue in the house, if they are in the granny flat—granny flats are another story—or they are in the actual house of the perpetrator, moving them from that area is very, very difficult. Perhaps Gaynor might like to add to that.

Mrs NOONAN: I think that is right, because often if you have lived there for a long time you may well be close to your GP, your support systems, so there is a lot that keeps you remaining in a certain situation. You will put up with what is happening because the other support structures that are in place are enough to keep you ticking over. I think that a lot of the problem that we come across is that it involves so much upheaval in a person's life that sometimes they decide not to go and do anything, because they cannot cope with the changes. That is a big issue for a lot of the people that we see.

Ms MERRIN: It is a huge issue.

Hon ALISON XAMON: I have two questions on this. Do you have any difficulties obtaining restraining orders? That is my first question. Secondly, do you find that people who are the enduring power of attorney may also wish to seek restraining orders against third parties to try to protect the person that they are trying to protect? Do you see either of those?

Ms OTTOLINI: We do not deal with the other side, unless we are trying to get them to negotiate, or into family mediation. We do not get too many cases of the enduring attorney doing the right thing. With regards to our clients and how easy it is or is not to get a restraining order, again it depends on our client and whether they fear a loss of the relationship.

Hon ALISON XAMON: So there is not a problem with the law as such?

Ms MERRIN: No, the law is not a problem.

Ms OTTOLINI: The problem is the relationship.

The CHAIRMAN: Noting the time, and that we have got through five of the 10 terms of reference, what I will just indicate at this point is that it will certainly be the case that the committee will write to you with some of the questions we will not have had an opportunity to ask you today. What I might just do in the remaining time that we have is just touch on the terms of reference and invite any particular comment that you want to take the opportunity this morning, while you are in public session, to comment on—some of the things we actually have touched on in the realm of the previous questions. Term of reference 6 talks about the committee needing to assess and review service delivery and agency responses. I did have a question in respect of your telephone advice line that is operated by the Older Persons' Rights Service, just to ask if there had been some form of review or audit done of that telephone line service.

Ms MERRIN: The telephone advice line for elder abuse? No, the one we have is the seniors at risk, which is different. The telephone advice line for elder abuse belongs at Advocare.

[10.50 am]

The CHAIRMAN: Advocare? Okay.

Ms MERRIN: Yes. Ours is just a volunteer service for people who the police have seen as being at risk for other reasons. It could be any reason.

Hon ALISON XAMON: And that is unfunded?

Ms MERRIN: That is unfunded, yes.

The CHAIRMAN: On the capacity of the WA police to identify and respond to elder abuse, you have said in your submission that the WA police are ill equipped to deal with nonviolent issues on elder abuse. We have touched on that again this morning, but is there anything further that you want to say on that?

Ms OTTOLINI: What I will add is that unless you create or have a good relationship with your local policing teams, and for us there are quite a few of them, you are not going to get the best result from the police. It is hard work to make sure that the police know what we do, what we want and why we want it. It is continual and almost regurgitating the same, because police staff change and that is a problem.

The CHAIRMAN: On a positive note, at least with regard to WA police, I assume you are encouraged by their partnership on certain issues?

Ms MERRIN: We have a really strong partnership with the WA police, because we have a really large CALD community, so we work with them on a number of programs. They have funded a number of our programs in education, because we have a very big education unit. This was just part of that and they wanted to extend to that, so we were happy to take them on as partners.

The CHAIRMAN: Good.

Term of reference 8 talks about the committee looking at initiatives to empower older persons to better protect themselves. Obviously, the calendar is one of those things. We may write to you with regard to some further things, but is there anything in particular that you wanted to add at this time on initiatives to empower older persons to better protect themselves?

Ms MERRIN: I would just reiterate to the committee, and I will not take two seconds, that I think that empowerment education is the answer to a lot of this. We are always going to have elder abuse, but we can reduce it if we can get people to actually just think about what they are doing and do it, and treat family as though they have gone to the bank. It is a contract. That is what it is; it is a contract. If you are going to lend money to your family please, lend money to your family if you have got it to lend, but make it a contract so that the family pay it back.

Mrs NOONAN: I think within that as well it is about knowing where to go and the moment that you have any suspicions being able to actually be in contact with someone who can assist you and provide you with information and being able to dip in and out as you need to, as opposed to going to see someone because you have actually reached a crisis point. If there had been interventions earlier, maybe we would not reach crisis point.

Ms OTTOLINI: That is that wraparound.

Mrs NOONAN: That is the bit that will help people, because they will be educated in a gentle way through the journey of what they are doing.

The CHAIRMAN: Okay.

The last term of reference is for the committee to look at new proposals or initiatives to enhance existing strategies to safeguard elders. Is there anything that you wanted to mention on that?

Ms OTTOLINI: We need a far more robust discussion on legislating against elder abuse.

Hon ALISON XAMON: I have noticed there has been the discussion around the health justice partnerships.

Ms MERRIN: Yes, that is one of the things; I was just waiting for Fran. I actually had a preliminary discussion with the hospital last week. We currently have a health justice partnership for family violence with the Joondalup Ramsay group, Joondalup hospital. Joondalup hospital has a very large older person's unit and they also have Glengarry, which is another hospital that takes in a lot of seniors. We are starting to work with them as well around abuse. They tell me that they see and have witnessed quite a lot going on. We have started that conversation. We have also spoken and had meetings with Health Justice Australia around this. Ramsay is actually showing some interest at this point in working with us to develop a partnership.

Hon TJORN SIBMA: I refer to the seniors at risk register that you update. It was the obvious question that I missed. How many seniors do you have on that register? It gets to prevalence, which is obviously an issue of —

Mrs NOONAN: There are probably a couple of hundred.

Ms MERRIN: A couple of hundred at least.

Mrs NOONAN: Obviously, people come on and off depending on if they change where they are living.

Ms MERRIN: It is a touch-base one. It is really quite effective, really. It is surprisingly effective. Volunteers run it, and some of those volunteers are ex-clients by the way as well, which is really interesting. They know, so they can convey the message very well because they are clients or have been clients.

The CHAIRMAN: They have got the lived experience.

Ms MERRIN: They have. They are the people who are very valuable to us.

Ms OTTOLINI: Some are from the peer education —

Ms MERRIN: Program.

The CHAIRMAN: On behalf of the committee, I would like to thank you for attending before us 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. If you want to provide additional information or elaborate on particular points you made, provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence. Thank you very much. I will just indicate for those in the public gallery that the committee will adjourn at this time and resume at 11 o'clock. Thank you.

Ms MERRIN: Thank you for hearing us.

Hearing concluded at 10.56 am
