SELECT COMMITTEE INTO ELDER ABUSE

INQUIRY INTO ELDER ABUSE

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 18 JUNE 2018

SESSION TWO

Members

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

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Hearing commenced at 11.03 am

Miss HELEN ST JACK
Solicitor, Albany Community Legal Centre, sworn and examined:

The CHAIRMAN: On behalf of the committee, I would like to welcome you to this public hearing. Before we begin, I do ordinarily ask whether you will take the oath or the affirmation. Has someone provided that to you?

Miss St JACK: Yes, they have, thank you.

[Witness took the oath.]

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

Miss St JACK: Yes, I have.

The CHAIRMAN: These proceedings are being recorded by Hansard and broadcast on the internet. Please note that this broadcast also will be available for viewing online after this hearing. Please advise the committee if you object to the broadcast being made available in this way. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

We have a number of questions for you today but before we do so, I do acknowledge the provision of a submission by the Albany Community Legal Centre dated 16 November 2017, which was accepted by the committee as a submission at that time and is publicly available. Before we proceed to the questions, do you have any opening remarks or an opening statement you might like to make?

[11.00 am]

Miss St JACK: No, thank you, I do not.

The CHAIRMAN: Thank you. It has been the custom and practice of the committee to take our witnesses through each of the terms of reference, so I will start at term of reference 1, which asks the committee to develop a definition of elder abuse. At page 2 of your submission, you state that while you support the World Health Organization definition of elder abuse that refers to relationships of trust, you also consider that elder abuse can occur in informal relationships where dominance, fear and control are the defining characteristics and that the definition should therefore be broadened. Can you just explain that a little further to the committee?

Miss St JACK: Certainly. The elder abuse that we encounter here at the legal centre occurs largely between family members and, therefore, that would be an example of the exploitation of older people occurring within a relationship of presumed trust. Another example of that would be exploitation occurring between a carer, whether that carer is formally or informally in that role, and an older person. Certainly, in terms of definitional issues, while we sort of broadly support the WHO definition, there are always going to be problems with using the word "elder" and "older". It is a

term that senior members in our community do not always like and always respond to, particularly when you add the word "abuse" on the end of it. I should say to you if I could that while I am here in my capacity as a solicitor at the legal centre, two days a week I am also a social worker at the hospital. So I have two hats and two forums within which I see this kind of occurrence on a regular basis. In terms of informal and formal settings, we are looking at family, carers. We may be looking at professionals who are in a position to financially exploit older people and certainly at the legal centre, what we are seeing is a very fraught situation that very often involves enduring powers of attorney and guardianship and wills.

The CHAIRMAN: Thank you. I think that is very helpful for the committee. It is very consistent with the evidence that we have received from others. You will obviously have a range of clients who come and see you from time to time. I anticipate that their understanding of the term "elder abuse" will not be as distinguished as your own. In fact, during the course of this inquiry, I seem to come across more and more, just out in the community, a lack of understanding of what we are talking about when it comes to elder abuse. Sometimes it is just bad things happening to older people rather than necessarily elder abuse in the context that you are discussing, quite rightly—relationships of trust and exploitation of such people. Is that a problem that you see also with your clients coming to see you and maybe complaining about elder abuse when it is not really elder abuse?

Miss St JACK: I would say that in each instance, when I have had people come to discuss a constellation of factors that I would define as elder abuse, it has definitely been a situation of elder abuse. By and large, I have found that they have not been able to characterise it as that, but have a broad understanding that something is definitely not right. They feel powerless. They know they are vulnerable within their family and within the community, but they feel powerless to define what is happening to them and they certainly feel powerless to take any action that might create some sort of protective network around them.

The CHAIRMAN: Thank you. Members any further questions on the definition of elder abuse? If not, I move to term of reference 2, which asks the committee to identify the prevalence of elder abuse. What are some of the barriers to reporting elder abuse that you have witnessed with your clients and are your clients reluctant to speak to you about their experiences of elder abuse?

[11.15 am]

Miss St JACK: I have found that they are not reluctant because they are speaking to me as a solicitor, and they feel that that is a safe space within which to do so. They are speaking to me as a solicitor, most importantly, at a community legal centre where they are not paying for the service, although they can give a donation if they wish. There is a platform of [inaudible] if you like, between myself as a solicitor and them as a client. The biggest barriers in reporting generally, I would say, is fear. Fear of being isolated from their families, from seeing their grandchildren, and from creating conflict within their family when they feel that they need their family more than ever. In the situation where there are carers who are not paid as carers—as in they are not getting a carer's allowance or a pension—and they have befriended a person, I have encountered that many times both here as a solicitor and as a social worker at the hospital. I would say that prevalence-wise, it is more easily able to be identified when I am doing social work at the hospital. It is very clear when you see a person present as a carer repeatedly for people who are in very, very vulnerable situations. One person will pass away; they will very quickly move on to another vulnerable person. In terms of general issues with prevalence and identifying prevalence, I would say that there are a number of clear obstacles: fear in reporting, but less and less so that is the case. Older people are coming forward—here at least—much more often than they were. Perhaps the greater obstacle is the lack of a multidisciplinary approach, where, say, community lawyers, social workers, GPs and even the

aged care assessment teams have a multidisciplinary forum where they are capturing vulnerable people they know. Particularly in regional centres it is a big problem, and we are hoping to identify it through a multidisciplinary forum that does not exist at the moment. There is this issue of the vulnerability of the person and the fear of reprisals, the fear of isolation from the family, the fear of not getting the care from a person who has befriended them and is actually providing care but is taking money from them and so on as well. Then there is this problem with not having an appropriate forum for a multidisciplinary approach. Those in my view are the two barriers to really good prevalence studies, or identifying the prevalence of elder exploitation and abuse.

The CHAIRMAN: You mentioned that the elderly are less fearful now of reporting. Is there something that you can pinpoint as an explanation for that? Is it simply a case that there is a growing awareness of this as a problem?

Miss St JACK: Yes; I think that is precisely it. I think that the media is more attuned to the issue; they are likely to see more within our region related to this. We as professionals are more likely to raise it as a clear and obvious issue with them. In a region like this, where we need targeted services, they are going to go to the senior citizens club, they are going to go to Probus, they are going to speak to their friends. There is a network of information that enables issues like this to be more openly discussed. That raises awareness about the issue. Education is the huge issue that needs to be addressed. There needs to be formal education in relation to what constitutes elder abuse, and what can be done about it. Those are two very different issues. But, by and large, the types of older people who would attend education are not in my view necessarily the people who are really vulnerable and at most risk.

The CHAIRMAN: Any further questions on prevalence, members? Otherwise, term of reference 3 is to identify the forms of elder abuse. Page 4 of your submission contains some examples of financial elder abuse. What other forms of elder abuse have you had to assist your clients with?

Miss St JACK: So the major issues for us—it is becoming increasingly common; at work I had four clients last week directly on this issue—is financial abuse relating to EPAs, EPGs and wills. I can give a really good example of that. In terms of psychological and emotional abuse, what I see most commonly is threats to isolate an older person from their grandchildren and from their broader family unless they cooperate—if you like, it is a two-pronged approach—with, for example, selling a house or handing over X amount of money to allow someone to put a deposit on a home. So that two-pronged approach of, "Unless you cooperate with this financial demand, you won't be seeing this person or that person in your life." The other issue I have encountered more regularly recently relates to the issue of granny flats and dwellings at the back of a property, where an older person might have contributed a large sum of money to the construction of that property. They have no propriety interest in the property at large, and there is no formal agreement between their children and themselves in relation to what happens if that property is sold and they how will they get that money back. That clearly is a dwelling that appreciates the property value of the registered proprietors of the land, which is usually their son or daughter and their partner. That is a situation I see very commonly. For example, if a marriage starts to destabilise the older person gets jittery and very concerned about what is going to happen to them because the house needs to be sold as part of the separation agreement.

The CHAIRMAN: I am conscious of the fact that you are uniquely placed in terms of your double training, both as a lawyer and a social worker, and obviously you also have a particular passion for this area. How easy do you think it is for these types of things to go undetected by other lawyers? EPAs, EPGs and wills are very common instruments and they are drafted up by a multitude of legal practitioners in Western Australia. I just wonder whether these things are being picked up by others.

Miss St JACK: I think that the capacity for these things to go undetected in a private practice setting is great. I am not certain that all legal practitioners understand the importance, particularly in relation to EPAs, of ascertaining capacity and competence and what that means. EPAs, in a situation of familial conflict, or where there is a constellation of factors that create a power dynamic, may not be a good idea. They are designed to protect people. They are designed to assist a person to continue to exist financially, with the assistance of another person entrusted with the management of their finances. That, by definition, makes an EPA a tool of exploitation in the wrong hands. So whether the right questions are being asked about that I do not know, but I suspect that not always.

The CHAIRMAN: Any further questions on forms of abuse? If not, risk factors is term of reference 4. You have already mentioned in your evidence today the fear of isolation and how that is a risk factor for the elderly. In your experience, are there any higher risk factors of elder abuse faced by culturally and linguistically diverse elderly people, or female elderly people, or indeed people in regional areas such as Albany?

Miss St JACK: I think the regionality issue is acute. For that reason I have a strong view about the regions having on-the-ground services that are multidisciplinary that involve the legal centre and the hospital particularly. I suspect that one of the most sensible options is to base a service at the hospital that involves a multidisciplinary approach. I think that, culturally, Indigenous older women are at considerably more risk—greater risk—of financial abuse and other types of abuse. I think that culturally and linguistically diverse women generally are at greater risk. Once, for example, their husband passes away and they are alone and they have communication issues, that places them at considerable risk of befriending; what I would call a predatory carer entering into their situation. Yes, I would say in the positive, yes, that is the case that they are at greater risk, and it depends really on where they are living. We cover a huge hinterland around us here at the centre, but here in Albany I would say that older women are at considerable risk, and Indigenous women are at considerable risk, and there are widowed women of culturally and linguistically diverse backgrounds who are at considerable risk. I certainly have seen that through work at the hospital, on the ground, on a regular basis.

The CHAIRMAN: Yes. In terms of this topic or category of predatory carers, I think in your submission you refer to them as serial carers, and you have touched on it a couple of times this morning. I remember you mentioning earlier that you can sometimes see these people present as carers, moving from one to the next. It is really just an observation, and I will just invite your comment. They really must be shameless, these people, because I would have thought that if they keep seeing you, for example, at the hospital, surely there must be some kind of awkwardness, or maybe the body language would be quite telling, that people would be suspicious of these people. But they obviously have no shame and just continue to carry on about their ordinary business.

Miss St JACK: I think there are two groups of predatory carers or befrienders. One is the befrienders who have very limited insight into whether what they are doing is morally and ethically right. For example, those sorts of people might provide care for a person. They see themselves as providing support and assistance, and so they see nothing wrong with taking $100 out of their account or encouraging them to change the will to leave them a lump sum to recompense them for the care that they have provided, even though they see themselves as great friends and so on. Then you have the people who are going about the caring process deliberately to see a will changed, or to see an EPA executed in their favour.

No, you would say about those people that they have insight, they are embarking on a deliberate course of conduct to benefit them financially during the life of that vulnerable person, and certainly after that person has passed away.

[11.30 am]

The CHAIRMAN: So for those type of scenarios, if you come across them, what capacity is there for you to report them to an authority that might be able to do something about this?

Miss St JACK: I am sad to say that, in my experience, it is very limited. Because we are in a regional setting, police are very busy, and it is not clear—from a legal perspective, they do not have a formal targeted role in assisting older, vulnerable people, which is not to say they do not, but there is no mandate, if you like, for there to be an older person support through the police. I know Advocare do a great job but for regional centres, that involves an older person on the phone who may have hearing difficulties, who needs to see someone right in front of them to trust them to talk about what is happening to them, what their story is, and establish a relationship with that person.

In a regional setting, it is quite a different scenario, and what you tend to get is people stepping in as much as they can: lawyers, social workers, GPs, ACAT assessors who may flag there is a concern here. Even though it is not their role, we are all aware that we need to watch for this stuff, but where we go as a central sort of reporting point where we can monitor these situations, we do not have that.

Of course, the issue for a multidisciplinary health justice partnership model is the issue of confidentiality: how do we preserve a client's confidentiality but discuss their situation in that forum with a view to assisting them, to empower them to manage their situation, and helping them if they cannot. That confidentiality issue applies to lawyers, social workers, GPs, ACAT assessors; all of us, really. All of us.

The CHAIRMAN: Have you seen an example of a health justice partnership or some other model that you would recommend to be rolled out elsewhere?

Miss St JACK: I am aware of research on multidisciplinary approaches to elder abuse monitoring and assistance. I guess that we at the legal centre have a very strong relationship with the Albany Health Campus and with certain GPs in the community, so we are very much convinced of the merits of a health justice partnership being formalised, and we think that in regional centres a roll-out of something like that and funding for that model is imperative to protecting what is actually a disproportionately large percentage of older people in our community.

I am aware of health justice partnerships being more formally pursued in other states, but I am not aware of how they are going. I have not read any evaluations. Certainly we see enough positive outcomes from the informal relationships that we have to know that a formal health justice partnership can only assist.

The CHAIRMAN: Okay. I think that is very helpful. I will move on, then, to term of reference 5, which is to assess and review the legislative and policy frameworks. What issues do your clients face when dealing with will disputes and enduring powers of attorney, and how does this relate to elder abuse?

Miss St JACK: The first thing I would say about that is that will disputes, obviously, under the Family Provision Act involve the Supreme Court or a court setting that is inaccessible to most people and certainly daunting to older people.

In terms of EPAs and EPGs, I will speak first about EPAs. There is considerable scope for those powers to be abused, and I see that on a regular basis. With an EPA that is registered at Landgate, I do not think that Landgate are sufficiently empowered to intervene in the registration of an EPA where there might be a situation of elder abuse, and, really, I am sure that Landgate would acknowledge that they have limited capacity to do much about that situation. That of course places older people with an EPA that is registered at Landgate in a very vulnerable position, because if that EPA has come into effect immediately upon signing, their house can be sold. Really all they would need is a doctor's letter to say that they have no capacity, and that doctor's letter may be as a result of a doctor performing a formal assessment or just doing an informal examination, but it almost

certainly would not be as a result of a gerontologist or a geriatrician doing a formal capacity assessment. Sorry, I have gone completely off track there, and I have forgotten the question, I am sorry.

The CHAIRMAN: I think it is an important point that you are raising there: that a lot of this does revolve around the issue of capacity. I am getting the impression from you that you are saying that where the stakes are higher, capacity assessment is very important, and there are specialists who should be used in those circumstances.

Miss St JACK: Yes. I think there are practical impediments to that, certainly in the regions. For example, I am thinking of our geriatrician at the hospital. Time is going to be a factor. He is a full-time hospital employee with a ward of patients in the subacute ward to manage on a daily basis. I think that there needs to be formal training for capacity assessment more broadly. Whether GPs are prepared to do that, I do not know, but social workers would be well placed to do those capacity assessments, as would occupational therapists. That certainly needs to be looked at in terms of the legal risk that older people face entering into powers of attorney arrangements.

The CHAIRMAN: In your submission at page 6 you also refer to the State Administrative Tribunal being given jurisdiction to hear matters and claims for equitable relief against substitute decision makers, and awarding any remedy available to the Supreme Court as per the Australian Law Reform Commission's 2017 report. Can you just explain that idea to the committee a little further.

Miss St JACK: I guess it goes back to what I was saying about access to justice generally for older people. The Supreme Court is a frightening concept both financially and in reality for an older person, in situations where they have lost all their money, basically, and have a situation where they may need a lump sum to go into residential aged care. In the regions, for example, there are very few pensioner beds in our residential aged-care facilities, and so you do need a lump sum to pay the residential aged-care deposit. If they have been relieved of their life savings, they need a remedy that is accessible, that is cheap, that is friendly, and in our view the State Administrative Tribunal is a good option in that regard.

We understand that there would need to be considerable legislative change for what the SAT does or does not do, but in our view, in terms of an ideal forum for a remedy, the State Administrative Tribunal is that, whether or not a remedy is obtained. In other words, they may get some of their money back and not all, but that is better than nothing.

The CHAIRMAN: Term of reference 6 requires the committee to assess and review service delivery and agency responses. You have discussed a few times this morning the multidisciplinary approach, which is touched on at page 6 of your submission, but also a different area that you touch on at page 7 is the suggestion that an independent entity or office of adult protection be established within the state health structure similar to Scotland. Can you explain that idea to the committee a little further.

Miss St JACK: Yes. In Scotland an act was introduced called the Adult Protection Act, and if you think about child protection legislation here, it was an act that basically set up protections and remedies for adults who were regarded as vulnerable. So that was not just people who are vulnerable because of their age, but vulnerable because of a range of factors, perhaps cognitive issues, acquired brain injury issues, disability and so on. That act, as I understand it, has mandatory or mandated reporting provisions; it had forums for remedies; it established an office for the protection of vulnerable adults under the auspices of the government, so it was a government entity. I guess, in that sense, that model got around the issue of the older person definition problems: where do you draw the line as to who is old and who is not, who is older and who is not. That act contemplated a population of adults who are vulnerable, whether it be because of age, cognition, disability and so on, and

vulnerable to exploitation in a range of settings, and exploitation of different kinds. That established an office of protection for vulnerable adults, so that was a model that we were quite interested in.

I suppose, drawing back from that and having a look at a model that is less than that and requires less funding and less reorganisation of statutes and so on, an office or an entity that exists at the hospital but does similar things without the statutes to create its existence and so on is a scaled down model of that.

The CHAIRMAN: Is there an example of such a scaled down model in some jurisdictions?

Miss St JACK: Not that I am aware of, no. That is a model that we see as being very regionally focused. In other words, in regional centres, we generally have a hospital that is quite large; we generally have a legal centre; we generally have an ACAT assessor entity that is part of the hospital. We have a range of points that make older people visible in the course of our everyday work. I guess something I would like to say about that is that any model that is agreed upon needs to not be city-centric in that regard because of the group of people that we are talking about and their need to sit opposite someone face to face and have on-the-ground services.

[11.45 am]

The CHAIRMAN: The seventh term of reference before the committee is to assess the capacity of the WA Police Force to identify and respond to elder abuse. Again, this is a topic that you touched on earlier. Specifically at page 7 of your submission, you recommend that specific offences and criminal procedures be created to deal with elder abuse. Do you have in mind, or do you have a list of, what those offences or procedures would be?

Miss St JACK: As I said before from the outset, the capacity of WA police to respond to elder abuse issues is limited as it currently stands. In the absence of specific offences it is very limited. They are likely to say, and rightly so, that it is a civil matter and that they cannot intervene. That means that if there were criminal offences for assault against an older person—for example, criminal offences that relate to unconscionable conduct, undue influence or those types of what are not actually criminal offences in the [inaudible] in terms of older people—then that brings the police into the network, if you like. We understand that that is a difficult thing to do, but we think that the need is there for specific offences against older people. I suppose that residential aged-care facilities are also part of that whole constellation of factors—that offences committed against people within residential aged-care facilities are offences that are committed within that particular setting. That idea needs to be broadened to include people who are in positions of trust, whether that is formal or informal. That would give the police at least some power to intervene.

The CHAIRMAN: I will move to the eighth term of reference and the initiatives that could be implemented to empower older persons to better protect themselves. Is the Albany Community Legal Centre involved in any programs to increase awareness of elder abuse in the community?

Miss St JACK: I will say at this point that, video-wise, you have disappeared. That is okay, but can you hear me?

The CHAIRMAN: Yes, we can hear you loud and clear.

Miss St JACK: Fine. Yes, we have a very comprehensive community legal education program that involves providing education to all manner of people within our region. Very frequently, we are educating people in relation to enduring powers of attorney, enduring powers of guardianship, wills and advance healthcare directives. That is the major demand that we find within the community; people want information about those documents, the risks associated with those documents and, in the case of wills, the risks of not having a will. We rely heavily on what we call CLE—community legal education. We are obviously seeing people day in, day out. We do not have any specific funding. We do not have any targeted programs other than our CLE. Informally, we have medical

centres that we liaise with [inaudible]. We have a good relationship with the hospital, but it is not a formal program as such.

The CHAIRMAN: Okay. Members, are there any other areas you would like to cover? No? We have found this hearing to be very helpful. Are there any further comments you would like to make while you have got the attention of the committee?

Miss St JACK: Look, I do not think so. I think the point I would try to emphasise to the committee is that the geography of any model is going to be very important, and that on-the-ground services in the regions and certainly a model that can deal with the rural and isolated regions as well is going to be crucial to the success of any intervention in this regard.

The CHAIRMAN: Great.

Hon ALISON XAMON: If I can just make an observation, though, it also looks as though there is almost an additional protective factor for some regional communities in that because you are smaller, you are more inclined to work collaboratively. Also, you are likely to have elderly people better known within the broader community and, therefore, that lessens the likelihood for isolation, which we know is one of the risk factors. I suppose my observation is that there are some specific opportunities available in regional Australia that perhaps are not so readily available in a large metropolitan area. I was wondering whether you had any thoughts on those observations.

Miss St JACK: Yes, I agree with that. We have about 40 000 people in Albany but about 11 per cent are older people. This is something that has to be overcome, and it is not an easy thing to overcome. Informal networks are, by definition, faulty, in that people always fall through the cracks. The other major issue for us is protection for professionals against confidentiality breaches. Where professionals are required to maintain client confidentiality, as is the case for all of us, we need to be able to feel safe and to have a formal setting to discuss older individuals at risk without risk of a complaint, if you like, whether it is to the Legal Practice Board, the social workers association, the AMA or whatever. It is a significant impediment that we are all required to maintain client confidentiality.

The CHAIRMAN: All right. At this point I am going to proceed to close today's hearing. We want to thank you for attending and making yourself available, firstly, by putting in a submission and, secondly, by appearing before us today via video link. 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 may provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence. Once again, thank you very much for making yourself available to the committee.

Miss St JACK: Thank you very much.

Hearing concluded at 11.53 am

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