

General Purpose Standing Committee No. 2

Elder abuse in New South Wales

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Terms of reference

That the General Purpose Standing Committee No. 2 inquire into and report on matters relating to elder abuse in New South Wales including:

1. The prevalence of abuse (including but not limited to financial abuse, physical abuse, sexual abuse, psychological abuse and neglect) experienced by persons aged 50 years or older in New South Wales
2. The most common forms of abuse experienced by older persons and the most common relationships or settings in which abuse occurs
3. The types of government and/or community support services sought by, or on behalf of, victims of elder abuse and the nature of service received from those agencies and organisations
4. The adequacy of the powers of the NSW Police Force to respond to allegations of elder abuse
5. Identifying any constraints to elder abuse being reported and best practice strategies to address such constraints
6. Identifying any strength based initiatives which empower older persons to better protect themselves from risks of abuse as they age
7. The effectiveness of NSW laws, policies, services and strategies, including the 2014 *Interagency policy on preventing and responding to abuse of older people*, in safeguarding older persons from abuse
8. The possible development of long-term systems and proactive measures to respond to the increasing numbers of older persons, including consideration of cultural diversity among older persons, so as to prevent abuse
9. The consideration of new proposals or initiatives which may enhance existing strategies for safeguarding older persons who may be vulnerable to abuse, and
10. Any other related matter.

These terms of reference were referred to the Committee by self reference.

Committee membership

The Hon Greg Donnelly MLC	Australian Labor Party	<i>Chair</i>
The Hon Paul Green MLC	Christian Democratic Party	<i>Deputy Chair</i>
Ms Jan Barham MLC*	The Greens	
The Hon Sophie Cotsis MLC	Australian Labor Party	
The Hon Matthew Mason-Cox MLC	Liberal Party	
The Hon Dr Peter Phelps MLC	Liberal Party	
The Hon Bronnie Taylor MLC	The Nationals	

* Ms Jan Barham substituted for Dr Mehreen Faruqi as a member of the committee for the duration of the inquiry.

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Chair's foreword

Honour thy father and thy mother
– Exodus 20:12

This Upper House inquiry has provided the opportunity to step back and consider how the NSW Government can build an effective policy, legal and service framework for preventing, investigating and responding to elder abuse. Our committee trusts that the inquiry will also provide the momentum for the government to further develop that framework and to make a much greater investment in tackling the substantial, pernicious and complex problem of elder abuse. I also hope that this inquiry will stimulate other states and territories and the Commonwealth to do more in their respective jurisdictions to both examine and act upon elder abuse.

Within the context of the many priorities that governments juggle, abuse of older people can be overlooked, perhaps because elder abuse tends to be hidden away. Perhaps it is because of the ageism that exists in our culture, that allows us to disrespect our elders and tacitly accept disempowerment as an inevitable outcome of frailty. Perhaps it is too threatening for many of us – because we ourselves will one day be old and frail – to see this abuse for what it is: exploitation of and in some cases violence towards people who are vulnerable, people who in many cases are the least able to protect and defend themselves.

We are currently seeing governments take domestic and family violence much more seriously, affording it much greater priority. This committee considers that the time has now come – both in New South Wales and nationally – to prioritise elder abuse as a policy issue. The existence of abuse is widely expected to grow with our ageing population. However, it must never be forgotten that older people have an innate dignity as persons and this must always be respected within the family and society.

The committee was shocked by the many cases presented to us: a daughter who drained her mother's bank account of \$300,000 via her enduring power of attorney; neighbours who arranged for enduring power of attorney and guardianship of a man who had already lost capacity; a granddaughter who tried to transfer her grandmother's house into her name for \$1 in return for a verbal promise of care; a man demeaned and treated roughly by nursing home staff; a daughter who couldn't cope with her mother's dementia and failed to provide for her necessities of life. Many of these true stories seemed almost unbelievable; some were quite shocking. For me, these stories should prick our conscience as a society and raise far reaching questions such as: We may enjoy the highest living standards in human history, but are we treating our elderly worse now than in the past? What is it about our society that leads us to behave this way towards those that we should love, honour and respect? How can we as individuals and as a community do more to identify and respond to elder abuse? We cannot dismiss these uncomfortable questions because they may seem too hard to answer.

The NSW Government already has a framework for addressing elder abuse through which it is doing valuable work. But it is clear that this is not nearly enough. Our committee considers that New South Wales needs to embrace a much stronger and more comprehensive approach to elder abuse that will engage the whole community with a new focus on prevention. This way forward must involve legislative reform to improve safeguards against financial abuse, and to enable allegations to be investigated by a new Public Advocate. There is also more to be done to improve service providers' identification of abuse and their responses to it. We urge the government to be ambitious in each of these tasks. This report contains eleven specific recommendations that we are confident will provide strong foundations for this comprehensive approach.

I thank all those who took part in this inquiry via their written submission or oral evidence, or by taking part in our consultation with Aboriginal Elders. Your professional expertise and your personal experience have very much shaped this report and its recommendations.

I am also grateful to my committee colleagues for the non-partisan way that they approached the evidence, and for their commitment to recommending the best policy framework that we can, so as to improve people's lives.

Finally, I thank the committee secretariat, Madeleine Foley, Merrin Thompson, Natalie Udovicic, Erica Vogels and Jodi Rahme, for their professionalism and resourcefulness at each stage of the inquiry.

I commend this report to the House and to the Government.

A handwritten signature in black ink that reads "Greg Donnelly". The signature is written in a cursive, slightly slanted style.

Hon Greg Donnelly MLC
Committee Chair

Executive summary

It is clear to the committee that the time has come for the NSW Government to embrace a comprehensive, coordinated and ambitious approach to preventing and addressing elder abuse, captured in the eleven recommendations set out in this report.

This comprehensive approach must engage the entire community with a clear focus on prevention, and must include key legislative reforms. It must be informed by a human rights framework affirming older people's autonomy and self determination, and boost training for service providers to identify and respond to abuse. It must include an enhanced role for the NSW Elder Abuse Helpline and Resource Unit, and embrace an active commitment to developing the evidence base, in order to furnish better policy and service responses into the future.

The committee appreciates that building this approach will necessarily take time and careful planning. Given the evidence that elder abuse is a significant and growing problem, the government must make elder abuse an immediate focus for action, so that the ambitious approach that we envisage is fully functioning by 2020.

In respect of prevention, the committee acknowledges the important work that the government is already implementing via the NSW Ageing Strategy, the NSW Elder Abuse Helpline and Resource Unit, the NSW Carers Strategy, and later life planning. Nevertheless, it is self evident that a great deal more needs to be done to prevent the complex problem of elder abuse. The committee thus recommends that the NSW Government make a significant new investment in the prevention of elder abuse by preparing and funding a framework that provides for substantially enhanced primary prevention, community education and awareness, community engagement, carer support and later life planning initiatives. This prevention framework must provide specific resources targeting culturally and linguistically diverse communities and Aboriginal communities, and engage with Multicultural NSW and Aboriginal Affairs NSW.

Turning to current service provision, the committee underscores that leadership by government officers in various agencies will be critical to the sustained effort required to build a new approach to elder abuse in New South Wales. We expect that the steering committee overseeing the government's strategies will meet at least quarterly in order to enhance accountability and drive the implementation of government policy.

It is timely that the Department of Family and Community Services (FACS) will soon commence its review of the *NSW Interagency policy for preventing and responding to abuse of older people*. The review should give due consideration to the content improvements proposed by stakeholders documented in our report and indeed the many detailed submissions to our inquiry; FACS should also conduct further consultation on potential improvements. Furthermore, it will be critical to the success of the revised interagency policy for FACS to develop a strong publicity and dissemination strategy. Ultimately, FACS must ensure that service providers actually utilise the document, develop their own policies and exercise their responsibilities under the policy.

The committee congratulates the Elder Abuse Helpline and Resource Unit for the important work that it is doing with older people, family members and service providers on a modest budget, and we also congratulate the NSW Government for establishing the Unit. Like others, we consider both the Helpline and the Resource Unit as essential components of the elder abuse system in New South

Wales. At the same time, it is clear to the committee that there is a significant need for greater provision of training to service providers to enable them to identify abuse and respond to it effectively. We note the recent provisions for additional training, but given the number of relevant service providers across the state, and the particular need to educate health professionals highlighted by several inquiry participants, the committee recommends that FACS and the NSW Ministry of Health together develop and resource a comprehensive plan for service provider training over the next four years.

The committee also considers that the role of the Elder Abuse Helpline and Resource Unit should be expanded to include some provision for case management and coordination, owing to the inherent complexity of victims' needs, and the multiple interventions that many require, as well as the demands that reporting abuse can place on an individual and their family. In addition, as the government's comprehensive approach to elder abuse enables the community to better recognise abuse, it may be that there is an emerging need for the Helpline to operate beyond its current hours. The government should duly consider this possibility in the future, and ensure that in all aspects of the Unit's work there is adequate provision for culturally and linguistically diverse and Aboriginal clients.

Financial abuse emerged during the inquiry as a substantial problem demanding urgent action on the part of government. We are especially troubled by claims that the law as it stands provides insufficient safeguards against financial abuse, that it does not treat many forms of financial abuse as criminal, and indeed, that the law itself is significant enabler of abuse, especially the current law in respect of enduring powers of attorney.

We share the view of many inquiry participants that offences and penalties should be introduced for misuse of enduring powers of attorney. In addition, it is extraordinary that an older person (a principal) has very limited ability to seek from the person or organisation they have appointed to manage their financial affairs (an attorney) any money that the attorney has stolen. As a matter of justice, there should be a straightforward process for an errant attorney to be ordered to pay compensation to the principal. Similarly, we see much merit in the view that attorneys must be subject to greater accountability and oversight.

We agree that these deficits would be well addressed by the NSW Government amending powers of attorney legislation in line with the changes recently legislated under Victoria's *Powers of Attorney Act 2014*, which itself was modelled on Queensland legislation.

The committee considers that by adopting the Victorian model, New South Wales will significantly enhance protections at the very earliest stage – when enduring powers of attorney are being made – with the effect that attorneys would be much less likely to act inappropriately, and if they did, would be unable to claim that they were not aware of their responsibilities. In addition, restitution of assets will be made much more straightforward (and indeed likely) by enabling the NSW Civil and Administrative Tribunal (NCAT) to order an attorney who has misused their powers and caused loss to a principal to pay compensation to the principal or their estate. The provisions would also place a greater onus on legal practitioners to fulfil their own obligations when making an enduring power of attorney. Furthermore, by utilising the Victorian model, New South Wales will not only adopt a highly regarded set of provisions, but in so doing, would achieve uniformity along the east coast in an area of legislation where such uniformity is highly desirable. Like numerous participants, we consider that these amendments are urgently required in New South Wales.

We further agree with stakeholders that people who take on the attorney role need to be better educated about their responsibilities. The Victorian provisions will address this to some extent, but more thought needs to be given to the best means by which it can be achieved.

The committee notes that there is some support for a national system of mandatory registration of powers of attorney as a means of enabling solicitors, banks and others to check the authenticity of an instrument, but like others, we recognise that there are a number of complex issues that need to be carefully weighed. In our view, this issue is best considered as part of the Australian Law Reform Commission's inquiry into protecting the rights of older Australians from abuse, and following that, by the Council of Australian Governments (COAG). More broadly, we actively encourage COAG and the relevant interjurisdictional groups to continue to work towards uniformity of legislation in respect of powers of attorney and guardianship.

The committee takes very seriously the allegations that some lawyers unwittingly – and in some cases deliberately – facilitate financial abuse. There is a need for action to improve legal practitioners' assessments of people's mental capacity, and some lawyers also need to devote more time to ensuring that the parties to wills, enduring powers of attorney, contracts of sale and other financial transactions understand the implications of the documents they are about to sign. The evidence before us has highlighted the weighty responsibilities that the law confers on lawyers here, the complex issues of which they should be aware, and the substantial risks of not exercising their duty as carefully as they should.

For these reasons the committee sees significant value in the Law Society of New South Wales, which is responsible for the continuing education of legal practitioners, introducing a unit on the assessment of mental capacity in respect of substitute decision making, wills and property transactions, as part of its Continuing Professional Development Program. In addition, as it completes the task of reviewing its *Capacity Guidelines*, we strongly encourage the Law Society to consider the evidence documented in this report as to how the guidelines should be consolidated and improved, and to publish a new set as a priority.

The committee agrees with stakeholders that the finance industry has a responsibility towards its customers to take practical steps to prevent financial abuse. We acknowledge that the banking industry has produced guidelines and adopted other measures in this regard, but we are not confident of the effect these are having at the many bank counters around the state. Greater action in the form of training programs for front line staff and supervisors across the finance sector is highly desirable. As the regulation of financial institutions is a matter for the Commonwealth, this issue should be considered as part of the Australian Law Reform Commission inquiry. In addition, the committee recommends that the Elder Abuse Helpline and Resource Unit be funded to provide information sessions with financial institutions aimed at raising awareness of financial abuse and promoting the use of online training tools. Further, as the technologies that enable us to so easily effect all sorts of transactions continue to evolve, it will be important for the finance industry to mitigate the risks of exploitation, especially with respect to vulnerable people.

With regard to policing, while we were concerned to hear that police responses to elder abuse vary in their effectiveness, it is clear to the committee that the NSW Police Force leadership is seeking to improve front line responses, and that police are building an effective working relationship with the Helpline. While we consider that the right balance needs to be struck between supporting all front line staff and investing in specialist positions, like numerous inquiry participants we do see enormous value in the Vulnerable Community Support Officer role being established in each Regional Command around the state. In addition, we emphasise the importance of elder abuse remaining on the Police Academy curriculum into the future in order to furnish a baseline understanding of elder abuse among all new officers. That curriculum will need to be developed and refined on an ongoing basis.

Participants told us that the powers of the police, the Helpline, the Guardianship Division of NCAT and the Public Guardian are all circumscribed and that the gap between them leaves people unprotected when they are very much at risk. The committee strongly supports stakeholders' call for the establishment of a Public Advocate in New South Wales, along the lines of the Victorian model, with the power to investigate complaints about abuse and also to initiate its own investigations, in order to deliver much greater protection for vulnerable older people than is currently available. The operation of the office should be reviewed after three years.

Summary of recommendations

Recommendation 1

28

That the NSW Government embrace a comprehensive, coordinated and ambitious approach to elder abuse with the following elements:

- a rights based framework that empowers older people and upholds their autonomy, dignity and right to self-determination
- a major focus on prevention and community engagement
- legislative reform to better safeguard enduring powers of attorney and to establish a Public Advocate with powers of investigation
- an ambitious training plan to enable service providers to identify and respond appropriately to abuse
- an active commitment to building the evidence base for policy
- an enhanced role for the NSW Elder Abuse Helpline and Resource Unit.

Recommendation 2

50

That the NSW Government make a significant new investment of resources in the prevention of elder abuse. This must involve the development and funding of a new prevention framework that provides for:

- substantially enhanced primary prevention, community education, awareness and engagement, carer support and later life planning initiatives
- specific resources for strategies targeting culturally and linguistically diverse and Indigenous communities and engagement with Multicultural NSW and Aboriginal Affairs NSW.

Recommendation 3

73

That the NSW Steering Committee on the Prevention of Abuse of Older People meet at least quarterly in order to enhance accountability and drive the implementation of government policy.

Recommendation 4

74

That in undertaking the three year review of the *NSW Interagency policy for preventing and responding to abuse of older people*, the NSW Government:

- explicitly consider the improvements to content recommended by stakeholders documented in our report, including with regard to duty of care, reporting requirements in respect of a crime, and privacy and confidentiality
- conduct further consultation on potential improvements with relevant government and non-government stakeholders
- develop a comprehensive strategy to ensure widespread promulgation of a revised policy
- ensure that service providers exercise their responsibilities under the policy.

Recommendation 5

75

That the Department of Family and Community Services and the NSW Ministry of Health develop and fund a comprehensive plan addressing the training needs of service providers, to enable better identification of and responses to abuse. The plan should address:

- the role of the NSW Elder Abuse Helpline and Resource Unit and other potential training providers
- the needs of the full range of service providers including general practitioners and other health professionals
- the potential for mandatory training for some service providers.

Recommendation 6**75**

That the NSW Government expand the role of the NSW Elder Abuse Helpline and Resource Unit to include:

- provision of case management and coordination
- consideration of Helpline operating hours, based on an assessment of demand
- adequate provision for culturally and linguistically diverse and Aboriginal clients.

Recommendation 7**101**

That the NSW Government, as a priority, introduce legislation to amend the *Powers of Attorney Act 2003* consistent with Victoria's *Powers of Attorney Act 2014*, thereby significantly enhancing safeguards in respect of enduring powers of attorney.

Recommendation 8**118**

That the NSW Government liaise with Law Society of New South Wales to request that the Society include a unit on the assessment of mental capacity in respect of substitute decision making, wills and property transactions in its Continuing Professional Development Program for legal practitioners.

Recommendation 9**119**

That the NSW Government fund the NSW Elder Abuse Helpline and Resource Unit to conduct information sessions with financial institutions to raise awareness of financial abuse and promote online training tools for staff such as Capacity Australia's training program to identify financial abuse.

Recommendation 10**141**

That the NSW Police Force establish a Vulnerable Community Support Officer in each Regional Command in New South Wales, with the position entailing training and support to front line officers, police response, liaison with local service providers and other government agencies, community education, awareness and engagement.

Recommendation 11**143**

That the NSW Government introduce legislation to establish a Public Advocate's Office along the lines of the Victorian model, with powers to investigate complaints and allegations about abuse, neglect and exploitation of vulnerable adults, to initiate its own investigations where it considers this warranted, and to promote and protect the rights of vulnerable adults at risk of abuse. Further, that the operation of the Office be reviewed after three years.

Relevant legislation

New South Wales

Carers (Recognition) Act 2010

Crimes Act 1900

Crimes (Domestic and Personal Violence) Act 2007

Crimes (Sentencing Procedure) Act 1999

Guardianship Act 1987

Legal Profession Act 2004 (repealed)

Legal Profession Uniform Law 2014

Mental Health Act 2007

NSW Trustee and Guardian Act 2009

Powers of Attorney Act 2003

Victoria

Guardianship and Administration Act 1986

Powers of Attorney Act 2014

Acronyms

AIFS	Australian Institute of Family Studies
ALRC	Australian Law Reform Commission
ATSI	Aboriginal and Torres Strait Islander
BOCSAR	NSW Bureau of Crime Statistics and Research
CALD	Culturally and linguistically diverse
COAG	Council of Australian Governments
COTA	Council on the Ageing NSW
CPSA	Combined Pensioners and Superannuants Association
EAHRU	NSW Elder Abuse Helpline and Resource Unit
FACS	Department of Family and Community Services
NCAT	NSW Civil and Administrative Tribunal
OWN	Older Women's Network
WEL	Women's Electoral Lobby
WHO	World Health Organisation

Chapter 1 Introduction

This chapter provides an overview of the establishment and conduct of the inquiry into elder abuse in New South Wales, as well as an outline of the structure of this report. It also provides a brief overview of two inquiries overlapping with our own, by the Australian Law Reform Commission and the NSW Law Reform Commission.

Conduct of the inquiry

Terms of reference

- 1.1 The inquiry into elder abuse was established by the General Purpose Standing Committee No. 2 under its self-referencing power on 1 September 2015.
- 1.2 The terms of reference can be found on page iv.

Submissions

- 1.3 A media release announcing the inquiry and a call for submissions was sent to all media outlets in New South Wales. Advertisements were placed in a number of foreign language magazines and newspapers. The committee also sought submissions by writing directly to individuals or organisations with a likely interest in the inquiry, including government agencies, non-government organisations and academics.
- 1.4 The committee received a total of 122 submissions and 21 supplementary submissions from a range of stakeholders. A list of submissions is contained in **appendix 1**.

Public hearings

- 1.5 The committee held four public hearings at Parliament House: the first on 20 November 2015; the second 22 February 2016; the third on 7 March 2016; and the final hearing 18 March 2016.
- 1.6 The committee heard from a total of 45 witnesses, including a panel of three individuals who had indicated in their submissions an experience of abuse. Their evidence was taken *in camera* and subsequently published by the committee.
- 1.7 On its final hearing day the committee held two panel discussions focusing on a number of legal issues arising in the inquiry – one with legal practitioners and one with legal academics. The purpose of the panel discussions was to find areas of agreement between participants that might inform the committee's recommendations.
- 1.8 A list of witnesses is set out in **appendix 2** and each of the transcripts is available on the committee's website. A list of documents tabled at the public hearings is provided in **appendix 3**.

- 1.9 The committee also had the benefit of receiving written answers to questions taken on notice during the hearings, as well as answers to a number of supplementary questions that were asked of some of the witnesses. A list of those responses is set out in **appendix 4** and the responses are also available on the committee's website.

Indigenous consultation

- 1.10 On 7 March 2016 the committee conducted a consultation with Aboriginal Elders as a joint initiative with the Law Society of New South Wales' Indigenous Issues Committee. We greatly appreciated the Law Society's organisation and facilitation of this event, and of course Elders' participation. The key themes and messages raised by participants are summarised in a report included at **appendix 6** and are also noted at various points throughout this report.

Other inquiries currently underway

- 1.11 The committee notes that two other inquiries overlapping with our own are, as of June 2016, currently on foot – one by the Australian Law Reform Commission and the other, the NSW Law Reform Commission. At several points in our report we suggest that an issue that arose in our evidence should be considered in further detail by one of those bodies. The remit of the other inquiries is set out in brief below.

Australian Law Reform Commission inquiry into elder abuse

- 1.12 The Australian Law Reform Commission (ALRC) inquiry, protecting the rights of older Australians from abuse, was referred by Senator the Hon George Brandis QC, Attorney-General of Australia. The inquiry commenced in February 2016 and will report by May 2017. Senator Brandis announced that the inquiry will consider:
- existing Commonwealth laws and frameworks which seek to safeguard and protect older persons from misuse or abuse by formal and informal carers, supporters, representatives and others. These should include, but not be limited to, regulation of:
 - financial institutions
 - superannuation
 - social security
 - living and care arrangements, and
 - health
 - the interaction and relationship of these laws with state and territory laws.¹

¹ Media Release, Senator the Hon George Brandis QC, Attorney-General, Leader of the Government in the Senate, 'Safeguarding older Australians', 24 February 2016, p 1; Australian Law Reform Commission, *Protecting the rights of older Australians from abuse, Terms of reference*, <https://www.alrc.gov.au/inquiries/elder-abuse/terms-reference>.

NSW Law Reform Commission review of guardianship legislation

1.13 The NSW Law Reform Commission is reviewing the desirability of changes to the *Guardianship Act 1987* (NSW). The Commission is examining:

1. The relationship between the Guardianship Act 1987 (NSW) and
 - The NSW Trustee and Guardian Act 2009 (NSW)
 - The Powers of Attorney Act 2003 (NSW)
 - The Mental Health Act 2007 (NSW)
 - other relevant legislation.
2. Recent relevant developments in law, policy and practice by the Commonwealth, in other States and Territories of Australia and overseas.
3. The report of the 2014 ALRC Equality, Capacity and Disability in Commonwealth Laws.
4. The UN Convention on the Rights of Persons with Disabilities.²

² NSW Law Reform Commission, *Review of the Guardianship Act 1987*, (7 June 2016) <http://www.lawreform.justice.nsw.gov.au/Pages/lrc/lrc_current_projects/Guardianship/Guardianship.aspx>.

Chapter 2 Background

This chapter sets the scene for our report by providing background information on key concepts, research evidence and the roles of relevant bodies. First, it provides a definition of elder abuse, then a brief overview of the limited research evidence with regard to prevalence, incidence and risk factor, on abuse in particular communities, and on the anticipated policy challenges arising from demographic change. The chapter then explains key concepts in relation to substitute decision making including capacity, powers of attorney and guardianship. The chapter concludes by outlining the roles of the NSW Trustee and Guardian, the NSW Public Guardian and the Guardianship Division, NSW Civil and Administrative Tribunal.

Definition of elder abuse

- 2.1** Elder abuse is defined by the World Health Organisation (WHO) as a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person.³ This definition is reflected in the NSW Government's key policy instrument in this area, the *NSW Interagency Policy on Preventing and Responding to Elder Abuse* (hereafter the interagency policy),⁴ which is discussed in detail in the following chapter.
- 2.2** Abuse of an older person can include physical, psychological, emotional, sexual or financial abuse. It can also include intentional or unintentional neglect. Sometimes abuse is hidden as it may not manifest in observable forms. Abuse most often occurs between family members, but may also include abusive acts by a friend or paid care worker.⁵
- 2.3** Table 1 below defines each type of elder abuse, as per the interagency policy.

Table 1: Types of elder abuse

Financial abuse	Financial abuse is the illegal or improper use of an older person's property or finances. This includes misuse of a power of attorney, forcing or coercing an older person to change their will, taking control of a person's finances against their wishes and denying them access to their own money.
Neglect	Neglect refers to the failure of a carer or responsible person to provide the necessities of life to an older person. Necessities of life are usually considered to be adequate food, shelter, clothing, medical or dental care. Neglect may also involve the refusal to permit others to provide appropriate care for an older person.

³ Submission 75, NSW Government, p 1, citing World Health Organisation *The Toronto Declaration on the Global Prevention of Elder Abuse*, Geneva, 2002, p3.

⁴ Family and Community Services, *NSW interagency policy – preventing and responding to abuse of older people*, (NSW Government, 2014).

⁵ Submission 75, NSW Government, p 3.

Psychological and emotional abuse	Psychological abuse is the infliction of mental stress involving actions and threats that cause isolation, fear of violence, deprivation and feelings of shame and powerlessness. Examples include treating an older person as if they are a child, engaging in emotional blackmail and preventing contact with family and friends and/or access to services.
Physical abuse	Physical abuse involves the infliction of physical pain or injury, or physical coercion. It includes physical acts such as hitting, slapping, punching, burning, tying an older person to a chair or bed, locking an older person in a room and overuse or misuse of medications.
Sexual abuse	Sexual abuse is a broad term used to describe a range of sexual acts where the victim's consent has not been obtained or where consent is obtained through coercion.

2.4 Elder abuse has recently come to public prominence as a pressing social issue. Professor Susan Kurrle, a geriatrician and chair of the Faculty of Medicine at the University of Sydney, who helped pioneer recognition of and responses to elder abuse in the 1990s, succinctly described the emergence of elder abuse as an issue demanding effective action:

Elder abuse is the last form of family violence to come to public attention. It tends to be a hidden problem with most abuse occurring within the family home, at the hands of family members or carers, or others with whom there is a relationship of trust. It is associated with increased rates of hospital admission and admission to residential aged care facilities, and also with increased morbidity and mortality. Until the late 80s very little was known about its occurrence in the Australian community, but over the last 25 years research throughout the country has confirmed the significance of abuse as a social, medical and legal problem.⁶

Evidence on prevalence, incidence and risk factors

2.5 The committee heard that while New South Wales has had a formal policy response to elder abuse for some time, our understanding and implementation of it have remained somewhat undeveloped.

2.6 A recent report prepared by the Australian Institute of Family Studies (AIFS) observes that compared to other areas of interpersonal violence such as family or domestic violence and child abuse, our progress towards understanding elder abuse and developing effective prevention strategies and responses to it, is recognised as considerably less well developed.⁷

⁶ Submission 37, Professor Susan Kurrle, p 1.

⁷ Rae Kaspiw, Rachel Carson and Helen Rhoades, *Elder abuse: Understanding issues, frameworks and responses*, (Research report no. 35, Australian Institute of Family Studies, 2016) p 4.

- 2.7** According to this report, there is very limited evidence in Australia to enable an understanding of the prevalence of elder abuse.⁸ While there are difficulties in accurately measuring the number of older people who experience abuse, as a result of varying definitions of abuse and the likelihood of underreporting, one estimate is that around one in twenty people aged 65 and over in New South Wales has experienced some form of elder abuse,⁹ equating to approximately 50,000 people.¹⁰ The available evidence suggests that prevalence varies across types, with psychological and financial abuse being the most common types of abuse reported.¹¹ There is some evidence that in many cases the older person experiences two or more types of abuse, and financial abuse and psychological abuse in particular are frequently reported as occurring together.¹²
- 2.8** From an international perspective, a recent WHO review of the prevalence of elder abuse in high and middle income countries reported rates of up to 14 per cent and even higher among people with cognitive impairment and/or living in institutions.¹³
- 2.9** Data from the NSW Elder Abuse Helpline and Resource Unit (EAHRU) give some insights into the picture of elder abuse in this state. Of the total of 2,234 calls to the Helpline in 2013-14 and 2014-15 recorded as relating to reported abuse, the most common abuse type reported was psychological abuse (57 per cent), followed by financial abuse (46 per cent), neglect (25 per cent), physical abuse (17 per cent) and sexual abuse (1 per cent).¹⁴ Women were most commonly reported to be the victims (71 per cent compared with 28 per cent men),¹⁵ with the most common age group being 75–84 years of age (33 per cent).¹⁶ In 71 per cent of calls, the alleged perpetrators were family members, and the largest group of perpetrating relatives were adult children (26 per cent sons and 21 per cent daughters). A little over one in ten (12 per cent) of perpetrators were spouses.¹⁷ The AIFS report notes that these findings from the NSW Helpline data are also broadly similar to patterns in Victoria and Queensland.¹⁸

⁸ Kaspiew, Carson and Rhoades (2016), p 5.

⁹ Submission 75, NSW Government, p 5, citing Pamela Kinnear and Adam Graycar, 'Abuse of Older People: Crime or Family Dynamics' (1999) 113 *Australian Institute of Criminology: trends and issues in crime and criminal justice*, p 2.

¹⁰ Submission 75, NSW Government, p 5, citing Mike Clare, Barbara Blundell and Joseph Clare, 'Examination of the extent of elder abuse in Western Australia' (Research Report, The University of Western Australia and Advocare, 2011).

¹¹ Kaspiew, Carson and Rhoades (2016), p 5.

¹² Submission 75, NSW Government, p 5, citing Paul Sadler 'Crime and Older People: Patterns of Elder Abuse' (paper presented at Crime and older people conference, Adelaide 25 February 1993, pp 10-11).

¹³ Submission 23, Australian Association of Gerontology, p 2 citing the World Health Organisation, 'Elder Abuse Fact Sheet' (Fact sheet No. 357, 2014).

¹⁴ Submission 75, NSW Government, p 17.

¹⁵ Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 10. These percentages are in respect of 2,151 calls in 2013-14 and 2014-15. In the remaining 1 per cent of calls, the gender of the person about whom abuse was alleged was recorded as 'other/unknown'. In an additional 173 cases, gender was left blank or omitted.

¹⁶ Submission 75, NSW Government, p 17.

¹⁷ Submission 33, NSW Elder Abuse Helpline and Resource Unit, pp 10 -11.

¹⁸ Kaspiew, Carson and Rhoades (2016), p 6.

- 2.10** The NSW Government submission underscored the complexity of abuse of older people reflected in the available research. Evidence indicates that there is no single cause of elder abuse but rather there are diverse patterns associated with different forms of abuse. Nevertheless, a common factor seen across all types of abuse is a relationship where the older person is in some way dependent on another person for their day to day needs. Research suggests this pattern is often seen in cases of financial abuse and neglect, as well as for many cases of psychological, physical and sexual abuse. Personal relationships with family members or friends that come to include a caring role can also give rise to abuse.¹⁹
- 2.11** Other research suggests that abuse of an older person can be a continuation of longstanding domestic violence. However, a history of domestic violence has not been associated with financial abuse, and rarely with neglect. There can also be an intergenerational aspect to elder abuse, with people who have experienced abuse as a child becoming abusive towards their ageing parent.²⁰
- 2.12** These observations are to some extent reflected in the recent AIFS report, which states that in the absence of systematic Australian (and limited international) research, our insights into the risk factors and protective factors for elder abuse is limited. Based on the limited available research, the AIFS report documents a number of risk factors for which there is sound evidence:
- disability, particularly cognitive impairment, which leads to reduced capacity, that is, reduced ability to make reasoned decisions
 - social isolation, which renders people more vulnerable to exploitation and also means that abusive behaviour is less likely to be recognised by others
 - a history of previous traumatic events including interpersonal and domestic violence
 - depression and/or drug and alcohol misuse on the part of the perpetrator, and the perpetrator being in a position of financial, emotional, or relationship dependence with the victim.²¹
- 2.13** The NSW Government submission further noted that the risk factors and considerations for preventing abuse are different for people living in the community and those in aged care settings.²²
- 2.14** Looking more broadly to societal factors, the AIFS report also notes a theme emerging from the literature – which it notes has not been systematically measured – concerning values and attitudes associated with elder abuse in various ways:

¹⁹ Submission 75, NSW Government, p 5, citing Paul Sadler ‘Crime and Older People: Patterns of Elder Abuse’ (paper presented at Crime and Older people conference, Adelaide 25 February 1993), pp 10-11.

²⁰ Submission 75, NSW Government, p 6, citing Pamela Kinnear and Adam Graycar, ‘Abuse of Older People: Crime or Family Dynamics’ (1999) 113 *Australian Institute of Criminology: trends and issues in crime and criminal justice*, p 4.

²¹ Kaspiew, Carson and Rhoades (2016), pp 7-9.

²² Submission 75, NSW Government, p 6.

Generally, social and individual values that fail to accord respect and consideration to elders and their human rights are considered to create an environment conducive to elder abuse. Some literature points to an association between gender roles and elder abuse, particularly financial abuse ...²³

- 2.15** The Ministerial Advisory Committee on Ageing articulated how ageism contributes both to the risk of abuse and to the failure to recognise it:

Ageism, when combined with other domains of disadvantage, such as poverty, disability, and cultural and linguistic diversity, may put some older people at greater risk of becoming victims of abuse. As ageist attitudes become entrenched in our culture, older people may internalise feelings of low self worth, become more passive and feel more dependent. Such perceptions can lead to an older person believing that they deserve to be treated more poorly than others and avoid speaking up when experiencing abuse from family members or a caregiver. Many older people may not be willing to report elder abuse because of the isolation that comes from a lack of self esteem and a feeling of invisibility. Ageism can also affect our understanding of the prevalence and severity of elder abuse and cause many instances of abuse to go unnoticed.²⁴

Elder abuse in particular communities

- 2.16** Abuse of older people occurs across the community and affects people of all backgrounds, although just as research on elder abuse is limited, so too is research on abuse in particular contexts such as among Indigenous people and culturally and linguistically diverse communities.²⁵ According to the AIFS report, ‘there remains much to be understood about the extent to which the dynamics of elder abuse are different or similar in varying contexts, and the extent to which different responses may be required.’²⁶
- 2.17** Aboriginal people have reported feeling the impact of elder abuse earlier, given their lower mortality age, such that a person may be considered ‘older’ at a younger age.²⁷ Participants in our consultation with Aboriginal Elders on 7 March 2016 told us that they had seen or experienced financial, psychological, emotional and physical abuse, as well as neglect. Some suggested that the experience of elder abuse might be different for Aboriginal communities.

²³ Kaspiew, Carson and Rhoades (2016), p 9, citing Kathryn Peri et al, ‘Keeping older people safe by preventing elder abuse and neglect’ (2009) 35 *Social Policy Journal of New Zealand* pp 159-172.

²⁴ Submission 12, Ministerial Advisory Committee on Ageing, p 3.

²⁵ Kaspiew, Carson and Rhoades (2016), p 12.

²⁶ Kaspiew, Carson and Rhoades (2016), p 12.

²⁷ Submission 75, NSW Government, p 6, citing Mike Clare, Barbara Blundell and Joseph Clare ‘Examination of the extent of elder abuse in Western Australia’ (Research report, University of Western Australia and Advocare, 2011).

2.18 Several participants said that among Indigenous Australians, issues of elder abuse are linked to a level of community disconnectedness and dysfunction which stems from dispossession and the dismantling of Indigenous communities and culture since the arrival of Europeans in Australia. Participants told the committee that political and societal disenfranchisement among Aboriginal people means that you ‘keep your family close’. Therefore when elder abuse occurs in a family, there is a lot of shame and secrecy around the abuse.²⁸ The full report of this consultation is included at appendix 6.

2.19 This accords with other evidence before the committee that older Indigenous victims of abuse are often reluctant to report abuse because of fear of retribution and further violence, fear of children being taken away, stigma, shame, distrust of the justice system and government agencies, and fear of being ostracised from family and the community.²⁹ The AIFS report noted some of the factors that can shape elder abuse experienced by Indigenous people:

Two factors that were identified as having particular implications in the Aboriginal context were cultural obligations and the circumstances of grandparents. From a cultural perspective, Aboriginal norms in relation to reciprocity, the expectation that resources will be shared, and kinship (where a wide variety of relationships are involved in familial and community networks), are dimensions that complicate understandings of whether and how elder abuse is occurring. The extent to which calls on grandparent resources to care for grandchildren are culturally reasonable or unreasonable was also highlighted by the research. Substantially more work is required to understand and conceptualise elder abuse in the Aboriginal context, especially among different groups in different circumstances, given the diversity among Aboriginal and Torres Strait Islander communities.³⁰

2.20 Research into the experience of culturally and linguistically diverse older people has found that some are at greater risk of abuse as a result of limited English skills, social isolation, dependency on family members, unwillingness to disclose abuse because of stigma, and cross-generational factors resulting in different expectations of care and support.³¹

Demographic change

2.21 The NSW Government submission posited that the ageing of the population – with the number of people aged 65 and over projected to double by 2050, and the number of people with dementia expected to almost treble within the same period – means that the number of older people vulnerable to financial abuse in particular is expected to rise, as families face greater financial pressure associated with the cost of living, high house prices and rising costs of residential and community care.³²

²⁸ Consultation with Indigenous Elders, General Purpose Standing Committee No. 2 and Law Society of New South Wales, 7 March 2016. See full report of this consultation at appendix 6.

²⁹ Submission 75, NSW Government, p 8.

³⁰ Kaspiew, Carson and Rhoades (2016), p 12.

³¹ Submission 75, NSW Government, p 6, citing Clare, Blundell and Clare (2011), p 33; see also Kaspiew, Carson and Rhoades (2016), p 12.

³² Submission 75, NSW Government, p 6.

- 2.22** The AIFS report elucidated various aspects of demographic change, and how such change will in turn impact upon certain risk factors for elder abuse, thus underscoring the need for appropriate policy responses:

The statistical evidence on Australia's age profile is clear ... in the coming decades unprecedented proportions of Australia's populations will be aged. In 2050, just over a fifth of the population is projected to be over 65 (compared with 15% in 2015), and those aged 85 and over are projected to represent about 5% of the population (compared with less than 2% in 2011). With three in ten people over 85 having dementia, the numbers of aged people with a primary risk factor for elder abuse are likely to increase substantially. There will be significant cultural diversity among this population. Given that women tend to outlive men, it seems reasonable to suggest that a substantial number of widowed women will be living alone in 2050, a circumstance that again reflects a key risk factor for elder abuse. The numbers of aged people with dementia living in assisted care will also be substantial, underlining the need to consider this context in the development both of prevalence assessment strategies and future policy responses.³³

- 2.23** Aged and Community Services NSW and ACT observed that the shifts and reforms taking place in aged and community care pose further challenges for government and service providers in identifying and responding to abuse. It noted that currently around 95 per cent of older people live in the community, and suggested that the move towards consumer choice and control may have the unintended consequence of providing the opportunity for family members acting as the older person's representative to curtail the oversight currently provided by services, or to make choices based on cost rather than the older person's needs.³⁴

Key concepts around substitute decision making

- 2.24** This section explains key legal concepts in relation to substitute decision making: capacity, ordinary and enduring powers of attorney, and enduring guardianship. It then sets out the roles of the NSW Trustee and Guardian, the NSW Public Guardian and the NSW Civil and Administrative Tribunal (NCAT).

Capacity

- 2.25** Capacity is a legal term referring to an adult's ability to make a decision for themselves. Generally, when a person has capacity to make a particular decision they can:
- understand the facts and the choices involved
 - weigh up the consequences and
 - communicate the decision.

³³ Kaspiew, Carson and Rhoades (2016), p 47.

³⁴ Evidence, Ms Illana Halliday, Chief Executive Officer, Aged and Community Services NSW and ACT, 7 March 2016, p 14; submission 22, Age and Community Services NSW and ACT, p 2.

- 2.26** If a person does not have the capacity to make a certain decision, because of, for example, dementia or mental illness, a substitute decision maker may need to make the decision for them.³⁵

Powers of attorney

- 2.27** A power of attorney is a legal document which appoints a person or trustee organisation (the attorney) to act on behalf of another (called the principal or donor) to manage their assets and financial affairs. The term attorney in this sense does not necessarily mean a lawyer or solicitor. The attorney may be a family member, close friend or trustee organisation such as NSW Trustee and Guardian.
- 2.28** Appointing an attorney gives the attorney the legal authority to act on the donor's behalf while they are alive. It does not affect the person's will.
- 2.29** A person can only make a power of attorney while they have capacity. An **ordinary power of attorney** ceases to have effect if a person loses mental capacity, while an **enduring power of attorney** continues to be in force after the donor has lost capacity.³⁶
- 2.30** In New South Wales a power of attorney can only apply to financial matters. Making a power of attorney does not mean that the donor lose control over their financial affairs. Rather, it gives the attorney formal authority to manage the donor's financial affairs according to the donor's instructions. Power of attorney can be cancelled (revoked) at any time provided the donor has the mental capacity to do so.
- 2.31** If it is necessary for a person to have their affairs managed by a substitute decision maker, but they did not make a power of attorney while they were capable and have since suffered loss of capacity, or if they always had a capacity issue, an interested party can apply to either the Supreme Court or Guardianship Division of NCAT for the appointment of a financial manager. The financial manager is either a private person, such as a family member under the supervision of NSW Trustee and Guardian, or a private trustee company. If there is no suitable person or private trustee company the NSW Trustee and Guardian will be appointed as direct manager.³⁷

Guardianship

- 2.32** Guardianship is a legal mechanism for substitute decisions for health and lifestyle matters (not financial decisions).

³⁵ NSW Attorney General's Department, *Capacity Toolkit* (2009), p 10.

³⁶ NSW Trustee and Guardian, *A guide for powers of attorney* (2016), p 4; NSW Trustee and Guardian, *Attorney frequently asked questions*, <<http://www.tag.nsw.gov.au/attorney-faqs.html>>.

³⁷ Answers to questions on notice, Ms Imelda Dodds, Chief Executive Officer, NSW Trustee and Guardian, 1 April 2016, p 1.

- 2.33** An enduring guardian is appointed by an individual to make lifestyle, health and medical decisions for them when they are not capable of doing this for themselves. Examples of these types of decisions include where the person lives and the services and medical treatments they are to receive.
- 2.34** Enduring guardianship only comes into effect if or when a person loses capacity and will only be effective during the period of incapacity, therefore, it may never become operational. It allows individuals to plan for the future, particularly for unforeseen situations. Generally, people appoint family members or other trusted people as their guardian.
- 2.35** An enduring guardian and enduring power of attorney are complementary documents and can be made separately or together.³⁸
- 2.36** A guardian may also be appointed by NCAT under a guardianship order, if it determines that a person has a disability and needs a guardian. It can appoint one or more people to be a guardian, or can appoint the NSW Public Guardian as the guardian of last resort.

Key bodies

- 2.37** The NSW Trustee and Guardian, the NSW Public Guardian and the NCAT each play an important role in the substitute decision making system, and thus in protecting older people from abuse, particularly financial abuse.

The NSW Trustee and Guardian

- 2.38** The NSW Trustee and Guardian is an independent statutory body that provides substitute financial management services for people with decision making disabilities under a court or tribunal order. It also educates the community on substitute decision making tools such as powers of attorney and enduring guardianship appointments.³⁹

NSW Public Guardian

- 2.39** The NSW Public Guardian is a statutory officer who fulfils the role of guardian for people with decision making disabilities under a court or tribunal order. The Public Guardian is appointed 'guardian of last resort' by the Guardianship Division of NCAT or the Supreme Court when there is no other person suitable and willing to perform this role.⁴⁰
- 2.40** Where an application for public guardianship is granted, the Public Guardian makes decisions in line with the principles of the *Guardianship Act 1987*.

³⁸ NSW Trustee and Guardian, *Attorney frequently asked questions*, <<http://www.tag.nsw.gov.au/attorney-faqs.html>>.

³⁹ Submission 75, NSW Government, pp 24-25.

⁴⁰ Submission 75, NSW Government, p 25.

Guardianship Division, NSW Civil and Administrative Tribunal

- 2.41** The Guardianship Division of NCAT hears and determines applications for the appointment of guardians and financial managers for people living with a decision making disability. While most of its work involves decisions about guardianship and financial management, the tribunal also has jurisdiction to review the guardianship and financial management orders it makes, and to review enduring powers of attorney and enduring guardianship appointments.⁴¹
- 2.42** Any person who suspects that an older person who lacks capacity to make decisions is at risk of abuse can contact the NCAT to discuss whether there is a need to apply for guardianship or a financial management order.⁴²

⁴¹ NSW Civil and Administrative Tribunal, *Annual Report 2014-15*, p 39. In addition, the Tribunal has jurisdiction to provide consent for medical and dental treatment and to approve a clinical trial so that people with decision making disabilities may participate.

⁴² Submission 75, NSW Government, p 25.

Chapter 3 Key principles

This inquiry provided the opportunity for the committee and inquiry participants to step back and consider the principles that should underpin the NSW Government's approach to elder abuse if it is to build an effective policy, legal and service framework for preventing, investigating and responding to elder abuse.

This chapter first considers stakeholders' views that New South Wales needs to embrace a comprehensive, coordinated and ambitious approach to abuse of older people that will necessarily include legislative reform. It then examines how a human rights approach that empowers older people can underpin the framework for tackling elder abuse. Here we explore several aspects to a rights based approach: autonomy and self determination, mandatory reporting, substitute decision making and supported decision making, and gender. Finally, the committee examines participants' calls for a national framework to address elder abuse and to build a stronger evidence base.

A comprehensive, coordinated and ambitious approach

- 3.1** The committee heard that there is increasing momentum for Australia to move to firstly recognise, and then address, elder abuse as a pressing policy issue. Professor Wendy Lacey, Head of the School of Law, University of South Australia, has advised the South Australian Government on policy and legislative responses to adult protection, and in 2014 published an article examining Australian jurisdictions' legislative and policy responses to elder abuse. In that article Professor Lacey observed 'a situation where elder abuse is simply not widely acknowledged as a serious issue in Australia and is inadequately addressed under existing laws'.⁴³
- 3.2** She advised the committee that Australian jurisdictions have been 'incredibly slow' to move on elder abuse in a concerted way; that existing state laws are neither adequate nor innovative; and that policy documents and interagency protocols are 'well-intentioned but ... weak and ineffective'.⁴⁴ Professor Lacey concluded, moreover, 'That Australia's legal and policy frameworks for dealing with elder abuse are so weak is a national disgrace and it is time that lawyers joined the calls for a better system of adult protection in Australia.'⁴⁵
- 3.3** Professor Lacey identified a number of specific flaws that characterise state based frameworks for elder abuse, including that of New South Wales:
- there is no dedicated agency with statutorily mandated responsibility to investigate cases of elder abuse, coordinate interagency responses and seek intervention orders where necessary
 - privacy laws can inhibit the sharing of information between agencies, hampering early intervention

⁴³ Professor Wendy Lacey, 'Neglectful to the point of cruelty? Elder abuse and the rights of older persons in Australia', (2014) 36, *Sydney Law Review*, p 99.

⁴⁴ Answers to questions on notice, Professor Wendy Lacey, Dean and Head of School, School of Law, University of South Australia, 18 March 2016, p 1; see also evidence, 18 March 2016, p 31.

⁴⁵ Lacey (2014), p 130.

- the lack of a coordinated interagency response framework means that individuals fall between the gaps in the legislative mandate of statutory agencies and eligibility criteria of service providers
- referral services between agencies do not encourage a multi-disciplinary and multi-agency response in complex cases of elder abuse
- the rights of older persons are at best partially incorporated into elder abuse frameworks, meaning that paternalistic approaches may still emerge
- only the police have the legal authority to enter premises and investigate a case of elder abuse, when other agencies would be more suited to conducting the initial investigation.⁴⁶

3.4 Professor Lacey observed that the current centrepiece of the NSW Government's approach to addressing abuse, the *NSW Interagency Policy on Preventing and Responding to Abuse of Older People* (discussed in detail in chapter 5) has its merits but does not enable agencies to take control of an investigation, nor to intervene in a timely manner. She added that education and awareness raising is critical to promoting understanding about abuse, but needs to be backed by an effective legal and policy framework.⁴⁷ As an alternative, Professor Lacey called on governments in all states and territories to develop 'an integrated, whole-of-government strategy for preventing and responding to elder abuse, which engages the entire community.'⁴⁸

3.5 Commenting more broadly on the NSW Government's policy and service leadership in respect of elder abuse over time, Aged and Community Services NSW and ACT asserted that a sustained focus has been lacking:

The issue of elder abuse has been raised, and various work done over the past 20 years. But in NSW there has not been a sustained focus on elder abuse meaning there has been little progress in dealing with the issues, and there is a sense of 'starting again' rather than building on the work of the past.⁴⁹

3.6 Aged and Community Services NSW and ACT thus emphasised the need for the NSW Government to ensure sustained attention on elder abuse, to ensure that the gains made from our inquiry are harnessed into the future.⁵⁰

⁴⁶ Professor Wendy Lacey, (2014) pp 105 and 126; see also submission 112, Professor Lacey, Dean and Head of School, School of Law, University of South Australia, pp 1-2.

⁴⁷ Evidence, Professor Wendy Lacey, Dean and Head of School, School of Law, University of South Australia, 18 March 2016, p 32.

⁴⁸ Lacey (2014), p 104.

⁴⁹ Submission 22, Aged and Community Services NSW and ACT, p 4.

⁵⁰ Submission 22, Aged and Community Services NSW and ACT, p 5; see also Evidence, Ms Illana Halliday, Chief Executive Officer, Aged and Community Services NSW/ACT, 7 March 2016, p 21.

Legislative reform

- 3.7** It has been suggested that the states and territories have tended to take a passive approach to elder protection due to a perception that the ageing portfolio ‘is controlled by the Commonwealth, and that the states have limited capacity to develop law and policy with respect to older persons.’⁵¹
- 3.8** Professor Lacey challenged this perception, arguing that measures are needed at the state and territory level because while the Commonwealth Government has powers in respect of the age pension and aged care, it does not possess the constitutional authority to control all of the relevant agencies who work in cases of elder abuse and which cater to the many vulnerable older persons who live in the community. She further asserted that, ‘our federal structure provides the capacity for innovation and variation in both law and policy at the state level. In this sense, states should not be afraid to draft innovative laws and regulatory frameworks that are tailored to their own jurisdiction.’⁵²
- 3.9** Professor Lacey underscored that a strong and comprehensive approach to elder abuse in any state and territory will necessarily involve legislative change, asserting that, ‘Until strategies are backed by legislative reform, vulnerable adults will continue to fall through the cracks of existing protective mechanisms and specialist services.’⁵³
- 3.10** In respect of legal reform, Professor Lacey advised that some state and territory governments have chosen to implement comprehensive adult protection legislation, such as in Scotland or British Columbia, while others have taken a more piecemeal approach that still addresses powers of attorney, guardianship, investigation via a public advocate and criminal law.⁵⁴
- 3.11** The committee considers a number of specific proposals for legislative reform in detail in chapter 6 on financial abuse, as well as chapter 7 on investigations.

A rights based approach

- 3.12** In her keynote speech to the National Elder Abuse Conference in February 2016, the Australian Human Rights Commission’s Age and Disability Discrimination Commissioner, the Hon Susan Ryan AO, argued that one of the greatest human rights challenges we face is to better protect the rights of older Australians and ensure that they are free from all forms of abuse.⁵⁵ Numerous inquiry participants emphasised the imperative for a rights based approach to underpin any government framework for addressing elder abuse.
- 3.13** The Australian Association of Gerontology observed that, ‘Elder abuse can be a violation of older people’s human rights. Conversely human rights based strategies can help empower

⁵¹ Lacey (2014), p 101.

⁵² Submission 112, Professor Wendy Lacey, p 2.

⁵³ Lacey (2014), p 105.

⁵⁴ Evidence, Professor Lacey, 18 March 2016, p 31.

⁵⁵ Hon Susan Ryan AO, Age and Disability Discrimination Commissioner, Australian Human Rights Commission, ‘Ageism and its relationship to elder abuse’, (keynote speech to the 4th National Elder Abuse Conference, Melbourne, 24 February 2016), p 4.

older people to be more aware of and to assert their rights.⁵⁶ It suggested that one factor driving elder abuse is ageism, which manifests itself in negative community attitudes towards older people and allows elder abuse to go unreported and unrecognised. Within families, another manifestation is the belief that simply because a relative is old, they cannot or should not make their own decisions.⁵⁷

- 3.14** In her evidence before the committee, Professor Lacey emphasised the value of a rights based approach that upholds the dignity and autonomy of older people:

I would like to highlight for the committee the importance of adopting a rights based approach to the area of elder abuse. It is all too easy to fall into an ageist approach when dealing with older persons and to just see that age alone means that people are automatically vulnerable. In any framework that is adopted for addressing elder abuse it is essential that we put the rights of the older person at the heart of whatever strategy is adopted. That includes respect for dignity, autonomy and the self-determination of the older person and empowering older people to exercise their rights as fully as possible for as long as possible.⁵⁸

- 3.15** In a similar vein, Aged and Community Services NSW and ACT asserted that, ‘Approaches to elder abuse need to be based on an empowering approach, respecting the older person’s autonomy, right and ability to make decisions for themselves unless proved otherwise.’⁵⁹

- 3.16** Observing that while Australian policies for elder abuse do routinely discuss empowerment and self-determination, Mr John Chesterman, Director of Strategy with the Victorian Office of the Public Advocate, noted that they nevertheless seem to be overly focused on vulnerability, with a concomitant focus on current and potential victims, rather than perpetrators and the settings in which abuse commonly occurs. Accordingly, he argued that elder abuse response strategies could be improved by prioritising what service responses, if any, the older person wants, and that even when a person has cognitive impairment, their wishes should still be a priority.⁶⁰

Autonomy and self determination

- 3.17** In keeping with this rights based approach, Mr Ian Day, Chief Executive Officer with Council on the Ageing (COTA) NSW asserted that, ‘An adult is an adult ... Whilst somebody has [decision making] capacity they can make a decision and have full rights. Under no circumstances would anybody suggest that ... somebody come in and take their rights away

⁵⁶ Submission 23, Australian Association of Gerontology, p 7.

⁵⁷ Submission 23, Australian Association of Gerontology, p 7.

⁵⁸ Evidence, Professor Lacey, 18 March 2016, p 31; see also submission 112, Professor Wendy Lacey, p 2.

⁵⁹ Submission 22, Aged and Community Services NSW and ACT, p 3; evidence, Ms Illana Halliday, Chief Executive Officer, Aged and Community Services NSW and ACT, 7 March 2016, p 14.

⁶⁰ Submission 3, Office of the Public Advocate (Victoria) attachment pp 3-4, Dr John Chesterman, ‘Taking control: Putting older people at the centre of elder abuse response strategies, (2015) 69 *Australian Social Work* 1, pp 115 - 124.

from them.⁶¹ He further noted that a rights based approach will honour the right of a victim to make their own decisions in respect of the abuse itself.⁶²

- 3.18** Capacity Australia underscored that Australian governments' responsibility to respect the decision making capacity of people with disability (including older people with disability) is enshrined in international law, namely the *United Nations Convention on the Rights of Persons with Disabilities*, to which Australia is a signatory.⁶³ It thus called on our committee to honour these principles in our recommendations to the NSW Government:

We suggest that the Standing Committee makes its recommendations in relation to this Inquiry mindful of the need to allow people with decision making disability to be involved as much as possible in the decision making about themselves and that substitute decision makers make decisions for them only when that is necessary, as a last resort and is subject to safeguards.⁶⁴

- 3.19** Ms Lee Critchley, a civil law division practitioner with Legal Aid NSW who has much experience in elder abuse cases, agreed with the imperative to guard against an overly paternalistic approach to older people simply because of their age,⁶⁵ and gave an example of an older client's decision not to take action in respect of financial abuse by her daughter:

If there is capacity they should be free to make decisions like any other adult—even those that others may consider to be bad decisions. As an example, I had a client where Legal Aid had been prepared to commence legal action against an older woman's daughter who fraudulently transferred her mother's property to herself. However, my client did not wish to proceed; she preferred to maintain the relationship with her daughter even though she was aware of what her daughter had done and the risks involved in not taking action to get the house transferred back to her. She had the right to make the decision even though it was not one that I was comfortable with.⁶⁶

- 3.20** Ms Pam Suttor, Chair of the Law Society of New South Wales' Elder Law and Succession Committee, agreed that older people have a right to make what others consider to be bad decisions.⁶⁷
- 3.21** Within this rights context, Ms Meredith Lea, Project Assistant in Violence Prevention with People with Disability Australia, emphasised the overlap between ageing and disability, suggesting that 'ableism' and disability discrimination are also drivers of elder abuse:

⁶¹ Evidence, Mr Ian Day, Chief Executive Officer, Council on the Ageing NSW, 20 November 2015, p 7.

⁶² Evidence, Mr Day, 20 November 2015, p 2.

⁶³ Submission 81, Capacity Australia, p 2.

⁶⁴ Submission 81, Capacity Australia, p 2.

⁶⁵ Evidence, Ms Lee Critchley, Civil Law Division Practitioner, Legal Aid NSW, 18 March 2016, p 15.

⁶⁶ Evidence, Ms Critchley, 18 March 2016, p 14.

⁶⁷ Evidence, Ms Pamela Suttor, Chair, Elder Law and Succession Committee, Law Society of New South Wales, 18 March 2016, p 20.

Firstly, it is essential to understand that violence against older people is heavily shaped by ableism and discrimination against people with disability. Elder violence is frequently enabled by the deprivation of autonomy, agency and rights that becomes possible as people acquire disability, including being forced into residential facilities rather than ageing in place and substitute decision makers being appointed. People with disability have been fighting to have their rights, agency and autonomy recognised for many decades, often in the face of ongoing human rights violations.⁶⁸

- 3.22** She argued that given the increasing rates of disability among older people, it is important to recognise that the drivers of violence against people with disability intensify as people age.⁶⁹

Mandatory reporting

- 3.23** The committee heard that consistent with a rights based approach to elder abuse, which respects the right of older people to autonomy and self-determination, governments should not introduce mandatory reporting of elder abuse.
- 3.24** Numerous stakeholders argued that mandatory reporting is inherently paternalistic and would offend the autonomy of older people. The Australian Association of Gerontology, for example, asserted that, ‘mandatory reporting to government authorities of suspected elder abuse, irrespective of the older person’s wishes, is not consistent with respecting older people as autonomous adults.’⁷⁰ It further noted that evidence to support the effectiveness of mandatory reporting of suspected abuse is not strong and strongly cautioned against any recommendation to that effect.⁷¹
- 3.25** Aged and Community Services NSW and ACT expressed very similar views, noting that there is some evidence that mandatory reporting may actually lead some older people not to seek help for fear of a report being made against their wishes.⁷² Both Aged and Community Services and the Australian Association of Gerontology strongly advocated instead for greater investment of resources in supporting service providers who work with older people to identify and respond appropriately to abuse.⁷³

⁶⁸ Evidence, Ms Meredith Lea, Project Assistant, Violence Prevention, People with Disability Australia, 18 March 2016, p 46.

⁶⁹ Evidence, Ms Lea, 18 March 2016, p 47; see also evidence, Ms Ngila Bevan, Human Rights Adviser and Manager, Advocacy and Communications, People with Disability Australia, 18 March 2016, p 48.

⁷⁰ Submission 23, Australian Association of Gerontology, p 4.

⁷¹ Submission 23, Australian Association of Gerontology, p 8.

⁷² Submission 22, Aged and Community Services NSW and ACT, p 4; evidence, Ms Halliday and Mr Paul Sadler, Director, Aged and Community Services NSW and ACT, 7 March 2016, p 14.

⁷³ Evidence, Ms Sarah Fogg, Member, Executive Committee, 22 February 2016, p 52.

- 3.26** Whilst noting concerns about the autonomy of older people, Alzheimer’s Australia NSW was perhaps more open to the idea of mandatory reporting, calling for further investigation of its ability to reduce the incidence of elder abuse and improve its resolution. In addition, Alzheimer’s Australia observed that in relation to mandatory reporting, ‘questions remain about where and to whom people would report their concerns, and whose role it would be to investigate the allegation’.⁷⁴ The issue of investigation is examined in detail in chapter 7.

Substitute decision making and supported decision making

- 3.27** Although this inquiry was focused on older people, the fact that our legislative framework for substitute decision making in respect of older people also captures people with disability, provided the opportunity for disability advocates to raise the related issue of supported decision making.

- 3.28** Ms Imelda Dodds, Chief Executive Officer of the NSW Trustee and Guardian, explained how her organisation conceptualises the issue of decision making:

Decision making is a spectrum with complete autonomy on one end and substitute decision making on the opposite end. There will be those clients especially those suffering dementia whose capacity will decline and will need to rely on substituted decision making. There are those clients who for example may have been in an accident and suffer brain injury but over time they improve. There are other clients who may have the capacity to manage a small amount of funds but not large investments and this can be accommodated by s71 of the *NSW Trustee and Guardian Act 2009*.⁷⁵

- 3.29** Ms Lea asserted that government needs to guard against the denial of people’s legal capacity and capacity more generally, and must prioritise a supportive decision making framework that provides whatever supports are required to enable people with disability to assert and exercise their legal capacity in line with their human rights.⁷⁶ Her colleague Ms Ngila Bevan, Human Rights Adviser, People With Disability Australia asserted that our current legal conceptions of capacity are being exposed as outdated, and noted that New South Wales has already moved towards supported decision making to some extent.⁷⁷ People with Disability Australia thus recommended that the NSW Government establish a supported decision making framework that promotes and supports people to assert and exercise their legal capacity and enshrines the primacy of supported decision making mechanisms.⁷⁸

- 3.30** Ms Dodds indicated that supported decision making has been and continues to be trialled both at the Public Guardian and the NSW Trustee and Guardian, whilst noting that it is resource intensive and necessitates greater involvement by family, friends and volunteers, who must be trained and educated in order for the model to work effectively.

⁷⁴ Submission 35, Alzheimer’s Australia NSW, pp 8-9.

⁷⁵ Answers to supplementary questions, Ms Imelda Dodds, Chief Executive Officer, NSW Trustee and Guardian, 1 April 2016, p 3.

⁷⁶ Evidence, Ms Lea, 18 March 2016, p 47.

⁷⁷ Evidence, Ms Bevan, 18 March 2016, p 50.

⁷⁸ Submission 104, People with Disability Australia, p 5.

3.31 A number of other participants expressed support for supported decision making, whilst noting that it has certain limitations. Mr Malcolm Schyvens, Deputy President and Division Head, Guardianship Division, NSW Civil and Administrative Tribunal (NCAT), observed that some other stakeholders are pushing for a shift away from substitute decision making. He stated his in principle support for supported decision making, whilst asserting that those individuals who lack capacity require protection that cannot be afforded by that model. He thus argued that careful thought is required in order to ensure the right provisions are in place.⁷⁹

Gender

3.32 Some stakeholders argued that a rights based framework will entail a greater recognition of gender as a factor in elder abuse.

3.33 In their joint submission, the Women's Electoral Lobby (WEL) and Older Women's Network (OWN) proposed that a rights based framework recognises the marginalisation of and discrimination against older women. These stakeholders argued that:

- Gender discrimination across the lifespan has a cumulative effect resulting in a high lifetime rate of violence against older women.
- Older women are subjected to discrimination based on age, gender, [Aboriginality], class, race, ethnicity, [sexuality and gender identity], disability and chronic illness. Marginalised, and powerless they can often be vulnerable to structural and interpersonal violence and abuse, which can take physical, sexual, psychological, emotional and financial forms.
- Violence and abuse is experienced within complex relationships. Many women are likely to be victims of violence and survivors of past violence, from partners, adult children, grandchildren and within care relationships themselves.
- Many [older] women also face challenges such as poverty, homelessness and difficulties accessing employment, health-care and aged care services.⁸⁰

3.34 Accordingly, Mary O'Sullivan, Executive Member of WEL, argued for elder abuse to be addressed from a family violence perspective that recognises elder abuse on a continuum of violence against women.⁸¹ She also noted that women predominate among paid and unpaid carers of older people, and that many of these carers are themselves older.⁸² Similarly, Dr Jane Mears of Western Sydney University and OWN emphasised the importance of a framework that understands the power dimension to abuse of older people, such that people in marginalised groups are disproportionately subject to violence and abuse.⁸³

⁷⁹ Evidence, Mr Malcolm Schyvens, Deputy President and Head of Guardianship Division, 7 March 2016, p 8. Mr Schyvens noted that the issue of supported decision making is being considered in other inquiries with an explicit focus on the United Nations convention, that is, the Australian Law Reform Commission inquiry and the NSW Law Reform Commission review of the *Guardianship Act 1987*, both of which are briefly explained in chapter 2.

⁸⁰ Submission 55, Women's Electoral Lobby NSW and Older Women's Network NSW, p 7.

⁸¹ Evidence, Ms Mary O'Sullivan, Member, Older Women's Network and Convenor, Women's Electoral Lobby Affordable Action Housing Group, 22 February 2016, p 35.

⁸² Evidence, Ms O'Sullivan, 22 February 2016, p 34.

⁸³ Evidence, Dr Jane Mears, Member, Older Women's Network and Associate Professor, School of Social Sciences, Western Sydney University, 22 February 2016, p 35.

- 3.35** The Australian Association of Gerontology agreed that ‘elder abuse shares many of the characteristics of domestic violence and can be regarded as a form of domestic or family violence’.⁸⁴ At the same time, it emphasised the differences between these two forms of abuse:

[P]erpetrators [of elder abuse] are more likely to be sons or daughters rather than intimate partners, abuse may arise in older age for the first time rather than being a long term pattern of behaviour, and older men can be victims of elder abuse. Elder abuse may be linked to the onset of disability in older age and carer stress and this can affect older men as much as women. The incidence of abuse is more common among women in part because of women’s greater longevity.⁸⁵

National framework

- 3.36** Whilst recognising the imperative for the NSW Government to strengthen its approach to elder abuse, a number of inquiry participants argued that it was timely for the Commonwealth to introduce a national framework.
- 3.37** One such participant was Age and Disability Discrimination Commissioner Susan Ryan, who called for a nationally coordinated approach to elder abuse in order to streamline current protections and fill any gaps, particularly in relation to women, Indigenous people, regional and rural communities, culturally and linguistically diverse communities and people with disability.⁸⁶
- 3.38** Similarly, in their joint submission, WEL and OWN called for a national plan to address violence against older people.⁸⁷ The Law Society of New South Wales also noted its support for a national approach,⁸⁸ as did COTA NSW.⁸⁹
- 3.39** Aged and Community Services NSW and ACT recommended a national approach that builds on and consolidates the work of states and territories.⁹⁰ In evidence, Mr Paul Sadler, Director, advised that the National Aged Care Alliance, representing national aged and community care providers along with a range of consumer, professional and union groups, has called on the Commonwealth Government to take an active approach in respect of elder abuse in the context of the current aged care reforms introducing greater consumer control.⁹¹ As noted in the previous chapter, Aged and Community Services NSW and ACT considers that these

⁸⁴ Submission 23, Australian Association of Gerontology, p 4.

⁸⁵ Submission 23, Australian Association of Gerontology, p 4; see also evidence, Dr Anthony Brown, President, Executive Committee, Australian Association of Gerontology, 22 February 2016, p 51.

⁸⁶ Evidence, Hon Susan Ryan AO, Age and Disability Discrimination Commissioner, 7 March 2016, p 2; Hon Susan Ryan AO, Age and Disability Discrimination Commissioner, ‘Elder Abuse forum: A human rights perspective’, TAFE NSW South Western Sydney Institute, Aged Care Rights Service and Auburn City Council, 13 October 2015, pp 7-9.

⁸⁷ Submission 55, Women’s Electoral Lobby NSW and Older Women’s Network NSW, p 8.

⁸⁸ Submission 107, The Law Society of New South Wales, p 5

⁸⁹ Evidence, Mr Day, 20 November 2015, p 5.

⁹⁰ Submission 22, Aged and Community Services NSW and ACT, p 5.

⁹¹ Evidence, Mr Sadler, 7 March 2016, p 22.

reforms may have the unintended consequence of reducing opportunities for identification of abuse by service providers.⁹²

Better evidence

3.40 There was a broad call among a range of participants for greater investment in evidence about elder abuse in Australia, in order to facilitate more informed policy.

3.41 In their joint submission, Ms Sue Field, Adjunct Fellow at Western Sydney University and Ms Mary Ann Le Mestre, solicitor, noted that much of the evidence about prevalence of elder abuse is sketchy, anecdotal and unreliable.⁹³

3.42 The recent Australian Institute of Family Studies report highlighted the conundrum of the poor evidence base in respect of elder abuse for policy makers and practitioners alike:

In the absence of systematic empirical data, the dynamics, circumstances and effects of elder abuse are difficult to assess ... In the absence of systematic data to shed light not only on prevalence but also on dynamics and effects among different groups and in different circumstances, the evidence base to support further development of policy and practice initiatives is underdeveloped.⁹⁴

3.43 The committee wrote to the NSW Bureau of Crime Statistics and Research (BOCSAR), requesting research and information beyond the data from the Helpline that might shed light on the prevalence and forms of elder abuse. However, BOCSAR was not able to provide any further information, apart from referring the committee to the Australian Bureau of Statistics Personal Safety Survey, which provides a breakdown of the prevalence of assault by age of victim, and some data on emotional abuse.⁹⁵

Prevalence study

3.44 Numerous stakeholders called for a national prevalence study on elder abuse as an important first step to tackling elder abuse.

3.45 Professor Susan Kurrle, a geriatrician and Chair in Health Care of Older People in the Faculty of Medicine at the University of Sydney, called on the NSW Government to either fund a state based study, or to contribute to a national prevalence study. She observed in her submission:

⁹² Evidence, Ms Halliday, 7 March 2016, p 14; Submission 22, Aged and Community Services NSW and ACT, p 2.

⁹³ Submission 50, Ms Sue Field, School of Law, Western Sydney University and Ms Mary-Ann de Mestre, Solicitor of NSW, p 1.

⁹⁴ Rae Kaspiew, Rachel Carson and Helen Rhoades, *Elder abuse: Understanding issues, frameworks and responses*, (Research report no. 35, Australian Institute of Family Studies, 2016), pp 46-47.

⁹⁵ Correspondence from Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, to secretariat, 21 April 2016, p 1.

The true prevalence of elder abuse in NSW and in Australia is unknown. We can extrapolate from international research, and we have rates of occurrence for specific populations (such as those older people presenting to aged care services), but it is important for the future that we are more aware of how often elder abuse occurs in the older population generally, what forms it takes, in whom it occurs, and what actions are taken to address it. A prevalence study will be a large and relatively expensive exercise but its findings will be pivotal in the understanding of elder abuse, and will inform how we can address this problem in the future.⁹⁶

- 3.46** The Australian Association of Gerontology identified a number of specific areas of priority for research:
- risk factors for elder abuse
 - how best to respond to it
 - the links between vulnerability and abuse
 - the role of other factors such as gender, socio-economic status and geography⁹⁷
 - the nature of the incidents in which the police are involved
 - the outcomes of NCAT and other interventions.⁹⁸
- 3.47** Other stakeholders who called for a prevalence study included the NSW Elder Abuse Helpline and Resource Unit,⁹⁹ and Mr Paul Versteegen of the Combined Pensioners and Superannuants Association (CPSA), who emphasised the importance of properly informed policy.¹⁰⁰
- 3.48** As one potential aspect of a national approach, several inquiry participants called for a consistent definition of elder abuse to be adopted across all states and territories for the purposes of quality data collection, measurement of trends and effective policy development.¹⁰¹
- 3.49** Other inquiry participants, including Ms Field and Ms de Mestre, and Mr Chesterman, noted the methodological challenges to gaining accurate data, given that abuse is so hidden and that those who are abused can be so reluctant to disclose it.¹⁰²
- 3.50** Commissioner Ryan advised the committee that she was, as at February 2016, developing a proposal for a national prevalence study:

⁹⁶ Submission 37, Professor Susan Kurrle, p 3; see also evidence, Professor Susan Kurrle, Geriatrician, Hornsby Ku-ring-gai and Eurobodalla Health Services, and Chair of Health Care of Older People, University of Sydney, 22 February 2016, p 9.

⁹⁷ Submission 23, Australian Association of Gerontology, pp 7-8.

⁹⁸ Evidence, Dr Brown, 22 February 2016, p 53.

⁹⁹ Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 7.

¹⁰⁰ Evidence, Mr Paul Versteegen, Policy Adviser, Combined Pensioners and Superannuants Association, 22 February 2016, p 16; submission 41, Combined Pensioners and Superannuants Association, p 4.

¹⁰¹ Submission 23, Australian Association of Gerontology, p 8; evidence, Dr Chesterman, 22 February 2016, p 61; evidence, Ms O'Sullivan, 22 February 2016, p 41.

¹⁰² Submission 50, Ms Sue Field, School of Law, Western Sydney University and Ms Mary-Ann de Mestre, Solicitor of NSW, p 1; evidence, Dr Chesterman, 22 February 2016, p 59.

In discussion with other Commonwealth agencies and with the Attorney I am developing proposals such as, first of all, that there be a national prevalence research project into the prevalence of elder abuse across Australia. We do not know how prevalent it is—we have international figures which we can extrapolate to Australia—but we know that it is a lot, we know that most of it goes unreported and it is my view that we would be better placed to develop nationally coordinated policies with the States if we had a better, more comprehensive picture of what is happening across the nation.¹⁰³

- 3.51** In evidence, Ms Maree Walk, Deputy Secretary, Programs and Service Design, Department of Family and Community Services, agreed that the lack of research on prevalence hinders governments' ability to identify and adopt the most sound policies to address elder abuse. She spoke in support of Ms Ryan's call for a national prevalence study into elder abuse, and advised the committee that in December 2015 the Minister for Ageing, the Hon John Ajaka MLC wrote to Commissioner Ryan and to Commonwealth Attorney-General, Senator the Hon George Brandis QC, offering \$50,000 in initial funding towards a national prevalence study.¹⁰⁴

Ongoing data collection

- 3.52** A number of stakeholders called for better research and data collection. For instance the CPSA advocated that agencies including NSW Police Force and the EAHRU record reports of abuse consistently, with the data compiled and published annually by a single agency.¹⁰⁵ The Australian Association of Gerontology also pointed to the Guardianship Division of the NSW Civil and Administrative Tribunal as a potentially valuable source of data.¹⁰⁶
- 3.53** Others who called for better research and data collection included WEL and OWN, who recommended:

That as part of a National Plan to prevent abuse and violence against older people, the NSW Government propose a research program to collect comparable statistics and commission specific reviews into the impact of violence and abuse on older people with a focus on older women.¹⁰⁷

- 3.54** Similarly, the Australian Association of Gerontology called for greater investment in research and data collection, with an agreed definition of abuse, asserting that, 'In the absence of clear definitions and improved data collection, comparing the results of different studies, measurement of trends over time or across jurisdictions is impossible.'¹⁰⁸

¹⁰³ Evidence, Commissioner Ryan, 22 February 2016, p 2.

¹⁰⁴ Evidence, Ms Maree Walk, Deputy Secretary, Programs and Service Design, Department of Family and Community Services, 18 March 2016, pp 2 and 3.

¹⁰⁵ Submission 41, Combined Pensioners and Superannuants Association, p 4; see also evidence, Mr Versteeg, 22 February 2016, p 20.

¹⁰⁶ Submission 23, Australian Association of Gerontology, pp 7-8.

¹⁰⁷ Submission 55, Women's Electoral Lobby NSW and Older Women's Network NSW, p 10.

¹⁰⁸ Submission 23, Australian Association of Gerontology, pp 7-8.

Committee view

- 3.55** The committee is encouraged by the NSW Government's openness to improvement conveyed to us during the inquiry. The government submission for example stated, 'NSW Government welcomes input and ideas on how current measures may be built upon and enhanced, to prevent and respond to abuse of older people in the most effective way possible.'¹⁰⁹ We appreciate this positive and open attitude and acknowledge the work that the Department of Family and Community Services and other agencies are already doing to both prevent abuse and respond to it when it occurs.
- 3.56** The committee considers that the views of inquiry participants documented in this chapter provide key insights into the way forward for the NSW Government. Participants have identified a number of guiding principles which we agree must shape the government's approach.
- 3.57** First, it is very clear to us that the time has come for New South Wales to embrace a comprehensive, coordinated and ambitious approach to elder abuse. We agree with the observations that New South Wales, like other states and territories, has taken a well-intentioned but somewhat passive approach to date. It is yet to fully comprehend and come to terms with its responsibilities in this area.
- 3.58** In the committee's view a comprehensive approach to tackling elder abuse will engage the entire community with a clear and unambiguous focus on prevention. We set out our recommendations in this regard in chapter 4.
- 3.59** We also consider that a rejuvenated, more effective approach to elder abuse must include key legislative reforms. In later chapters we make specific recommendations to strengthen safeguards in relation to enduring powers of attorney, and to establish a Public Advocate with powers of investigation.
- 3.60** The approach must be informed by a human rights framework that affirms the autonomy and self determination of older people. We do not support mandatory reporting in respect of elder abuse, as this would undermine the right of older people to make their own decisions. We recognise the interrelationship between elder abuse and disability, as well as a gender dimension to elder abuse.
- 3.61** Within a rights based framework that upholds people's right to self determination, the committee agrees that more can be done to facilitate supported decision making for people with disability. At the same time, we recognise that for some age related disabilities such as dementia, substitute decision making provides vitally important protections. We note that the NSW Law Reform Commission's review of the *Guardianship Act* is examining decision making models and will thus grapple with these complex issues in greater depth than our committee. However, we state clearly here our position that the system must retain some provision for substitute decision making in order to cater to those who do lack capacity.
- 3.62** The need for much better data on elder abuse is widely recognised by participants, and confirmed by our difficulty gaining any information beyond that provided by the Helpline, as seen in our communication with BOCSAR. It is self evident that a better evidence base will

¹⁰⁹ Submission 75, NSW Government, p 28.

furnish better policy and service responses. It will also assist FACS to make a persuasive case for greater investment to address this serious social problem, which, as we noted in the previous chapter, is widely anticipated to rise as the population ages. We applaud the Minister for Ageing's recent approach to the Commonwealth Attorney-General offering to contribute funds to a national prevalence study, and we express our strong support for a Commonwealth-led national prevalence study conducted in conjunction with the states and territories. We urge the Commonwealth Government to commit to and to implement such a study as soon as possible.

3.63 In light of these conclusions, the first recommendation of our report is for the NSW Government to develop and implement a comprehensive, coordinated and ambitious approach to elder abuse. This approach must incorporate a number of specific elements, several of which are the focus of subsequent chapters of this report. We include them here as a means of highlighting that they are essential to the comprehensive approach that we envisage for New South Wales. These essential elements are: a rights based framework; a major focus on prevention and community education and engagement; legislative reform to strengthen safeguards and enable investigations; renewed planning for training of service providers; an active commitment to building the evidence base for policy, via investment in data collection, evaluation and research; and an enhanced role for the NSW Elder Abuse Helpline and Resource Unit.

3.64 The committee appreciates that building such a comprehensive approach will necessarily take time and careful planning. The right policies and frameworks need to be written and agreed; the right people need to be recruited and trained; the necessary infrastructure needs to be developed. We envisage that the careful process of managing this may feasibly take four years. Given that all the evidence is clear that elder abuse is a significant, complex and growing problem, it must become a focus for action immediately, so that a comprehensive approach is fully functioning by 2020.

Recommendation 1

That the NSW Government embrace a comprehensive, coordinated and ambitious approach to elder abuse with the following elements:

- a rights based framework that empowers older people and upholds their autonomy, dignity and right to self-determination
- a major focus on prevention and community engagement
- legislative reform to better safeguard enduring powers of attorney and to establish a Public Advocate with powers of investigation
- an ambitious training plan to enable service providers to identify and respond appropriately to abuse
- an active commitment to building the evidence base for policy
- an enhanced role for the NSW Elder Abuse Helpline and Resource Unit.

3.65 With regard to a national framework, the committee agrees with inquiry participants that it is desirable for the Commonwealth Government to introduce a national framework that complements and builds on the work of states and territories. At a number of points in our report we note the desirability of a nationally consistent approach, particularly in regard to

legal provisions. A national approach would also demonstrate leadership and give added impetus to the work of states and territories.

- 3.66** The committee trusts that a national approach, led by the Commonwealth, could well be an outcome of the present Australian Law Reform Commission inquiry into protecting older Australians from abuse, and we strongly encourage the Australian Government to this end.

Chapter 4 Prevention

In the previous chapter the committee called on the NSW Government to take a strong, comprehensive approach to tackling elder abuse that will, among other measures, engage the entire community with a new focus on prevention. After first documenting participants' calls for more concerted action and investment in this area, this chapter explores the various strategies that could comprise that preventative approach. First, we consider community education and awareness strategies, then community engagement activities, followed by supports targeting carers, and last, the promotion of planning ahead tools for later in life.

A new emphasis on prevention

- 4.1** A number of inquiry participants called for a greater focus on prevention in the NSW Government's approach to elder abuse, in order to more effectively address the various causes and risk factors for abuse.
- 4.2** The Australian Association of Gerontology suggested that while the present policy and program emphasis in New South Wales on responses to abuse is necessary and welcome, it is desirable that more work be done to prevent abuse in the first place. Dr Anthony Brown, President of the Association's Executive Committee, gave evidence that, 'we feel more work is needed to prevent abuse in the first place. There needs to be a focus on the primary causes of elder abuse, which we see as ... being ageism and isolation'.¹¹⁰
- 4.3** Council on the Ageing (COTA) NSW highlighted a pressing need for a prevention strategy that educates and raises awareness about abuse, engages the community in prevention, and addresses isolation and carer stress:
- Indeed, we believe, there is an urgent need to address cases of potential elder abuse by a strategy of prevention. The first step in a prevention strategy must be a Government-funded education and awareness-raising campaign that will enable members of the community to recognise elder abuse. Once such a campaign occurs, then the community can be engaged in the process of preventing elder abuse. We strongly believe that prevention is a community issue. Not only is there a need to understand what elder abuse looks like, there is a critical need to understand the conditions in which it thrives – isolation and carer stress.¹¹¹
- 4.4** Dr John Chesterman, Director of Strategy with the Victorian Office of the Public Advocate, called for a greater focus on prevention across all jurisdictions including New South Wales, identifying two key components to this:
- reforms to the enduring powers of attorney legislation in order to better prevent financial abuse – discussed in detail in chapter 6

¹¹⁰ Evidence, Dr Anthony Brown, President, Executive Committee, Australian Association of Gerontology, 22 February 2016, p 51.

¹¹¹ Submission 38, Council on the Ageing NSW, pp 3-4.

- a community education strategy that tackles ageism and negative assumptions about older people.¹¹²

4.5 This evidence is supported by the recent research report on elder abuse by the Australian Institute of Family Studies (AIFS) which observed that, ‘Preventative responses to elder abuse are generally seen to be underdeveloped in Australia.’¹¹³ It identified two broad elements to prevention, both locally and internationally:

- first – changing values and attitudes among the broader community, professionals and individuals who interact with older people, to address ageist assumptions and attitudes and to develop understanding of ageing
- second – mitigating the risk factors for elder abuse through strategies aimed at reducing social isolation, increasing autonomy and maintaining knowledge of their financial affairs.¹¹⁴

Current primary prevention strategies

4.6 The NSW Government submission to our inquiry documented the wide range of current preventative initiatives currently in place in New South Wales. Ms Maree Walk, Deputy Secretary, Programs and Service Design, Department of Family and Community Services (FACS) outlined a number of these initiatives when she appeared before the committee:

Through the Ageing, Carer, Disability and Volunteering Strategies, FACS is committed to addressing elder abuse by reducing ageism, promoting inclusion and addressing social isolation, and through supporting carers in their caring duties and with their own health and wellbeing. FACS also partners with other government and community organisations to increase awareness of legal instruments and planning-ahead documents to empower older people and the community to respond to abuse and to educate service providers and the community about elder abuse.¹¹⁵

4.7 The key plank to the government’s primary prevention work in respect of elder abuse is the NSW Ageing Strategy, which includes a range of initiatives to help people remain connected within their community as they grow older. It outlines a vision for an ageing population that is healthy, vibrant and active, and is underpinned by the principle that older people know what is best for their own lives and have the right to make their own decisions.

4.8 According to the NSW Government submission, a key goal of the Ageing Strategy is to reduce ageism:

At a broad level, ageism can be seen as an underlying cause of elder abuse. Ageist attitudes and perceptions play an important role in whether abuse is recognised and

¹¹² Evidence, Dr John Chesterman, Director of Strategy, Office of the Public Advocate, Victoria, 22 February 2016, p 59.

¹¹³ Rae Kaspiew, Rachel Carson and Helen Rhoades, *Elder abuse: Understanding issues, frameworks and responses*, (Research report no. 35, Australian Institute of Family Studies, 2016) p 9.

¹¹⁴ Kaspiew, Carson and Rhoades, (2016) pp 9-10.

¹¹⁵ Evidence, Ms Maree Walk, Deputy Secretary, Programs and Service Design, Department of Family and Community Services, 18 March 2016, p 2.

reported. The belief that it is ‘normal’ for a person to lose control of their decisions with age can mean abusive behaviour often goes unseen or unchallenged.

Effectively addressing elder abuse involves promoting positive images of ageing, and shifting away from stereotyped images of older people as frail and lacking self-determination.

This goal is reflected in the NSW Ageing Strategy, which outlines a vision for an ageing population that is healthy, vibrant and active [and] ... is underpinned by the principle that older people know what is best for their own lives and have the right to make decisions on their own behalf.¹¹⁶

4.9 Measures in the Ageing Strategy include:

- The Liveable Communities Grant Program, which will provide \$4 million over four years to assist councils, non-government organisations and small businesses deliver projects that promote accessibility, active living and mobility
- The Tech Savvy Seniors program, which helps older people become more confident with using smart phones, tablets, computers and social media, via free or low cost training at libraries, community colleges and residential facilities
- The Living Active Lives program, which promotes the benefits of physical and creative activity among older people and aims to reduce social isolation.¹¹⁷

4.10 FACS further advised that between 2008 and 2012, the NSW Government provided financial assistance to Uniting Care’s Respect for Seniors program. This continuing grassroots campaign has ‘a vision for a safe, caring community where people age with dignity and respect’, advocating positive attitudes and behaviours towards seniors through social awareness campaigns and targeted programs focused on preventing abuse of older people and ageism in the community.¹¹⁸ Resources developed through the program include the *As Life Goes On* DVD and resource kit; activities include the Wear Purple for World Elder Abuse Awareness Day and presentations to local groups. FACS told the committee that it continues to support Wear Purple day.¹¹⁹

4.11 Further government initiatives to address elder abuse are detailed in the subsequent sections of this chapter.

¹¹⁶ Submission 75, NSW Government, p 28.

¹¹⁷ Submission 75, NSW Government, pp 27-28.

¹¹⁸ Answers to supplementary questions, Ms Helen Rogers, Executive Director, Participation and Inclusion, Programs and Service Design, Department of Family and Community Services, 27 April 2016, p 3.

¹¹⁹ Answers to supplementary questions, Ms Rogers, 27 April 2016, p 3.

Community education and awareness strategies

4.12 Many inquiry participants highlighted the imperative for greater investment in community education and awareness raising as a means of preventing abuse, with some also seeing it as a way to enable victims to recognise what they are experiencing as abuse and to seek help.¹²⁰

4.13 In its submission, Aged and Community Services NSW and ACT asserted that, ‘Raising community awareness of the issue of abuse and tackling ageism will help create an environment which will discourage elder abuse.’¹²¹ To this end, Ms Illana Halliday, Chief Executive Officer, suggested that there is much to be learned from campaigns about domestic violence, so as to challenge community members’ assumptions about what is appropriate behavior towards older family members, as well as ageist beliefs regarding the value of older people to our society:

If you think back, 20 years ago people did not talk about domestic violence and we have well and truly lifted public knowledge ... We can learn a lot about how to tackle elder abuse from what has been done in that space: We must lift public awareness that it is not okay. Inheritance impatience is not okay; being rough when handling someone is not okay ... It is not okay to socially isolate them. We need to get a conversation going about that.

The other thing is we need to tackle ageism. We are constantly being bombarded by the problem of older people living longer. I think it is great they are living longer; they are providing a whole pile of stuff for people. They have value to give us and they are part of the community. If they are worthless then you can understand people thinking it is okay to take their money or leave them trapped at home. It is not okay. They are valuable people, valuable parts of our community and our families.¹²²

4.14 Professor Carmelle Peisah, Conjoint Professor in psychiatry at the University of New South Wales, and President of Capacity Australia, expressed similar views, asserting, ‘We need more promotion and public awareness campaigns to push less ageism ... certainly less shame and more of this message that it is not on to abuse older people.’¹²³

4.15 Ms Kerry Marshall, Manager of the Elder Abuse Helpline and Resource Unit (EAHRU), advised the committee that tackling ageism means educating the community about the dignity and value of older people:

¹²⁰ Evidence, Mr Tom Cowen, Manager, Legal Services and Principal Solicitor, Older Persons Legal Service, Seniors Rights Service, 20 November 2016, p 22; submission 49, Legal Aid NSW, p 17.

¹²¹ Submission 22, Aged and Community Services NSW and ACT, p 5.

¹²² Evidence, Ms Illana Halliday, Chief Executive Officer, Aged and Community Services NSW and ACT, 7 March 2016, pp 20-21; see also evidence, Dr Chesterman, 22 February 2016, p 59.

¹²³ Evidence, Professor Carmelle Peisah, Conjoint Professor, Faculty of Medicine, University of New South Wales and President, Capacity Australia, 18 March 2016, p 33.

Promoting the dignity and inherent value of older persons is a crucial component of elder abuse identification, intervention and prevention. We see ageism played out all the time; it is pervasive and often facilitates poor decision-making on behalf of older people. Ageism excuses and discredits abuse, often resulting in devastating outcomes for older people.¹²⁴

- 4.16** Council on the Ageing (COTA) NSW called for a community education campaign aimed at helping people to understand the dimensions of elder abuse:¹²⁵

Can government legislate against elder abuse? No, because it will happen behind closed doors whether it is there or not. What the Government can do is provide funding for campaigns. There is an education campaign which is necessary. We have very small numbers that are calling the helpline in reality when there is an issue out there. There needs to be a far greater understanding of what elder abuse is, what causes it, what happens and what the abuser is doing. That is for the abuser as well; they need to understand.¹²⁶

- 4.17** Alzheimer's Australia advocated a state wide 'public awareness and political leadership campaign', which draws attention to the seriousness of elder abuse and challenges widespread attitudes and perceptions. It noted that both political leadership and significant investment of resources have helped to create much greater awareness in respect of domestic violence and violence against women.¹²⁷ Assistant Commissioner Denis Clifford, the NSW Police Force's Corporate Spokesperson on Vulnerable Communities, also pointed to the success of recent domestic violence campaigns and expressed support for more community awareness raising as a means of improving reporting of elder abuse.¹²⁸

- 4.18** Echoing Ms Halliday's call to 'get a conversation going' about attitudes towards older people, representatives of the Australian Association of Gerontology called for a 'compassionate and informed public discussion' about ageism,¹²⁹ and further noted the imperative for influential individuals to be aware of how they might perpetuate negative attitudes:

Government and community leaders also need to be aware that public debates around older people as economical social burdens or as bed-blockers, for example, are both inaccurate and derogatory and, more importantly, they reinforce ageist perceptions in the community, in families and older people themselves—the perception that older people are somehow worthless and burdens.¹³⁰

- 4.19** Age and Disability Discrimination Commissioner, the Hon Susan Ryan AO, called for a community awareness campaign addressing attitudes to inheritance in order to prevent

¹²⁴ Evidence, Ms Kerry Marshall, Manager, Elder Abuse Helpline and Resource Unit, 20 November 2015, p 12

¹²⁵ Evidence, Mr Ian Day, Chief Executive Officer, Council on the Ageing NSW, 20 November 2015, p 2; submission 38, Council on the Ageing NSW, p 4.

¹²⁶ Evidence, Mr Day, 20 November 2015, p 10.

¹²⁷ Submission 35, Alzheimer's Australia NSW, pp 7-8; evidence, Mr Brendan Moore, General Manager, Policy, Research and Information, Alzheimer's Australia NSW, 22 February 2016, p 48.

¹²⁸ Evidence, Assistant Commissioner Denis Clifford, Commander and Corporate Spokesperson on Vulnerable Communities, NSW Police Force, 7 March 2016, p 31.

¹²⁹ Evidence, Dr Brown, 22 February 2016, p 55.

¹³⁰ Evidence, Dr Brown, 22 February 2016, p 51.

financial abuse.¹³¹ She noted that it will be challenging to convey the key messages effectively, given the sensitivity of the issues, but suggested that non-government organisations already in touch with older people could be harnessed to strong effect:

It is a basic thing to say to older people, especially older ladies, “If your son asks you for a loan, the first thing you should do is get legal advice.” It is a confronting and harsh thing to say, but we have to find a way to say it. I also think that our non-government organisations have a big role to play, particularly National Seniors and the Council for the Ageing ... who have branches and activities all over Australia ... When we are looking at communicating with groups of older people we need to go through the non-government organisations that are already communicating with them.¹³²

4.20 In chapter 8 we explore in detail the issue of constraints to reporting elder abuse.

Culturally and linguistically diverse communities

4.21 Numerous participants readily identified the need for education and awareness raising activities to target culturally and linguistically diverse (CALD) communities, necessarily using a tailored approach.

4.22 Commissioner Ryan, for example, highlighted the need to tailor the community awareness campaign to CALD communities:

We must also consider the various ethnic groups ... We should look at what is being done and then work with them to communicate. As members have observed, it will be different in regional areas and in, for example, a tight Italian community. We need to cover the whole field.¹³³

4.23 Professor Peisah drew attention to the challenges of reaching CALD communities, which are well known to access a disproportionately low share of services. She asserted that, ‘It is hard enough for culturally and linguistically diverse families to access many health services and many dementia services let alone to ring up a hotline and say, “My son just ripped me off”’. Thus she called for strategies that are integrated into ethnic communities and that address the stigma and shame of abuse.¹³⁴ Capacity Australia’s submission recommended specific funding for Aboriginal and CALD communities to enable the development of culturally appropriate tools in collaboration with the communities themselves, which are then utilised in culturally respectful ways:

¹³¹ Evidence, Commissioner Ryan, 22 February 2016, p 4.

¹³² Evidence, Commissioner Ryan, 22 February 2016, p 4.

¹³³ Evidence, Commissioner Ryan, 22 February 2016, p 4.

¹³⁴ Evidence, Professor Peisah, 18 March 2016, p 38.

A separate funding pool for Aboriginal and Torres Strait Islander (ATSI) and culturally diverse and linguistically diverse (CALD) communities is necessary. Funding for the development of education and awareness raising tools must incorporate quarantined funds for development of tools appropriate for communities and culturally diverse communities. The development of these tools must be done in collaboration with communities, and their leaders and elders, to ensure cultural authenticity. It is also essential for trainers / educators to work with leaders and elders to deliver education, and to be culturally competent.¹³⁵

4.24 Ms Marshall of the EAHRU recommended that to be effective, CALD strategies should engage different CALD community members who are the key players in that community, where they meet, and get the word out through those people.¹³⁶ The EAHRU submission put it in terms of community consultation, working with key influential figures and targeting key access points such as churches. In addition, it recommended that government engage bilingual and bicultural workers and ethno-specific organisations to deliver elder abuse training to their communities.¹³⁷

4.25 Asked for her advice on effective ways to increase understanding and awareness in CALD communities, Ms Jane Brock, Executive Officer of the Immigrant Women's SpeakOut Association, advised utilising multiple 'soft' entry points, as the Association had done for women in CALD communities:

We need a soft point of entry. That is, we need to have gathering points where women will feel comfortable. We have done many community development activities in the past, and we have difficulty reaching out to those who cannot read and write in English. We have done it through radio stations. We were successful at some point, but then we found out that there are many who have arrived here under the sponsorship of their children and who are on visitor's visas. They come here to look after their grandchildren. We thought that we should reach out to those women as well.¹³⁸

4.26 Ms Brock advised the committee that after consulting with this particular group of older women about their needs, Immigrant Women's SpeakOut Association staff established that they wanted to learn some English so that they could talk with their grandchildren and get around their community. By bringing them together to meet this need, the Association was also able to provide the opportunity to discuss exploitation within families and sources of help.¹³⁹

4.27 The Immigrant Women's SpeakOut Association submission recommended the development and implementation of a statewide community education campaign targeting CALD communities regarding abuse of older people.¹⁴⁰

¹³⁵ Submission 81, Capacity Australia, p 17.

¹³⁶ Evidence, Ms Marshall, 20 November 2015, p 17.

¹³⁷ Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 27.

¹³⁸ Evidence, Ms Jane Brock, Executive Officer, Immigrant Women's SpeakOut Association, 22 February 2016, p 39.

¹³⁹ Evidence, Ms Brock, 22 February 2016, p 39.

¹⁴⁰ Submission 109, Immigrant Women's SpeakOut Association, p 2.

4.28 In a similar vein, the Older Women’s Network (OWN) and Women’s Electoral Lobby (WEL) called on the government to ‘support more extensive community programs for older women of CALD background as a way of fostering knowledge and awareness of their rights as older women and of informally and formally exchanging information in diverse languages about identifying, reporting and combatting abuse.’¹⁴¹

Indigenous communities

4.29 The committee also heard of the need to educate and raise awareness about abuse of older people among Indigenous communities.

4.30 During the committee’s consultation with Aboriginal Elders on 7 March 2016, participants told us that ageism and a lack of respect for Elders are common among Indigenous youth, such that many Elders experience openly rude and disrespectful behavior, which they find demeaning and offensive. Participants told us that shame is a huge barrier to seeking help, and identified a number of matters which help to illuminate our understanding of the complex dynamics between generations in Indigenous communities:

- Indigenous Elders attain their status because they are considered to be teachers and leaders in their communities.
- When participants were young they were taught to respect older people in their communities. Age and life experience were esteemed. Younger people now do not value age and experience, which manifests in disrespectful attitudes and actions, and sometimes leads to elder abuse within families.
- There is a disconnection between Indigenous youth and their Elders which some participants attribute to the dismantling of Indigenous culture and dispossession. Opportunities to connect, teach and learn between older and younger Aboriginal people that existed as part of the fabric of traditional Indigenous culture are not being fostered in society today, and it is difficult both for Elders and young people to find their place and their value in an urban environment.
- Young Aboriginal people see that Elders are not respected by government and therefore see no reason why they should respect them either. Many identified addressing the issue of elder abuse to be integral to rebuilding communities and Aboriginal culture.
- Elders need to be empowered to act and support their own communities and government must play a key role in providing support.¹⁴²

4.31 With these observations in mind, Indigenous Elders recommended that an education campaign be conducted to challenge ageist attitudes and to inform Indigenous communities about elder abuse, its forms, how to recognise it and where to get help.¹⁴³

¹⁴¹ Submission 55, Women’s Electoral Lobby NSW and Older Women’s Network NSW, p 33.

¹⁴² Consultation with Indigenous Elders, General Purpose Standing Committee No. 2 and Law Society of New South Wales, 7 March 2016, pp 1-2. See appendix 6.

¹⁴³ Consultation with Indigenous Elders, 7 March 2016, p 4. See appendix 6.

Current initiatives

- 4.32** The committee sought from FACS information about the public education activities it currently funds and/or delivers. FACS advised that a key role of the EAHRU, established in March 2013, is to build community awareness about abuse:

The Helpline promotes awareness of elder abuse to the public through:

- publishing and distributing information brochures, including translations into Simplified Chinese, Traditional Chinese, Croatian, Italian and Greek
- posters and marketing material that promote positive images of older people and educate the community on what constitutes elder abuse
- an annual Talking Elder Abuse art competition (beginning in 2015), and
- marking International World Elder Abuse Awareness Day each year.

The Helpline also works in partnership with a range of sector peak bodies including the Australian College of GPs, the Seniors Rights Service, Law Access, Alzheimer's Australia, and Australian Primary Nurses. Working collaboratively with these groups, the Helpline builds understanding of preventing, recognising and responding to elder abuse throughout the community. Since establishment, the Helpline has updated its branding to feature positive images of older people. In 2015, it ran a six month campaign called Positive Ageing Free from Abuse which promoted the service and raised the issue of abuse of older people.

In 2016, the Talking Elder Abuse art competition will be open for entries between 1 May and 1 June. The competition is open to members of registered clubs, associations, incorporated associations and government agencies. It will be promoted through the Helpline's network, social media and community e-newsletters and the Human Services Network website.

The Helpline's webpage on World Elder Abuse Awareness Day page will be available online from mid April 2016.¹⁴⁴

- 4.33** FACS further advised us of other education and awareness raising activities that the Helpline intends to undertake in 2016:

- Creating a multi-language Helpline information card. It will be translated into approximately 14 languages and distributed via migrant resources centres, Multicultural Disability Advocacy NSW and community legal centres across New South Wales.
- Creating a Safe Older Neighbour card in conjunction with NSW Police Neighbourhood Watch/EyeWatch liaison officers. The card will be distributed in hardcopy and electronic format towards the end of 2016.
- Distributing Helpline resource packs to Rural and Remote Medical Centres, Royal Flying Doctors bases and Aboriginal Medical Services across New South Wales.
- Raising awareness of elder abuse and promoting the Helpline among religious leaders. The Helpline will create videos on preventing and responding to elder abuse in conjunction with NSW Police and the Trustee and Guardian. Videos will be available on the Elder Abuse Helpline and Resource Unit YouTube channel and will be promoted via religious councils and peaks. The Helpline will also offer training to church leaders.

¹⁴⁴ Answers to supplementary questions, Ms Rogers, 27 April 2016, p 2.

- Distributing resource packs to ageing, disability and social inclusion officers at all local councils across New South Wales to coincide with Carers' Week in October 2016.
- Developing a community service announcement to be distributed to community and commercial radio stations across New South Wales.
- Promoting awareness of elder abuse and the Helpline through neighbourhood focused apps including YourLink and Nabo.¹⁴⁵

4.34 In respect of information and awareness raising in CALD communities, Ms Rogers of FACS acknowledged the ongoing challenge of building awareness in all communities. She noted the Helpline's multi-language brochures and its work with the Multicultural Health Network and CALD general practitioners to distribute that information. In addition, Ms Rogers noted the potential for Multicultural NSW's re-established regional advisory council network to raise awareness in CALD communities.¹⁴⁶

4.35 With regard to Aboriginal communities, FACS indicated that under the EAHRU's four year plan for awareness raising, targeted engagement with Indigenous communities is planned for late 2016, with resources to be developed and distributed in 2017. As part of this work:

In 2016, Helpline staff will distribute resource packs to organisations across NSW, including to Aboriginal Medical Services.

Late in 2016, the Helpline will begin consultation with Indigenous community organisations, Aboriginal health and community services and cultural leaders to discuss outreach to Indigenous communities across NSW. Consultation will inform development of culturally appropriate resources in 2017 that will aim to raise awareness of elder abuse among Indigenous communities, reduce barriers to seeking assistance, and support respectful relationships between generations.¹⁴⁷

4.36 The committee heard that other awareness raising activities, particularly with regard to financial abuse, are conducted by Legal Aid NSW. Legal Aid advised the committee that it currently produces brochures for older people about legal issues and has run a "Borrowers beware" radio campaign targeting CALD communities who may be at risk of using their homes as security for loans taken for the benefit of their adult children.¹⁴⁸

Community engagement strategies

4.37 As noted earlier in this chapter, COTA NSW argued strongly that as a second key element of an effective prevention strategy, the NSW Government should invest in 'community

¹⁴⁵ Answers to supplementary questions, Ms Rogers, 27 April 2016, p 3.

¹⁴⁶ Evidence, Ms Helen Rogers, Executive Director, Participation and Inclusion, Programs and Service Design, Department of Family and Community Services, 18 March 2016, p 11.

¹⁴⁷ Cover letter to answers to questions on notice, Ms Helen Rogers, Executive Director, Participation and Inclusion, Department of Family and Community Services, 27 April 2016, p 1.

¹⁴⁸ Evidence, Ms Lee Critchley, Civil Law Division Practitioner, Legal Aid NSW, 18 March 2016, p 15; see also Submission 49, Legal Aid NSW, p 17.

engagement' that mobilises community networks and organisations to prevent abuse by targeting isolation among older people, as well as carer stress.¹⁴⁹

4.38 Mr Ian Day, Chief Executive Officer, envisaged this as a community-based approach that builds trusting relationships between people.¹⁵⁰ The COTA submission explained that community organisations can prevent isolation by maintaining contact with less visible individuals such as those who are house bound, if given this imprimatur. It suggested that this outreach objective 'needs to be promoted, encouraged and supported by grass roots community engagement strategies such as NSW Grandparents Day or RUOK Day.'¹⁵¹

4.39 Mr Day explained that individuals in trusted positions such as general practitioners and church leaders would need to be trained in how to support and engage with older people at risk of isolation, as well as carers.¹⁵² He further advised that this would require a tailored approach:

The issue of addressing the isolation needs to be delivered appropriately. This is why it is really important for the community groups to get involved so that if it is a particular ethnic group that has taken on that responsibility, so much the better, and then there is the support of the trusted person.¹⁵³

4.40 Professor Wendy Lacey, Head of the School of Law, University of South Australia, echoed this recommendation, based on a model operating in Canada. There, provinces (local government) operate community response networks for adult protection targeting mainly older people and people with disability. Members of the community, via schools, churches, veterans' groups and so on, join their local community network, with the aim of providing social connections and support:

A Community Response network or CRN is a group of people and organisations in a community who work together to create a coordinated response to adult abuse, neglect and self-neglect by:

- Including everyone in the community who wants to be involved,
- Raising community awareness and providing education agreements or protocols among members about how organisations or agencies will respond when an adult needs help,
- Keeping track of how the response is working ...

CRN members can be anyone in the community concerned about adult abuse and neglect including designated agencies, police, community organisations serving specific groups, faith communities, financial institutions, advocacy organisations and concerned citizens.¹⁵⁴

¹⁴⁹ Submission 38, Council on the Ageing NSW, p 4.

¹⁵⁰ Evidence, Mr Day, 20 November 2015, p 11.

¹⁵¹ Submission 38, Council on the Ageing NSW, p 3.

¹⁵² Evidence, Mr Day, 20 November 2016, pp 5 and 8; see also submission 38, Council on the Ageing NSW, p 3.

¹⁵³ Evidence, Mr Day, 20 November 2016, p 8.

¹⁵⁴ Public Guardian and Trustee of British Columbia, *British Columbia's adult guardianship laws: Supporting self-determination for adults in British Columbia – Protecting adults from abuse, neglect and self neglect*, quoted in

- 4.41** Looking beyond prevention, Professor Lacey emphasised that these local community networks also play an important role in identifying and responding to abuse:

It is based on the notion that elder abuse is everybody's business and that you need to be looking out for your neighbours and the people in your street. You need to be aware of what the signs of elder abuse are ... They have been highly successful in raising community awareness and getting buy-in from groups within the community who actively promote safeguarding vulnerable people in their communities. I think that is probably the best way to go to get local action plans in place. That is how you are going to spot the vulnerable person who may look as if they are malnourished or have signs of physical abuse or neglect. They are often the best people to keep a close eye on our most vulnerable.¹⁵⁵

- 4.42** Perhaps as an example of a community engagement initiative, the Older Women's Network and Women's Electoral Lobby identified OWN's Wellness Centres, which 'enhance the participation, community connectedness and social inclusion of older women as a strengths based initiative with a preventative outcome.'¹⁵⁶ Dr Mears explained how the wellness centres operate:

We have six centres going in Sydney. They are run virtually by volunteers. They have a couple of hundred to several hundred people coming to those centres every week. ... that is an opportunity for people to join groups, to talk to each other and to talk about things ... That is what our research showed really strongly: If you can set up very safe environments for people where they know they are going to be safe, they will talk. If you do not do that, people are too frightened—and for very, very good reason.¹⁵⁷

- 4.43** Dr Mears went on to highlight the peer to peer support that such groups offer, for example via the ability to share information about experiences and service providers.¹⁵⁸

Support for carers

- 4.44** Many inquiry participants identified support for family carers as another important means of preventing elder abuse, based on a recognition of the considerable demands of the caring role.
- 4.45** Mr Brendan Moore, General Manager of Policy, Research and Information at Alzheimer's Australia NSW, told the committee that, 'The life of a carer should not be dismissed or taken lightly' and underscored their very substantial contribution to Australian society.¹⁵⁹ Mr Moore, like numerous others, highlighted the potential link between carer stress and abuse, asserting, 'When talking about neglect or the psychological [abuse] ... it is probably more due to the fact

answers to questions on notice, Professor Wendy Lacey, Dean of Law, University of South Australia, 18 March 2016, p 2.

¹⁵⁵ Evidence, Professor Wendy Lacey, Dean and Head of School, School of Law, University of South Australia, 18 March 2016, p 39.

¹⁵⁶ Submission 55, Women's Electoral Lobby NSW and Older Women's Network NSW, p 28.

¹⁵⁷ Evidence, Dr Jane Mears, Member, Older Women's Network and Associate Professor, School of Social Sciences, 22 February 2016, p 36.

¹⁵⁸ Evidence, Dr Mears, 22 February 2016, p 37.

¹⁵⁹ Evidence, Mr Moore, 22 February 2016, p 45.

that they do not have the support to be a carer.¹⁶⁰ Alzheimer's Australia NSW's submission suggested that the nature of caring is such that some people find it overwhelming, and offered a recent (if extreme) example that highlights the need to support carers in their role:

Carers may also feel so overwhelmed by the burden of caring that they fail to provide basic care and neglect the person with dementia. There was a recent case reported in the media where the coronial inquest found that a daughter's "inability to cope with her mother's descent into dementia" led to the death of her mother. The daughter had lived with her mother since 1995 and cared for her since 2010 when she was diagnosed with dementia. Although they had a close relationship, from November 2010 until her death sometime in July or August 2013, the daughter failed to take her mother to a doctor or seek any other form of assistance. The frail woman was left in the house for nine hours a day, six days a week, while her daughter worked. Such devastating cases highlight the need to ensure that carers of people with dementia are appropriately supported in their caring role. The challenge though is reaching people who never reveal themselves to service agencies or health professionals.¹⁶¹

- 4.46** Mr Moore attested to the value of carer education courses such as those run by Alzheimer's Australia, which provide support, training and a better understanding of what to expect as a carer, whilst also informing them of other available supports. He called for more funding to enable such services to reach more carers.¹⁶²
- 4.47** Other stakeholders such as the Seniors Rights Service attested to the need for support to prevent 'carer burnout that might lead to taking their frustrations out on the vulnerable older person.'¹⁶³ Ms Melissa Chaperlin, solicitor with the Older Person's Legal Service operated by the Seniors Rights Service, told the committee that in her role, she regularly encounters carers of older people who need support to manage and cope with the aggressive behaviours arising from their loved one's dementia.¹⁶⁴
- 4.48** The Australian Association of Gerontology observed that abuse by a carer of an older person can be driven by the carer's own mental illness or other conditions, perhaps exacerbated by stresses of the caring role.¹⁶⁵ Both Mr Day of COTA NSW and Ms Marshall of the EAHRU observed that it is often the case that within a family, the adult child with the least personal resources takes on the caring role.¹⁶⁶ Ms Marshall called for more practical/nursing care training to be available to carers to prevent unintentional neglect, while Mr Day agreed more generally that there is a need for greater investment in carer support.¹⁶⁷ Professor Wendy Lacey also advocated for more carer supports.¹⁶⁸

¹⁶⁰ Evidence, Mr Moore, 22 February 2016, p 45.

¹⁶¹ Submission 37, Alzheimer's Australia NSW p 10.

¹⁶² Evidence, Mr Moore, 22 February 2016, p 45.

¹⁶³ Submission 25, Seniors Rights Service, p 21.

¹⁶⁴ Evidence, Ms Melissa Chaperlin, Solicitor, Older Persons Legal Service, The Seniors Rights Service, 20 November 2015, p 22.

¹⁶⁵ Submission 23, Australian Association of Gerontology, p 6.

¹⁶⁶ Evidence, Mr Day, 20 November 2016, p 3; evidence, Ms Marshall, 20 November 2016, p 19.

¹⁶⁷ Evidence, Mr Day, 20 November 2016, p 5; see also answers to questions on notice, Mr Day, Council on the Ageing NSW, received 18 December 2016, p 1; evidence, Ms Marshall, 20 November 2016, p 19

¹⁶⁸ Evidence, Professor Lacey, 18 March 2016, p 35.

- 4.49** Ms Ryan agreed that more carer support is ‘crucial’ as a means of preventing abuse,¹⁶⁹ highlighting respite in particular as an important support for carers whose role is inherently demanding and isolating:

Carers get into a most difficult position. They have often given up their job to provide care, they are isolated, and are there 24/7 ... We are all in favour of the home based care arrangements that are being developed and expanded. They are essential. Respite for carers is an essential part of keeping carers going and if carers cannot do their job it falls back to public resources. There is every reason, not just human rights, for supporting carers in that way.¹⁷⁰

- 4.50** Representatives of the Australian Association of Gerontology spoke of the need for ‘early conversations’ with carers by key professionals such as general practitioners,¹⁷¹ whilst also noting the challenge for the range of organisations supporting carers to reach out to ‘non-traditional’ carers so that they are more aware of the supports that are available to them.¹⁷²

- 4.51** Carers NSW, the peak body representing carers in this state, acknowledged some carers do commit acts of abuse, but asserted that it strongly believes ‘that this is most often related to the high to extreme levels of psychological distress carers can experience as a result of their caring role.’¹⁷³ It went on to provide evidence of this distress, and emphasised timely support as a potential preventative measure:

The Carers NSW 2014 Carer Survey found that carers, especially carers of the elderly, experienced significantly lower wellbeing and significantly higher psychological distress than Australian averages. Indeed, the Australian Unity Wellbeing Index indicates that carers have the lowest wellbeing of any group, including the unemployed and homeless. Timely, appropriate support to assist carers in their caring role and promote their own health and wellbeing may therefore reduce the risk of elder abuse perpetrated by carers.¹⁷⁴

- 4.52** Carers NSW’s submission furnished further insights into the complexities that may characterise abuse in carer relationships, including abuse of elderly carers by the people they care for. These insights are pertinent to discussions about interventions as well as prevention:

Carers can also be victims of abuse perpetrated by the person they care for, especially where the person they care for exhibits behaviours of concern as a result of their condition. For example, an ageing parent caring for adult offspring with an intellectual disability, or an older person caring for a spouse with dementia. For older carers in abusive situations, it may be difficult to escape abuse because of the often high and ongoing support needs of the person they care for. The Carers NSW 2014 Carer Survey found that over 40 per cent of carer respondents had nobody else who helped them care. One third said there was not even anyone available to help them if they were ill or needed a break.

¹⁶⁹ Evidence, Commissioner Ryan, 22 February 2016, p 5.

¹⁷⁰ Evidence, Commissioner Ryan, 22 February 2016, p 5.

¹⁷¹ Evidence, Ms Janene Eagleton, Member, Executive Committee, Australian Association of Gerontology, and Dr Brown, 22 February 2016, p 58.

¹⁷² Evidence, Ms Eagleton and Mr Brown, 22 February 2016, p 58.

¹⁷³ Submission 78, Carers NSW, p 1.

¹⁷⁴ Submission 78, Carers NSW, p 1.

Abuse within carer relationships is complex due to the dependent nature of care. Loyalty and commitment to the person they care for may prevent older carers from reporting or addressing the abuse, especially if it is linked to deteriorating capacity or behaviours related to disability and not seen as intentional. Over 40 per cent of respondents to our 2014 Carer Survey indicated that they felt an emotional obligation to care, while one in four respondents felt they had no other choice. Furthermore, many older carers are in interdependent care relationships and may rely on the person they care for practically, emotionally or financially. For example, a frail aged mother with a son with mild intellectual disability or mental illness, may be subject to occasional violent outbursts from him. She provides him with a home, emotional and financial support but may also rely on him for assistance with meal preparation, home maintenance, transport or social support. The circumstances and nature of their care relationship, makes the abuse within it difficult to resolve.

Carers NSW also hears from carers who are being exploited or restricted by other people in their family. Carers often turn to Carers NSW for support and advice when their family members are putting them under unreasonable pressure to continue their caring role without adequate support. Other carers report that members of their family place undue financial restrictions on them, for example, accusing them of spending too much on an elderly parent. Lack of support from, and poor relationships with, family members can make an already demanding carer role even harder to sustain.¹⁷⁵

- 4.53** Within this context, Carers NSW suggested that, ‘While referral can be made to appropriate agencies in situations of abuse, we believe that developing a framework for elder abuse which recognises the needs of carers would be of great assistance.’¹⁷⁶

Current initiatives

- 4.54** FACS representatives acknowledged the substantial contribution of unpaid carers, stating, ‘Most people will either need or provide care at some point in their lives. It is important to recognise that while some carers do abuse, the majority do not. Carers are more often part of the solution to support vulnerable older people than the problem.’¹⁷⁷ FACS further acknowledged that ‘supporting them to maintain their health, wellbeing and social connectedness is vital.’¹⁷⁸
- 4.55** FACS went on to detail the range of supports the department provides for carers. A key initiative has been the *Carers (Recognition) Act 2010* (NSW), which was introduced to provide for the recognition of carers by enacting a carers charter and establishing a carers advisory council. The Act also places obligations on public sector agencies to recognise and consult with carers. FACS is currently undertaking a statutory review of the Act.¹⁷⁹
- 4.56** In addition, the NSW Carers Strategy 2014-2019 is a five year plan to improve the position of carers in NSW. Led by FACS, the strategy is being implemented by government, non-

¹⁷⁵ Submission 78, Carers NSW, p 2.

¹⁷⁶ Submission 78, Carers NSW, p 2.

¹⁷⁷ Answers to supplementary questions, Ms Rogers, 27 April 2016, p 5.

¹⁷⁸ Answers to supplementary questions, Ms Rogers, 27 April 2016, p 3.

¹⁷⁹ Answers to supplementary questions, Ms Rogers, 27 April 2016, p 4.

government organisations and private businesses in partnerships designed to deliver better support for carers:

Its focus is on improving outcomes for carers in five key areas: employment and education; carer health and wellbeing; information and community awareness; carer engagement; and improving the evidence base.

Commitments in the Carers Strategy include:

- making it easier for carers to use health care and health promotion services, including mental health services
- extending the variety and reach of peer support programs for carers in NSW
- improving employment outcomes for carers
- improving communication so that it is easier for carers to find information about support, and
- media campaigns to improve community awareness of carers.¹⁸⁰

4.57 FACS also has a carer grants program, which provides recurrent funding to Carers NSW and smaller amounts of funding to 14 other non-government organisations for carer support. Its funding to Carers NSW supports peak activities, training, information and referral, a carer representation program and a state wide young carer program.¹⁸¹

4.58 The department further advised that carers receive support from a range of FACS programs including direct assistance such as respite, and those that support the person they are caring for, such as personal care, domestic assistance, day programs and case management.¹⁸²

4.59 Asked what supports or services FACS provides or funds to prevent carers from becoming perpetrators of abuse, FACS again referred to the Carers Strategy then identified a number of strategies being implemented via the EAHRU:

The Elder Abuse Helpline and Resource Unit includes information on carers in its training sessions, including the role of 'carer stress' in cases of abuse. Training highlights the increased risk of abuse associated with the older person's increase in care needs and dependency on their carer. Training also emphasises the importance of adequate training and education in the caring role for preventing unintentional neglect or abuse.

Participants are also encouraged to adopt tools such as the modified caregiver strain index, as a means of identifying people experiencing stress in the caring role and enabling open conversations. The carer strain index was developed by the New York University College of Nursing. A link to the index was recently added to the Elder Abuse Helpline and Resource Unit website.¹⁸³

¹⁸⁰ Answers to supplementary questions, Ms Rogers, 27 April 2016, p 4.

¹⁸¹ Answers to supplementary questions, Ms Rogers, 27 April 2016, p 4.

¹⁸² Answers to supplementary questions, Ms Rogers, 27 April 2016, p 4.

¹⁸³ Answers to supplementary questions, Ms Rogers, 27 April 2016, p 5.

Later life planning

4.60 In addition to broadly focused community awareness, community engagement and carer support strategies, a number of participants highlighted that measures aimed at promoting later life planning can be an important strength based means of preventing abuse, especially financial abuse.

4.61 Ms Jane Eagleton of the Australian Association of Gerontology emphasised the role of education in empowering people as they age to understand what things they will likely need to have in place to protect themselves as they get older. She observed among the population ‘a general degree of ignorance about what is important to have in place as you age in terms of healthy ageing, making sure you have powers of attorney, your wills, your estate planning.’¹⁸⁴

4.62 The Hastings Elder Abuse Prevention Network highlighted that it is important to begin discussions about later life planning with people of a younger age, where possible, attesting to the value of community organisations in reaching these groups.¹⁸⁵

4.63 Both the Combined Pensioners and Superannuants Association (CPSA) and Alzheimer’s Australia NSW attested to the value and success of the NSW Trustee and Guardian’s *Get it in Black and White* campaign and planning ahead tools, with the latter reporting that they reached a broad audience. Both organisations called for continued investment in such measures to encourage older people to be proactive in their legal and financial affairs.¹⁸⁶ The CPSA explained why much more work on this front is necessary:

Most older Australians have a will (93% of Australians aged 70 and over according to one study), but fewer have organised a power of attorney should ever they need one. A 2014 survey of CPSA members aged 65 and over found that only 47% had arranged for a power of attorney should they need one.¹⁸⁷

4.64 Alzheimer’s Australia NSW highlighted the need for awareness raising in culturally and linguistically appropriate formats for both Aboriginal and CALD communities,¹⁸⁸ and further noted the value of two of its own initiatives:

- Alzheimer’s Australia NSW’s national financial abuse Q&A sheet which outlines actions that individuals can take to prevent abuse and protect themselves and family members
- The *Start2Talk* website developed through an Alzheimer’s Australia *National Quality Dementia Care Initiative* grant provides information about how individuals can plan ahead. The underlying philosophy of this initiative is encouraging open communication amongst family members and trusted others to have conversations about wishes for the future.¹⁸⁹

¹⁸⁴ Evidence, Ms Eagleton, 22 February 2016, p 55.

¹⁸⁵ Submission 53, Hastings Elder Abuse Prevention Network, p 10.

¹⁸⁶ Submission 41, Combined Pensioners and Superannuants Association, p 8; submission 35, Alzheimer’s Australia NSW, p 5.

¹⁸⁷ Submission 41, Combined Pensioners and Superannuants Association, p 7.

¹⁸⁸ Alzheimer’s Australia NSW, *Preventing financial abuse of people with dementia*, discussion paper no. 10, 2014, p 6.

¹⁸⁹ Submission 35, Alzheimer’s Australia NSW, p 6.

- 4.65** Also focusing on the prevention of financial abuse, and in particular, the financial empowerment of older women, OWN and WEL pointed beyond information provision to the need for independent, trusted and free financial advice, education and guidance for older people. They recommended that ‘the NSW Minister for Ageing seek the agreement of his state and territory colleagues to ask COAG to investigate an additional function for Centrelink Financial Services to provide independent financial advice to aged pension recipients to support their decision making and financial planning.’¹⁹⁰

Current initiatives

- 4.66** The NSW Government submission highlighted the role of the NSW Trustee and Guardian in educating the community about substitute decision making tools, such as powers of attorney and enduring guardianship, and gave further information on the *Get it in Black and White* media and advertising campaign, which was launched in 2013 with the aim of encouraging people to plan ahead to ensure their future financial, legal, health and lifestyle decisions are respected. It advised that the need for the campaign was substantiated by research showing that just five per cent of people correctly understand the purpose of all three planning ahead documents (wills, powers of attorney and enduring guardianship). As part of the campaign, the NSW Trustee and Guardian produced fact sheets in 15 languages including English.¹⁹¹ In terms of future priorities it advised:

As part of service changes planned to begin from mid-2016, the NSW Trustee and Guardian will enhance community outreach in metropolitan, rural and regional areas across NSW. This is planned to include visits to local community venues where people can book in a time to prepare legal documents with the NSW Trustee and Guardian such as a will or power of attorney. These outreach activities will make it easier for more people in rural and regional areas to set up substitute decision-making documents to protect their interests should they lose capacity.¹⁹²

- 4.67** In chapter 6 we consider further specific suggestions about educational strategies targeting older people appointing substitute decision makers as a means of preventing financial abuse.

Committee view

- 4.68** The committee supports the values and general direction embedded in the NSW Ageing Strategy, the NSW Carers Strategy, the Elder Abuse Helpline and Resource Unit’s communication materials, and other measures, which already focus on empowering older people, challenging ageism, addressing isolation and supporting carers. It is clear to us that the a recognition of the links between ageism, isolation and abuse – which inquiry participants highlighted as fundamentally important – is already underpinning the government’s approach to the prevention of elder abuse.
- 4.69** The NSW Ageing Strategy appears to be providing a framework for primary prevention by promoting activity, connectedness and personal agency among older people across New South

¹⁹⁰ Submission 55, Women’s Electoral Lobby NSW and Older Women’s Network NSW, pp 20-21.

¹⁹¹ Submission 75, NSW Government, pp 24-25. The government submission further noted that the Public Guardian also educates the community about guardianship.

¹⁹² Submission 75, NSW Government, p 25.

Wales. In addition, we commend the government for the various awareness raising strategies being implemented, or soon to be implemented, via the EAHRU, and note their targeted approach in respect of both CALD and Aboriginal communities. The range of strategies planned for 2016 is encouraging and aligns well with the approaches advocated by inquiry participants. We also acknowledge the important preventive efforts and supports that are flowing from the NSW Carers Strategy, which quite rightly is aimed at improving a range of outcomes for carers, and which can only in turn, have benefits for those for whom they care. Finally, we recognise the valuable work in respect of later life planning being undertaken by the NSW Trustee and Guardian, including its noteworthy plans for outreach into rural and regional areas.

- 4.70** Our view as a committee is that there needs to be substantial additional investment in each of these initiatives. It is self evident that a great deal more needs to be done to prevent the complex, hidden and pernicious problem of elder abuse. More resources are required because changing attitudes in a meaningful way, and therefore changing behaviour, will take time. Reaching across the population and into the vast number of communities that comprise our state, each with their unique characteristics, is a complex task that requires skill and again, sustained effort. So too is working in partnership with and empowering local leaders and grassroots organisations. Similarly, reaching isolated and vulnerable carers and providing them with sufficient support is a massive task in its own right, as is ensuring that the planning ahead message reaches all those who need to hear it – and actually inducing them to act.
- 4.71** We see real value in the community engagement approach that some inquiry participants advocated, and recognise an overlap between engagement to mobilise community networks to reduce isolation and build social connections, and engagement with community leaders to address elder abuse in CALD and Aboriginal communities. We also recognise that such community engagement will facilitate not only prevention, but also identification of and responses to abuse. We encourage FACS to consider in detail the local community networks operating in Canada and to work collaboratively and systematically with communities in implementing its strategies across our state.
- 4.72** The committee thus recommends that the NSW Government make a significant new investment in the prevention of elder abuse by preparing and funding a preventative framework that provides for substantially enhanced primary prevention, community education and awareness raising, community engagement, carer support and later life planning initiatives. The challenge of achieving real prevention across the full range of communities that make up New South Wales cannot be underestimated. Given the particular need to harness the resources of culturally and linguistically diverse communities and to work in a culturally competent and respectful way with Indigenous communities, we consider that a proportion of the funding should be specifically allocated for CALD and Indigenous communities, and that both Multicultural NSW and Aboriginal Affairs must be actively engaged in this preventative work.

Recommendation 2

That the NSW Government make a significant new investment of resources in the prevention of elder abuse. This must involve the development and funding of a new prevention framework that provides for:

- substantially enhanced primary prevention, community education, awareness and engagement, carer support and later life planning initiatives
 - specific resources for strategies targeting culturally and linguistically diverse and Indigenous communities and engagement with Multicultural NSW and Aboriginal Affairs NSW.
-

4.73 The committee notes that a number of the reforms we are recommending in chapter 6 to improve protections in respect of enduring powers of attorney in particular, and financial abuse more generally, are all aimed very clearly at preventing abuse. If adopted by the NSW Government, we consider that these recommendations will together provide a very significant step forward for prevention of elder abuse in New South Wales.

Chapter 5 Current service provision

While previous chapters have focused on the guiding principles for the NSW Government's approach to elder abuse and on preventative measures, this chapter focuses on service provision to address elder abuse once it occurs.

First, the committee considers the NSW Steering Committee for the Prevention of Abuse of Older People, which oversees the government's strategy for addressing abuse, then the *NSW Interagency policy on preventing and responding to abuse of older people*, which provides the framework for the range of community care, health and other front line services' responses to elder abuse. Next, we examine participants' views about the role played by the NSW Elder Abuse Helpline and Resource Unit, as well as potential improvements to it. We then consider the broader calls for improved education for service providers.

The chapter also documents stakeholders' recommendations to improve a number of other elements to the service system, including services for culturally and linguistically diverse communities and Aboriginal communities, as well as case management, counselling and accommodation. We conclude by briefly documenting a number of issues raised in relation to a matter that is currently being examined by the Commonwealth Government: abuse of older people in aged care.

NSW Steering Committee for the Prevention of Abuse of Older People

- 5.1** The Steering Committee for the Prevention of Abuse of Older People (hereafter the steering committee) was established in 2013, 'as a high level advisory group to ensure a coordinated approach to tackling abuse'.¹⁹³ Its membership is comprised of representatives of the Department of Family and Community Services (FACS), NSW Ministry of Health, the NSW Police Force, the NSW Trustee and Guardian, the Commonwealth Department of Human Services, and a number of peak bodies and community agencies with expertise in elder abuse.
- 5.2** The steering committee reports to the NSW Interdepartmental Committee on Ageing, itself comprised of representatives of the Department of Premier and Cabinet, NSW Treasury, Transport for NSW, the Department of Planning and the Environment, the Ministry of Health, the Office of Finance and Services, Department of Education, Department of Justice and FACS. It also has four non-government members representing the Ministerial Advisory Committee on Ageing, Council on the Ageing (COTA) NSW, Local Government NSW, and the private sector.
- 5.3** The steering committee's key activities have included:
- overseeing the establishment of the NSW Elder Abuse Helpline and Resource Unit (EAHRU) in March 2013 and providing ongoing advice to support its operations
 - identifying state wide policy direction
 - monitoring local and regional policies and programs for consistency and relevance
 - reviewing data to identify priority areas and trends

¹⁹³ Submission 75, NSW Government, p 10.

- maintaining the *NSW Interagency policy on preventing and responding to abuse of older people*.¹⁹⁴

Stakeholder views

5.4 The committee was advised in November 2015 that the steering committee had not met since the end of 2014.¹⁹⁵ Appearing before the committee in March 2016, Ms Maree Walk, Deputy Secretary, Programs and Service Design, FACS, confirmed that the steering committee did not meet during 2015, but that it had met on 9 February 2016.¹⁹⁶ FACS subsequently advised that the steering committee had met on an almost monthly basis during 2013 and 2014.¹⁹⁷ No explanation was provided to us as to why steering committee meetings were not held during 2015.

NSW Interagency policy on preventing and responding to abuse of older people

5.5 The *NSW Interagency policy on preventing and responding to abuse of older people* (hereafter the interagency policy) is a whole of government policy that guides the work of frontline services for older people, along with the EAHRU. According to the NSW Government submission, the interagency policy embodies the principle that to effectively address elder abuse, all government and community agencies that support older people are alert to the problem and understand their role in preventing and responding to abuse. The interagency policy is focused on abuse of older people living in community settings and:

- provides a framework under which government and community organisations develop their own detailed policies and guidelines for responding to abuse of older people
- outlines the roles and responsibilities of NSW government agencies and of the EAHRU in responding to elder abuse
- provides practical guidance for agencies supporting older people, including key principles for responding to elder abuse, risk factors, interventions and interagency practices
- outlines when police intervention must be sought in responding to cases of abuse
- supports the coordination of local and regional responses to abuse
- includes a policy checklist to help agencies develop their own detailed procedures for developing and responding to abuse
- provides guidance on how to support and protect workers in situations where abuse is suspected, witnessed or alleged
- includes information on confidentiality.¹⁹⁸

¹⁹⁴ Submission 75, NSW Government, p 10.

¹⁹⁵ Submission 38, Council on the Ageing NSW, p 1; Evidence, Mr Ian Day, Chief Executive Officer, Council on the Ageing NSW, 20 November 2015, p 4.

¹⁹⁶ Evidence, Ms Maree Walk, Deputy Secretary, Programs and Service Design, Department of Family and Community Services, 18 March 2016, p 4.

¹⁹⁷ Answers to questions on notice, Ms Helen Rogers, Executive Director, Participation and Inclusion, Department of Family and Community Services, 27 April 2016, p 4.

¹⁹⁸ Submission 75, NSW Government, pp 11- 12; see also evidence, Ms Walk, 18 March 2016, p 2.

- 5.6** The NSW Government indicated to the committee that the interagency policy is regularly reviewed and updated, and ‘and will be reviewed following the release of the committee’s report ... to ensure it continues to operate effectively for New South Wales agencies’.¹⁹⁹ Ms Walk advised that as of March 2016, FACS was due to commence its three year review of the interagency policy, and was waiting for the committee’s recommendations before it proceeded with that work. She also indicated that the department was seeking to have this work informed by the Helpline’s three years of operation, and by the issues that service providers are raising during elder abuse training.²⁰⁰

Stakeholder views

- 5.7** Inquiry participants told the committee that they see value in the interagency policy, but also raised a number of suggestions by which to improve both its use and its content.
- 5.8** Numerous stakeholders including the Council on the Ageing (COTA) NSW and the Seniors Rights Service recognised the interagency policy as an important initiative protecting the welfare of older people.²⁰¹ Professor Susan Kurrle of Hornsby Ku-ring-Gai and Eurobodalla Health Services and the University of Sydney also noted the significance of this policy document and indicated that use of the policy has becoming more widespread over time.²⁰²
- 5.9** Alzheimer’s Australia NSW stated that in its view, it is too early to judge the effectiveness of the interagency policy, and that its launch was accompanied by ‘such limited publicity ... that awareness of its existence is low’, including among public servants in NSW government agencies.²⁰³ It stated, however, that in the absence of other avenues, the interagency policy remains the best strategy to encourage reporting.²⁰⁴ Alzheimer’s Australia NSW recommended that all funded community and aged care organisations in NSW ‘be required to make staff aware of their responsibilities and obligations under the interagency policy.’²⁰⁵
- 5.10** Similarly, the Australian Association of Gerontology attested to the value of the interagency policy as a ‘key plank in guiding responses to abuse in NSW’, but expressed concern about the ‘lack of attention given to promulgation of the policy after its release, and the low level of promotion and education about the policy to the health and community services sector in the front line for identifying and responding to abuse, most of whom are non-government organisations and private providers outside government.’ The Association further noted that formal processes for consultation with service providers about the policy and how best to ensure its implementation were never properly implemented.²⁰⁶ These views were echoed by

¹⁹⁹ Submission 75, NSW Government, p 13.

²⁰⁰ Evidence, Ms Walk, 18 March 2016 p 6.

²⁰¹ Submission 38, Council on the Ageing NSW, p 1; submission 25, Seniors Rights Service, p 34.

²⁰² Submission 37, Professor Kurrle, p 1.

²⁰³ Submission 35, Alzheimer’s Association NSW, p 6.

²⁰⁴ Submission 35, Alzheimer’s Association NSW, p 5.

²⁰⁵ Alzheimer’s Australia NSW, *Preventing financial abuse of people with dementia*, discussion paper no. 10, 2014, p 6.

²⁰⁶ Submission 23, Australian Association of Gerontology, p 4.

Aged and Community Services NSW and ACT, which contended that earlier interagency initiatives did not receive sustained leadership and support, such that earlier gains were lost.²⁰⁷

5.11 Professor Carmelle Peisah, President of Capacity Australia and Conjoint Professor in psychiatry at the University New South Wales, reported that within the health system ‘no-one has ever heard of the inter-agency protocol ... That is a real shame.’²⁰⁸

5.12 Further evidence of the claim that there is a lack of awareness about the interagency policy on the ground came from the Hastings Elder Abuse Prevention Network. It advised the committee that in preparing its submission, the Network approached its member organisations to evaluate their use and knowledge of the interagency policy, and was disappointed to learn that not all of its member organisations were aware of the policy. It thus recommended that greater effort be made improve awareness of the policy, and greater onus be placed on health, welfare and community organisations to develop their own policies and adhere to them.²⁰⁹

5.13 COTA NSW suggested that the interagency policy is effective in instances where an individual decides to act, triggering various government, community or private providers, or indeed family or friends. However, it does not address the more common cases where elder abuse is perpetrated by a family member or carer ‘in an environment of isolation, dependence and undue influence’. It argued that the document gives little recognition to the role of the broad community, community groups, friends and family, and other trusted individuals in preventing and responding to elder abuse.²¹⁰

5.14 The EAHRU argued that the interagency policy needs a greater level of detail in order to be more useful to service providers:

Many professionals call the Helpline seeking guidance not only on how to respond to abuse but on their responsibility, if any, to report. The feedback we have had from callers is that the policy is too general and does not provide them with enough information or guidance to make a decision on how to move forward ... Agencies are also concerned about breaching trust and worry their client will cancel services.²¹¹

5.15 The EAHRU further stated that while Helpline staff are confident and effective in providing guidance around policy issues, in the absence of clear written guidance, some agencies lack the confidence to act.²¹² It thus recommended a number of specific inclusions to the interagency policy:

- duty of care and reporting requirements under section 316 of the *Crimes Act 1900*
- information on what constitutes a crime

²⁰⁷ Submission 22, Aged and Community Services NSW and ACT, p 4; see also answers to supplementary questions, Ms Illana Halliday, Chief Executive Officer and Mr Paul Sadler, Director, Aged and Community Services NSW and ACT, received 5 April 2016, p 3.

²⁰⁸ Evidence, Professor Carmelle Peisah, President, Capacity Australia and Conjoint Professor, Faculty of Medicine, University New South Wales, 18 March 2016, p 34.

²⁰⁹ Submission 53, Hastings Elder Abuse Prevention Network, p 10.

²¹⁰ Submission 38, Council on the Ageing NSW, pp 2 and 4.

²¹¹ Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 30.

²¹² Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 30.

- information on what constitutes serious harm
- privacy and confidentiality considerations and requirements
- requirements in respect of reporting to police.²¹³

- 5.16** In addition, the EAHRU recommended that all organisations that serve older people put in place elder abuse policies and procedures that are based on best practice and aligned with the interagency policy, and that these organisational policies be regulated and checked as part of accreditation standards or other relevant processes.²¹⁴
- 5.17** As another improvement to the content of the interagency policy, the Seniors Rights Service proposed that from its perspective as a legal service, it would be useful to list a series of considerations that would assist service providers to weigh up the wishes of the older person on the one hand with the legal process and potential outcome of criminal proceedings on the other. In addition, it proposed that the policy include guidelines as to when agencies are able to explore alternative solutions at the instruction of an older person with capacity, who does not want to take criminal proceedings but nevertheless wishes to work with legal authorities.²¹⁵
- 5.18** Looking more broadly, Professor Wendy Lacey, Dean of the School of Law at the University of South Australia argued that from her perspective as a public lawyer and a human rights lawyer, ‘the biggest gaps that are currently present in the protective frameworks in Australia are the fact that they are based in various weak policy instruments. Those instruments are largely based on referral arrangements between key agencies and also with the use ... of a hotline’.²¹⁶ She further highlighted that restrictive privacy laws inhibit the effectiveness of these interagency arrangements.²¹⁷ Professor Lacey’s recommendation to establish a non-police body with powers to investigate elder abuse is documented in chapter 8.

The NSW Elder Abuse Helpline and Research Unit

- 5.19** The EAHRU is operated by Catholic Healthcare Services and funded by FACS, receiving approximately \$600,000 per annum. It has five equivalent full time staff.²¹⁸
- 5.20** The EAHRU is comprised of the Helpline, which provides information and referrals over the phone, and the Resource Unit which provides other forms of information and resources. According to Ms Kerry Marshall, Manager of the EAHRU, the Helpline and the Resource Unit together not only directly support older people experiencing abuse, but also play a critical role in mentoring frontline workers and linking them with necessary supports when abuse of

²¹³ Submission 33, NSW Elder Abuse Helpline and Resource Unit, pp 30-31.

²¹⁴ Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 31.

²¹⁵ Submission 25, Seniors Rights Service, p 34.

²¹⁶ Evidence, Evidence, Professor Wendy Lacey, Dean and Head of School, School of Law, University of South Australia, 18 March 2016, p 31.

²¹⁷ Submission 112, Professor Lacey, p 2.

²¹⁸ Evidence, Ms Kerry Marshall, Manager, NSW Elder Abuse Helpline and Resource Unit, 20 November 2016, p 13.

an older person is identified or suspected.²¹⁹ We discuss the Helpline and the Resource Unit in turn below.

The Helpline

- 5.21** The Helpline is a free service that provides information, support and referrals for older people experiencing abuse, or for people who witness or suspect the abuse of an older person. The service is confidential and callers may remain anonymous.
- 5.22** Helpline staff are qualified in telephone counselling. They assess the needs of each caller and refer to appropriate services including legal services, health services (most frequently general practitioners), police, the Guardianship Division of the NSW Civil and Administrative Tribunal, community services, housing services, financial services, respite services, Centrelink and emergency services. Staff make referrals directly where they identify that the older person may not have capacity to do so themselves and may follow up on referrals if they believe a person is at risk of harm.
- 5.23** The Helpline operates between 8.30 am and 5.00 pm Monday to Friday, with an after hours call back service. It offers a telephone interpreter service and brochures about it are available in five languages.²²⁰
- 5.24** Ms Walk of FACS explained to the committee that rather than acting on reports of abuse, the role of helpline staff is to empower callers to act for themselves:

The Helpline gives general guidance; it does not do case management of a particular case, and it could not with the 1,500 or so calls that it gets [each year] ... Rather it is a question of that soft coaching and saying, “Well, how might you raise that with the older person themselves? How can they be engaged in the decision-making?”²²¹

- 5.25** As of 7 April 2016, the Helpline has received a total of 4,684 calls in the three years since it was established.²²² The NSW Government advised that the number of calls has increased over time, as the Helpline becomes more established and builds links with frontline agencies supporting older people. During 2014-15, the Helpline received 30 per cent more calls than the previous financial year, with 1,200 calls received in 2013-14 and 1,571 in 2014-15.²²³ The NSW Government submission provided detailed information on calls to the Helpline.²²⁴
- 5.26** With respect to the cultural breakdown of callers, FACS indicated that:

The proportion of calls to the Elder Abuse Helpline ... from culturally and linguistically diverse communities was 14% (517 calls, from 1 March 2013 to 29 February 2016).

²¹⁹ Evidence, Ms Marshall, 20 November 2016, p 13.

²²⁰ Submission 75, NSW Government, pp 13-15.

²²¹ Evidence, Ms Walk, 18 March 2016, p 8.

²²² Answers to questions on notice, Ms Rogers, 27 April 2016, p 4.

²²³ Submission 75, NSW Government, p 15.

²²⁴ Submission 75, NSW Government, see pp 16-20.

Of these, around one third of calls related to people of Eastern European background (164 calls), and one third related to people of Western European background (171 calls). Other cultural groups included:

- Asian – 16% (81 calls)
- Middle Eastern background – 6% (32 calls)
- Pacific Islander – 3% (17 calls)
- South American – 2% (13 calls)

There were 22 calls (4%) relating to people identified as Indigenous.²²⁵

The Resource Unit

- 5.27** FACS advised the committee that the Resource Unit provides training and information about elder abuse, and promotes community education and awareness. In doing so it enables more people to recognise abusive behaviour, to understand the causes and risk factors, and to know where to seek help. The Resource Unit works in partnership with a range of sector peak bodies including the Australian College of General Practitioners, the Aged Rights Service, Law Access, Alzheimer’s Australia NSW and Australian Primary Nurses.²²⁶ It has built working relationships with the NSW Police Force, Seniors Rights Service, community justice centres, Legal Aid NSW, Justice Connect, general practitioners and emergency departments, the NSW Trustee and Guardian and the NSW Ambulance Service.²²⁷
- 5.28** Between March 2013 and June 2015 the Resource Unit delivered education sessions on recognising and responding to elder abuse to 89 groups, attended by a total of 4,798 participants from a range of government and community organisations including hospitals, police, legal centres, disability service providers, community care providers, neighbourhood and community centres, seniors’ groups, local councils and volunteer organisations.²²⁸ Nevertheless, the EAHRU submission stated that, ‘The demand for face-to-face training from the Helpline outweighs the Helpline’s resources’ and recommended that further funding be provided to the EAHRU to increase capacity to provide training to front line aged care workers.²²⁹
- 5.29** In addition to education and training sessions, the Resource Unit promotes awareness of elder abuse throughout the community, for example through its six-month *Positive Ageing Free from Abuse* campaign in 2015. The Resource Unit also promotes awareness of elder abuse through:
- publishing and distributing information brochures
 - posters and marketing material that promote positive images of older people and educate the community on what constitutes elder abuse

²²⁵ Answers to questions on notice, Ms Rogers, 27 April 2016, p 2.

²²⁶ Submission 75, NSW Government, pp 20-21.

²²⁷ Answers to supplementary questions, Ms Rogers, 27 April 2016, p 1.

²²⁸ Submission 75, NSW Government, p 20.

²²⁹ Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 24.

- an annual *Talking Elder Abuse* art competition (beginning in 2015)
- marking International World Elder Abuse Awareness Day each year.²³⁰

Stakeholder views

- 5.30** There was widespread regard and support for the EAHRU among inquiry participants, both as a watershed in the government's commitment to preventing and addressing elder abuse, and for the actual work and outcomes of the Helpline and the Resource Unit. Stakeholders also identified a number of potential improvements to enable it to more effectively fulfil its role.
- 5.31** Representatives of the NSW Police Force attested to the immense value of the Helpline to officers. Assistant Commissioner Denis Clifford, Corporate Spokesperson on Vulnerable Communities, told the committee, 'The elder abuse hotline has been a godsend to us as a resource to get that more professional or expert advice.'²³¹ Superintendent Robert Critchlow, Commander of The Hills Local Area Command, reported, 'The Helpline has proven itself over time as a referral point and police are now common callers to the service ... It is working well.'²³²
- 5.32** Alzheimer's Australia NSW stated its support for 'the strength based approach which empowers older people to protect themselves, underpinned by the philosophy that elder abuse is unacceptable.'²³³ Similarly, Professor Peisah praised the strength based initiatives adopted by the EAHRU, identifying their anti-ageism approach as key, and called for the work of the unit to be supported and strengthened.²³⁴
- 5.33** Professor Susan Kurrle highlighted the establishment of the Helpline as a very significant achievement for New South Wales, and noted the value placed on it by other states.²³⁵ She stated that from her perspective as a clinician, it has been 'extremely useful' in providing advice and support to older people and their family members, medical professionals, especially general practitioners, and other health and aged care providers. Professor Kurrle reported that informal feedback from GPs and practice nurses has been very positive with regard to the Helpline's assistance with difficult cases. She further asserted that the ongoing operation is essential to the appropriate management of older people who are subjected to elder abuse and recommended that the government provide 'a modest increase in resources' to the EAHRU, to enhance education aimed at both raising awareness and improving care providers' responses to abuse.²³⁶

²³⁰ Submission 75, NSW Government, pp 20-21.

²³¹ Evidence, Assistant Commissioner Denis Clifford, Commander, NSW Police Force and Corporate Spokesperson on Vulnerable Communities, 7 March 2016, p 26.

²³² Evidence, Superintendent Robert Critchlow, Commander of The Hills Local Area Command, and Assistant Sponsor, Vulnerable Communities, 7 March 2016, p 25.

²³³ Submission 35, Alzheimer's Association NSW, p 6.

²³⁴ Evidence, Professor Peisah, Capacity Australia, 18 March 2016, p 32.

²³⁵ Evidence, Professor Susan Kurrle, Geriatrician, Hornsby Kur-ring-gai and Eurobodalla Health Services and Chair, Health Care of Older People, Faculty of Medicine, University of Sydney, 22 February 2016, p 9.

²³⁶ Submission 37, Professor Susan Kurrle, p 3.

- 5.34** The Australian Association of Gerontology also described the establishment of the EAHRU as a very positive development and noted that the evaluation of the NSW Ageing Strategy in late 2014 reported high levels of satisfaction among both callers and training participants. At the same time, it expressed concern that the EAHRU had recently experienced high staff turnover, and about the amount of information publicly available on the unit's performance and lessons learnt from its experience. In addition, the Australian Association of Gerontology suggested that the education and training for professionals has been 'modest' despite this being one of the unit's key roles, and went on to suggest that a contributory factor may be the 'lack of continuity and consistency' in the support the EAHRU receives from FACS, as reflected in the absence of meetings of the interagency steering committee (which has a specific role in overseeing the unit) noted above.²³⁷
- 5.35** In their joint submission, the Older Women's Network (OWN) and Women's Electoral Lobby (WEL) also expressed strong support for the EAHRU. They called for its educational role to be strengthened, and for the government to require the unit to publish online annual reports of its activities and progress.²³⁸ These organisations also questioned whether the name 'Elder Abuse Helpline' might be unhelpful and offputting to older people, advocating market research in this regard, and called for 'a national approach to ensure consistency across helplines'.²³⁹
- 5.36** Two particular stakeholders, both of which acknowledged the establishment of the EAHRU as very welcome, nevertheless raised questions about its role.
- 5.37** First, COTA NSW argued for the EAHRU to be reoriented to training and harnessing key community members to better support older people experiencing abuse. It also highlighted the need for greater awareness in the general public of the existence and purpose of the Helpline.²⁴⁰
- 5.38** Second, the Combined Pensioners and Superannuants Association (CPSA) suggested that the present model of a 'one way street' where callers initiate contact and the Helpline provides only information and referrals, is inadequate. Its proposal for a body that is empowered to actually investigate and intervene in situations of abuse is discussed in chapter 8.²⁴¹
- 5.39** There was some discussion among inquiry participants about whether the Helpline should operate 24 hours a day. When asked about this possibility, police representatives indicated that a 24 hour service would be welcome.²⁴² On the other hand, Ms Marshall of the EAHRU was cautious about the need for this, reporting that the Helpline receives very few calls outside of

²³⁷ Submission 23, Australian Association of Gerontology, pp 4-5; see also evidence, Ms Sarah Fogg, Member, Executive Committee, Australian Association of Gerontology, 22 February 2016, p 56.

²³⁸ Submission 55, Women's Electoral Lobby NSW and Older Women's Network NSW, p 30.

²³⁹ Submission 55, Women's Electoral Lobby NSW and Older Women's Network NSW, p 31.

²⁴⁰ Submission 38, Council on the Ageing NSW, pp 3-4.

²⁴¹ Submission 41, Combined Pensioners and Superannuants Association of NSW, pp 4-5.

²⁴² Evidence, Assistant Commissioner Clifford, 7 March 2016, p 26; evidence, Mr Critchlow, 7 March 2016, p 31; see also evidence, Hon Susan Ryan AO, Age and Disability Discrimination Commissioner, Australian Human Rights Commission, 22 February 2016, p 6.

business hours and suggested that training should have a greater priority for any additional funding.²⁴³

- 5.40** There was also some discussion about the value of a national helpline. The Hon Susan Ryan AO, Age and Disability Discrimination Commissioner with the Australian Human Rights Commission, advised that she is considering the potential for a national elder abuse hotline, matched with a national communications campaign to promote this service. She suggested that the cost of a national helpline be shared between state and Federal governments.²⁴⁴ Dr Chesterman, Director of Strategy with the Victorian Office of the Public Advocate also expressed his support for a national helpline.²⁴⁵

Department of Family and Community Services comments

- 5.41** The NSW Government provided further information on recent developments with respect to the EAHRU.
- 5.42** In November 2015 the Resource Unit expanded its training program to include ‘train the trainer’ sessions for managers in community services organisations, in order to enable greater reach to staff of community services organisations, including those in rural and remote areas. A suite of e-learning tools and webinars were at that time being developed to complement the training sessions and improve the accessibility of professional learning.²⁴⁶ Ms Walk advised that this training will increase the skills of an estimated 14,000 staff across the state.²⁴⁷
- 5.43** Ms Walk also informed the committee that since our inquiry commenced, FACS has extended funding of the EAHRU until July 2017.²⁴⁸
- 5.44** In respect of data on referrals from the Helpline to other agencies, FACS advised that it is working with the Helpline to improve reporting on referrals to enable information to be reported more readily and reliably in future, and that once these improvements are made, it anticipates this information will be published.²⁴⁹

Education for service providers

- 5.45** Beyond the work of the EAHRU, there was a broader discussion among inquiry participants about the continued need to improve health and community service staff awareness of and responses to abuse.

²⁴³ Answers to questions on notice, Ms Kerry Marshall, Manager, NSW Elder Abuse Helpline and Resource Unit, p 3.

²⁴⁴ Evidence, Commissioner Ryan, 22 February 2016, pp 2 and 6.

²⁴⁵ Evidence, Dr John Chesterman, Director of Strategy, Office of the Public Guardian, Victoria, 22 February 2016, p 61.

²⁴⁶ Answers to supplementary questions, Ms Rogers, p 2.

²⁴⁷ Evidence, Ms Walk, 18 March 2016, p 2.

²⁴⁸ Evidence, Ms Walk, 18 March 2016, p 2.

²⁴⁹ Answers to supplementary questions, Ms Rogers, p 2.

5.46 Many participants highlighted the imperative to ensure that service providers are well equipped, via training, to identify and respond to elder abuse. Indeed many including the EAHRU,²⁵⁰ the Seniors Rights Service,²⁵¹ and the Australian Association of Gerontology,²⁵² called for all aged and community care service providers to be adequately trained in this respect.

5.47 For example, Ms Marshall of the EAHRU argued for mandatory education across all organisations that serve older people,²⁵³ pointing out that this training would enable staff coming into contact with older people to adopt an ‘eyes wide open approach’ that would make them more alert to the possibility that a person is experiencing abuse or neglect. She stated that even though key services might have a ‘tick a box’ to check for abuse, staff need to be competent in identifying it, and that this is often an issue even for very well educated clinicians.²⁵⁴ Consistent with this, the EAHRU submission recommended:

All employees across all organisations that serve older persons participate in mandatory education that raises awareness about elder abuse, and to provide further training and resources that:

- Address ageism;
- The rights of older adults;
- The types, prevalence and signs of abuse and neglect of older persons;
- Factors that may contribute to elder abuse; and
- Individual roles and responsibilities with regard to responding or reporting abuse.²⁵⁵

5.48 Professor Peisah strongly endorsed this ‘eyes wide open’ approach in health, community care and other services for older people, whom she argued have an active responsibility to employ such an approach in their work.²⁵⁶

5.49 From her vantage point as a gerontologist and practice leader with expertise in elder abuse, Professor Kurrle observed over the past 25 years ‘a higher degree of awareness’ about elder abuse, and greater effectiveness among health and aged care providers in responding to it.²⁵⁷ Nevertheless, she highlighted the continuing need for greater awareness and capacity building among health professionals to respond to abuse, and identified some of the challenges in respect of these groups:

²⁵⁰ Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 23

²⁵¹ Submission 25, Seniors Rights Service, p 7.

²⁵² Submission 23, Australian Association of Gerontology, p 5.

²⁵³ Evidence, Ms Marshall, 20 November 2015, p 12.

²⁵⁴ Evidence, Ms Marshall, 20 November 2015, p 14.

²⁵⁵ Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 23.

²⁵⁶ Evidence, Professor Peisah, 18 March 2016, p 34.

²⁵⁷ Submission 37, Professor Susan Kurrle, pp 1-2.

Generally the medical profession has been slow to be involved in the identification and management of elder abuse. This may relate to a lack of awareness of elder abuse, and a lack of scientific knowledge in this area with no evidence based guidelines on interventions and treatment available. Factors such as the sensitivity in managing elder abuse situations where both victim and abuser are patients, and the concern about involvement in legal actions also make this a very difficult area. However health care professionals in the acute hospitals, particularly medical and nursing staff in the Emergency Department, are at the front line of identification of elder abuse, and it is important that they are aware of elder abuse and how it may present. Appropriate funding for education and training about elder abuse, and the use of the Interagency Policy, is necessary to improve knowledge and confidence in managing this difficult area.²⁵⁸

- 5.50** Professor Kurrle went on to highlight general practitioners as ‘absolutely key to the identification and management of most cases of abuse and GP involvement is essential to ensure the best outcome for their patients’, noting that 97 per cent of people aged over 65 see their GP at least once a year.²⁵⁹ She also underscored the important role of nurse practitioners, who are often responsible for conducting annual ‘over 75 assessments’ of older people in their own home.²⁶⁰ She asserted that ‘it is essential that the NSW Ministry of Health engage with the Primary Health Networks associated with each Local Health District to ensure that LHD staff are well linked with these Networks around the issues related to elder abuse, including providing assistance with education’. Professor Kurrle further recommended that the NSW Government provide specific funding for education and training in elder abuse for acute hospital staff, via the NSW Ministry of Health.²⁶¹
- 5.51** Consistent with this, the EAHRU highlighted an urgent need for frontline health care professionals to recognise and respond to cases of suspected elder abuse and to abide by established policies and procedures, noting that this will necessarily require effective professional education. It thus recommended that clinical training on indicators of abuse be developed for health care professionals and included in relevant organisational mandatory education.²⁶²
- 5.52** The Eastern Community Legal Centre offered an example from Victoria about a general practitioner’s highly inappropriate response to an allegation of sexual abuse which highlights the importance of training for clinicians:

In many cases a GP is the only person that someone experiencing elder abuse will disclose to. Yet they receive almost no professional development training on this issue and remain largely unaware of referral options.

A disturbing case in the eastern metropolitan region involved a 78 year old woman experiencing sexual abuse at the hands of her husband who had Alzheimer’s Disease.

²⁵⁸ Submission 37, Professor Kurrle, p 3.

²⁵⁹ Submission 37, Professor Kurrle, p 3; evidence, Professor Susan Kurrle, 22 February 2016, p 10.

²⁶⁰ Evidence, Professor Susan Kurrle, Geriatrician, Hornsby Ku-ring-gai and Eurobodalla Health Services, and Chair of Health Care of Older People, University of Sydney, 22 February 2016, pp 10 and 14.

²⁶¹ Submission 37, Professor Kurrle, pp 3-4

²⁶² Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 24; see also submission 30, Leading Age Services Australia NSW – ACT, p 3.

When encouraged to speak to her G.P, he advised her that this was common and that in any case men with this disease who are exhibiting these behaviours usually pass through this stage “in a year or so”. No support or referral was offered.²⁶³

5.53 Illustrating the complexity of the issues that health care and other service providers have to grapple with when responding to abuse, Capacity Australia asserted that ‘funding for education and awareness raising of ... human rights, mental capacity and consent, elder abuse, neglect and exploitation with the medical, disability and aged care sectors is fundamental to ensuring the issue [of elder abuse] is brought to the fore.’²⁶⁴ It argued that this education must provide the correct balance between safeguarding and promoting autonomy and dignity of risk, that is, the right of an individual to make their own mistakes.²⁶⁵

5.54 The EAHRU also identified a need to more effectively target abuse in culturally and linguistically diverse communities, including via training led by bilingual and bicultural community workers:

The Helpline has found it essential to collaborate with CaLD services to raise awareness of elder abuse amongst older CaLD groups. However, moving forward, more organisations including EAHRU need to collaborate and raise awareness using a more targeted and structured approach ... Bilingual and bicultural workers/ethno-specific organisations [could] deliver elder abuse training to their communities which would enable them to further examine the issues and complexities.²⁶⁶

5.55 Further strategies in respect of CALD groups are discussed in the following section.

Other service system improvements

5.56 In addition to the substantial and ongoing need for training of the full range of service providers that engage with older people, inquiry participants advocated a range of other improvements to the health and community service systems, in order to improve responses to elder abuse.

5.57 Perhaps summing up the broad principle underpinning an ideal service system, Aged and Community Services NSW and ACT suggested, ‘There needs to be viable options for older people to provide them with real options when they seek to leave an abusive situation, or to support and empower them to remain safely when that is their choice.’²⁶⁷ Each of the specific improvements identified by participants is discussed in turn below.

Culturally and linguistically diverse communities

5.58 There was a widespread recognition among inquiry participants that alongside all the challenges that older people face in addressing abuse, older people in CALD communities face additional ones, and indeed that some are at greater risk of abuse. Evidence about the risk

²⁶³ Submission 32, Eastern Community Legal Centre, p 6.

²⁶⁴ Submission 81, Capacity Australia, p 17.

²⁶⁵ Submission 81, Capacity Australia, p 17.

²⁶⁶ Submission 33, NSW Elder Abuse Helpline and Resource Unit, pp 26-27.

²⁶⁷ Submission 22, Aged and Community Services NSW and ACT, p 5.

among older CALD people was noted in chapter 2, and in chapter 4 the committee examined the need for greater awareness raising strategies among this target group. There we recommended that in developing and funding a new prevention framework for elder abuse, the NSW Government provide quarantined funds for strategies targeting CALD and Indigenous communities.

5.59 The Immigrant Women’s SpeakOut Association documented a range of needs in respect of older CALD women, identified through a focus group of ten participants from Afghan, Indian, Filipino, Bosnian and Sierra Leonian communities held in February 2016:

- specific and specialist services for older CALD women
- respite care specifically for CALD women
- centre based activities provided by non-government organisations with bilingual workers who will support older CALD women to participate in group activities and enjoy quality of life
- free interpreting services
- multilingual and plain language resources and information.²⁶⁸

5.60 Thus the Immigrant Women’s SpeakOut Association recommended that funding be provided for:

- support programs that employ specialist bilingual workers to address issues of elder abuse
- the development and implementation of a statewide community education campaign targeting CALD communities about elder abuse (discussed in chapter 4)
- the establishment of a refuge for older women of CALD backgrounds, in particular those who are escaping family and domestic violence
- ongoing training for service providers in cultural competency, use of interpreters, as well as ethnicity, gender and other issues concerning the wellbeing of older CALD people
- interpreting services
- free English conversation classes for older CALD people.

5.61 The Immigrant Women’s SpeakOut Association also recommended that the NSW Government work with non-government service providers to implement a collaborative and whole of government approach to address the needs of older CALD women.²⁶⁹

²⁶⁸ Submission 109, Immigrant Women’s SpeakOut Association, p 2.

²⁶⁹ Submission 109, Immigrant Women’s SpeakOut Association, p 2.

5.62 The case study below captures some of the dynamics of elder abuse in a CALD context.

Case study – Fatima²⁷⁰

In 2012 two sisters sponsored their mother, Fatima, to migrate from the Middle East and she was granted a refugee visa. She lived with one daughter for a period then the other, helping them with housework and child care.

When Fatima started receiving Centrelink payments, her daughters began to fight over where their mother should stay, so that they could gain access to her money.

After two years, Fatima became very unwell and needed someone to look after her. Her daughters tried to pass her care on to each other. They verbally abused her and as her health continued to deteriorate, she became incontinent and lost all independence.

The daughter with whom she then lived moved Fatima into the bathroom and locked her there while their family was out, so that she did not soil the furniture.

Eventually the daughters arranged to have Fatima cared for in a nursing home. They did not visit regularly and she became very lonely. She did not know any English to communicate with the other residents and the staff, and would not eat.

Before Fatima passed away her daughters refused her last wish to go back to her home country to live with her son because they did not want to lose access to her Centrelink payments.

Indigenous communities

5.63 Participants in the committee's consultation with Aboriginal Elders emphasised that Indigenous communities benefit most from local services run by local Aboriginal people, and that access to local services engenders community support, helps to prevent isolation, and builds positive interactions between older and younger people. Participants also highlighted that many services in rural communities are being relocated and thus moved out of reach of many people, or else require people to move away from family in order to access supports.

5.64 Aboriginal Elders made the following recommendations to us for government action.

- Establish an intervention service for older Aboriginal people experiencing elder abuse to provide safety and support without the stigma and fear associated with calling the Police or community services (noted in chapter 8).
- Conduct an education campaign to inform the Indigenous community about elder abuse, its forms, how to recognise it, where to get help and to challenge ageist attitudes (noted in chapter 4).

²⁷⁰ Submission 109, Immigrant Women's SpeakOut Association, pp 1-2. This case study is based on the content of the submission, and the names have been changed.

- 5.65** As a means of duly recognising and supporting Aboriginal communities, and indirectly helping to prevent elder abuse, consultation participants made a number of further recommendations.
- Empower Aboriginal Elders by including them as a key stakeholder group in the strategic plans of government agencies and local governments.
 - Create programs where local Elders can access funding to provide services for their communities and young people.
 - Ensure funding regulations are in step with offering services or providing opportunities to rebuild community connections as well as longer funding timeframe for programs.
 - Provide healing places for the community on country to heal together.
 - Establish a NSW State Aboriginal Elders organisation funded by the NSW Government. The organisation should be a representative body for the Aboriginal Community and an advisory body for the NSW Government, and be responsible for implementing the recommendations identified above.²⁷¹

Case management and coordination

- 5.66** Several participants highlighted the need for services that can provide case management and service coordination in respect of elder abuse.
- 5.67** The EAHRU observed that those experiencing abuse frequently require multiple service types, and that callers to the Helpline – both community members and professionals – often need a ‘stepped approach’ which includes support, capacity building and clear guidance through the stages responding to allegations. In addition, the Helpline has also found that better outcomes are achieved when callers remain with one staff member throughout their interactions with that service, as they build trust with the staff member who knows the history of the abuse and intervention plan, and is able to provide further information, support and referrals accordingly.
- 5.68** The EAHRU reported that the need for case management has increased since the Commonwealth Aged Care changes resulted in the cessation of case management services funded under the former Home and Community Care Program. Accordingly, the EAHRU recommended that the government extend the role of the NSW Elder Abuse Helpline to include case management and coordination for elder abuse cases when required.²⁷²
- 5.69** In a similar vein, Professor Kurrle highlighted as problematic the decision at the Commonwealth level to remove aged care assessment teams from the aged and community care sector, as they had for many years filled the pivotal role of providing expert case management in cases of elder abuse.²⁷³ Professor Kurrle made a strong call for an alternative method of assessment and case management in the health system, proposing that the NSW Government ‘consider the development of teams of health care professionals within each

²⁷¹ Consultation with Indigenous Elders, General Purpose Standing Committee No. 2 and Law Society of New South Wales, 7 March 2016, pp 3-4. See appendix 6.

²⁷² Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 14

²⁷³ Evidence, Professor Kurrle, 22 February 2016, p 9; see also submission 23, Australian Association of Gerontology, p 5.

Local Health District's aged care services to assist in the identification, assessment and management of cases of abuse. This could be in partnership with the corresponding Primary Health Network for each Local Health District to allow for the involvement of general practice.²⁷⁴

- 5.70** Moving away from the health system, the Seniors Rights Service highlighted the Queensland model of legal practitioners and social workers working together to address individual cases of elder abuse:

The legal option is not always the best or most appropriate option. A holistic approach to elder abuse resolution is needed. The Queensland model of Seniors Legal and Support Services attempts to address “whole person issues” in cases of elder abuse. In this model a solicitor and a social worker/counsellor work together to assist the older person to address and set right the elder abuse issues. A number of offices have been established in major towns and cities throughout Queensland and outreach work is also undertaken. These units are auspiced by community legal centres and have proved to be highly effective in responding to elder abuse.²⁷⁵

- 5.71** Similarly, the Mid North Coast Community Legal Centre noted that in some regions of Australia there has been great success in partnering legal and social work professionals to address exploitation and abuse.²⁷⁶

- 5.72** Justice Connect Seniors Law in Victoria advised the committee that under the Health Justice Partnerships model it has partnered with a community health service in the West of Melbourne, which offers integrated and coordinated health, legal and community services. It advocated that the NSW Government consider expanding this model as an effective means of responding to cases of elder abuse in New South Wales.²⁷⁷ Ms Sue Field, lecturer in seniors law at Western Sydney University, endorsed this proposal, saying, ‘At the moment there is very little in the way of formal communication channels [or] partnerships between the health professionals and lawyers working in this area. A more structured approach such as the integrated model [of Health Justice Partnerships] is an excellent example of what can be achieved.’²⁷⁸

- 5.73** Taking an international perspective, Dr Chesterman observed that Scotland's provision for ‘adult protection committees’ serves as a best practice model for service coordination in this area:

We know from the family violence sector that service collaboration is crucial ... I think there are 29 adult protection committees in Scotland, with a population of around 5 million. On these committees a range of service providers meet to talk about

²⁷⁴ Submission 37, Professor Kurrle, p 4; see also evidence, Professor Kurrle, 22 February 2016, p 14.

²⁷⁵ Submission 25, Seniors Rights Service, p 24; see also evidence, Mr Tom Cowen, Manager, Legal Services and Principal Solicitor, Older Persons Legal Service, Seniors Rights Service, 20 November 2015, p 28.

²⁷⁶ Submission 36, Mid North Coast Community Legal Centre, p 6.

²⁷⁷ Submission 19, Justice Connect Seniors Law, pp 4, 5 and 27-30.

²⁷⁸ Answers to questions on notice, Ms Sue Field, Western Sydney University, received 18 December 2015, p 1.

individuals in the local community and responses that need to be provided for the at-risk individuals. That seems to be an ideal scenario for elder abuse.²⁷⁹

Counselling and mediation

- 5.74** The EAHRU also pointed to a need for elder abuse specific counselling services. It explained that in keeping with the rights based approach that respects the wishes of older people, the Helpline's approach is to start with the 'least invasive' intervention possible, for example mediation and counselling before making a guardianship application, as they can be helpful in restoring family relationships and achieving a better outcome for the older person. However, mediation and counselling services are not specifically trained to provide counselling in respect of elder abuse, and their costs can be prohibitive. While GPs can refer patients for free psychology sessions, the older person requires a mental health plan, creating another barrier to service access. The EAHRU thus recommended that elder abuse specific counselling services be established.²⁸⁰
- 5.75** In a similar vein, the OWN and WEL reported a need for specialist counselling services to address psychological abuse of older people, and recommended that counselling for older people be available in community languages.²⁸¹

Accommodation

- 5.76** The EAHRU further highlighted the accommodation needs of some victims of elder abuse. Ms Marshall explained this need, referring to it as a high priority:

Our problem is that if an older person goes into hospital, or is still within the home in a situation of abuse, then there is simply nowhere for them to go that is appropriate. We all tend to think that they can go to a nursing home, but that is not their preferred option. In fact as I said in my submission, they will go back to an abusive situation rather than go into a nursing home. I would say it is a high priority for those who are experiencing abuse.²⁸²

- 5.77** Thus the EAHRU identified a need for:
- short-term emergency accommodation that is appropriate for the needs of older people, with access to support to gain long term accommodation
 - priority access to assessment and community based services to enable the older person to live independently
 - priority access for older people fleeing abuse who have limited finances, to Department of Housing dwellings.²⁸³

²⁷⁹ Evidence, Dr Chesterman, 22 February 2016, p 63.

²⁸⁰ Submission 33, NSW Elder Abuse Helpline and Resource Unit, pp 14-15.

²⁸¹ Submission 55, Women's Electoral Lobby NSW and Older Women's Network NSW, pp 15-16.

²⁸² Evidence, Ms Marshall, 20 November 2016, p 14.

²⁸³ Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 2.

5.78 The OWN and WEL also identified a need for accommodation, calling on the NSW Government to adopt a plan to address housing affordability for older women, including by:

- urgently providing proportionate levels of supported crisis accommodation services for older women
- recognising older people as a specific target group in homelessness programs
- conducting snapshot data collections to monitor usage of Specialist Homelessness Services (formerly Supported Accommodations Program services) and housing services by older women
- reviewing social and public housing programs to ensure appropriate and proportionate access and responses for single older women
- mapping the ‘hidden homelessness’ of many older women
- developing a strong advocacy base to ensure the rights of older homeless women are not neglected.²⁸⁴

5.79 The Australian Association of Gerontology called on domestic violence and elder abuse services to ensure that their respective approaches to service delivery do not allow older people to fall between the gaps:

It is important that domestic violence services have a good understanding of elder abuse and, vice versa, that elder abuse services have a good understanding of domestic violence. Both types of services need to recognise the strengths of each other’s approaches so that victims of elder abuse can receive the right support.

Traditional domestic violence services, refuges and family relationship services are rarely set up to cater for older people and generally do not have experience of supporting victims of abuse perpetrated by sons and daughters. They are certainly inappropriate for older men who are victims of abuse.

Given the demand pressures on domestic violence services it is also important that older people who are the victims of spousal abuse (usually women) are not referred elsewhere simply on the grounds of age.²⁸⁵

Recognition of and responses to ‘systemic abuse’

5.80 Professor Kurrle also advocated better recognition of the ‘significant issue’ of ‘systemic abuse’ of older people.²⁸⁶ She explained this term and called for an appropriate complaints mechanism:

The whole issue of ‘systemic abuse’ is important to recognise. This is abuse that occurs as the result of the health or aged care systems that are in place. It may be beyond the scope of this inquiry to address abuse related to Commonwealth funded services, but with respect to NSW Government services, examples include the use of

²⁸⁴ Submission 55, Women’s Electoral Lobby NSW and Older Women’s Network NSW, p 15.

²⁸⁵ Submission 23, Australian Association of Gerontology, p 6.

²⁸⁶ Evidence, Professor Kurrle, 22 February 2016, pp 12-13.

physical restraints in acute hospitals, the use of chemical restraints (usually psychotropic medication) to manage patients with challenging behaviours, and the forced discharge of older patients to their home because of the need for hospital beds. All these actions cause harm to an older person within what should be considered a relationship of trust.

The NSW Government should consider a system of review and redress perhaps through a Health Ombudsman to allow these issues to be addressed.²⁸⁷

Abuse in aged care settings

5.81 Many inquiry participants voiced concerns about abuse in aged care settings and offered proposals for how this can be better addressed. The committee takes these concerns very seriously. It considers, however, that abuse of older people in aged care is an area of Commonwealth Government responsibility and thus outside the scope of this inquiry. We understand that abuse in aged care settings is being considered during the Australian Law Reform Commission inquiry currently underway, as well as the Senate Standing Committee on Community Affairs inquiry into the future of the aged care workforce.

5.82 We thus limit ourselves to briefly summarising below the issues raised by inquiry participants.

- In elder abuse occurring in aged care, the abuser may be a resident, a family member or friend, or a staff member.²⁸⁸
- People with dementia and associated behavioral and psychological symptoms are more likely to be involved both as victims and abusers.²⁸⁹
- Resident to resident abuse is coming increasingly recognised as an issue²⁹⁰ but remains under reported and documented.²⁹¹
- Residents and their families are generally reluctant to complain as they are frightened of repercussions or feel powerless to access assistance.²⁹²
- Similarly, aged care staff, many of whom are in vulnerable work situations, fear the consequences of reporting abuse.²⁹³
- It is compulsory for serious physical abuse and sexual abuse in high care residential aged care facilities to be reported to police and the Aged Care Complaints Scheme.²⁹⁴

²⁸⁷ Submission 37, Professor Susan Kurrle, p 4.

²⁸⁸ Submission 37, Professor Susan Kurrle, p 2; submission 25, Seniors Rights Service, p 22.

²⁸⁹ Submission 37, Professor Susan Kurrle, p 2.

²⁹⁰ Submission 37, Professor Susan Kurrle, p 2.

²⁹¹ Evidence, Mr Paul Versteeg, Policy Adviser, Combined Pensioners and Superannuants Association, 22 February 2016, p 16.

²⁹² Submission 25, Seniors Rights Service, p 22.

²⁹³ Evidence, Mr Rob Sheehy, Area Manager, Aged Care, Health Services Union, 22 February 2016, pp 24 and 26; evidence, Ms Helen Macukewicz, NSW Nurses and Midwives Association, 22 February 2016, pp 25 and 26; evidence, Mr Angus McFarland, Assistant Secretary, Australian Services Union NSW and ACT (Services) Branch, 22 February 2016, p 27.

²⁹⁴ Submission 37, Professor Susan Kurrle, p 1.

- While restrictive practices (including chemical, mechanical, social or physical restraint and seclusion) are used to protect from harm the older person or others around them, there are concerns that such practices can also be imposed as a means of coercion, discipline, convenience or retaliation by staff or others providing support.²⁹⁵
- Where a person with cognitive impairment is the abuser, a careful response is required that protects the victim whilst not criminalising the abuser.²⁹⁶

5.83 A number of participants thus called for:

- strengthened training for aged care staff on abuse, especially for those without qualifications,²⁹⁷ with better regulated, quality training more generally²⁹⁸
- a more robust aged care complaints mechanism²⁹⁹
- expanded compulsory reporting requirements for providers and data collection, for example of incidents of resident to resident abuse³⁰⁰
- systemic advocacy services to work on behalf of older people and families³⁰¹
- enhanced staffing ratios as a means of reducing abuse³⁰²
- introduction of a working with vulnerable people check, based on the Australian Capital Territory system, to provide a more comprehensive check than current police checks³⁰³
- establishment of a structure to build strong links between providers, local communities and oversight agencies, thereby enhancing integrated care.³⁰⁴

²⁹⁵ Answers to questions on notice, Professor Carmelle Peisah, President, Capacity Australia, received 15 April 2016, p 5.

²⁹⁶ Evidence, Ms Macukewicz, 22 February 2016, p 25; evidence, Professor Kurrle, 22 February 2016, p 12.

²⁹⁷ Evidence, Mr Versteeg, 22 February 2016, p 17; submission 55, Women's Electoral Lobby NSW and Older Women's Network NSW, p 26.

²⁹⁸ Evidence, Commissioner Ryan, 22 February 2016, p 7; evidence, Ms Mel Gatfield, Assistant Secretary, United Voice, NSW Branch, 22 February 2016, pp 24 and 26; evidence, Mr Sheehy, 22 February 2016, p 24; submission 55, Women's Electoral Lobby NSW and Older Women's Network NSW, p 26.

²⁹⁹ Submission 25, Seniors Rights Service, p 22.

³⁰⁰ Evidence, Ms Macukewicz, 22 February 2016, pp 25 and 31; submission 110, Aged Care Crisis, p 4.

³⁰¹ Submission 25, Seniors Rights Service, p 22.

³⁰² Evidence, Ms Macukewicz, 22 February 2016, pp 25 and 28; evidence, Mr Versteeg, 22 February 2016, p 16; evidence, Mr Sheehy, 22 February 2016, p 24; submission 67, Quality Aged Care Action Group Incorporated, p 2.

³⁰³ Submission 41, Combined Pensioners and Superannuants Association, pp 8-9; submission 23, Australian Association of Gerontology, p 5; submission 55, Women's Electoral Lobby NSW and Older Women's Network NSW, p 26; evidence, the Commissioner Ryan, 22 February 2016, p 7; Answers to questions on notice, Ms Sue Field, Adjunct Fellow, School of Law, Western Sydney University, 18 December 2016, p 1; answers to questions on notice, Mr Ian Day, Chief Executive Officer, Council on the Ageing NSW, received 18 December 2016, p 1.

³⁰⁴ Submission 110, Aged Care Crisis, p 15.

5.84 In response to the issues raised by inquiry participants, and their suggested recommendations, aged care providers and others provided the following responses from their perspective.

- The introduction of mandatory reporting of suspected abuse of residents of aged care facilities to the Commonwealth Government and the police has introduced significant administrative burden for little demonstrable benefit to older people.³⁰⁵
- Media reports tend to distort the reality of aged care and paint an unhelpful picture of what is actually occurring. Research which seeks to better understand the reality would be very welcome.³⁰⁶
- Training is effectively already mandatory in aged care, such that further legislative impetus is unlikely to make a difference here.³⁰⁷
- There is no clear evidence that staffing levels have a bearing on resident to resident assaults. Services do have to record these incidents and they are always a focus of unannounced visits.³⁰⁸
- The protective intent behind the proposal for working with vulnerable people checks is appreciated, however the sector is cautious about introducing another administrative requirement without clear evidence that such a check will provide better protections whilst not infringing on the rights of employees.³⁰⁹
- Expanding the Community Visitors Scheme to encompass residents currently not on Commonwealth Subsidised Care may be valuable.³¹⁰
- The Commonwealth could take a more active role in collating the resources and best practices of state based agencies responsible for elder abuse, and apply them in a national approach.³¹¹
- Clear guidelines to appropriately manage and report elder abuse are required.³¹²

Committee view

5.85 Noting that during 2013 and 2014 the NSW Steering Committee for the Prevention of Abuse of Older People met almost monthly, the committee trusts that the meeting in February 2016, after a long delay, is a sign of renewed commitment to that committee's work to address elder abuse. We also underscore that leadership by government officers – exercised and conveyed via regular meetings of the steering committee – will be critical to the sustained effort required

³⁰⁵ Submission 23, Australian Association of Gerontology, p 8; evidence, Mr Paul Sadler, Director, Aged and Community Services NSW and ACT, 7 March 2016, p 14.

³⁰⁶ Evidence, Ms Illana Halliday, Chief Executive Officer, Aged and Community Services NSW and ACT, 7 March 2016, p 15; evidence, Mr Sadler, 7 March 2016, p 15.

³⁰⁷ Evidence, Mr Sadler, 7 March 2016, p 15.

³⁰⁸ Evidence, Mr Sadler, 7 March 2016, p 18; evidence, Ms Halliday, 7 March 2019, p 19.

³⁰⁹ Submission 22, Aged and Community Services NSW and ACT, p 4; evidence, Mr Sadler, 7 March 2016, p 15.

³¹⁰ Submission 30, Leading Age Services Australia NSW – ACT, p 2.

³¹¹ Submission 30, Leading Age Services Australia NSW – ACT, p 2.

³¹² Submission 30, Leading Age Services Australia NSW – ACT, p 2.

to build the strong and comprehensive approach to elder abuse that we have recommended for New South Wales. We expect that the steering committee will be meeting at least quarterly from this point, in order to enhance accountability and to drive the implementation of government policy. Furthermore, in light of our recommendation below addressing training for service providers including health professionals, we emphasise the need for the NSW Ministry of Health to be more actively engaged in this policy area. Similarly, our recommendations in chapter 6 to improve safeguards against financial abuse will require the NSW Department of Attorney General and Justice to become more involved.

Recommendation 3

That the NSW Steering Committee on the Prevention of Abuse of Older People meet at least quarterly in order to enhance accountability and drive the implementation of government policy.

- 5.86** While a number of key stakeholders attested to the value of the *NSW Interagency policy on preventing and responding to abuse of older people* as the key policy document addressing elder abuse in New South Wales, the committee was disappointed to learn that it was not widely publicised among service providers, and that many remain unaware of the policy. Considering that this document is intended to guide service responses, and to provide the framework under which service providers develop their own detailed policies and guidelines, the lack of awareness about it is concerning.
- 5.87** We see merit in a number of the improvements to the content of the interagency policy that were proposed by inquiry participants, especially with regard to duty of care, reporting requirements in respect of a crime, and privacy and confidentiality.
- 5.88** It is timely that FACS is about to commence its review of the interagency policy, now that it has been in place for three years, and we welcome the department's undertaking to consider our recommendations as it performs that work. We consider that in conducting the review, FACS should give due consideration to the content improvements proposed by stakeholders that are documented in our report and indeed the many detailed submissions to our inquiry. FACS should also conduct further consultation on potential improvements with relevant government and non-government organisations. In addition, it will be critical to the success of the revised interagency policy for FACS to develop a comprehensive publicity and dissemination strategy. Equally, identifying the most effective means by which to ensure that service providers actually utilise the document, develop their own policies and exercise their responsibilities under the policy will be critical to its success. We agree with participants that it may be necessary to build agencies' use of the interagency policy into accreditation and funding processes.

Recommendation 4

That in undertaking the three year review of the *NSW Interagency policy for preventing and responding to abuse of older people*, the NSW Government:

- explicitly consider the improvements to content recommended by stakeholders documented in our report, including with regard to duty of care, reporting requirements in respect of a crime, and privacy and confidentiality
 - conduct further consultation on potential improvements with relevant government and non-government stakeholders
 - develop a comprehensive strategy to ensure widespread promulgation of a revised policy
 - ensure that service providers exercise their responsibilities under the policy.
-

5.89 The committee congratulates the EAHRU for the important work that it is doing with older people, family members and service providers on a modest budget. We also congratulate the NSW Government for establishing the unit, and in doing so, enabling much more effective responses to elder abuse in New South Wales. It is apparent to the committee that the strength based approach of the EAHRU is widely respected, with both callers to the Helpline and training participants reporting high levels of satisfaction with its services. Like others, the committee considers both the Helpline and the Resource Unit as essential components to the elder abuse system in New South Wales, and we endorse its continued role. The committee also respects the insights into the gaps and needs in the service system which the EAHRU reported to us, given the unit's unique position within that system.

5.90 It clear to the committee, as highlighted in stakeholders' evidence in respect of the Resource Unit specifically, and training more generally, that there is a very significant need for greater provision of training to service providers to enable them to identify abuse and to respond to it effectively. There are many, many service providers around the state, across numerous sectors and in a plethora of roles, that will be able to perform those roles more effectively – and to assist vulnerable older people more successfully – if they receive training about identifying and responding to elder abuse. The evidence before us also attested to the complexity of the task of responding to abuse, which itself validates the need for quality training provided on an ongoing basis.

5.91 We note that FACS has recently made provision for the EAHRU to deliver 'train the trainer' sessions for managers in service organisations, as well as to develop e-learning tools and webinars. We are hopeful that they will be well utilised and effective and encourage the EAHRU and FACS to duly evaluate these strategies. Given the vast number of relevant service providers across the state, and the particular need to educate health professionals that was highlighted by several participants, the committee recommends that the NSW Government develop and resource a comprehensive plan for the training of service providers over the next four years. This plan must necessarily address not only the role of the EAHRU in delivering training, along with other potential training providers such as local health districts. It must also plan for the needs of the full range of service providers responding to abuse, including general practitioners and other health professionals. With this in mind, and to achieve better reach into the health sector, we believe that this work should be conducted by FACS in conjunction with the NSW Ministry of Health. Again we strongly encourage these

agencies to explicitly consider the views of participants documented in this report and in submissions and oral evidence.

Recommendation 5

That the Department of Family and Community Services and the NSW Ministry of Health develop and fund a comprehensive plan addressing the training needs of service providers, to enable better identification of and responses to abuse. The plan should address:

- the role of the NSW Elder Abuse Helpline and Resource Unit and other potential training providers
 - the needs of the full range of service providers including general practitioners and other health professionals
 - the potential for mandatory training for some service providers.
-

5.92 Participants made a case for a range of strategies to address particular service needs in respect of CALD and Indigenous communities, as well the need for more counselling and emergency and long-term accommodation. The committee was particularly persuaded by the need for case management, owing to the inherent complexity of victims' needs, the multiple interventions that many require, as well as the emotional demands that reporting abuse can place on an individual and their family. In this regard, we consider that the role of the EAHRU could reasonably be expanded to include some provision for case management and coordination, and we recommend this to the NSW Government. In addition, as the government's comprehensive approach to elder abuse enables the community to better recognise abuse, it may be that there is an emerging need for the Helpline to operate beyond its current hours. The government should duly consider this possibility in the future, and ensure that in all aspects of the Unit's work there is adequate provision for culturally and linguistically diverse and Aboriginal clients.

Recommendation 6

That the NSW Government expand the role of the NSW Elder Abuse Helpline and Resource Unit to include:

- provision of case management and coordination
 - consideration of Helpline operating hours, based on an assessment of demand
 - adequate provision for culturally and linguistically diverse and Aboriginal clients.
-

5.93 We also call on the government as it develops the comprehensive approach to elder abuse envisaged in our first recommendation, to explicitly consider participants' proposals for other service system improvements, for example the service model for justice and health partnerships, or similarly, lawyers and social workers working together to address cases of abuse. The following two chapters on financial abuse, as well as the final chapter on policing, investigations and decision making, all focus on the legal dimensions to elder abuse. As the government adopts the legislative and other recommendations we make in the remainder of the report, and the legal landscape around elder abuse changes, we strongly encourage the NSW Government to revisit these potentially valuable proposals from inquiry participants.

- 5.94** In relation to abuse in aged care settings, we reiterate that we take the concerns raised with us by inquiry participants very seriously. Although residential aged care is a Commonwealth Government responsibility and thus outside the scope of this inquiry, we urge that the matters raised with us be given due consideration during the national inquiries currently underway with the Australian Law Reform Commission and the Senate Standing Committee on Community Affairs.

Chapter 6 Financial abuse

As noted in chapter 2, financial abuse is one of the most common forms of elder abuse, along with psychological abuse. Financial abuse emerged as a major focus for our inquiry, with many participants highlighting it as an area ripe for policy and legislative change, especially in order to better prevent abuse from occurring.

In this first of two chapters focusing on inquiry participants' views about how to better prevent and address financial abuse, we begin by documenting a range of examples of financial abuse, along with the challenges to reporting and acting. The committee then turns to a detailed examination of the misuse of enduring power of attorney, which emerged as an area of significant concern to stakeholders, and ways to better safeguard older people who appoint enduring attorneys. These proposed actions include that New South Wales adopt Victoria's legislative model for enduring powers of attorney, greater education for attorneys and the people appointing them, and mandatory registration of powers of attorney. The chapter then explores the desirability of uniform national laws in this area, and concludes with a discussion about the emerging issue of informal granny flat agreements.

Types of financial abuse

6.1 Financial abuse is the illegal use, improper use or mismanagement of an older person's money, financial resources, property or assets without the person's knowledge or consent. The government submission highlighted the potentially profound effects of financial abuse on an older person's circumstances and wellbeing:

The impact of financial abuse on older people can be severe, including homelessness or premature entry into residential aged care, and can contribute to poor mental and physical health. The loss of assets, such as their home, may ruin a person's plans for retirement and leave them dependent on social support for income and housing.³¹³

6.2 In order to set the scene for this chapter's detailed discussion of potential systemic and legislative reforms to enable better prevention and responses to financial abuse, here we document stakeholders' evidence about the various forms and manifestations of financial abuse, as well as the risk factors, contributors and prevalence, and then the challenges to reporting and acting on it.

Examples

6.3 The committee heard many examples of financial abuse, with the following provided by the Australian Association of Gerontology:

- using an older person's money without their consent
- coercing an older person into handing over an asset
- moving into their home for personal gain
- misuse of power of attorney by spending their money in ways that are not in the person's best interests or are for direct personal gain

³¹³ Submission 75, NSW Government, p 24.

- forcing an older person's signature or misleading them about the purpose of a signature
- coercing an older person to become a guarantor without them having sufficient knowledge to make an informed decision
- getting an older person to sign a will or power of attorney through deception or undue influence
- overcharging for or not delivering services, including care services
- promising long term care or accommodation in exchange for money or property (or in order to receive a carer payment or allowance) and then not doing so
- pressuring an older person to take out a loan or a product which is not for their benefit.³¹⁴

6.4 Set out below are several case studies of financial abuse provided to the committee.

Case study – Transfer of mother's house to her son³¹⁵

In March 2016 the Supreme Court ordered that a transfer by a 92 year old woman of her house, her only significant asset, to her son for \$1.00 be set aside, that is, reversed. Because she had lost capacity it was necessary – and lucky for her family – that the NSW Trustee and Guardian brought the proceedings.

The alarm was raised when Centrelink deemed the transfer to be a gift and reduced the mother's pension accordingly. This led to an escalating debt to the nursing home where she resided as fees payable exceeded her income. The manager of the facility in turn applied to NSW Civil and Administrative Tribunal and the NSW Trustee and Guardian was appointed as the financial manager.

Fortunately, the son had not mortgaged the property and the title could be transferred back to his mother. According to Mr Richard McCullagh, a solicitor, this was only achieved because the Trustee and Guardian had the necessary skills to deal with the matter and specialised staff well versed in pursuing the relevant redress in the court.

³¹⁴ Submission 23, Australian Association of Gerontology, p 4; submission 23, Australian Association of Gerontology, pp 3-4, citing Banking and Financial Services Ombudsman, *Financial abuse of the vulnerable older person*, Bulletin 56, December 2007. A comprehensive list of behaviour constituting abuse was also provided in submission 81, Capacity Australia, pp 2-3, submission 25, Seniors Rights Service, p 15, and submission 107, Law Society of New South Wales, pp 1-2.

³¹⁵ Submission 11d, Mr Richard McCullagh, pp 1-2. The decision is *Cohen v Cohen* [2016] NSWSC 336. This case study is based on the content of the submission.

Case study – Fraudulently obtained reverse mortgage over mother’s house³¹⁶

Francesca’s daughter, Teresa, who suffered from a mental illness, moved in with Francesca after her own marriage broke down. Teresa formed an online relationship and started sending large quantities of money overseas. She was able to arrange a reverse mortgage over her mother’s property whereby all of the \$220,000 proceeds were paid to her, and she transferred the funds overseas.

The reverse mortgage was granted in circumstances where Francesca was taken to the bank and Teresa served as the translator. Francesca’s signature was forged then witnessed by a justice of the peace.

Francesca eventually discovered the reverse mortgage and sought help from the Financial Rights Legal Centre. The Centre acted for Francesca in the Financial Ombudsman Service and succeeded in having the reverse mortgage set aside by agreement with the bank.

Case study – Mother coerced into selling her stake in the family business³¹⁷

Anne, a widow aged 79 years, controlled 60 per cent of the family business. Her son with whom she had a strained relationship owned the remaining 40 per cent.

Anne’s son introduced her to a friend, and together the two men cajoled, threatened and bullied her into selling her shares at less than 50 per cent of their true market value – \$1.3 million, not \$2.7 million. They convinced her to change solicitors twice during the sale negotiations and directed her to a solicitor who was known to the purchaser.

Anne’s daughter Judy became aware of the matter when Anne was due to sign contracts of sale. She contacted the Elder Abuse Helpline. After two hours explaining the history of the matter Judy was advised that whilst they understood her concerns there was nothing they could do as the complaint had to be made by Anne.

Risk factors and prevalence

6.5 Underlying all of the actions and examples above is breach of trust, with a trusted person taking advantage of or coercing the older person. Tragically, these and many other examples involved an immediate family member fundamentally breaching the trust of a parent or grandparent. The committee heard that while by no means all older people who experience such financial exploitation have cognitive impairment, such impairment is certainly a risk factor for financial abuse. Alzheimer’s Australia NSW explained:

As symptoms progress, a person with dementia will lose the ability to make financial decisions and manage their finances. The gradual loss of capacity and decline in cognitive abilities ... makes people much more vulnerable and increases their risk of being financially abused, exploited and defrauded.³¹⁸

³¹⁶ Submission 40, Financial Rights Legal Centre, p 6. This case study is based on the content of the submission, and the names have been changed.

³¹⁷ Submission 6, Cooma Monaro Legal Services, p 2. This case study is based on the content of the submission, and the names have been changed.

³¹⁸ Tabled document, Alzheimer’s Australia NSW, *Preventing financial abuse of people with dementia*, discussion paper 10, 2014, p 11.

- 6.6** Other risk factors relate to family relationships and dynamics, social and cultural connections, physical and mental health and wellbeing, and the older person's and abuser's financial circumstances.³¹⁹ Capacity Australia observed that financial abuse is often fueled by ignorance and family conflict, as well as 'inheritance impatience' – discussed below. It further noted that undue influence by one family member over another is commonly facilitated by legal professionals because of their failure to detect when an older person is struggling to manage their financial affairs, that is, when they lack financial capacity.³²⁰ The role of the legal profession in assessing capacity, and potential measures to improve their assessments, are discussed at length in the following chapter.
- 6.7** Inquiry participants attested to the common occurrence of financial abuse and to its growing prevalence. For example, Mr Malcolm Schyvens, Deputy President and Head of the Guardianship Division, NSW Civil and Administrative Tribunal (NCAT), advised the committee that over time, financial management issues have grown as a proportion of cases before the tribunal. He reported, 'Applications relating to the management of a person's financial affairs have tripled since the Guardianship Board days. They now comprise 47 per cent of all applications ... not infrequently [they] involve allegations of misappropriation or exploitation.'³²¹
- 6.8** The NSW Government submission notes that the number of older people vulnerable to financial abuse is likely to rise as families face greater financial pressure associated with the cost of living, high house prices and increasing costs of community and residential care.³²² A further factor is the increased wealth, especially housing wealth, of this generation of older people, which potentially creates motivations for exploitation.³²³
- 6.9** Numerous inquiry participants validated these potential factors when they referred to the phenomenon of 'inheritance impatience'. The Australian Association of Gerontology submission explained this term, which is reflected in the case study below:

Family members may also regard older relatives' assets as belonging to the family rather than the older relatives, since the assets will be coming to them as an inheritance in due course (or so they expect). This has been referred to as 'inheritance impatience'. Younger generations may feel that they can't 'get ahead' without access to financial support from parents or grandparents and this may create undue pressure on older people.³²⁴

³¹⁹ Tabled document, Alzheimer's Australia NSW, *Preventing financial abuse of people with dementia*, discussion paper 10, 2014, p 12; see also evidence, Professor Peisah, President, Capacity Australia and Faculty of Medicine, University of New South Wales, 18 March 2016, p 35.

³²⁰ Submission 81, Capacity Australia, p 4. For further detail see Nick O'Neill and Professor Carmelle Peisah, 'Administration' in *Capacity and the Law* (Sydney University Press, 2011).

³²¹ Evidence, Mr Malcolm Schyvens, Deputy President and Head, Guardianship Division, NSW Civil and Administrative Tribunal, 7 March 2016, p 5; see also evidence, Professor Susan Kurrle, Evidence, Geriatrician, Hornsby Kur-ring-gai and Eurobodalla Health Services and Chair, Health Care of Older People, Faculty of Medicine, University of Sydney, 22 February 2016, p 9.

³²² Submission 75, NSW Government, p 6.

³²³ Submission 23, Australian Association of Gerontology, p 2; see also evidence, Mr Schyvens, 7 March 2016, p 5; and evidence, Hon Susan Ryan AO, Age and Disability Discrimination Commissioner, Australian Human Rights Commission, 2 February 2016, p 3.

³²⁴ Submission 23, Australian Association of Gerontology, p 7. The submission noted that there are cultural differences in attitudes towards assets generated and held by older people, and sensitivity is

Case study – Inheritance impatience³²⁵

Ingrid's father, Andrew, died in 2012 and her mother, Esther, in 2015. Esther, a homemaker, and Andrew, a businessman, were married for 64 years and had five children together. Ingrid alleges Esther experienced financial abuse from her husband and that this pattern was repeated later, in the form of elder abuse by her son.

In 2004, Esther drafted her own will, which Andrew was unhappy with as he wanted a mutual will. Three years later, after spending 10 days in hospital and in a vulnerable state of poor health and cognitive impairment, Ingrid claims that Esther was pressured by Andrew to sign a codicil to change her will according to his preferences. A lawyer was not present, and two of Andrew's employees witnessed Esther's signature.

After Andrew's funeral in 2012, Esther was declared legally incapable at the age of 88. Soon after, her son Simon was appointed enduring power of attorney. Esther's GP did not refer her to a specialist for a neurological or mental health assessment, but completed the required paperwork himself. Six months later, Esther was assessed by a psychogeriatrician who diagnosed Esther with depression and cognitive impairment. The psychogeriatrician was not asked to reverse the GP's assessment of Esther's capability.

Ingrid's four brothers met frequently to discuss Esther's finances without Esther being present. Occasionally, these meetings included the sons' wives, which Ingrid considered inappropriate. Simon often sent his siblings spreadsheets detailing Esther's assets.

Also after Andrew's death, Simon proposed that Esther give her children a substantial amount of money. He claimed that keeping the money in the bank did not necessarily improve Esther's life, but that it would benefit her children who had mortgages or debts. Ingrid disagreed with the proposal, as did one other brother.

While residing in an aged care home, Esther had no means of purchasing goods and services in her daily life as Simon refused to give her any cash. He said he was concerned it would be stolen from her handbag. This meant that she couldn't purchase items such as shoes or clothes, make independent decisions about accessing services such as hairdressing, and participate in excursions with other residents. Simon also refused to pay for Esther's private carers/companions, claiming that she did not need them at the aged care home.

In the year before Esther died, three sons and their wives met to discuss her finances and told Ingrid that Esther's expenses were excessive. They told her to spend less when she took Esther on outings, and expressed concern at the cost of her 90th birthday party.

- 6.10** Aboriginal Elders advised the committee that in their communities, financial abuse commonly occurs in the context of grandparents' need to meet the costs of caring for grandchildren, particularly where the parents are affected by alcoholism, drug addiction, gambling or mental health issues. Children and grandchildren are often the perpetrators of financial abuse, which may be linked with emotional or psychological abuse such as threats to welfare or safety, or to withdraw care. In addition, the traditional culture among older Aboriginal people to share resources in an open and informal way is often abused by young people, who may leave the

required when assessing whether the transfer of assets from parents or grandparents to younger family members, constitutes exploitation or not.

³²⁵ Submission 92, Name suppressed, pp 1-8. This case study is based on the content of the submission and evidence, and the names have been changed.

older person without money or food, or use stand-over tactics to demand money, especially where addiction is an issue. Many older people are too scared to say no to family members asking for or demanding money.³²⁶

- 6.11** Thus there was a broad view among inquiry participants that financial abuse of older people is a widespread and increasing problem that demands urgent action on the part of government. The Age and Disability Discrimination Commissioner, the Hon Susan Ryan AO, told the committee that the need to address financial abuse was ‘extremely urgent’.³²⁷ In addition, Mr Brendan Moore, General Manager, Policy Research and Information, Alzheimer’s Australia NSW, emphasised the value of prevention via disincentives to financial abuse, asserting, ‘Making it harder to perpetrate would be a great development’.³²⁸

Challenges to reporting and acting

- 6.12** The committee heard that financial abuse shares many of the challenges for policy and service provision of other forms of abuse, and also carries its own difficulties in respect of disclosure and action on the exploitation or theft. In a recent discussion paper, *Preventing financial abuse of people with dementia*, Alzheimer’s Australia NSW noted that as with other forms of abuse, victims are often reluctant to report financial exploitation because of loyalty or fear of repercussions, and may not be aware of where they can seek help. In addition, when financial abuse is reported, it can be difficult to substantiate and act on these claims, especially when the victim has dementia.³²⁹
- 6.13** The Law Society of New South Wales explained that it can be very difficult to prove that a person lacked legal capacity and thus was not able to give consent to a financial or legal transaction, or that a transaction was not approved by an older person.³³⁰ Similarly, proving that a family member misappropriated funds can be problematic and time consuming, especially where that individual was the only person with access to all information concerning the older person’s finances.³³¹ In addition, privacy requirements on the part of banks or legal services may prevent staff from raising concerns about financial abuse of an older person.³³²
- 6.14** According to the NSW Government submission, taking action carries its own psychological burdens for older people. Also, many do not have the financial resources to protect their legal rights, and gaining legal representation can be difficult if the prospects of recovering their property are limited.³³³

³²⁶ Consultation with Indigenous Elders, General Purpose Standing Committee No. 2 and Law Society of New South Wales, 7 March 2016, pp 2-3. See full report of this consultation at appendix 6.

³²⁷ Evidence, Commissioner Ryan, 22 February 2016, p 3.

³²⁸ Evidence, Mr Brendan Moore, General Manager, Policy, Research and Information, Alzheimer’s Australia NSW, 22 February 2016, p 43.

³²⁹ Alzheimer’s Australia NSW, *Preventing financial abuse of people with dementia*, discussion paper no. 10, 2014, p 6.

³³⁰ Submission 107, Law Society of New South Wales, p 2.

³³¹ Submission 100, Ms Sarah Breusch, Solicitor, University of Newcastle Legal Centre, p 1.

³³² Submission 75, NSW Government, p 9.

³³³ Submission 75, NSW Government, p 24.

6.15 The committee heard that a further issue impeding effective responses to financial abuse of older people is the law itself. First, participants argued that the law provides insufficient safeguards against financial abuse. Second, despite the common occurrence of financial abuse, the potentially very substantial sums of money that may be stolen, and the significant impact that these losses may have on an older person's life choices and wellbeing, stakeholders told the committee that at present the law in New South Wales does not treat many forms of financial abuse as criminal.³³⁴ The major focus for stakeholders' criticism on both these counts was the law in respect of enduring powers of attorney, discussed at length below.

Misuse of enduring powers of attorney

6.16 Much of the focus of stakeholders' written and oral evidence in respect of financial abuse focused on the need for government to act to improve safeguards in respect of enduring powers of attorney and to strengthen the consequences of misuse. This emerged in our inquiry as a very significant issue in need of reform.

6.17 As noted in chapter 2, a power of attorney is a legal document appointing a person or trustee organisation (the attorney) to act for another (the principal) in respect of their financial affairs. It affords the attorney the legal authority to act on the principal's behalf while they are alive. An ordinary power of attorney ceases to have effect if the person loses mental capacity, while an enduring power of attorney continues in force after the person has lost capacity. A power of attorney can only be legally made when a person still has capacity. While the person has capacity they may revoke it.³³⁵

6.18 Alzheimer's Australia NSW noted that enduring powers of attorney can be both a means of preventing financial abuse and of perpetrating it. It stated that currently, the best way to safeguard oneself against financial abuse is to plan ahead and appoint a trusted individual as an enduring power of attorney.³³⁶

6.19 The committee heard that while most attorneys (the majority of whom are family members) carry out their responsibilities appropriately and often very generously, a minority do not, whether through incompetence, a misguided sense of entitlement, or willful theft.³³⁷

6.20 The Seniors Rights Service advised the committee that under the *Powers of Attorney Act 2003* enduring attorneys are obligated to:

- comply with the directions of the principal if the principal has capacity
- act in the best interests of the principal
- be accountable and keep records of all transactions
- keep the principal's funds separate from their own.³³⁸

³³⁴ Evidence, Mr Ian Day, Chief Executive Officer, Council on the Ageing NSW, 20 November 2016, p 7.

³³⁵ NSW Trustee and Guardian, *A guide for powers of attorney* (2016), p 4; NSW Trustee and Guardian, *Attorney frequently asked questions*, <http://www.tag.nsw.gov.au/attorney-faqs.html>.

³³⁶ Submission 35, Alzheimer's Australia NSW, p 6.

³³⁷ Submission 81, Capacity Australia, p 5.

6.21 According to Ms Sue Field, lecturer in seniors law at Western Sydney University and Ms Mary-Ann de Mestre, a solicitor, the potential for abuse of enduring powers of attorney derives primarily from four factors:

- the principal [or donor] may have cognitive impairment and thus minimal ability to effectively monitor the activities of the attorney
- ‘highly trusted’ family members and relatives are most commonly appointed as attorneys
- both principals and attorneys generally have a limited understanding of the powers and duties of the attorney
- revocation will only protect a principal’s assets from future depletion by the attorney but cannot address any loss the principal has already suffered. To recover any such loss, the principal is required to undertake burdensome recovery proceedings in the Supreme Court.³³⁹

Criticisms of the current law

6.22 Inquiry participants identified numerous specific problems with the current law in respect of enduring powers of attorney in New South Wales: the absence of criminal offences and penalties; poor provisions for compensation of funds lost; obstacles arising from burden of proof; and insufficient supervision of attorneys. Many stakeholders argued that these deficits in the law enable financial abuse to occur or allow it to go unpunished. Each is discussed in turn below.

6.23 The story set out on the following page illustrates many of the deficits in the current enduring power of attorney system.

The absence of criminal offences and penalties

6.24 The committee heard that there are limited options for criminal charges for financial abuse by a person holding an enduring power of attorney. Numerous participants observed that currently the *Power of Attorney Act 2003* does not make theft or fraud by an attorney a criminal offence, nor attach a penalty. The only penalty under the legislation is if the attorney continues to act after being served a notice of a revocation.³⁴⁰ As Alzheimer’s Australia NSW put it, ‘If a person perpetrates financial abuse by misusing an [enduring power of attorney] they cannot be charged with a criminal offence because technically their behaviour, although immoral, is not illegal under NSW law.’³⁴¹

³³⁸ Submission 25, Seniors Rights Service, p 32.

³³⁹ Submission 50, Ms Sue Field, School of Law, Western Sydney University and Ms Mary-Ann de Mestre, Solicitor of NSW, pp 1-2.

³⁴⁰ Submission 25, Seniors Rights Service, p 16; submission 100, University of Newcastle Legal Centre, p 7.

³⁴¹ Submission 37, Alzheimer’s Australia NSW pp 6-7; see also submission 50, Ms Sue Field and Ms Mary-Ann de Mestre, p 4.

Case study – Renee³⁴²

Renee's mother Mavis was diagnosed with dementia in 2002. In 2009 and again in 2010, Mavis appointed her other daughter Stacey with enduring guardianship and enduring power of attorney.

Renee alleges that between 2010 and 2012 Stacey used her power of attorney to drain all of Mavis' money – around \$300,000 – from her bank account. When her mother became very concerned about why Stacey was denying her access to her own bank statements, Renee took her mother to the bank. When the teller showed her that account had been drained, Renee says her mother placed her head on the desk and cried uncontrollably.

When Mavis confronted Stacey, she verbally abused her mother and threatened physical violence. Her aged care facility called the police. Renee made an application to the then Guardianship Tribunal who appointed the NSW Trustee and Guardian to manage Mavis' financial affairs. Renee was disappointed that the Trustee and Guardian did not do more to investigate what had happened to her mother's money, and that the police likewise did not act in relation to the abuse.

Renee believes that the situation could have been avoided had there been some legal requirement for the solicitor preparing the 2009 and 2010 legal documents to be informed of Mavis' dementia. Renee says that people with dementia can be coached to behave as if they had full capacity, and that solicitors can be poor judges of a person's legal capacity. She called for a requirement for a medical certificate verifying the applicant's capacity to avoid these issues.

It also appears that Stacey did not register the power of attorney with the Department of Lands when her mother's house was sold, even though this is required. Renee recommends that all powers of attorney and revocations should be registered, and their details available on a centralised data system. Renee also believes that it would be much harder for financial abuse to occur if two people were appointed as attorney.

It was later discovered that Stacey had a criminal record as she had previously assaulted an elderly man many years earlier. Renee suggests that it should be compulsory for people appointed as power of attorney to make a statutory declaration that they do not have a criminal record.

Stacey was never charged with wrongdoing; nor was any of the money recovered. To Renee, this was a great injustice. She recommends that police should have greater powers to deal with financial abuse, saying to the committee, 'changes have to be made so that the very vulnerable in our society are protected. Powers of attorney are such powerful documents and yet there are no consequences when they are misused to inflict pain and anguish on their victims and to steal everything from them.'

Renee told the committee, 'our mother died, knowing that she had lost everything, especially her pride and dignity [from] not having enough money in her bank account to pay for her funeral costs. She was subjected to extreme abuse from being brave enough to speak up. The psychological impact was enormous and she had to endure so much toward the end of her life – including losing her eldest daughter.'

6.25 According to the Seniors Rights Service, while there are some provisions in the criminal law that could be applied to these types of situations, it is very difficult to obtain evidence that the transactions were not valid under the relevant instrument appointing the attorney.³⁴³ It observed that because of this legal framework, 'There is a tendency to characterise misuse by

³⁴² Submission 94, Name suppressed, pp 1-9; *in camera* evidence, Witness A, 18 March 2016, pp 2 and 6-12, published by resolution of the committee. This case study is based on the content of the submission and evidence, and the names have been changed.

an attorney of the funds of an older person as a civil dispute or a matter for the family to decide, rather than a crime',³⁴⁴ whatever the sums involved.

- 6.26** The Seniors Rights Service called for amendments to the *Power of Attorney Act 2003* to criminalise misuse of funds by an attorney, with attached penalties.³⁴⁵ Similarly, the University of Newcastle Legal Centre recommended the creation of 'offences that explicitly address activities by an attorney that are not in the best interests of the principal, and that these offences carry with them a criminal penalty.' It further suggested that the legislation include a definition of financial abuse such as that in the United Kingdom's equivalent statute.³⁴⁶ Both the Legal Centre and Mr Richard McCullagh suggested that these penalties would also act as a deterrent to 'would be' rogue attorneys.³⁴⁷
- 6.27** The many others who argued in favour of the introduction of offences and penalties for misuse of enduring power of attorney included Capacity Australia,³⁴⁸ the Elder Abuse Helpline and Resource Unit,³⁴⁹ Ms Lise Barry, Senior Lecturer at Macquarie Law School,³⁵⁰ Ms Lee Critchley of Legal Aid NSW,³⁵¹ and Ms Field and Ms de Mestre.³⁵² Council on the Ageing (COTA) NSW asserted, 'There needs to be legal ramifications for people who do not conduct the affairs of the older person for whom they have power of attorney or guardianship. The legal ramifications should be within the criminal jurisdiction.'³⁵³

Poor provisions for compensation

- 6.28** The committee also heard that there are very limited options for seeking compensation where a person has misused a power of attorney.
- 6.29** The committee was informed by the University of Newcastle Legal Centre that at present the sole provision for compensation for losses caused by an attorney under the criminal law is via criminal proceedings for fraud.³⁵⁴
- 6.30** The only other alternative is to bring a civil claim for breach of fiduciary duty, unconscionable conduct or undue influence via the Equity Division of the Supreme Court to claw back whatever assets the attorney has taken.³⁵⁵

³⁴³ Submission 25, Seniors Rights Service, p 16.

³⁴⁴ Submission 25, Seniors Rights Service, p 25.

³⁴⁵ Submission 25, Seniors Rights Service, p 25.

³⁴⁶ Submission 100, University of Newcastle Legal Centre, p 7.

³⁴⁷ Submission 100, University of Newcastle Legal Centre, p 7; evidence, Mr McCullagh, 18 March 2016, p 16.

³⁴⁸ Answers to questions on notice, Mr Nick O'Neill, Director, Capacity Australia, p 1.

³⁴⁹ Evidence, Ms Lise Barry, Senior Lecturer, Macquarie Law School, 18 March 2016, p 30.

³⁵⁰ Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 32; see also evidence, Ms Kerry Marshall, NSW Elder Abuse Helpline and Resource Unit, 20 November 2015, p 12.

³⁵¹ Evidence, Ms Lee Critchley, Civil Law Division Practitioner, Legal Aid NSW, 18 March 2016, p 28.

³⁵² Submission 50, Ms Field and Ms de Mestre, p 6; see also answers to questions on notice, Ms Sue Field, Western Sydney University, 18 December 2015, p 1.

³⁵³ Answers to questions on notice, Mr Ian Day, Council on the Ageing NSW, 18 December 2016, p 2.

³⁵⁴ Submission 100, University of Newcastle Legal Centre, p 5.

- 6.31** However, by the time a civil case is brought and finalised, the funds may have been dissipated.³⁵⁶ In addition, according to Alzheimer’s Australia NSW, pursuing a civil case against the perpetrator is a time consuming, stressful, expensive process, and is unlikely to result in the recovery of stolen assets.³⁵⁷ It further asserted that, “This loophole acts as a significant enabler and masks the actual prevalence of abuse because people believe it is not worth the effort of reporting and pursuing civil action.”³⁵⁸
- 6.32** According to Ms Field and Ms de Mestre, both Queensland and Tasmania have much better provisions under their respective equivalent legislation for compensation or damages where it has been found that an attorney has abused their position for financial gain. Both allow for applications to be made for compensation for loss.³⁵⁹
- 6.33** Inquiry participants suggested that NCAT should play a role in resolving claims for financial redress, as occurs in other jurisdictions. Mr Richard McCullough, a legal practitioner, pointed out that in many instances, the older person does not want to have their child or other family member convicted of a crime; they simply want their money back. He argued that it would be simpler and cheaper for all concerned if NCAT were able to order errant attorneys to pay compensation.³⁶⁰
- 6.34** While the Law Society did not support an expansion of NCAT powers,³⁶¹ both Legal Aid NSW³⁶² and the Legal Services Commissioner asserted that NCAT would be a cheaper and simpler forum for the resolution of the disputes, with the latter stating, NCAT should be the forum for civil sanctions rather than the Courts due to the formality and costs involved in court proceedings.³⁶³
- 6.35** The University of Newcastle Legal Centre recommended that any new legislation allow for compensation to be paid to the principal or, in the event of their death, their beneficiaries.³⁶⁴

³⁵⁵ Evidence, Ms Critchley, 18 March 2016, p 28.

³⁵⁶ Evidence, Ms Critchley, 18 March 2016, p 28.

³⁵⁷ Submission 37, Alzheimer’s Australia NSW pp 6-7; see also submission 50, Ms Field and Ms de Mestre, pp 3-4 and answers to questions on notice, Mr Nick O’Neill, 18 April 2016, p 1.

³⁵⁸ Submission 37, Alzheimer’s Australia NSW pp 6-7; see also submission 50, Ms Field and Ms de Mestre, pp 3-4.

³⁵⁹ Submission 50, Ms Field and Ms de Mestre, pp 2-3.

³⁶⁰ Evidence, Mr McCullough, 18 March 2016, pp 15-16 and 29; evidence, Ms Sarah Breusch, Solicitor, University of Newcastle Legal Centre, 18 March 2016, p 29.

³⁶¹ Evidence, Ms Pam Suttor, Chair, Elder Law and Succession Committee, Law Society of New South Wales, 18 March 2016, p 29.

³⁶² Submission 49, Legal Aid NSW, p 8.

³⁶³ Correspondence from Mr John McKenzie, Commissioner, Legal Services Commission, to Chair, 26 April 2016, p 9; see also submission 25, Seniors Rights Service, p 25.

³⁶⁴ Submission 100, University of Newcastle Legal Centre, pp 4-5.

Burden of proof

- 6.36** As noted above in respect of financial abuse more generally, the burden and level of proof required to successfully prosecute a case are obstacles for an older person who may lack capacity.³⁶⁵ The issue is illustrated in the case study below.

Case study – level of proof required³⁶⁶

Cecil, in his 80s and blind, lived in Department of Housing accommodation. He had appointed his nephew his enduring attorney. Over the course of three years the nephew would empty his uncle's bank account each pension day on the premise he was making withdrawals for his uncle's shopping. He would only give Cecil basic supplies (weetbix, bread etc) and spend the rest of the pension money on himself.

The fraud and theft were discovered when Home Care began assisting Cecil with shopping. He was advised by the Seniors Rights Service to revoke the power of attorney, which he did. The matter was also reported to the NSW Police for investigation.

It is unlikely that Cecil will be able to recover the misappropriated funds due to the difficulty of gathering evidence of sufficient probity to prove the case. Even if the evidence is obtained, recovering funds from the nephew, a person who is also on benefits and lives in social housing, will be difficult.

- 6.37** The Law Society of NSW as well as Ms Field and Ms de Mestre proposed that the present difficulties regarding onus of proof in respect of enduring powers of attorney could be addressed by adopting a Queensland provision for presumption of undue influence. Where the attorney effects a transaction that benefits the attorney or a relation, business associate or close associate, there is a presumption of undue influence which the attorney must rebut.³⁶⁷ This proposal was also supported by Ms Sarah Breusch of the University of Newcastle Legal Centre.³⁶⁸

Insufficient supervision of attorneys

- 6.38** There was also a widespread view that the law in New South Wales does not provide for sufficient oversight of attorneys at present.
- 6.39** Ms Field and Ms de Mestre argued that the law as it stands in New South Wales actually allows abuse to occur because there is no sufficient checking mechanism in respect of attorneys. Unless a third party such as an aged care provider, another family member or a concerned individual who suspects abuse, has a vested interest in the financial affairs of the principal – and subsequently makes an application to the Guardianship Division of NCAT or the Supreme Court for a review of the power of attorney – abuse is likely to go unnoticed.³⁶⁹

³⁶⁵ Submission 25, Seniors Rights Service, p 16.

³⁶⁶ Submission 25, Seniors Rights Service, p 16. This case study is based on the content of the submission, and the names have been changed.

³⁶⁷ Submission 50, Ms Field and Ms de Mestre, p 5; submission 107, Law Society of New South Wales, p 3.

³⁶⁸ Evidence, Ms Suttor, 18 March 2016, p 16.

³⁶⁹ Submission 50, Ms Field and Ms de Mestre, pp 2-3.

- 6.40** Although attorneys are required to keep separate financial records, there is no requirement to ensure the attorney furnishes accounts to a third party, unlike appointed financial managers who must present audited accounts annually to the NSW Trustee and Guardian. Again this contrasts with Queensland and South Australia.³⁷⁰
- 6.41** In addition, Ms Field and Ms Le Mestre argued that the option under clause 4 of the enduring power of attorney form for an attorney to commence their powers ‘once my attorney considers that I need assistance managing my affairs’ also allows financial exploitation to occur, and called for this option to be removed.³⁷¹
- 6.42** Others who called for greater accountability mechanisms in respect of attorneys included the University of Newcastle Legal Centre, COTA NSW, and Ms Kerry Marshall, Manager of the Elder Abuse Helpline and Resource Unit (EAHRU).³⁷²

Means to address misuse of enduring powers of attorney

- 6.43** Inquiry participants suggested various means to address misuse of enduring powers of attorney, including by the introduction of legislation modelled on that recently introduced in Victoria. Beyond the provisions in the Victorian model, participants recommended greater education of attorneys of the people appointing them. There was also debate about the merits of introducing mandatory registration of powers of attorney.

Victoria’s recent changes

- 6.44** There was a widespread view among inquiry participants that many of the deficits in New South Wales’ legislation for enduring powers of attorney could be addressed by changes that were recently legislated in Victoria, and before that, in Queensland.
- 6.45** The committee heard that the following provisions of the *Powers of Attorney Act 2014* (Vic) provide greater protections against abuse of enduring powers of attorney:
- New indictable offences for dishonestly obtaining or using an enduring power of attorney, which are punishable by up to five years imprisonment (ss. 135, 137).
 - Additional powers for the Victorian Civil and Administrative Tribunal including the power to order compensation for any loss caused by the enduring attorney in contravening the Act (ss. 71-72, ss. 77-80).
 - More stringent execution requirements for the making and revoking of enduring powers of attorney, including elevated witnessing requirements (s. 23, ss. 32-36, ss. 44-50).
 - Clear articulation of the duties of enduring attorneys to act honestly, diligently and in good faith and to exercise reasonable skill and care (ss. 63-70).
 - New provisions prohibiting conflict of interest transactions (ss. 64-65).

³⁷⁰ Submission 50, Ms Field and Ms de Mestre, pp 2-3.

³⁷¹ Submission 50, Ms Field and Ms de Mestre, p 4.

³⁷² Submission 100, University of Newcastle Legal Centre, pp 5 and 7.

- New regulation of an enduring attorney's ability to give gifts from the principal's property (s. 67).
 - Creation of the role of supportive attorney, where the principal retains decision making authority whilst receiving assistance with decision making.³⁷³
- 6.46** Stakeholders who spoke in support of various aspects of the Victorian changes included the Seniors Rights Service,³⁷⁴ the NSW Trustee and Guardian,³⁷⁵ Ms Field and Ms de Mestre,³⁷⁶ Ms Barry,³⁷⁷ and the Legal Services Commissioner.³⁷⁸
- 6.47** Capacity Australia strongly advocated that the Victorian changes be introduced in New South Wales.³⁷⁹ Mr Nick O'Neill, Director of Capacity Australia, Professorial Visiting Fellow at the Faculty of Law, University of New South Wales, and former President of the NSW Guardianship Tribunal, articulated his support on several grounds.
- 6.48** First, by adopting the Victorian model, New South Wales would achieve uniformity with Victoria and Queensland, which as discussed in the later section on uniform national laws and interjurisdictional recognition, is highly desirable in this area. Uniformity down the east coast of Australia would deliver consistent coverage of approximately two thirds of Australia's population.³⁸⁰
- 6.49** Second, the Victorian model has introduced much more effective processes at the making stage of an enduring power of attorney. At the making stage, the principal would have to have explained to them the nature and effect of their appointment, and the explainer (legal practitioner) would have to certify that the principal appeared to understand what he or she was doing. Also, before the power of attorney became effective, the attorney would have to have explained to them the nature and effect of the appointment and their obligations as attorney. Further, the explainer would have to certify that the attorney appeared to understand their role and obligations. Under this model, an errant attorney cannot effectively claim that they were unaware of their duties and the consequences of not fulfilling them. Here Mr O'Neill asserted:

³⁷³ Tabled document, Department of Justice, Victoria, *Overview of the Powers of Attorney Act 2014 reforms*, 2015, pp 1-2; submission 3, Office of the Public Advocate, Victoria, p 2; evidence, Dr John Chesterman, Director of Strategy, Office of the Public Advocate, Victoria, 22 February 2016, p 65.

³⁷⁴ Submission 25, Seniors Rights Service, p 16; evidence, Ms Melissa Chaperlin, Solicitor, Seniors Rights Service, 20 November 2015, p 23.

³⁷⁵ Submission 111, NSW Trustee and Guardian, p 7.

³⁷⁶ Submission 50, Ms Field and Ms de Mestre, p 5.

³⁷⁷ Evidence, Ms Marshall, 20 November 2015, p 12.

³⁷⁸ Correspondence from Mr McKenzie to Chair, 26 April 2016, p 9.

³⁷⁹ Submission 81, Capacity Australia, p 18-20; evidence, Mr Nick O'Neill, Director, Capacity Australia, and Professorial Visiting Fellow, Faculty of Law, University of New South Wales 18 March 2016, pp 33-34.

³⁸⁰ Answers to questions on notice, Mr O'Neill, 18 April 2016, p 1.

Because attorneys would have to have explained to them that the legislation requires them, among other things, to act honestly, diligently and in good faith as well as exercise reasonable skill and care, avoid entering into arrangements which may cause a conflict of interest between their interests and those of the maker, and that there could be consequences for them if they fail to do so, in terms of having to account (pay back money of the maker that they cannot account for) or pay compensation, they would not be able to get away with claiming that they didn't know what their obligations were.³⁸¹

- 6.50** Third, the requirement for a person about to become an enduring attorney to acknowledge in writing that they understand their obligations and the consequences of failing to do so and that they undertake to act in accordance with the provisions of the legislation, 'provide substantial safeguards against enduring attorneys acting inappropriately in the first place.'³⁸²
- 6.51** Fourth, were New South Wales to adopt Victoria's provisions for the ordering of compensation, this would provide NCAT with the power, which both the Queensland and Victorian Civil and Administrative Tribunals currently have, to require attorneys who misuse their powers and cause loss to the principal to pay compensation to the principal, or their estate if the loss is discovered after their death.³⁸³
- 6.52** Fifth, in clearly elucidating the responsibilities of attorneys, the Victorian model assists the relevant government and non-government organisations to more clearly communicate those duties within the community, together with information about what a concerned person could do if they had a sound basis for believing that an enduring attorney was acting improperly in relation to the principal's money or property.
- 6.53** Last, the provisions of the Victorian model would also help to 'concentrate the mind' of potentially recalcitrant lawyers who did not carry out their obligation to explain matters as required to the principal and the attorney. According to Mr O'Neill, the failure of a legal practitioner to meet such a clear requirement of practice could amount to unsatisfactory professional, or even professional misconduct, and may also leave the solicitor liable for damages.³⁸⁴
- 6.54** Inquiry participants' views about the need to improve safeguards against errant solicitors as a means of preventing financial abuse are discussed at length in a later section.

Education of attorneys

- 6.55** Beyond the provisions of the Victorian model, participants recommended that educational strategies for attorneys be put in place.
- 6.56** A number of participants such as Ms Marshall of the EAHRU called for greater support and education for attorneys, in addition to greater accountability.³⁸⁵ Similarly, Mr Day of COTA

³⁸¹ Answers to questions on notice, Mr O'Neill, 18 April 2016, p 1.

³⁸² Submission 81, Capacity Australia, pp 19-20.

³⁸³ Answers to questions on notice, Mr O'Neill, 18 April 2016, p 1.

³⁸⁴ Answers to questions on notice, Mr O'Neill, 18 April 2016, p 2.

³⁸⁵ Evidence, Ms Marshall, 20 November 2015, p 12; see also submission 33, NSW Elder Abuse Helpline and Resource Unit, p 32.

NSW called for ‘far greater education of people that take on that role in the first place so they actually understand their obligations’.³⁸⁶

6.57 For Mr Day, education is an important means by which to challenge the belief of some attorneys that now they have power of attorney, the older person’s money is theirs.³⁸⁷ Mr Tom Cowen, Manager of Legal Services and Principal Solicitor with the Older Persons Legal Service, Seniors Rights Service, observed that many agree to the role without a good understanding of what it entails:

Very often, an attorney says, “Yes, I will do the job”, without delving into what it entails and the right way to go about it. Mention a conflict of interest to them and they are startled and say, “What is that?” That is a fundamental piece of knowledge that all attorneys should have.³⁸⁸

6.58 Agreeing that the problem of financial abuse often arises not from outrageously malevolent acts, but from more ‘ordinary’ ones arising from ‘inheritance impatience’, Ms Field agreed on the desirability of education so that attorneys understand their roles and responsibilities.³⁸⁹ Her submission recommended compulsory education of attorneys (and principals) prior to their appointment, perhaps in the form of a short module on the powers and responsibilities of an attorney.³⁹⁰

6.59 Likewise, Alzheimer’s Australia NSW noted that some financial abuse may occur as a result of an attorney not understanding their role, and recommended education for attorneys.³⁹¹ Similarly, Ms Lise Barry, Senior Lecturer at Macquarie Law School asserted, ‘Far more resources should be expended on educating attorneys about their responsibilities.’³⁹²

6.60 On a related issue, the Seniors Rights Service recommend that as part of a mandatory registration system (discussed below), attorneys be required to submit accounts every six to 12 months in relation to the older person’s assets.³⁹³ Sue Field agreed that 12 monthly reporting would be reasonable.³⁹⁴

³⁸⁶ Evidence, Mr Day, 20 November 2015, p 10.

³⁸⁷ Evidence, Mr Day, 20 November 2015, p 3.

³⁸⁸ Evidence, Mr Tom Cowen, Manager, Legal Services and Principal Solicitor, Older Persons Legal Service, Seniors Rights Service, 20 November 2015, p 21.

³⁸⁹ Evidence, Ms Sue Field, Adjunct Fellow, School of Law, Western Sydney University, 20 November 2015, pp 39 and 40.

³⁹⁰ Submission 50, Ms Field and Ms de Mestre, p 4; see also evidence, Ms Field, 20 November 2015, p 37.

³⁹¹ Submission 35, Alzheimer’s Australia NSW, p 8; evidence, Mr Moore, 22 February 2016, p 43; see also Alzheimer’s Australia NSW, *Preventing financial abuse of people with dementia*, discussion paper no. 10, 2014, p 6.

³⁹² Submission 21, Ms Lise Barry, Macquarie Law School, p 9.

³⁹³ Evidence, Ms Chaperlin, 20 November 2015, p 23; evidence, Mr Cowen, 20 November 2015, p 25.

³⁹⁴ Evidence, Ms Field, 20 November 2015, p 38; see also answers to questions on notice, Ms Sue Field, Faculty of Law, Western Sydney University, 18 December 2015, p 1.

Strategies targeting older people appointing substitute decision makers

- 6.61** Participants also pointed to education of older people as they prepare to appoint a substitute decision maker as another non-legislative means of preventing financial abuse. As noted in chapter 4 on prevention, numerous stakeholders pointed to a need for awareness raising in respect of financial abuse and planning ahead tools, including via information in culturally and linguistically appropriate formats for Aboriginal and CALD communities.
- 6.62** There was a broad recognition among stakeholders that older people should exercise wisdom and caution in their choice of substitute decision maker.³⁹⁵ Ms Field emphasised the importance of older people having full and open conversations with family members about who would be the best attorney, even though these conversations may be uncomfortable. She also suggested that often the best attorney is not a family member.³⁹⁶ Mr Moore of Alzheimer's Australia NSW agreed, noting that family members can indeed pose the greatest risk.³⁹⁷
- 6.63** In their joint submission, Ms Field and Ms de Mestre delineated four 'essential and non-negotiable' criteria for an attorney to minimise the risk of financial abuse:
- The attorney must have integrity;
 - They must have financial acumen;
 - They must be fully informed of their responsibilities and the consequences of not adhering to these responsibilities; and
 - They must be available, that is both geographically and willing.³⁹⁸
- 6.64** These authors thus argued that should a proposed attorney not meet all four criteria, 'irrespective of their status, they should not be considered appropriate to be appointed as an attorney.'³⁹⁹ Implicit here is the view that older people would benefit from more information and education in order to make optimal decisions here. Like Ms Field,⁴⁰⁰ the Seniors Rights Service recommended that greater education be provided to older people on the making of an enduring power of attorney and the conditions that can be placed in the document to offer them greater protection.⁴⁰¹
- 6.65** The NSW Trustee and Guardian advised the committee that while promoting the importance of making a power of attorney, it stresses the need to carefully consider who is appointed. It noted that people also have the option to appoint the NSW Trustee and Guardian itself as an independent attorney.⁴⁰²

³⁹⁵ See for example, evidence, Mr Day, 20 November 2015, p 9 and evidence, Mr Moore, 22 February 2016, p 43.

³⁹⁶ Evidence, Ms Field, 20 November 2015, p 32.

³⁹⁷ Evidence, Mr Moore, 22 February 2016, p 43.

³⁹⁸ Submission 50, Ms Field and Ms de Mestre, p 6.

³⁹⁹ Submission 50, Ms Field and Ms de Mestre, p 6.

⁴⁰⁰ Evidence, Ms Field, 20 November 2015, p 37.

⁴⁰¹ Submission 25, Seniors Rights Service, p 33.

⁴⁰² Submission 111, NSW Trustee and Guardian, p 7.

- 6.66** Related to this, the Legal Services Commissioner called for greater endeavours to consolidate the ‘excellent’ information resources available to the public via the Elder Abuse Helpline, Land and Property Information, Law Access and the Department of Justice, and to ensure that the public are aware of them.⁴⁰³

Mandatory registration

- 6.67** There was substantial debate during the inquiry about mandatory registration of enduring powers of attorney as a potential safeguard against financial abuse.
- 6.68** Numerous participants advocated the introduction of a mandatory register. For example, Ms Field and Ms de Mestre recommended that enduring powers of attorney be required to be registered before the instrument takes effect.⁴⁰⁴ Ms Field highlighted the benefits of a register by asking, ‘how many powers of attorney exist? We have no idea – no idea whatsoever. Also, how does a third party know that this is a valid document? How do they know it is the most recent document?’⁴⁰⁵ She noted that no one may actually know if a power of attorney is in existence, or whether it has ever been revoked.⁴⁰⁶
- 6.69** Ms Breusch of the University of Newcastle Legal Centre shared this view, explaining from her practitioner perspective that a compulsory register would be very helpful to lawyers and clients seeking to track down an enduring power of attorney or check its authenticity:

My experience is that at the moment it is too easy for an attorney to become a rogue attorney and not have any checks made until things have gone a long way wrong ... I have encountered this issue where people appointed attorneys at numerous times and cannot remember who or when so in making a new appointment you cannot be certain as to the background and who else is out there with this power. It really confuses the issue ... in terms of who might be acting.

The idea is that would allow an easy check to see who has been appointed but it would allow someone to record a revocation. At the moment a revocation just takes place by individuals, the previously appointed attorney, in writing saying that their power has been revoked. If we do not know their address there is no certainty that person receives it which means that is also complicated.⁴⁰⁷

- 6.70** Ms Breusch envisaged that the register would be publicly accessible, with appropriate safeguards.⁴⁰⁸
- 6.71** Others who supported mandatory registration of enduring powers of attorney included the Seniors Rights Service,⁴⁰⁹ the Combined Pensioners and Superannuants Association,⁴¹⁰ the

⁴⁰³ Correspondence from Mr McKenzie to Chair, 26 April 2016, p 8.

⁴⁰⁴ Submission 50, Ms Field and Ms de Mestre, p 6.

⁴⁰⁵ Evidence, Ms Field, 20 November 2015, p 36.

⁴⁰⁶ Evidence, Ms Field, 20 November 2015, p 36.

⁴⁰⁷ Evidence, Ms Breusch, 18 March 2016, p 16.

⁴⁰⁸ Answers to questions on notice, Ms Sarah Breusch, Solicitor, University of Newcastle Legal Centre, 20 April 2016, p 1.

⁴⁰⁹ Submission 25, Seniors Rights Service, p 32; evidence, Mr Cowen and Ms Chaperlin, 20 November 2015, p 25.

EAHRU,⁴¹¹ Professor Wendy Lacey of the School of Law, University of South Australia,⁴¹² and the Hastings Elder Abuse Prevention Network.⁴¹³ Some of these stakeholders envisaged the register to be national, others state.

- 6.72** The Australian Bankers' Association called for a national register 'so that banks (and other financial institutions, organisations, companies and service providers) can more easily establish the authenticity and currency of [an] instrument.'⁴¹⁴
- 6.73** Noting that in New South Wales, powers of attorney are currently required to be registered in respect of any dealing with land – that is, a transfer, mortgage or lease – Mr Richard McCullagh suggested that Land and Property Information's register for this purpose could simply be expanded.⁴¹⁵
- 6.74** Dr John Chesterman of the Victorian Office of the Public Advocate advised that although a mandatory register is not currently operating in that state, it was recommended in 2010 by a Victorian parliamentary committee and in 2012 by the Victorian Law Reform Commission. Asked whether there would be a cost attached to registration, Dr Chesterman presumed so, noting that the United Kingdom system of mandatory registration operates on a full cost recovery basis through the cost of registration.⁴¹⁶
- 6.75** On the other hand, some inquiry participants argued against mandatory registration, or at least said that there are many issues that need to be carefully considered before adopting this approach.
- 6.76** Alzheimer's Australia NSW raised questions about the cost of a register, who would run it, and who would have access. It noted that there is conjecture about whether or not a register would ensure greater accountability and deter financial abuse, and further suggested that a mandatory register might actually act as a disincentive to taking out enduring powers of attorney, when rates of take up of these instruments are already low in New South Wales. Mr Moore told the committee that Alzheimer's Australia NSW had previously recommended that the NSW Law Reform Commission examine the proposal in detail.⁴¹⁷
- 6.77** Capacity Australia took a firmer position, recommending against mandatory registration on the basis that the various elements of the Victorian model discussed above, if adopted in New South Wales, would provide sufficient additional protections in respect of enduring powers of attorney, without the additional cost burden of a new register.⁴¹⁸ As Mr O'Neill asserted in evidence:

⁴¹⁰ Submission 41, Combined Pensioners and Superannuants Association, p 8.

⁴¹¹ Submission 33, Elder Abuse Helpline and Resource Unit, p 32.

⁴¹² Evidence, Professor Wendy Lacey, Dean and Head of School, School of Law, University of South Australia, 18 March 2016, p 44.

⁴¹³ Submission 53, Hastings Elder Abuse Prevention Network, p 10.

⁴¹⁴ Submission 113, Australian Bankers' Association, p 3.

⁴¹⁵ Evidence, Mr McCullagh, 18 March 2016, pp 16 and 20.

⁴¹⁶ Evidence, Dr Chesterman, 22 February 2016, p 65.

⁴¹⁷ Submission 35, Alzheimer's Australia, p 8; evidence, Mr Moore, 22 February 2016, p 45.

⁴¹⁸ Submission 81, Capacity Australia, p 21 and 45.

I am not a no-registration absolutist, but there are some real problems in forcing registration, particularly if it carries with it the validity of the enduring power of attorney. The stronger and more beneficial ways of going about this would be to adopt the Victorian approach, which requires it to be explained to the person who becomes the enduring attorney, what his or her obligations are, and then signing off that the person understands that. Secondly, for the person administering this to sign off that the person appeared to understand it and that they had met their obligation to explain it to them. So you have two people in the firing line if things go wrong who are not there now plus the compensation arrangements that have been adopted in Victoria.⁴¹⁹

- 6.78** Mr O'Neill expressed further concerns about the cost of such a system and the potential 'chilling effect' of mandatory registration. He also advised the committee that there are cases where powers of attorney were registered with Land and Property Information, but the property was sold anyway, contrary to the interests of the older person.⁴²⁰
- 6.79** The Law Society argued that while a register may be beneficial in enabling the identification of people holding powers of attorney, it is not persuaded that this in itself would actually serve to reduce the incidence of elder abuse.⁴²¹ In evidence, Ms Pam Suttor, elder law practitioner, cautioned against this kind of 'overregulation', emphasising instead the potential role for banks and other financial institutions to help prevent abuse – as discussed in detail in a later section of this chapter.⁴²²
- 6.80** The Legal Services Commissioner, Mr John McKenzie, advised that he does not support mandatory registration on the basis that legal costs will increase if practitioners are required to register the documents, with the client also having to pay the registration fees. He stated his concern that people of lower socioeconomic circumstances would bear a significant cost burden, and advised that in his opinion, registration in respect of land transactions is sufficient.⁴²³
- 6.81** The NSW Trustee and Guardian expressed cautious support for mandatory national registration, with Ms Imelda Dodds, Chief Executive Officer, advising the committee that:

Many people believe national registration would be preferable. In today's society with people moving around and owning assets in other states and territories a national register would be the ideal. Also many financial institutions operate on a national level. It is believed that banks would prefer a national register for this reason.

However each state and territory has different legislation and different forms ... Lack of uniformity makes national registration difficult.⁴²⁴

- 6.82** Ms Dodds noted that such a system would provide data on the numbers of powers of attorney, enable comparison of the proportion of cases of reported abuse versus overall

⁴¹⁹ Evidence, Mr O'Neill, 18 March 2016, p 45.

⁴²⁰ Evidence, Mr O'Neill, 18 March 2016, p 44.

⁴²¹ Submission 107, Law Society of New South Wales, pp 4-5.

⁴²² Evidence, Ms Suttor, 18 March 2016, p 21.

⁴²³ Correspondence from Mr McKenzie to Chair, 26 April 2016, p 9.

⁴²⁴ Answers to questions on notice, Ms Imelda Dodds, Chief Executive Officer, NSW Trustee and Guardian, 1 April 2016, pp 7-8.

powers of attorney made, and provide information on the number of powers of attorney made and actually activated. In addition, the Trustee and Guardian submission raised the question of which organisation would be responsible for a national register.⁴²⁵

Uniform national laws and interjurisdictional recognition

6.83 Earlier in this chapter we documented participants' views about the desirability of adopting Victoria's legislative model in respect of enduring powers of attorney, which itself adopted many of the features of the Queensland model. There was a broader discussion during the inquiry about the desirability of uniform national laws – or at least interjurisdictional recognition – in respect of both powers of attorney (regarding financial orders) and guardianship (regarding health and lifestyle matters).

6.84 The Seniors Rights Service advocated uniform national laws in respect of powers of attorney, recommending that the Commonwealth Government encourage the states to give over their responsibilities with respect to powers of attorney so that these laws apply across all of the states. It argued that this would resolve issues in relation to the enforcement of criminal proceedings against attorneys who reside interstate and avoid the need for extradition.⁴²⁶

6.85 In their hearing, Ms Dodds of the NSW Trustee and Guardian and Mr Graeme Smith, the Public Guardian, attested to the difficulties that arise from the inconsistent laws in respect of both powers of attorney and guardianship. Mr Smith, told the committee that he quite frequently becomes aware of family members deliberately taking their loved one interstate to subvert substitute decision making orders:

It is not unusual for myself, for example, to be appointed as someone's guardian in New South Wales only to have the family take the person across the border beyond my reach. I can seek to have a guardianship order in New South Wales recognised in Queensland but it has to go before [Queensland Civil and Administrative Tribunal] to be determined, and often I will not know where the person is so it becomes a case of reporting the person missing and having the Queensland police trying to locate them. That is not an infrequent occurrence. ... I probably deal with 10 or 15 matters like that annually where a person has been removed from the jurisdiction.⁴²⁷

6.86 Mr Smith advised that the Commonwealth Parliament's Legal and Constitutional Affairs Committee recommended some five years ago that there be national legislation for guardianship and financial administration.⁴²⁸ The Law Society noted its support for that committee's recommendations, and itself recommended that until such time as uniform legislation is in place, jurisdictions maximise the portability of instruments.⁴²⁹

⁴²⁵ Submission 111, NSW Trustee and Guardian, pp 7-8.

⁴²⁶ Submission 25, Seniors Rights Service, p 40.

⁴²⁷ Evidence, Mr Graeme Smith, NSW Public Guardian, 7 March 2016, p 10.

⁴²⁸ Evidence, Mr Smith, 7 March 2016, p 11.

⁴²⁹ Standing Committee on Legal and Constitutional Affairs, *Older people and the law*, House of Representatives, 2009, cited in submission 107, the Law Society of New South Wales, p 7.

- 6.87** Ms Dodds stated her strong support for interjurisdictional recognition of enduring powers of attorney, if not harmonisation, but noted that neither is easy to achieve.⁴³⁰ She advised that the matter is being considered by the Council of Australian Governments (COAG), and that compared with many other matters, ‘there has been enormous good will and effort’ on the part of the relevant interjurisdictional group members to try to bring this area of law into as much similarity as possible.⁴³¹
- 6.88** The Australian Bankers Association asserted that inconsistencies between jurisdictions’ regimes for formal substitute decision making arrangements is a ‘key risk factor’ for financial abuse. It called for consistent and uniform legislation across jurisdictions and for mutual recognition and transferability of formal arrangements between jurisdictions.⁴³²
- 6.89** After her hearing, Ms Dodds advised that she had met with the NSW Cross Border Commissioner about how New South Wales might engage the other states and territories in discussions and action to further harmonise laws relating to guardianship and powers of attorney.⁴³³ She and the Legal Services Commissioner both pointed to the Australian Law Reform Commission (ALRC) inquiry on protecting the rights of older Australians from abuse as a potential impetus for reform,⁴³⁴ while the latter suggested that the prevention of financial abuse is an area that ‘cries out for uniform legislation in all States.’⁴³⁵

Granny flats

- 6.90** There was also some discussion during the inquiry about granny flats as an issue related to financial abuse. Participants were concerned that there needs to be better protection for older people who enter into informal arrangements with their children to pay for additions or enhancements to property, including granny flats, and subsequently have difficulty making a claim for their share of the asset.
- 6.91** Ms Melissa Chaperlin, Solicitor with the Older Persons Legal Service at the Seniors Rights Service, explained to the committee that this is a relatively common issue:

Another systemic problem we get through our service is what we call granny flat issues, where an older person makes a significant contribution to a child’s property to reside there on the understanding they will be able to do so for their life. This might be in the form of building extensions, contributing to a mortgage or having a separate granny flat built on the same property. Often the older person is not on the legal title. When the relationship breaks down the only legal remedy currently in New South Wales is to commence proceedings in the Supreme Court claiming an equitable

⁴³⁰ Evidence, Ms Imelda Dodds, Chief Executive Officer, NSW Trustee and Guardian, 7 March 2016, p 4.

⁴³¹ Evidence, Ms Dodds, 7 March 2016, p 4.

⁴³² Submission 113, Australian Bankers’ Association, p 3.

⁴³³ Answers to questions on notice, Ms Dodds, 1 April 2016, p 4.

⁴³⁴ Answers to questions on notice, Ms Dodds, 1 April 2016, p 4; correspondence from Mr McKenzie to Chair, 26 April 2016, p 9.

⁴³⁵ Correspondence from Mr McKenzie to Chair, 26 April 2016, p 9.

interest and a caveat on the property, which can sometimes result in expensive and lengthy proceedings.⁴³⁶

- 6.92** According to the Seniors Rights Service, these Supreme Court proceedings may be expensive, take several years to be dealt with and be very confronting for an older person who has not engaged in legal proceedings before.⁴³⁷ The Seniors Rights Service thus recommended that, similar to the Victorian Civil and Administrative Tribunal, the NCAT be given jurisdiction to: approve family agreements for the accommodation and care of older people; dissolve family agreements when they are being disregarded or misused or are not protecting the older person; and make compensation payments to the older person.⁴³⁸ The Seniors Rights Service also proposed as a preventative measure that legislation be introduced to provide a standard family agreement for the creation of a granny flat arrangement or any other family financial agreement, with model clauses to protect older people.⁴³⁹
- 6.93** Others who supported the proposal for this expansion to NCAT's jurisdiction included the University of Newcastle Legal Centre⁴⁴⁰ and Mr McCullagh.⁴⁴¹ On the other hand, Ms Critchley of Legal Aid was cautious as to whether NCAT was an appropriate forum for such determinations.⁴⁴²

Committee view

- 6.94** A key message of this report is the need for government to substantially increase its work to prevent the growing problem of elder abuse. In chapter 4 the committee recommended that the NSW Government make a significant new investment in the prevention of elder abuse by preparing and funding a preventative framework that provides for substantially enhanced primary prevention, community education and awareness, community engagement, carer support and later life planning initiatives.
- 6.95** The committee is troubled by the extent of financial abuse brought to our attention by a range of submission authors and witnesses. In light of the strong evidence that financial abuse of older people is already a substantial problem that is expected to increase as the population continues to age, we agree with participants that it demands urgent action on the part of government.
- 6.96** We are especially troubled by claims that the law as it stands provides insufficient safeguards against financial abuse, that it does not treat many forms of abuse as financial abuse as criminal, and indeed that the law is a significant enabler of abuse.

⁴³⁶ Evidence, Ms Chaperlin, 20 November 2015, p 22; see also submission 100, Newcastle University Legal Centre, p 2.

⁴³⁷ Submission 25, Seniors Rights Service, p 17.

⁴³⁸ Submission 25, Seniors Rights Service, pp 16-17 and 30; evidence, Ms Chaperlin, 20 November 2015, p 22.

⁴³⁹ Submission 25, Seniors Rights Service, p 29; evidence, Ms Chaperlin, 20 November 2016, p 26.

⁴⁴⁰ Submission 100, Newcastle University Legal Centre, p 8; evidence, Ms Breusch, 18 March 2016, p 16.

⁴⁴¹ Submission 11d, Mr Richard McCullagh, pp 2-3.

⁴⁴² Evidence, Ms Critchley, 18 March 2016, p 25.

- 6.97** It is clear to the committee that the government can make a very substantial contribution to preventing financial abuse by taking straightforward action to improve legislation. This can be done expeditiously and will actually cost government very little, but enable much stronger protections for the finances of many, many individuals across New South Wales.
- 6.98** The evidence before our committee shows that there is much to be gained by improving New South Wales law in respect of enduring powers of attorney. These instruments fundamentally rely upon an attorney honouring the significant trust placed in them by the principal. It is therefore critical to the integrity of the enduring power of attorney system that the law does all it can to safeguard that trust.
- 6.99** Thus we share the strong concerns of participants that, if a person perpetrates financial abuse by misusing an enduring power of attorney, there are very limited options available under the criminal law. Notwithstanding that an older person may not want their abuser sent to gaol, it seems extraordinary that a person who steals \$10,000, \$50,000 or even \$300,000 from an older person via an enduring power of attorney cannot be charged with a criminal offence. We thus share the view of many participants that offences and penalties should be introduced for misuse of enduring powers of attorney. We further consider that obstacles in relation to burden of proof for older people who lack capacity to prosecute a case should be addressed.
- 6.100** It is also extraordinary that older people or other concerned family members have very limited ability to seek compensation for losses from an attorney, that an attorney who steals a sum of money may never be ordered to pay that money back, and that the option of making a civil claim is so vexed and expensive for the claimant that it is rarely exercised. As a matter of justice, there should be a straightforward process for an errant attorney to be ordered to pay compensation to the principal. We agree that it is sensible that NCAT be afforded this power. Similarly, we see much merit in the view of numerous stakeholders for attorneys to be subject to greater accountability and oversight.
- 6.101** We agree with inquiry participants that many of these deficits would be well addressed by the NSW Government amending this state's powers of attorney legislation in line with the changes recently legislated under Victoria's *Powers of Attorney Act 2014*, which itself was modelled on Queensland legislation. Specifically, the reformed New South Wales legislation should include:
- new indictable offences for dishonestly obtaining or using an enduring power of attorney, which are punishable by imprisonment
 - additional power for NCAT to order compensation for any loss caused by an enduring attorney in contravening the legislation
 - more stringent execution requirements for the making and revoking of enduring powers of attorney, including elevated witnessing requirements
 - clear articulation of the duties of enduring attorneys to act honestly, diligently and in good faith and to exercise reasonable skill and care
 - new provisions prohibiting conflict of interest transactions
 - new restrictions on an enduring attorney's ability to give gifts from the principal's property.

- 6.102** The committee considers that by adopting the Victorian model, New South Wales will significantly enhance protections at the very earliest stage – when enduring powers of attorney are being made – with the effect that attorneys would be much less likely to act inappropriately, and if they did, would be unable to claim that they were not aware of their responsibilities. In addition, restitution of assets will be made much more straightforward (and indeed likely) by enabling the NCAT to order an attorney who has misused their powers and caused loss to a principal to pay compensation to the principal or their estate. The provisions would place a greater onus on legal practitioners to fulfil their own obligations when making an enduring power of attorney. Furthermore, by utilising the Victorian model, New South Wales will not only adopt a highly regarded set of provisions, but in so doing, would achieve uniformity along the east coast in an area of legislation where such uniformity is highly desirable. Like numerous participants, we consider that these amendments are urgently required in New South Wales.

Recommendation 7

That the NSW Government, as a priority, introduce legislation to amend the *Powers of Attorney Act 2003* consistent with Victoria's *Powers of Attorney Act 2014*, thereby significantly enhancing safeguards in respect of enduring powers of attorney.

- 6.103** We agree with inquiry participants that people who take on the attorney role need to be better educated about their roles and responsibilities. The Victorian provisions will address this to a significant extent, but beyond that, further thought needs to be given to the most appropriate means by which this should occur, and how it can actually reach those who would benefit most.
- 6.104** The committee notes that there is some support for mandatory registration of powers of attorney but like others, we agree that there are a number of complex issues that need to be carefully weighed up. It is perplexing that such powerful documents are not registered anywhere; that there is no formal record of those that have been activated and those revoked. A register would rightly enable solicitors, banks and others to check the authenticity of an instrument or to track one down and would also send the signal that these are documents to be taken seriously. It thus seems clear that mandatory registration would deliver greater safeguards against financial abuse, but we also acknowledge the concerns of some stakeholders that this assumption has not been proven, that the costs may prove a disincentive to taking out a power of attorney and/or place an unfair burden on many who cannot afford them. Like others, we see that the greater value would lie in a national register – whilst acknowledging that this outcome is a challenge in the context of legislation that varies between jurisdictions. As Ms Dodds observed, the call for a mandatory register provides an incentive for moves towards uniformity of legislation. In our view, this is another argument for adopting the Victorian model for enduring powers of attorney in New South Wales, as recommended above.
- 6.105** In the committee's view, the complex issue of a mandatory national register of enduring powers of attorney instruments is best considered as part of the Australian Law Reform Commission's inquiry into protecting the rights of older Australians from abuse, and following that, by COAG.

- 6.106** In the same vein, and more generally, the committee agrees in principle that uniform national laws with respect to enduring powers of attorney as well as guardianship are desirable, and that until such time as uniform legislation is in place, that jurisdictions should maximise the portability of instruments. We actively encourage COAG and the relevant interjurisdictional group members to continue to work towards the goal of uniformity.
- 6.107** Finally, the committee recognises that granny flat issues are becoming increasingly common, and we agree that older people would benefit from greater protections with regard to such arrangements. Sadly, it is all too believable that verbal agreements based on trust later dissolve and leave older people financially out of pocket or even homeless. Like several stakeholders, we see merit in the Seniors Rights Service's proposals such for the expanded jurisdiction of NCAT, but we also note the caution of others in this complex area of law. We strongly encourage the NSW Department of Attorney General and Justice to examine this issue in greater detail.

Chapter 7 Legal practitioners and financial institutions

In this second chapter focusing on financial abuse, the committee explores inquiry participants' views about how financial abuse can be better prevented through measures that target legal practitioners on the one hand, and financial institutions on the other.

First, it considers proposed improvements to prevent legal practitioners either knowingly or unknowingly enabling financial abuse to occur, via their work in preparing enduring powers of attorney, wills, contracts of sale and other financial transactions. Here, stakeholders were particularly focused on improving lawyer practices in assessing the mental capacity of the older people instructing them. Next, the chapter examines the measures that the finance industry can implement to ensure their own safeguards against financial abuse, most particularly, training for front line banking staff.

Lawyer practices

- 7.1 A further area of substantial discussion during the inquiry concerned how lawyer practices can be improved as a means of better safeguarding against financial abuse.

Issues of concern

- 7.2 The committee heard allegations of actively unethical practices on the part of legal practitioners; others observed that by not properly fulfilling their role in assessing a person's capacity, lawyers may unwittingly facilitate financial abuse.
- 7.3 The committee took evidence from three *in camera* witnesses who had observed financial abuse of an older relative or friend. All three voiced strong concerns about the actions of lawyers in verifying the capacity of the older person to grant enduring power of attorney and/or make a will. Such concerns were a significant focus in two cases, both of which involved formal complaints to the Office of the Legal Services Commissioner, the statutory body that deals with complaints about lawyers in New South Wales. These stories have been documented as case studies, below.

Case study – James⁴⁴³

James, a retired psychologist, visited Roy, a family friend, and found him confused, very unclean and living in 'appalling' conditions due to his hoarding. James took Roy to his general practitioner, who arranged for him to be assessed in a hospital aged care and rehabilitation unit.

It became apparent that Roy was being financially exploited by his gardener. The clinical nurse specialist appointed to Roy's case made an appointment with the NSW Trustee and Guardian for early 2014 to discuss his finances. The day before the appointment, Roy's neighbour, Mr Black, spoke to his own solicitor and had him speak to Roy on the phone, while Roy was in Mr Black's house. Mr Black

⁴⁴³ Submission 7a, Mr John Clair, pp 1-4; *in camera* evidence, Witness B, 18 March 2016, pp 2-3 and 6-14. Evidence published by resolution of the committee. This case study is based on the content of the submission and evidence, and the names have been changed.

then took Roy to the solicitor's office and had enduring power of attorney and enduring guardianship put in place. The appointment with the Trustee and Guardian was cancelled by either Mr Black or the solicitor. The solicitor also held Roy's will, which named Mr and Mrs Black as sole beneficiaries. The will had been prepared by another solicitor after Roy's father had died in 2009, but Roy had no memory of making it.

James wrote to the solicitor questioning Roy's capacity to sign the enduring power of attorney and guardianship documents, and pointed out the solicitor's conflict of interest in acting for both parties. He forwarded a copy of the letter to the Office of the Legal Services Commissioner. The solicitor arranged for the enduring power of attorney and enduring guardianship to be redone by a second solicitor.

Roy's elderly cousin and James challenged the actions of the first and second solicitors with the Guardianship Division of NCAT, and the enduring power of attorney was dealt with at a hearing mid year. A neuropsychological report prepared just prior concluded that Roy did not have capacity and the Tribunal determined that Roy had not understood what he had done. The enduring power of attorney was suspended and Mr Black was appointed financial manager subject to audit by the NSW Trustee and Guardian.

James told the committee that a long running dispute with the Legal Services Commissioner ensued, culminating in the Deputy Commissioner writing to the first solicitor urging him 'to review the Law Society of NSW client capacity guidelines, and in making determinations as to a client's capacity that you document the steps taken as part of your assessment.' No file notes were produced for the Legal Services Commissioner despite it being considered 'fundamental that solicitors take thorough, comprehensive and contemporaneous file notes of any consultation with clients where capacity is an issue.' James considers it very unsatisfactory that a reminder of best practice was the only action the Legal Services Commission took in respect of the first solicitor; he is unaware of any action in respect of the second.

James argues that despite the Law Society's guidelines stating that 'where a solicitor has doubts about a client's capacity to give competent instructions, it is their responsibility to explore the issue further', both solicitors ignored several red flags: the involvement of the aged care team; the appointment with the Trustee and Guardian; Roy's confused mental state; and the letter from James questioning Roy's capacity.

James says while in Roy's case the enduring power of attorney was suspended, he believes, 'There must be numerous cases where similar actions are perpetrated against the elderly and go unnoticed [or] unchallenged. I suspect this could be the tip of an iceberg.'

In his view, the current system for enduring powers of attorney places enormous trust in solicitors to act ethically where capacity is in question, 'However if a solicitor or lawyer ignores [the] red flags and proceeds regardless, the Legal Services Commissioner can do little more than remind them of best practice, as I found in my case. Such behaviour does not appear to fall within the category of unsatisfactory professional conduct, as defined in the [now repealed] *Legal Profession Act 2004*.⁴⁴⁴ I believe this puts far too much trust in solicitors and lawyers to act ethically when the repercussions for the elderly can be quite disastrous.'

James recommends that:

⁴⁴⁴ The *Legal Profession Act 2004* (NSW) was replaced with the *Legal Profession Uniform Law 2014* (NSW). Complaints about conduct that occurred before 1 July 2015 are dealt with under transitional provisions. See correspondence from Mr John McKenzie, Legal Services Commissioner, to Chair, 26 April 2016, p 1.

- lawyers have a mandatory requirement to follow the Law Society's capacity guidelines
- the guidelines identify warning bells and red flags, and if a threshold number is reached or if there is any question over the person's capacity, then a neuropsychological assessment be required
- wherever a solicitor is acting for both an older person and their potential beneficiary, a neuropsychological assessment must take place before enduring power of attorney can be executed
- lawyers be required to take comprehensive notes in any consultation where capacity is in question
- failure by a solicitor to comply with these requirements should be grounds for unsatisfactory professional conduct and be subject to sanction by the Legal Services Commissioner.

Case study – Martin⁴⁴⁵

Martin's mother in law Eleanor was diagnosed with dementia in 2009. Up until that time her two daughters, Roslyn (married to Martin) and Kate had been close and supportive of each other. Then Eleanor was involved in a serious accident which medical staff suspected was caused by her having dementia. Plans were made for Eleanor to be assessed by specialists and to plan for the future, but in the meantime, Kate arranged for Eleanor to give her \$400,000 towards the purchase of a property.

Kate refused to cooperate with requests to return the money or to finalise the medical assessments. She then organised for Eleanor to alter her affairs via a lawyer – who was not Eleanor's regular solicitor. A longstanding enduring power of attorney naming both daughters and an enduring guardianship legal document naming Roslyn were both revoked. A new power of attorney was created with an accountant named as attorney, as was a new enduring guardianship, with Kate named as guardian. A new will was also prepared with the accountant named as executor and trustee.

Roslyn took the matter to the Guardianship Tribunal. While the Tribunal initially did not find in her favour, over the following three years (and around 15 hearings) Roslyn and Martin successfully challenged the enduring power of attorney and enduring guardianship appointments, based on the Tribunal accepting their 'gold plated' medical evidence that Eleanor lacked capacity when they were made.

Martin alleges that the changes to Eleanor's legal documents were illegal, fraudulent and well orchestrated. He states in his submission that he has 'significant and irrefutable evidence that [Kate] conspired with the accountant and lawyer to effect these changes.' As the NCAT has no mandate to make findings of fraud or other illegalities, and the police have not investigated what they see as essentially family matters, he considers that the perpetrators have not been held to account.

Martin alleges that the lawyer arranged the new documents in full knowledge of Eleanor's incapacity, that he certified and witnessed an enduring guardianship appointment that was unsigned, and that he withheld information from and gave false evidence to the NCAT. He has gained no satisfaction from his complaints about the accountant or the lawyer, and feels that the Office of the Legal Services Commissioner 'defended the actions of the lawyer and were not open to the possibility of his

⁴⁴⁵ Submission 51, Name suppressed; *in camera* evidence, Witness C, 18 March 2016, pp 2-5 and 8-14. Evidence published by resolution of the committee. This case study is based on the content of the submission and evidence, and the names have been changed.

wrongdoing.’

He recommended that in matters where there is any doubt held by family members or others about a person’s capacity, the law should be changed to require people aged 60 or more to undertake a capacity test by an independent medical specialist within 30 days prior to creating, revoking or altering a will, enduring power of attorney or enduring guardianship. This, he argued, would provide a significant safeguard against abuse and reduce the significant costs of dealing with resultant disputes via the Tribunal or the courts.

Martin subsequently recommended instead that a voluntary system be established that if a person wants to maintain the presumption of capacity at the time a legal instrument is executed, they should, before they give instructions for the instrument or before it is executed, undertake a test that will give a reasonable assurance of capacity. The results of such a test should be requested and seen by the legal practitioner at the time of executing any documents. He also suggested that principals be encouraged to advise their immediate family members of the planned changes.

- 7.4** Numerous other inquiry participants raised concerns about lawyer practices in assessing an older person’s legal capacity, and the time that they devote to ensuring that the parties understand the implications of the documents they are party to. Our recommendation in the previous chapter that the NSW Government introduce legislation to amend the *Powers of Attorney Act 2003* consistent with Victoria’s *Powers of Attorney Act 2014*, would go some way to addressing this issue, in that the Victorian model introduced more stringent execution requirements for the making and revoking of enduring powers of attorney, including elevated witnessing requirements.
- 7.5** The committee was advised that when preparing an enduring power of attorney, enduring guardianship or will, it is a lawyer’s role to assess a person’s capacity to make a decision, that is, to assess ‘that the person understands the nature of the particular decision to be made, can weigh up the alternative, understands the consequences of the decision and can communicate it in some way.’⁴⁴⁶ As witness to an enduring power of attorney, a legal practitioner signs a section 19 certificate which effectively states, ‘I explained this enduring power of attorney to the principal and they appeared to understand it.’⁴⁴⁷
- 7.6** Ms Sue Field, Adjunct Fellow in elder law at Western Sydney University, emphasised that solicitors need to take ‘far more time’ ensuring that the parties to an enduring power of attorney understand its implications, and in the case of the attorney, their responsibilities. She observed that, ‘Preparing the power of attorney can be a quick job, and perhaps sometimes it is too quick.’⁴⁴⁸
- 7.7** Capacity Australia observed that policy documents such as the *NSW Interagency policy for preventing and responding to abuse of older people* have codified the importance of legal and medical professionals understanding mental capacity, consent and undue influence, and that practical measures such as the *NSW Capacity Toolkit*⁴⁴⁹ were introduced to advance practitioners’

⁴⁴⁶ Submission 21, Ms Lise Barry, Macquarie Law School, p 5.

⁴⁴⁷ Evidence, Ms Sue Field, Adjunct Fellow in Elder Law, School of Law, Western Sydney University, 20 November 2016, p 33.

⁴⁴⁸ Evidence, Ms Field, 20 November 2016, p 32.

⁴⁴⁹ NSW Attorney General’s Department, *NSW Capacity Toolkit*, 2008.

understanding in relation to the making of wills, enduring powers of attorney, gifts, contracts of sale and other financial transactions. Nevertheless, according to Capacity Australia, ‘many legal and financial professionals undertake only cursory enquiry – usually in the form of closed questions prompting yes [or] no answers – when they are checking that a client understands the documents they are signing, if they check at all. This provides ripe opportunity for abuse by others seeking to exploit the person signing the document.’⁴⁵⁰

7.8 Ms Lise Barry, Senior Lecturer at the Macquarie Law School has conducted research specifically on how lawyers assess the capacity of older people to instruct them. This entailed an examination of the 35 ‘capacity complaints’ lodged with the Office of the Legal Services Commissioner from 2011-2013 – that is, complaints that a lawyer took instructions from a person at a time that the person was allegedly not competent to give them.

7.9 Ms Barry advised the committee that underlying almost all of these complaints were direct or implied allegations of elder abuse, whether in regard to a will, real estate transactions, or the granting of substitute decision making powers. Notably, she observed that ‘What emerges from some of these files is a sense that in a lot of instances, the person making the complaint about a lawyer was doing all within their power to raise an allegation about elder abuse and have some action taken, but that they had struck numerous barriers in doing so.’⁴⁵¹

7.10 Ms Barry told the committee that while New South Wales has the largest proportion of all lawyers in Australia (42 per cent), no lawyer has been prosecuted for the way in which they have taken instructions from an older person. By contrast, in Queensland, which has only 16 per cent of the nation’s lawyers, four such disciplinary matters have been successfully prosecuted.⁴⁵² According to Ms Barry, one of the problems in New South Wales is the absence of clear regulations to guide lawyers in this area of law:

One of the difficulties of pursuing these cases is that there are no clear regulations in NSW regarding the procedure for taking instructions for a power of attorney or enduring guardian appointment, or in situations where an older person’s capacity to give instructions is in doubt. For instance there is no binding requirement that a lawyer follow the guidelines set down in the *NSW Capacity Toolkit* or the Law Society’s own guidelines. There is not even an absolute requirement that the lawyer maintain file notes of the manner in which they took instructions or of how they ascertained that an older person understood the ramifications of appointing an attorney or guardian.⁴⁵³

7.11 Some of Ms Barry’s findings and observations are outlined below.

- Lawyer practices vary widely. Lawyers sometimes have a very limited understanding of the interview skills required to determine an older person’s capacity to appoint a power of attorney or enduring guardian, and that they are doing so free of undue influence.
- There is currently little training for lawyers in the skills required for comprehensive client interviewing.

⁴⁵⁰ Submission 81, Capacity Australia, p 4.

⁴⁵¹ Submission 21, Ms Lise Barry, Macquarie Law School, p 2.

⁴⁵² Submission 21, Ms Lise Barry, Macquarie Law School, p 8.

⁴⁵³ Submission 21, Ms Lise Barry, Macquarie Law School, p 8.

- Lawyers may be discouraged from seeking a professional opinion about an older person's capacity because it can be both time consuming and costly.
- The complaints process itself is very burdensome and time consuming, such that there may be many other cases of similar experiences that were not brought to the attention of the Office of the Legal Services Commissioner.⁴⁵⁴

7.12 Consistent with Ms Barry's findings, Mr O'Neill of Capacity Australia called on lawyers to recognise their responsibility to adjudge capacity much more seriously. He argued that the Queensland prosecutions highlight that solicitors need to be much more careful in taking instructions and making notes of conversations on these issues, asserting, 'It is time to blow the whistle on the profession to be more professional about this issue. It is expected of doctors and psychologists. It is becoming more expected of solicitors and if they are doubtful here, tell them to go across the Tweed and have a look over there.'⁴⁵⁵

7.13 Mr O'Neill also noted the recent decision of the Queensland Civil and Administrative Tribunal which found that a solicitor who had failed to prepare adequate notes of an interview and had not conducted the interview with his client alone until reviewing the documents amounted to unsatisfactory professional conduct.⁴⁵⁶ He further argued that the standard of professional conduct in respect of taking adequate contemporaneous notes in the circumstances of this case is the same standard required of solicitors in New South Wales.⁴⁵⁷

Proposed improvements

7.14 Participants proposed a number of mechanisms to improve solicitor practices in order to better prevent them from wittingly or unwittingly enabling financial abuse.

7.15 Based on her research findings, Ms Barry recommended:

- that lawyers receive further education in assessment of capacity, in how to identify underlying family conflict that may impact upon the older person, on the manifestations of elder abuse and how powers of attorney and enduring guardianship can be used to perpetrate abuse
- that there be more stringent requirements upon lawyers to document the interview process to demonstrate that they have made prior inquiries in respect of an older person giving instructions for the appointment of an attorney or enduring guardian
- if called upon to witness appointments, lawyers should take the opportunity to screen for elder abuse and to provide information to the older person about the steps they can take to address abuse

⁴⁵⁴ Submission 21, Ms Lise Barry, Macquarie Law School, pp 5 and 7; evidence, Ms Lise Barry, Senior Lecturer, Macquarie Law School, 18 March 2016, pp 30-31.

⁴⁵⁵ Evidence, Mr Nick O'Neill, Director, Capacity Australia, and Professorial Visiting Fellow, Faculty of Law, University of New South Wales, 18 March 2016, p 36.

⁴⁵⁶ *Legal Services Commissioner v Given* [2015] QCAT 225.

⁴⁵⁷ Submission 81a, Capacity Australia, pp 1-2.

- that more research be conducted on the interview techniques and screening required in situations where elder abuse may be occurring.⁴⁵⁸

7.16 Ms Barry proposed that as a minimum, lawyers should keep a file note about the questions they asked, or possibly a tick a box document that showed what they asked, rather than the current requirement simply to certify that the person appeared to understand what they were agreeing to.⁴⁵⁹ Similarly, Ms Field and de Mestre recommended that lawyers use a checklist ‘to assess a principal’s understanding of the nature and effect of the power of attorney and guidelines as to how to identify and report evidence of duress, exploitation and any evidence that may put the principal’s capacity into question’.⁴⁶⁰ Asked whether a standard template could be available, with solicitors having the option to instead make a comprehensive file note, Ms Barry agreed that this could work well.⁴⁶¹

7.17 Finally, Ms Barry made a number of observations in respect of the Law Society’s guidelines for legal practitioners, which together suggested that they lack clarity and authority:

There are five different guidelines on the NSW Law Society website ... and I think that causes confusion for lawyers who are seeking guidance. In some respects the guidelines are contradictory. In one set of guidelines it says you could consult a medical practitioner, a local general practitioner. In other guidelines, it says that you must go to a specialist for an assessment. One set of guidelines says you must take note, another set of guidelines does not mention taking notes at all ... They need a clean-up, from my perspective. It is very difficult for [Office of the Legal Services Commissioner] to pursue any complaint in that regard when the guidelines are not consistent. The Law Society has a disclaimer on the guidelines, that they do not vouch for the accuracy of anything in them, that they are just guidelines, that there is no obligation on lawyers to follow them – and lawyers will say that as well – ... “I didn’t follow the guidelines because they are just guidelines; it is not mandatory”.⁴⁶²

7.18 Ms Suttor advised that the Law Society’s *Capacity Guidelines* are currently under review and undertook to take on board matters arising from her hearing.⁴⁶³ She did not support over-regulation,⁴⁶⁴ but asked to comment on the proposed checklist, Ms Suttor indicated that she saw potential value in this.⁴⁶⁵

⁴⁵⁸ Submission 21, Ms Lise Barry, Macquarie Law School, pp 4 and 10; evidence, Ms Barry, 18 March 2016, pp 30-31.

⁴⁵⁹ Evidence, Ms Barry, 18 March 2016, pp 36-37.

⁴⁶⁰ Submission 50, Ms Sue Field, Faculty of Law, Western Sydney University and Ms Mary-Ann de Mestre, Solicitor of NSW, pp 5-6.

⁴⁶¹ Evidence, Ms Barry, 18 March 2016, pp 36-37.

⁴⁶² Evidence, Ms Barry, 18 March 2016, p 37.

⁴⁶³ Evidence, Ms Pam Suttor, Elder Law and Succession Committee, Law Society of New South Wales 18 March 2016, p 18.

⁴⁶⁴ Evidence, Ms Suttor, 18 March 2016, p 13.

⁴⁶⁵ Evidence, Ms Suttor, 18 March 2016, p 18.

7.19 As another means of introducing safeguards around capacity assessment, a number of participants including the three *in camera* witnesses called for a requirement for medical verification of capacity in the making of wills, enduring powers of attorney and/or enduring guardianship documents. As Witness A, referred to as Renee in the case study on page 85, stated in her submission:

As we discovered, solicitors are poor judges of medical issues in relation to capacity, so surely when a power of attorney is being prepared then if a medical certificate formed part of the [power of attorney] documents then this may help to stop some of the abuse. This medical certificate must be completed by the person's treating GP, listing any medical conditions (such as dementia), treating specialists, medications prescribed, a brief medical history and, importantly, how long the GP has been seeing this patient. This would help to stop any diagnosis being hidden from the solicitor when the [power of attorney] is being prepared and also help in relation to any future matters that may arise.⁴⁶⁶

7.20 Similarly, the Elder Abuse Helpline and Resource Unit recommended that a general practitioner or trained clinician be required to 'sign off' an enduring power of attorney so as to provide 'activation', confirming that the older person no longer has capacity.⁴⁶⁷

7.21 On the other hand, Ms Field did not necessarily support medical verification as a matter of course, noting that the delay in obtaining a medical assessment from a specialist doctor could be considerable. Correspondingly, she argued that prevention via education to enable people to appoint the right attorney, as well as to ensure that principals and attorneys understand their roles and responsibilities, is preferable.⁴⁶⁸

7.22 Asked whether medical opinion on a principal's capacity should be provided as a matter of course, Ms Suttor of the Law Society argued for the status quo, in which a medical certificate is sought when the lawyer has reasonable grounds to consider the person's capacity is in doubt.⁴⁶⁹

7.23 Others like Ms Barry, who recommended further education for lawyers as a means of improving practice included the geriatrician Professor Susan Kurrle of the University of Sydney⁴⁷⁰ and Professor Peisah of the University of Sydney and Capacity Australia, with the latter asserting that such training must address the medico-legal interface and when a medical opinion should be sought.⁴⁷¹ Alzheimer's Australia NSW's discussion paper on financial abuse and dementia recommended that the NSW Law Society provide training about financial abuse

⁴⁶⁶ Submission 94, Name suppressed, p 5.

⁴⁶⁷ Submission 33, Elder Abuse Helpline and Resource Unit, p 32.

⁴⁶⁸ Evidence, Ms Field, 20 November 2015, p 37.

⁴⁶⁹ Evidence, Ms Suttor, 18 March 2016, p 21.

⁴⁷⁰ Evidence, Professor Susan Kurrle, Geriatrician, Hornsby Kur-ring-gai and Eurobodalla Health Services and Chair, Health Care of Older People, Faculty of Medicine, University of Sydney, 22 February 2016, p 11.

⁴⁷¹ Evidence, Professor Carmelle Peisah, President, Capacity Australia, and Conjoint Professor, Faculty of Medicine, University of New South Wales, 18 March 2016, p 38.

to lawyers and include this as part of continuing legal education requirements, including through the *'Is it Dementia?'* training resource developed by Alzheimer's Australia.⁴⁷²

7.24 Similarly, Ms Field and Ms de Mestre recommended the introduction of mandatory courses for legal practitioners on the assessment of mental capacity and on enduring powers of attorney. Noting that Western Sydney University seems to be the older university in Australia to teach elder law at the undergraduate level, they recommended that this subject be introduced into other undergraduate law courses.⁴⁷³

7.25 Capacity Australia emphasised the Law Society's responsibilities with respect to instituting practitioner training:

We also recommend that the Law Society pursue more actively the education of its members in regards to their "obligations to consider a person's capacity before acting on instructions about a variety of decisions such as property transactions, civil litigation and future planning," as recommended in the NSW Attorney General's Department Capacity Toolkit. Such education must include the risk factors for and indicators of undue influence (both within and outside will-making) and the specific screening assessment of capacity to make enduring powers of attorney and wills.⁴⁷⁴

The role of the Office of the Legal Services Commissioner

7.26 In light of the two *in camera* witnesses' frustrations about their inability to have errant solicitors held to account, the committee asked Ms Barry of Macquarie Law School to comment, from her perspective as a researcher examining the files of the Office of the Legal Services Commissioner, how the Office's powers and actions might be improved.

7.27 Ms Barry advised that from her perspective, the Office of the Legal Services Commissioner takes these complaints very seriously, as evidenced by their invitation for her to examine those files in a completely transparent way, and their having established capacity as a specific complaints area in 2012. Acknowledging the extreme concern and frustration of complainants, she further observed that the Office is constrained by the *Legal Profession Uniform Law 2014* (NSW) which regulates the profession, defines its role and sets a very high benchmark for misconduct:

The [Office of the Legal Services Commissioner] is constrained by the uniform legislation and the high level of misconduct that is required in order to take any disciplinary action against a lawyer. These cases are always dealt with as consumer disputes. They are not professional misconduct. The [Office] is constrained in that way by the legislation. These complaints do not rise to the level where they can always be prosecuted ... The [Office] does not have powers to investigate. It does not have powers to go in and look at the files, interview in depth and meet all the people involved. It does not have the resources to do the things that complainants clearly want it to do sometimes.⁴⁷⁵

⁴⁷² Alzheimer's Australia NSW, *Preventing financial abuse of people with dementia*, discussion paper no. 10, 2014, p 6.

⁴⁷³ Submission 50, Ms Field and Ms de Mestre, p 5.

⁴⁷⁴ Submission 81, Capacity Australia, p 16.

⁴⁷⁵ Evidence, Ms Barry, 18 March 2016, p 43.

- 7.28** In light of the level of concern among participants about lawyer practices and how the Office of the Legal Services Commissioner responded to complaints, the committee sought comment from the Commissioner and Assistant Commissioner.
- 7.29** In correspondence to the committee, Mr Jim Milne, Assistant Commissioner (Complaints), made a number of observations about complaints concerning legal practitioners. He advised that 13.3 per cent (334) of all complaints received by the Office in 2014-15 related to issues arising out of wills and probate matters. Complaints about lawyers arising from such matters have been gradually increasing (along with the ageing population) over time, to the point where two years ago the Office started recording complaints that go specifically to the issue of capacity of a client. There were 17 such complaints in 2014-15.⁴⁷⁶
- 7.30** He further advised that complaints are most often made about inappropriate actions by lawyers with elderly clients removing or putting in place enduring guardianship and powers of attorney, or altering wills. The more serious allegations relate to lawyers ignoring medical and other evidence of a client's incapacity. He acknowledged that, 'Other than not considering or seeking medical opinions, there are indicators of issues of concern including overriding existing [powers of attorney] ... without due consideration, taking instructions without meeting clients and acting to benefit certain potential beneficiaries of the client's will without considering all parties.'⁴⁷⁷
- 7.31** The Assistant Commissioner noted that there is developing case law (particularly in Queensland)⁴⁷⁸ emphasising the need for lawyers to take proper detailed notes in dealing with elderly clients. Finally, he observed:
- The distinction between a client's testamentary capacity and their capacity to exercise their judgement with respect to other aspects of their life (management of finances, medical issues and accommodation for instance) is an important, and not always well understood, consideration.
 - Whilst the existing guidelines (eg Law Society Capacity Guidelines in NSW) are a valuable resource for all concerned with the interaction between lawyers and elderly clients, there is a need for all such guidelines across Australian jurisdictions to be reviewed, consolidated and better publicised.⁴⁷⁹
- 7.32** In other correspondence to the committee, the Legal Services Commissioner, Mr John McKenzie, provided a detailed explanation of the framework for oversight of legal practitioners in New South Wales, including the avenues for complaint and the responses that currently exist for unsatisfactory professional conduct.⁴⁸⁰

⁴⁷⁶ Correspondence from Mr Jim Milne, Assistant Commissioner (Complaints), Office of the Legal Service Commissioner, to secretariat, 17 March 2016, p 1.

⁴⁷⁷ Correspondence from Mr Milne to secretariat, 17 March 2016, p 1.

⁴⁷⁸ *Legal Services Commissioner v Ford* [2008] LPT 12.

⁴⁷⁹ Correspondence from Mr Milne to secretariat, 17 March 2016, p 1.

⁴⁸⁰ Correspondence from Mr McKenzie to Chair, 26 April 2016, pp 1-4.

7.33 Asked to comment on the suggestion that the Law Society's Capacity Guidelines be made mandatory, the Commissioner's response included:

I am not in favour of any of these Guidelines being made mandatory in all cases where capacity is in question.

Making any set of Guidelines mandatory makes it too prescriptive. Each situation must be assessed on its individual circumstances.

I am also concerned that practitioners who may have an interest in this area but who are not necessarily accredited specialists may abandon this area of law altogether on the basis that it is simply too difficult. This would be a great disservice to people, particularly in regional areas where there are fewer lawyers.

I agree that as matter of course lawyers should record the questions they ask and the responses they receive in interviews where they are attempting to satisfy themselves of a client's capacity. However, I do not agree that this should be made mandatory on the basis that a failure to make file notes would generally not result in disciplinary action in NSW.⁴⁸¹

7.34 The Commissioner advised that between October 2012 and 30 June 2015 the Office received a total of 98 complaints directly relating to issues of capacity, and that no disciplinary action was taken against any of the solicitors who were the subject of complaints. He then gave further insight into the complexity of most matters brought to his attention, stating, 'However, the vast majority of these complaints were difficult, often long running, matters that often turned on contradictory evidence, medical assessments and determinations by the Guardianship Division of NCAAT.'⁴⁸²

7.35 Asked to comment on the proposal for greater education for lawyers in relation to capacity matters, the Commissioner indicated that he supports this 'wholeheartedly', especially via seminars and talks. He further suggested that the insurer for solicitors in New South Wales, LawCover, be asked to include this topic in their risk management talks for professionals. In addition, the Commissioner observed that as succession law is no longer compulsory in university legal education, 'the profession needs to consider new ways to ensure graduate lawyers have the required skills.'⁴⁸³

7.36 In respect of the proposal that a medical certificate be required to verify a person's decision making capacity in respect of power of attorney, Mr McKenzie indicated his personal view that the present requirements in New South Wales, where a medical certificate is confined to matters where the practitioner has reasonable grounds to suspect that the client lacks capacity, are sufficient.⁴⁸⁴

⁴⁸¹ Correspondence from Mr McKenzie to Chair, 26 April 2016, pp 5-6.

⁴⁸² Correspondence from Mr McKenzie to Chair, 26 April 2016, pp 5-6; see also evidence, Ms Barry, 18 March 2016, p 43.

⁴⁸³ Correspondence from Mr McKenzie to Chair, 26 April 2016, p 7.

⁴⁸⁴ Correspondence from Mr McKenzie to Chair, 26 April 2016, p 7.

Banks and other financial institutions

7.37 The final area in which participants called for measures to better prevent financial abuse was in respect of financial transactions. Numerous stakeholders called for banks and other financial institutions to improve staff awareness of the potential for abuse and the ‘red flags’ that should prompt them to act to at least question the appropriateness of a transaction.

7.38 Age and Disability Discrimination Commissioner Susan Ryan highlighted the pivotal position that bank tellers and other front line staff are in, asserting:

In some cases it involves an old, frail person, sometimes with dementia, being brought to the bank by a family member or a “friend”, who says, “She wants to hand her assets to me”, or “She wants to guarantee this loan.” It is now very important that bank tellers on the frontline are trained to see that something is wrong and not proceed before getting more advice.⁴⁸⁵

7.39 Participants such as Alzheimer’s Australia NSW⁴⁸⁶ and Mr O’Neill of Capacity Australia saw this as an issue of banks’ responsibility towards their customers, with the latter stating that in his view, banks and other financial institutions ‘are obliged’ to take practical steps to prevent their interactions with customers being occasions of financial abuse.⁴⁸⁷

7.40 The Law Society called for greater action on the part of financial institutions as an alternative to further regulation of enduring powers of attorney and lawyer practices, as envisaged in the previous sections of this chapter.⁴⁸⁸ Its submission supported three particular recommendations of the House of Representatives Standing Committee on Legal and Constitutional Affairs inquiry into older people and the law:

- that the banking and finance sector develop national industry wide protocols for reporting allegations of abuse and develop training to assist banking staff to identify suspicious transactions
- that it be mandatory for credit providers to advise guarantors regularly on the progress of the loans they have provided surety for, and notify them should any default occur
- that financial institutions be made more aware of the purpose and intentions of enduring powers of attorney.⁴⁸⁹

⁴⁸⁵ Evidence, Hon Susan Ryan AO, Age and Disability Commissioner, Australian Human Rights Commission, 22 February 2016, p 3; see also Hon Susan Ryan AO, Age and Disability Discrimination Commissioner, Australian Human Rights Commission (Financial Services Council Elder Abuse Symposium, Sydney, 19 October 2015) pp 5-6.

⁴⁸⁶ Submission 37, Alzheimer’s Australia NSW, pp 7-8.

⁴⁸⁷ Answers to questions on notice, Mr Nick O’Neill, Director, Capacity Australia and Professional Visiting Fellow, Faculty of Law, University of New South Wales, 18 April 2016, pp 3-4.

⁴⁸⁸ Evidence, Ms Suttor, 18 March 2016, p 17.

⁴⁸⁹ Submission 107, Law Society of New South Wales, pp 7-8.

Efforts by financial institutions to address financial abuse

7.41 The committee heard that banks have to some extent acted on their responsibilities here. Ms Dodds of the NSW Trustee and Guardian advised the committee, for example, that banks have demonstrated cooperation and concern,⁴⁹⁰ and noted that the Australian Bankers' Association have promulgated practice guidelines for their members. She also emphasised that not only banks have obligations here, but the whole financial services sector.⁴⁹¹

7.42 The Australian Bankers' Association recognised that banks 'play a significant role in ensuring adequate safeguards in relation to financial decision making'.⁴⁹² It reported that the Association has worked with various organisations to raise awareness of financial abuse, and has supported research undertaken by Alzheimer's Australia, Capacity Australia, Western Sydney University and Council on the Ageing NSW.⁴⁹³ At the same time it noted a number of significant challenges from the perspective of banks.

- Banks must ensure that they do not breach their legal obligations, including in regards to privacy, in responding to a potential instance of financial abuse. They must act on the instructions of their customers and must assume that a customer can transact, until the law or the medical profession say otherwise.
- Banks must also be careful not to discriminate on the basis of a person's age. It is difficult for a bank to establish a situation of undue influence without making a subjective judgement that may 'discriminate' here.
- Banks have a legal obligation to act in accordance with an authority contained in an enduring power of attorney instrument or other order.
- The bank-customer relationship is a contractual one in which the bank is not at liberty to permit transactions on the customer's account without the customer's mandate. Therefore, a person presenting as an agent of the customer imposes an obligation on the bank to authenticate the arrangement. Recognition by a bank that the authority of a third person to act on behalf of a bank customer is a key liability issue for banks. The duty to authenticate the authority to act as agent as well as establish the identity of the agent needs to be carefully and strictly exercised.
- Financial abuse is often complex and it is difficult to distinguish between an unwise but legitimate financial transaction from an exploitative transaction. The subjective judgements required may offend the customer, and actions may be discriminatory. In addition, banks cannot prevent customers from making informed, but ill-advised decisions.
- Banks also need to ensure that any measures do not disadvantage older people through the diminution of trust in third parties acting in good faith and in the best interests of the older person.⁴⁹⁴

⁴⁹⁰ Evidence, Ms Imelda Dodds, Chief Executive Officer, NSW Trustee and Guardian, 7 March 2016, p 8; see also evidence, Commissioner Ryan, 22 February 2016, p 3.

⁴⁹¹ Evidence, Ms Dodds, 7 March 2016, p 6.

⁴⁹² Submission 113, Australian Bankers' Association, p 2.

⁴⁹³ Submission 113, Australian Bankers' Association, p 4.

⁴⁹⁴ Submission 113, Australian Bankers' Association, p 2.

7.43 The Australian Bankers' Association advised that in the context of these challenges the banking industry has developed two industry guidelines.

- *Protecting vulnerable customers from potential financial abuse* – which explains what financial abuse can look like, how it can impact customers and the bank's relationships with customers, and how staff can respond.
- *Responding to requests from a power of attorney or court-appointed administrator* – which explains how these different legal arrangements work across Australia, how they are used by bank customers and their substitute decision-makers, and how banks should respond to these arrangements.⁴⁹⁵

7.44 As discussed above in the section on a mandatory register of powers of attorney, the Australian Bankers' Association identified the inconsistencies between jurisdictions' regimes for formal substitute decision making arrangements as a 'key risk factor' for financial abuse. It called for consistent and uniform legislation across jurisdictions, for mutual recognition and transferability of formal arrangements between jurisdictions, and for a national mandatory register of powers of attorney.⁴⁹⁶

7.45 Nevertheless, other inquiry participants called for more action so that banking staff do not unwittingly facilitate the financial abuse of their customers. Alzheimer's Australia NSW acknowledged the *Protecting vulnerable customers from abuse* industry guideline, but pointed out that it is not mandatory, has no legal force and makes no binding obligations on individual banks. Alzheimer's Australia NSW thus recommended that all staff of banking and financial service institutions be required to participate in mandatory training about dementia and the actions they can take to prevent or respond to financial abuse of vulnerable clients.⁴⁹⁷ Correspondingly, its discussion paper *Preventing financial abuse of older people with dementia* made three recommendations in respect of banks and financial services institutions:

Staff receive mandatory training on identifying financial abuse using the education modules and resources developed by Capacity Australia

Staff receive mandatory training about dementia using the 'Is it Dementia?' training resource developed by Alzheimer's Australia

Banking and financial services institutions provide information to their customers about how to protect themselves from financial abuse and steps they can take to plan ahead.⁴⁹⁸

7.46 Capacity Australia also called for banks and other financial institutions to take much greater action. It noted that a call by the Banking and Financial Services Ombudsman in 2007 for the development of national protocols and training programs for financial service providers has thus far gone unheeded by industry. Specifically, Capacity Australia reported that, informed by

⁴⁹⁵ Submission 113, Australian Bankers' Association, p 2.

⁴⁹⁶ Submission 113, Australian Bankers' Association, p 3. These issues were also canvassed in Rae Kaspiw, Rachel Carson and Helen Rhoades, *Elder abuse: Understanding issues, frameworks and responses*, Research report no. 35, Australian Institute of Family Studies, 2016, p 36.

⁴⁹⁷ Submission 37, Alzheimer's Australia, pp 7-8.

⁴⁹⁸ Alzheimer's Australia NSW, *Preventing financial abuse of people with dementia*, Discussion paper no. 10, 2014, p 6.

research and consultation with the banking sector as well as the Australian Bankers' Association's industry guideline, it had developed an online tool to teach banking staff about identifying and responding to financial abuse. However, 'Despite the availability, ease of use and efficacy of this tool, launched in February 2015 ... no bank in Australia has availed themselves of [it].'⁴⁹⁹ Capacity Australia further asserted that this remains in sharp contrast to the approach taken in numerous other countries.⁵⁰⁰ It thus recommended that the NSW Government encourage 'banks and other financial institutions, accountants and other financial advisors to take appropriate action, including the development of training programs for their staff, in order to ensure that they conduct their businesses in ways that help to reduce the incidence of financial abuse.'⁵⁰¹

Committee view

- 7.47 The committee takes very seriously the allegations that some lawyers unwittingly – and in some cases, deliberately – facilitate financial abuse. The oral and written evidence of our three *in camera* witnesses, together with the research findings of Ms Barry of the Macquarie Law School, and the information provided to us by the Office of the Legal Services Commissioner, indicate that there is a need for action to improve legal practitioners' assessments of people's mental capacity and that some lawyers do need to devote more time to ensuring that the parties to wills, enduring powers of attorney, contracts of sale and other financial transactions understand the implications of the documents they are about to sign. As was pointed out to us, a failure on the part of legal practitioners to take the necessary care in fulfilling their responsibilities provides a ripe opportunity for abuse by others.
- 7.48 The evidence before us has also highlighted the weighty responsibilities that the law confers on lawyers here, the complex issues of which legal practitioners should be aware, and the substantial risks of not exercising their duty as carefully as they should.
- 7.49 For these reasons the committee sees significant value in the Law Society of New South Wales, which is responsible for continuing education of legal practitioners, introducing a unit on the assessment of mental capacity in respect of substitute decision making, wills and property transactions as part of its Continuing Professional Development Program. The training should address:
- interview techniques to enable effective determination of capacity
 - the manifestations of elder abuse, risk factors for undue influence, and how legal instruments such as powers of attorney can be used to perpetrate abuse
 - the medico-legal interface, including when a medical opinion should be sought
 - legal practitioners' responsibilities, as set out in Law Society's revised *Capacity Guidelines*.

⁴⁹⁹ Submission 81, Capacity Australia, p 10; see also evidence, Mr O'Neill, 18 March 2016, p 34 and answers to questions on notice, Mr O'Neill, 18 April 2016, pp 3-4.

⁵⁰⁰ Submission 81, Capacity Australia, pp 10-11.

⁵⁰¹ Submission 81, Capacity Australia, p 16.

- 7.50** In respect of the *Capacity Guidelines* themselves, the committee is pleased that the Law Society has already commenced the task of reviewing them. We strongly encourage the Society to accomplish this task and publish a new set as a priority, and in doing so, consider the evidence documented in this chapter about how the guidelines should be consolidated and improved. In particular, we highlight participants' calls that the *Guidelines* make very clear the need to keep detailed notes of interviews with clients when assessing capacity – that is, the questions lawyers ask and the answers they are given. We see significant value in the inclusion of a checklist that facilitates an assessment of the principal's understanding of the nature and effect of powers of attorney and other relevant documents which they are about to sign. This checklist should also address the issue of notification and/or non-notification of family members in relation to the wishes of the principal. Legal practitioners could use the checklist or alternatively make their own comprehensive notes.

Recommendation 8

That the NSW Government liaise with Law Society of New South Wales to request that the Society include a unit on the assessment of mental capacity in respect of substitute decision making, wills and property transactions in its Continuing Professional Development Program for legal practitioners.

- 7.51** On a related matter, the committee notes that elder law is not an element of any undergraduate law program, apart from at a single university, when this is such a common aspect of legal practice, particularly for suburban solicitors. Law schools could consider their responsibilities in respect of teaching and research in this area.
- 7.52** While we acknowledge the call of some inquiry participants for a medical assessment of capacity, or at least a medical certificate to verify a person's capacity, as an essential step in respect of enduring powers of attorney, we do not believe that we have sufficient evidence from a range of stakeholders to make such a recommendation. In the absence of this evidence, we are satisfied with the current requirements for a medical certificate to be confined to matters where the practitioner has reasonable grounds to suspect that the client lacks capacity.
- 7.53** Finally, the committee agrees with stakeholders that the finance industry has a responsibility towards its customers to take practical steps to prevent abuse. We acknowledge that the banking industry, as represented by the Australian Bankers' Association, takes this responsibility seriously and has adopted measures to give it some effect. Like others, however, we note that the guidelines are non-binding on individual banks, and we wonder what effect they actually have at the counter of the many bank branches around New South Wales. In addition, it is disappointing that despite the Association's work in this area, including its collaborative work with some inquiry stakeholders, no banks have yet made use of Capacity Australia's online training tool for front line banking staff. The committee considers that the Elder Abuse Helpline and Resource Unit should be funded to provide information sessions with financial institutions aimed at raising awareness of financial abuse and promoting the use of online training tools.

Recommendation 9

That the NSW Government fund the NSW Elder Abuse Helpline and Resource Unit to conduct information sessions with financial institutions to raise awareness of financial abuse and promote online training tools for staff such as Capacity Australia's training program to identify financial abuse.

- 7.54** Beyond banking, we also underscore the responsibility of all financial institutions in this area. The committee agrees that greater action in the form of training programs for front line staff and supervisors across the financial sector is highly desirable. At the same time, we recognise that the regulation of banking and other financial institutions is a matter for the Commonwealth Government. As such, we again believe that in the first instance, this issue should be considered as part of the Australian Law Reform Commission inquiry.
- 7.55** In conclusion, we note how easily all sorts of financial transactions are carried out now via electronic means. Modern technology enables all of us to manage our financial affairs with less effort and more immediacy, but it also carries risks. As technologies continue to evolve it will be important for all of us, especially the finance industry, to keep a close eye on the potential for exploitation, particularly with respect to vulnerable people, and to mitigate such risks.

Chapter 8 Policing, investigation and decision making

This chapter focuses on the means through which allegations of elder abuse can be investigated, and where appropriate, legal decisions made to protect the welfare and resources of an older person. It begins by documenting the various constraints that are known to affect the reporting of abuse. The chapter then explores inquiry participants' views about how the NSW Police Force responds to elder abuse. Next, it examines what numerous stakeholders referred to as the 'investigation gap' that impedes timely intervention to protect vulnerable adults experiencing elder abuse, and the various calls for a Public Advocate with investigative powers to be established in New South Wales. The chapter concludes by briefly considering the work of the Guardianship Division, NSW Civil and Administrative Tribunal.

Barriers to reporting

8.1 The committee heard that the barriers to people reporting abuse and seeking help are substantial and numerous. The Seniors Rights Service suggested that these barriers fall into two categories: individual barriers that are 'internal' to the individual; and systemic or external barriers. It listed the following individual barriers to reporting.

- The older person may not realise that they are being subject to elder abuse, but consider the treatment as normal.
- The older person may have diminished capacity, such as a cognitive barrier.
- They may have a physical or mental disability that either reduces their understanding of what is happening to them or their capacity to explain it to a third person.
- They may have restricted mobility.
- They may lack knowledge about their rights or the resources available to help them.
- They may be socially isolated.
- Their need to preserve their relationship with the abuser may overwhelm their desire to report the abuse.
- They may be so dependent on the abuser or others that they cannot risk reporting the abuse.
- They may be overawed by the stigma or shame that would flow from disclosure.
- They may fear reprisal by the abuser if they report the abuse.
- There may be cultural, religious or generational barriers.
- There may be literacy or language barriers.
- They may perceive or actually lack access to support services or options.⁵⁰²

⁵⁰² Submission 25, Seniors Rights Service, pp 27-28. See also submission 41, CPSA, p 6; submission 35, Alzheimer's Australia NSW, p 5; and Rae Kaspiew, Rachel Carson and Helen Rhoades, *Elder*

- 8.2** The Seniors Rights Service advised that in its experience, very often the older person does not want to take action against their children or other family members; they just want the abuse to stop.⁵⁰³ Professor Carmelle Peisah, President of Capacity Australia and Conjoint Professor, Faculty of Medicine at the University of Sydney, attested to the strength of these internal barriers, stating:

We know from the scientific literature that older people who have been abused by their family members—and we all know that this is the most common scenario—often do not even see it as abuse. They feel deeply ashamed and they will not report it. ... It is particularly so for our older Australians from culturally and linguistically diverse backgrounds.⁵⁰⁴

- 8.3** The Seniors Rights Service went on to identify a range of systemic barriers as well:

The first barrier that should be mentioned is that staff in organisations that deal with older people may not listen clearly to the older person. This is actually quite a serious problem. SRS has many case studies where a parent is being controlled by their adult child to the extent that the child instructs solicitors, aged care staff, doctors and others about the older person's needs. Often the older person is not present or does not speak up at that time.

When the older person does speak up it is often too late – the crucial decisions about accommodation, health care or finances have been made or the staff member being spoken to does not listen or take seriously the older person's expressed concerns, choosing instead to rely on conversations with the support person.⁵⁰⁵

- 8.4** The NSW Government submission also identified a range of barriers, then acknowledged the potential to further educate and raise awareness about elder abuse:

There are a range of systems and initiatives in place in NSW to raise awareness of elder abuse, but there is scope to further increase understanding of elder abuse among the community. Increasing the visibility of elder abuse as a significant problem that may be experienced by older people is key to increasing the likelihood that a friend, relative or the older person themselves will recognise when abuse is occurring and seek help. Working to address attitudes and knowledge about abuse of older people will improve the responsiveness of the community as a whole to stopping abuse.⁵⁰⁶

Policing

- 8.5** In this section the committee considers stakeholders' views about how the NSW Police Force responds to elder abuse. First we provide some background information on the kinds of abuse to which police have a mandate to respond.

abuse: Understanding issues, frameworks and responses, Research report no. 35, Australian Institute of Family Studies, 2016, p 10.

⁵⁰³ Submission 25, Seniors Rights Service, pp 26-28.

⁵⁰⁴ Evidence, Professor Carmelle Peisah, President, Capacity Australia, and Conjoint Professor, Faculty of Medicine, the University of Sydney, 18 March 2016, p 33.

⁵⁰⁵ Submission 25, Seniors Rights Service, pp 26-28

⁵⁰⁶ Submission 75, NSW Government, p 9.

Background

8.6 The *NSW Interagency policy for preventing and responding to abuse of older people* outlines the circumstances in which police intervention **must** be sought in responding to cases of elder abuse, including where:

- the abusive situation results in serious injury inflicted on the victim
- the perpetrator has access to a gun and is threatening to cause physical injury to any person
- the perpetrator is using or carrying a weapon (including guns, knives or any other weapon capable of injuring a person) in a manner likely to cause physical injury to any person or likely to cause a reasonable person to fear for their safety
- an immediate serious risk to individual(s) or public safety exists, or workers are threatened.⁵⁰⁷

8.7 In addition to these extreme circumstances, there are of course many situations where family members, older people or concerned third parties seek help via the police.

8.8 The NSW Government submission conceptualised the police role as follows:

The NSW Police Force is an essential agency in responding to abuse of older people. Police officers work in the community, and so are well placed to recognise an older person who may be experiencing abuse.

Abusive behaviour can often constitute a crime, such as assault or neglect, and where police intervention is sought, officers are able to investigate and take appropriate action. However, the abused older person can often be reluctant to take such action for fear of losing their family, carer or their home ...

Police have various powers to respond to elder abuse under the *Crimes (Domestic and Personal Violence) Act 2007* and *Crimes Act 1900*. It is also noted that under 21A(2)(h) of the *Crimes (Sentencing Procedure) Act 1999*, the Court is to take into account whether the offence was motivated by hatred for, or prejudice against, a group of people to which the offender believed the victim belonged (such as age, or having a particular disability), when determining the appropriate sentence for an offence.⁵⁰⁸

8.9 The NSW Government advised that with the establishment of the Elder Abuse Helpline and Resource Unit (EAHRU), police officers are supported to respond holistically to the needs of older people experiencing abuse. The EAHRU works with police through a model of continuous improvement, providing ongoing feedback on what works well and areas where further support and education is needed.⁵⁰⁹

⁵⁰⁷ Submission 75, NSW Government, p 12. The interagency policy outlines that while it is always necessary to consult with the older person about making a report to police, in serious cases such as those described above it is not necessary to gain consent to contact the police. This approach seeks to balance the rights of older people to make their own decisions with the need to protect those at risk of serious harm.

⁵⁰⁸ Submission 75, NSW Government, p 22.

⁵⁰⁹ Submission 75, NSW Government, p 22.

- 8.10** Assistant Commissioner Denis Clifford, Commander in the NSW Police Force and Corporate Spokesperson on Vulnerable Communities, advised the committee that an analysis of the COPS database indicated that there were 2,063 cases in the 2014-15 financial year that could be categorised as abuse of a person aged over 50 years, where the victim had a relationship with the offender.⁵¹⁰ These involved ‘assault’ (1,456 incidents) or ‘offences against the person – other’ (607 incidents), which was comprised almost completely of intimidation and harassment offences, and two recorded incidents of kidnapping.⁵¹¹
- 8.11** Assistant Commissioner Clifford also indicated that since 2012 there have been three prosecutions under the *Crimes Act 1900* for the offence of failure to provide the necessities of life. In one matter the offender was convicted of manslaughter. The other two cases were before the courts at the time of his appearance before the committee.⁵¹²

Stakeholder views

- 8.12** There was quite a convergence of views among inquiry participants as to the performance of the police in responding to abuse. Overall, participants valued a police response. They called for more training to address variations in quality of response, and almost universally recommended that more Vulnerable Community Support Officer positions, of which there is currently only one, be established around the state.
- 8.13** The EAHRU attested to the close working relationship that the Elder Abuse Helpline shares with the NSW Police Force and highlighted the role played by the current Assistant Sponsor, Vulnerable Communities – Abuse of Older Persons, Superintendent Robert Critchlow, as pivotal in establishing, maintaining and improving that working relationship. It explained how the two bodies work together:

The ... NSW Interagency policy, 2014 is used to determine whether to bring a particular case to the attention of the police. When a crime has been committed, the Helpline advises the caller to telephone police or makes the call on their behalf. If the Helpline is unsure whether the matter requires reporting, it will consult a senior police officer with knowledge and expertise in matters relating to the abuse of older persons for clarification and guidance. The Helpline encourages agencies to seek guidance from NSW Police where there is a genuine and realistic concern about harm to a person’s safety. The Helpline also requests police to conduct welfare checks when there is significant concern for an older person. The working relationship between the Helpline and NSW police is integral to good outcomes for older persons experiencing abuse ...⁵¹³

- 8.14** The EAHRU went on to say that it has found that the response of individual police ‘varies from exemplary to less than adequate at times, risking the possibility of further unnecessary

⁵¹⁰ Evidence, Assistant Commissioner Denis Clifford, Commander, NSW Police Force and Corporate Spokesperson on Vulnerable Communities, 7 March 2016, p 24. Assistant Commissioner Clifford acknowledged that this data had limitations.

⁵¹¹ Answers to questions on notice, Assistant Commissioner Denis Clifford, Commander, NSW Police Force and Corporate Spokesperson on Vulnerable Communities, 5 April 2016, p 1.

⁵¹² Evidence, Assistant Commissioner Clifford, 7 March 2016, pp 24-25.

⁵¹³ Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 16.

suffering of the older person.⁵¹⁴ It reported that when responses are less than adequate, the Helpline currently relies on the Assistant Sponsor to step in and contact the relevant command to ensure an adequate follow up response. It explained that this is not punitive process, but one that seeks continuous improvement by identifying the education and training needs of the staff involved. The Helpline also provides positive feedback to the Assistant Sponsor, which is relayed to the relevant commands to encourage continued excellence.⁵¹⁵

8.15 The EAHRU asserted that, ‘Although limited in number, the Vulnerable Community Support Officers have been exceptional in their responses to instances of elder abuse’⁵¹⁶ and concluded that:

Whilst being effective during the establishment phase of the Helpline, the position is limited in its application across NSW and is not a sustainable model. First response from frontline staff needs to be of a consistent high standard. For that reason, the Helpline recommends ...

- Further training in identifying and responding to elder abuse for all frontline police staff.
- Increase the number of specialist trained police in elder abuse by rolling out the Vulnerable Community Support Officer position across NSW.⁵¹⁷

8.16 Others who attested to the variability of police responses to elder abuse included the Combined Pensioners and Superannuants Association (CPSA), which stated that, ‘although there are many in the police force who do understand the issue and know how to approach it, there are many who do not. If someone contacts the police to report abuse, they should not be turned away or discouraged from pursuing the matter because the police officer taking the call does not recognise the seriousness of the issue.’⁵¹⁸

8.17 Aged and Community Services NSW and ACT reported that some aged care providers would like a more timely response from police when called on to investigate suspected abuse by staff, noting that significant delays in police follow up have resulted in staff moving from one employer to another before a matter has been finalised.⁵¹⁹

8.18 Similarly, Leading Age Services Australia NSW and ACT advised the committee that its members have reported that police responses to allegations arising in aged care settings ‘are often inadequate’ as the role of the police is more crisis focused. More positively, it affirmed the actions of Vulnerable Community Support Officers and suggested that, ‘these positions, appropriately resourced, would have the gravitas to manage elder abuse issues and give these issues the attention and follow up they merited.’⁵²⁰

⁵¹⁴ Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 16.

⁵¹⁵ Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 16.

⁵¹⁶ Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 16.

⁵¹⁷ Submission 33, NSW Elder Abuse Helpline and Resource Unit, pp 16-17.

⁵¹⁸ Submission 41, Combined Pensioners and Superannuants Association, p 6.

⁵¹⁹ Submission 22, Aged and Community Services NSW and ACT, p 3.

⁵²⁰ Submission 30, Leading Age Services Australia NSW – ACT, p 2.

8.19 Alzheimer's Australia NSW identified a number of the challenges that police face in responding to allegations of financial abuse in particular:

There are significant challenges for the NSW Police Force in responding to allegations of elder abuse, especially allegations of financial abuse of people with dementia. Abuse of people with dementia is challenging for police to investigate and then prosecute because people with dementia may be viewed as unreliable witnesses due to their declining cognitive capacity. Also, in the case of financial abuse there may be very little physical evidence to mount a case of elder abuse. Investigation of an allegation of financial abuse requires a victim (or their representative) to report the abuse, make a statement, and be prepared to attend a court hearing. It is also difficult to investigate because the police need to apply to a magistrate for a warrant to access bank records and other documents. If a case does progress to judicial processes, it has to be proven beyond a reasonable doubt. This judgement is complicated by dementia and limitations to cognitive capacity.⁵²¹

8.20 In a similar vein, both the Seniors Rights Service and Mid North Coast Community Legal Centre pointed to the limitations on police's ability to act in respect of financial abuse as problematic, with the latter reporting that police can be unwilling to become involved in an allegation without clear evidence of physical mistreatment.⁵²² In chapter 6 the committee explored how the law itself currently makes inadequate provision for a criminal response to financial abuse, as well as the difficulties of establishing proof in such cases, which means that often, criminal proceedings are not pursued (see paragraphs 6.24 to 6.27 and 6.36 to 6.37)

8.21 In respect of physical and sexual abuse of an older person with dementia, the Eastern Community Legal Centre in Victoria reported that police are 'hamstrung' when unable to take statements from victims.⁵²³

8.22 In addition, Ms Nglia Bevan, Human Rights Adviser and Manager, Advocacy and Communications with People with Disability Australia, spoke of how people with disability including older people with disability are not seen as credible witnesses, and even when they are, judgements about the likely success of prosecution mean that cases do not proceed. She contended that in this context, many allegations are not investigated or prosecuted, and not treated as crimes when they should be. For example, if abuse is occurring in a service setting, police may refer it back to the service provider for an internal investigation rather than treating it as a police matter.⁵²⁴

8.23 Dr Nicole Asquith gave an academic perspective on the systemic challenges for police in her role as Associate Professor of Policing and Criminal Justice, Western Sydney University, and these resonated with the views of inquiry participants noted above. She suggested that, 'On the rare occasions when elder abuse is reported to criminal justice agencies, police and other investigators are often faced with multiple and competing factors that influence how a

⁵²¹ Submission 35, Alzheimer's Australia NSW, p 4; see also Alzheimer's Australia NSW, *Preventing financial abuse of people with dementia*, Discussion paper no. 10, 2014, p 6.

⁵²² Submission 25, Seniors Rights Service, p 25; submission 36, Mid North Coast Community Legal Centre, p 3.

⁵²³ Submission 32, Eastern Community Legal Centre, p 2.

⁵²⁴ Evidence, Ms Nglia Bevan, Human Rights Adviser and Manager, Advocacy and Communications, People with Disability Australia, 18 March 2016, p 49.

criminal investigation will proceed.⁵²⁵ She cited research from the United States which found that senior police officers believed they had a responsibility to protect vulnerable older victims, and that they made a significant contribution to the fight against elder abuse. However, they also believed that older complainants were not good witnesses for reasons of frailty, lack of capacity, poor memory or lack of understanding of the legal system. In addition, a lack of knowledge about elder abuse and the appropriate mechanisms to respond to it sharply reduced the confidence of frontline police officers to recognise and investigate incidents as elder abuse.⁵²⁶

- 8.24** Dr Asquith also suggested that to date, elder abuse is managed by most police services, including the NSW Police Service, as a form of domestic or family violence. She suggested that this can be problematic for those whose abuse does not occur in a family context. In addition, she proposed that in prioritising the safety of the victim, ‘pro-arrest and pro-prosecution’ police strategies in respect of family violence can be problematic for the older person’s care and independence.⁵²⁷
- 8.25** Both Alzheimer’s Australia NSW and the Seniors Rights Service recommended more training for police to improve their responses to abuse, with the former emphasising that dementia training should become a mandatory requirement.⁵²⁸ The latter called for police to be trained to better understand and respond to financial abuse via misuse of enduring powers of attorney.⁵²⁹
- 8.26** There was vocal praise among numerous participants, as noted earlier from the EAHRU, for the role of the Vulnerable Community Support Officer, responsible for supporting a range of vulnerable groups including people from culturally and linguistically diverse backgrounds, people with disability and older people. The committee heard that there is one such officer in New South Wales, in the North West Local Area Command (although there had previously been one in another area command). Correspondingly, stakeholders including Alzheimer’s Australia NSW,⁵³⁰ Capacity Australia,⁵³¹ the CPSA,⁵³² and the Seniors Rights Service,⁵³³ all recommended that a Vulnerable Community Support Officer position be established in each local area command around the state.⁵³⁴

⁵²⁵ Submission 13, Dr Nicole L Asquith, p 5.

⁵²⁶ Submission 13, Dr Nicole L Asquith, pp 5-6.

⁵²⁷ Submission 13, Dr Nicole L Asquith, p 4.

⁵²⁸ Submission 35, Alzheimer’s Australia NSW, p 4; see also Alzheimer’s Australia NSW, *Preventing financial abuse of people with dementia*, Discussion paper no. 10, 2014, p 6.

⁵²⁹ Submission 25, Seniors Rights Service, p 25.

⁵³⁰ Submission 37, Alzheimer’s Australia NSW, p 4.

⁵³¹ Submission 81, Capacity Australia, p 17.

⁵³² Submission 41, Combined Pensioners and Superannuants Association, p 6; see also evidence, Mr Paul Versteeg, Policy Adviser, Combined Pensioners and Superannuants Association, 22 February 2016, p 18.

⁵³³ Submission 25, Seniors Rights Service, p 25; see also evidence, Mr Tom Cowen, Manager, Legal Services and Principal Solicitor, Older Persons Legal Service, Seniors Rights Service, 20 November 2015, p 27.

⁵³⁴ Submission 35, Alzheimer’s Australia NSW, p 4; submission 36, Mid North Coast Community Legal Centre, p 3.

8.27 As an example of the views in support of Vulnerable Community Support Officers, Professor Susan Kurrle of Hornsby Ku-ring-Gai and Eurobodalla Health Services and the University of Sydney, reported that:

The work performed by the NSW Police Vulnerable Community Support Officer has been invaluable in promoting awareness of elder abuse amongst members of NSW Police, and in providing advice and assistance in police management of cases.

The NSW Government should consider increasing the number of Vulnerable Community Support Officers across NSW to assist in education and training for NSW Police, and to assist members of NSW Police in dealing with cases of abuse.⁵³⁵

8.28 The Seniors Rights Service addressed the skills and responsibilities of these officers:

The NSW Police Force should have Vulnerable Persons Officers present at each area command centre who are familiar with the considerations which relate to domestic violence and abuse of the elderly. These officers should be aware of the Elder Abuse Protocols and of the issues surrounding the capacity of the victim, including whether the relevant individual is able to give evidence and whether steps should be taken to protect the person. They should be trained to undertake the training of other officers in identifying and responding appropriately to elder abuse occurrences.

Officers should also be aware that clients may be too intimidated to make or pursue complaints if they are reliant on the alleged abuser for care and accommodation. This issue needs to be addressed with care and consideration by officers.⁵³⁶

NSW Police Force perspective

8.29 The committee heard the NSW Police Force's perspective on these issues when it took evidence from Assistant Commissioner Clifford and Superintendent Robert Critchlow, Assistant Sponsor and Commander of The Hills Local Area Command.

8.30 Assistant Commissioner Clifford noted a number of the challenges that police face in responding to elder abuse, and spoke of efforts that the Police Force is making to build communication and cooperation between it and other agencies, with a view to influencing responses from officers at the front line. He praised the Helpline as 'a godsend to us as a resource to get that more professional or expert advice' for the constable on the street.⁵³⁷

8.31 Elaborating on this point, Mr Critchlow indicated that the complex nature of elder abuse has demanded a team approach with government and non-government agencies, stating, 'It crosses over many boundaries – human services, law enforcement, health services of course, and I think the complexity of it requires a very nuanced and sophisticated response, which we are moving towards under Assistant Commissioner Clifford's leadership.'⁵³⁸ Following the

⁵³⁵ Submission 37, Professor Susan Kurrle, p 4.

⁵³⁶ Submission 25, Seniors Rights Service, p 25; see also evidence, Mr Tom Cowen, 20 November 2015, p 27.

⁵³⁷ Evidence, Assistant Commissioner Clifford, 7 March 2016, p 26.

⁵³⁸ Evidence, Superintendent Robert Critchlow, Commander of The Hills Local Area Command, and Assistant Sponsor, Vulnerable Communities, 7 March 2016, p 25; see also p 28.

hearing, NSW Police advised that it has taken a multidisciplinary approach to elder abuse, just as it has with domestic and family violence, mental health and child protection. It stated, 'Police's view is that a coordinated, multi-agency approach to social justice issues is significantly more effective than agencies working in isolation.'⁵³⁹

8.32 Assistant Commissioner Clifford advised that the police response to elder abuse is given leadership via a structure under his corporate sponsorship of the vulnerable communities portfolio, in which each Regional Commander has appointed a Regional Sponsor for Vulnerable Communities at the senior officer level. The Regional Sponsors liaise as part of a network to engage with each of the commanders in their region and to provide support to operational police on any issue relating to the portfolio, including by building relationships with other services in their local communities.⁵⁴⁰

8.33 Assistant Commissioner Clifford acknowledged that the police can always do better,⁵⁴¹ and Mr Critchlow provided an example of how police are learning through experience – which illustrates Dr Asquith's point earlier that police, in their 'pro-arrest' approach of domestic violence, need to be sensitive to the particular vulnerability and care needs of older people:

We had a matter recently in Ku-ring-gai where an abusive relative was appropriately charged with a domestic violence offence against an older person. The constables, in their keenness, removed the offender from the home – as they normally would – and left the older person alone. We relied upon the assistance of an inspector who worked in the command that was part of Mr Clifford's group who was able to step in, amend the bail conditions, intervene appropriately, remedy the situation and train the constables as to what better approach could have been taken. As we experience these cases we develop this body of knowledge and increase our training and responses through the documents we are delivering then our responses will be delivered in a better way.⁵⁴²

8.34 Assistant Commissioner Clifford also advised that the Police Force and the EAHRU have together developed an aide memoire card to be issued to all front line police, to sit inside the cover of officers' notebooks. The card provides succinct information on the signs and types of elder abuse, and how police officers should respond.⁵⁴³

8.35 With regard to the extent to which elder abuse is addressed in police academy training, Mr Critchlow advised:

It is very hard to get into the curriculum for Goulburn; it is jam packed, as you could probably guess. But in the last review I was able to have the abuse of older persons inserted as an issue in family and domestic violence and there was specific reference to the services of the Elder Abuse Helpline as a resource to them. Also we will be sending these cards down to be issued to each foundational student as they go

⁵³⁹ Answers to supplementary questions, Assistant Commissioner Clifford, 5 April 2016, p 1.

⁵⁴⁰ Evidence, Assistant Commissioner Clifford, 7 March 2016, pp 29-30; answers to questions on notice, Assistant Commissioner Clifford, received 5 April 2016, p 1.

⁵⁴¹ Evidence, Assistant Commissioner Clifford, 7 March 2016, p 29.

⁵⁴² Evidence, Mr Critchlow, 7 March 2016, p 26.

⁵⁴³ Evidence, Assistant Commissioner Clifford, 7 March 2016, p 25.

through Goulburn to have as they leave, so they will have that from their first day out.⁵⁴⁴

The investigation gap

- 8.36** Looking beyond the issue of policing, numerous inquiry participants highlighted that there is at present an ‘investigation gap’ that impedes timely intervention to protect vulnerable adults who are suspected to be experiencing abuse. This gap, many argued, should be filled by the creation of a public advocate. In this section the committee explores participants’ proposals for such an office in New South Wales.
- 8.37** Ms Kerry Marshall, Manager of the EAHRU, told the committee that the Helpline has found that ‘there are times when the suffering experienced by an older person is unnecessarily prolonged due to a lack of appropriate laws and powers for police, health and community services to intervene’.⁵⁴⁵ The EAHRU submission advised that without these powers, the only available – yet unsatisfactory – option is to request police to conduct a ‘welfare check’.
- 8.38** The EAHRU explained that sometimes it receives calls from community members who suspect that an older person is being abused by family members. In such cases there is usually very limited information about the older person and no way for the caller or anyone else to talk to them about their situation. Specialist health services such as aged care assessment teams do not cannot conduct an assessment or home visit without the older person’s consent, so if family members intercept phone calls and decline services, the only other option is to request a ‘welfare check’ from police. However, police do not have the necessary powers to enter a property and search for evidence of abuse, so if a family member denies access and gives a reasonable explanation as to why the police cannot enter the property, and evidence of abuse is not immediately apparent, police cannot enter. If they are granted access, they understandably do not have the clinical skills to look for physical indicators of abuse or neglect such as bed sores, malnutrition and dehydration, and the older person remains at risk.⁵⁴⁶
- 8.39** Accordingly, the EAHRU recommended that police be able to obtain search warrants on the grounds of suspected elder abuse, and that multidisciplinary investigation teams consisting of police and clinicians with specialist aged care and elder abuse skills be established.⁵⁴⁷ The case study below provided by the EAHRU illustrates very well the inability to act in a timely way.
- 8.40** On a different but related matter, the EAHRU also recommended that new criminal offences for elder abuse be established in law.⁵⁴⁸ Ms Marshall argued that the case study above also illustrates how even when reprehensible actions have been reported to the police, the law as it stands means that it is very difficult to lay charges. She spoke of how she and the police had gone through the *Crimes Act 1900* together to determine what the perpetrators could be charged with, but were only able to be charged with a fairly minor offence. She argued, ‘This

⁵⁴⁴ Evidence, Mr Critchlow, 7 March 2016, p 29.

⁵⁴⁵ Evidence, Ms Kerry Marshall, Manager, NSW Elder Abuse Helpline and Resource Unit, 20 November 2016, p 12.

⁵⁴⁶ Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 17.

⁵⁴⁷ Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 17.

⁵⁴⁸ Submission 33, NSW Elder Abuse Helpline and Resource Unit, p 18.

person was a few weeks away from death yet our laws do not necessarily reflect that well enough.⁵⁴⁹

Case study – Couple pleads guilty to starving and withholding medication from 80 year old man⁵⁵⁰

In March 2016 a 46 year old man and his 49 year old partner pleaded guilty to refusing to provide the necessities of life to the man's 80 year old father.

The father weighed 40 kilograms when he was found – several months after an initial report to the Elder Abuse Helpline by a neighbour. His son and daughter in law had also denied him medication for his diabetes and prostate cancer for nearly a year.

The son was sentenced to a four month intensive corrections order, and the daughter in law to a 12 month good behaviour bond. She was also convicted of intimidation.

The EAHRU says that the case highlights the interventions possible for victims of elder abuse, 'however, the older person's suffering was prolonged and nearly resulted in his death due to police and other services not having sufficient powers.'

The first call to the Helpline conveying concerns about the man was taken in December 2013. A neighbour reported that the man had been calling for help, throwing plastic bags over the fence with notes inside asking for help and expressing fear. The neighbour also heard verbal abuse and putdowns by the daughter in law. The neighbour had confronted the man's son but was verbally abused.

The Helpline referred the matter to the local aged care assessment team, but for reasons unknown, no assessment was conducted.

With no other option, the Helpline requested that local police conduct a 'welfare check'. The son and daughter in law told police that the older person had dementia and wandered, and required a lock on his door for his own safety. Police spoke to the older man in the presence of the alleged abusers, and he stated that he was okay.

The neighbour again called the Helpline with concerns, and was able to tell staff of the older man's pharmacy. The pharmacy had enough concerns to disclose to the older person's GP. The GP was relieved to receive a call from the Helpline and advised that a meeting with the son and daughter in law regarding concerns for the man had not gone well and that the concerns were ongoing.

The neighbour called the Helpline again, stating they had recorded the older person being screamed at and mistreated. The neighbour also reported that he had escaped and came to their place crying and scared. At his request, the neighbour drove him to his brother in law's house but he subsequently returned home to the abusers.

Police were called again and were reluctant to conduct a second visit due to the lack of previous evidence. They asked the neighbour to go to the police station and make a report, but the neighbour was reluctant to go as they feared retaliation. The Helpline is not aware of a second visit occurring.

After some months, the Helpline received a call from the GP stating they hadn't seen the older person for many months and were concerned. With limited options, the Helpline once again called the pharmacy to see if any prescriptions had been filled. The pharmacy advised they still had the older person on their books but no prescription had been filled for some time.

The Helpline put together a dot point history to the Police Assistant Sponsor (Vulnerable Communities

⁵⁴⁹ Evidence, Ms Marshall, 20 November 2015, p 17.

⁵⁵⁰ This case study is based on that in submission 33, Elder Abuse Helpline and Resource Unit, p 18.

– Abuse of Older Persons) asking for advice and assistance. A senior officer was appointed, who spoke to a local geriatrician who sent their two most experienced workers, a nurse and social worker, to the older person’s home with the police officer in attendance.

They found the older person in his spare room, with little food and having to defecate and urinate in a bucket so he didn’t disturb the dogs.

The following day, the social worker returned to the man’s home. He had a small bag packed with a few items and said he wanted to get out and never come back.

The man was found to not have dementia and he regained his health with appropriate care. He has since moved back to his home.

8.41 The EAHRU also contended that there is an intervention gap in respect of people who have capacity. Ms Marshall referred to an example of a man called the Helpline saying, “My brother has my father locked up at home spending all his money. Dad still has capacity.” And we could not get access to get a GP to see him to assess capacity because the brother would say, “No, I am the guardian and I have power of attorney as well.” According to Ms Marshall, “There was no way to access this person ... we need in some way to allow services to get in there in situations like this.”⁵⁵¹

8.42 Participants identified the need for a neutral service with investigative powers during the committee’s consultation with Aboriginal Elders. They emphasised that the Helpline is of limited effectiveness because it can only refer people on, rather than intervene in situations of abuse; however, older Aboriginal people will usually only call when they are in a desperate situation, when intervention is needed, not advice. They called for the establishment of an intervention service for older Aboriginal people experiencing elder abuse to provide safety and support without the stigma and fear associated with calling the police or community services.⁵⁵²

8.43 The need for an investigative body that also provides victims and other complainants with the support they need to pursue their matters was highlighted by one submission author, who described themselves as traumatised by the process of seeking assistance for their family member’s financial abuse:

It appears the process required to obtain assistance when being abused requires a level of competency far greater than most elderly people would possess. They would already be traumatised and fragile after being abused and be in fear of losing their family. To be successful with a positive outcome the applicant will need to be a detective, accountant and lawyer and to be doggedly persistent and unflinchingly determined in order to succeed. Specially trained social workers could offer support to the applicant and elderly person during this process to help them cope. I asked the Guardianship Tribunal if there was any support for the applicant and they said no. I have been left severely traumatised. I don’t believe my experience is what the government intended to be the outcome. I would certainly think seriously whether to assist another person who was being abused. The applicant will need to be super human just to try to provide assistance to somebody they know is being abused.⁵⁵³

⁵⁵¹ Evidence, Ms Marshall, 20 November 2016, p 17.

⁵⁵² Consultation with Indigenous Elders, General Purpose Standing Committee No. 2 and Law Society of New South Wales, 7 March 2016, pp 3-4.

⁵⁵³ Submission 8, Name suppressed, p 2.

Filling the investigation gap – a Public Advocate for New South Wales

8.44 Inquiry participants gave evidence on the possible ways to fill the ‘investigation gap’, including by establishing a Public Advocate for New South Wales, who would investigate and facilitate the resolution of suspected cases of elder abuse.

8.45 Professor Wendy Lacey, Dean and Head of the School of Law, University of South Australia, observed that ‘beyond serious cases where the criminal law is engaged (where the police can intervene) and cases where the victim suffers from mental illness or mental incapacity (where mental health and guardianship legislation can be engaged), there is a lack of clear statutory mandates for the investigation of abuse by existing agencies.’⁵⁵⁴ In her submission, Professor Lacey observed:

The major gap in current regulatory frameworks means that only state police authorities have the power to conduct investigations and engage in intervention strategies. And, in cases of elder abuse which frequently involve family violence or complex familial relationships, police can often be the least effective agency to respond in cases not involving a critical emergency or serious crime. Furthermore, agencies such as guardianship boards and public advocates can only assist persons with mental incapacity and many other key agencies have restrictive criteria for accessing their services.⁵⁵⁵

8.46 Professor Lacey advised that this could be addressed as part of comprehensive adult protection legislation, as occurred in Scotland or British Columbia, or in a more specific way, as recommended by Dr John Chesterman in Victoria, by amending the guardianship and administration legislation, ‘which could then empower the Public Guardian or Public Advocate to exercise those powers of investigation and coordinate an interagency and multidisciplinary response across government and with key providers that would enable both early intervention and, hopefully, a practical solution for the victim of elder abuse.’⁵⁵⁶

8.47 According to Professor Lacey, no Australian state or territory has an agency with the power to investigate of its own initiative a complaint or suspected case of elder abuse, nor the power to compel other agencies and providers to actually participate in that investigation and provide information. She further asserted that early intervention cannot take place because privacy laws do not permit access unless there is a pressing urgency or a situation of medical emergency.⁵⁵⁷

8.48 Looking specifically at New South Wales, Alzheimer’s Australia NSW mapped out the various elements of the system for responding to, investigating and intervening in respect of allegations of abuse:

- The EAHRU can only provide advice and referrals; they cannot investigate allegations of abuse or rectify the situation for victims.

⁵⁵⁴ Wendy Lacey, ‘Neglectful to the point of cruelty? Elder abuse and the rights of older persons in Australia’, *Sydney Law Review* (2014) 36, p 126; see also submission 112, Professor Wendy Lacey, School of Law, Macquarie Law School, pp 1-2.

⁵⁵⁵ Submission 112, Professor Wendy Lacey, pp 1-2.

⁵⁵⁶ Evidence, Professor Wendy Lacey, Dean and Head of School, School of Law, University of South Australia, 18 March 2016, pp 31-32.

⁵⁵⁷ Evidence, Professor Lacey, 18 March 2016, p 31.

- The Seniors Rights NSW also can only provide advice.
- The Guardianship Division, NCAT has the authority to appoint a financial manager and/or guardian where there are allegations of elder abuse.
- The NSW Police Force can respond to allegations of elder abuse, but only when an illegal act is committed.⁵⁵⁸

8.49 Alzheimer's Australia NSW thus argued that together these services are limited in their capacity to resolve an allegation satisfactorily,⁵⁵⁹ such that older people experiencing abuse currently have poor access to justice.⁵⁶⁰ It recommended that a Public Advocate be established in New South Wales, as has occurred in other Australian States and Territories. Its role would include:

- promoting and protecting the rights of adults with decision making disabilities to reduce their risk of neglect, exploitation and abuse
- investigating allegations of abuse, with the statutory authority to receive reports and investigate instances of financial abuse of people with dementia and other vulnerable adults
- facilitating resolution of abuse, including in instances where it is perpetrated by someone appointed as an enduring power of attorney who fails to act in the best interests of the person with dementia.⁵⁶¹

8.50 Alzheimer's Australia thus recommended that the NSW Government review the *Guardianship Act 1987*, then amend the Act to enable the creation of the Public Advocate role with these functions.⁵⁶²

8.51 Others who called for the investigation gap to be filled included the Mid North Coast Community Legal Centre⁵⁶³ and the Combined Pensioners and Superannuant's Association. The latter envisaged this as a unit with responsibility for investigating and intervening in cases of abuse, receiving referrals and coordinating responses. It highlighted the need for 'less invasive alternative approaches [than currently exist] for older people who are experiencing abuse that does not pose immediate and serious risk'. It also proposed that the unit include social workers, police, counsellors, health professionals and other service providers deemed necessary.⁵⁶⁴

⁵⁵⁸ Submission 35, Alzheimer's Australia NSW, pp 3-4.

⁵⁵⁹ Submission 35, Alzheimer's Australia NSW, p 4.

⁵⁶⁰ Evidence, Mr Brendan Moore, General Manager, Policy, Research and Information, Alzheimer's Australia NSW, 22 February 2016, p 46.

⁵⁶¹ Submission 35, Alzheimer's Australia NSW, p 7; see also evidence, Mr Moore, 22 February 2016, p 46 and Alzheimer's Australia NSW, *Preventing financial abuse of people with dementia*, discussion paper no. 10, 2014, p 6.

⁵⁶² Submission 35, Alzheimer's Australia NSW, p 7.

⁵⁶³ Submission 36, Mid North Coast Community Legal Centre, p 6.

⁵⁶⁴ Submission 41, Combined Pensioners and Superannuants Association, pp 4-5.

8.52 Some participants suggested that New South Wales would benefit from adopting the model operating in Victoria. There the Office of the Public Advocate is an independent statutory office empowered with a number of functions under the *Guardianship and Administration Act 1986* (Vic) and other legislation. Its roles include advocacy, investigation and guardianship services for people with cognitive impairment or mental ill health.⁵⁶⁵ Those who looked to this model included the Legal Services Commissioner, Mr John McKenzie, who stated:

It seems to me that it would help the public if they could access a central body/agency that can assist them in relation to all enquiries about Enduring Powers Of Attorney and Appointment of Enduring Guardian. An agency similar to that of the Victorian Office of the Public Advocate would be of great assistance to the public.⁵⁶⁶

8.53 Similarly, Ms Sarah Breusch of the University of Newcastle Legal Centre and Mr Richard McCullagh, a solicitor, agreed that it is desirable to fill this gap, potentially with the Victorian model.⁵⁶⁷ From Ms Breusch's perspective, the gap sits between having concerns about what is happening to an older person, and a matter that is sufficiently serious to take to the Guardianship Division of NCAT.⁵⁶⁸ Ms Lee Critchley, Civil Law Practitioner with Legal Aid NSW, agreed that it is desirable to fill the gap, but expressed caution as to the powers such an agency might have to intervene in peoples' lives.⁵⁶⁹

8.54 On the other hand, Dr Chesterman, who is Director of Strategy with the Victorian Office of the Public Advocate, advised that he saw it as a significant limitation that in Victoria the role is limited to situations of guardianship or potential guardianship (that is, where there is cognitive impairment or mental ill-health). Instead, he advocated that the investigation gap in New South Wales be filled by a statutory authority empowered to investigate the wellbeing of at risk adults in the general community where there is no obvious medical emergency or crime.⁵⁷⁰

8.55 The NSW Public Guardian, Mr Graeme Smith, explained the limits to his powers with respect to investigation:

In New South Wales the Public Guardian does not have those powers. The Public Guardian does have statutory standing to bring matters to the tribunal with respect to a guardianship application, but the legislation is deficient in the sense that the Public Guardian has no powers of investigation in order to gather the information which is necessary to bring the application to the tribunal. So on one level one suspects that the legislator intended that the Public Guardian would be able to investigate matters and bring matters to the tribunal, but they failed to provide the Public Guardian with the necessary investigative powers to be able to do that. The only way that I can bring matters to the tribunal for the appointment of a guardian is to rely on information that is brought to me by a third party, because I cannot investigate the matter directly

⁵⁶⁵ Evidence, Dr John Chesterman, Director of Strategy, Office of the Public Advocate, Victoria, 22 February 2016, p 59.

⁵⁶⁶ Correspondence from Mr John McKenzie, Commissioner, Legal Services Commission, to Chair, 26 April 2016, p 9.

⁵⁶⁷ Evidence, Mr Richard McCullagh, Legal Practitioner, 18 March 2016, p 23.

⁵⁶⁸ Evidence, Ms Sarah Breusch, Solicitor, University of Newcastle Legal Centre, 18 March 2016, p 23.

⁵⁶⁹ Evidence, Ms Lee Critchley, Civil Law Practitioner with Legal Aid NSW, 18 March 2016, p 23.

⁵⁷⁰ Evidence, Dr Chesterman, 22 February 2016, p 59.

myself. If you compare our legislation with that of other jurisdictions then that is a deficiency.⁵⁷¹

8.56 Ms Imelda Dodds, Chief Executive Officer of the NSW Trustee and Guardian, told the committee that for some time she has called for ‘the establishment of a Public Advocate in New South Wales who, with proper powers, would be better enabled to investigate matters brought to their attention, a power which is currently lacking in this state⁵⁷² and which is ‘long overdue’.⁵⁷³ She asserted that the power to initiate its own investigations would be critical.⁵⁷⁴

8.57 The NSW Trustee and Guardian submission included a detailed proposal for the Office of the Public Guardian to be reinvented into a Public Advocate’s Office with extended powers in respect to people with impaired decision making ability, including those people whose affairs are being managed under an enduring power of attorney. It recommended:

1. The Public Advocate to have the function of receiving and investigating complaints in relation to:

- a. the abuse, neglect or exploitation of people
- b. the misuse of powers by private individuals or organisations appointed to substitute decision-making, co-decision-making and supporter roles.

2. Where the Public Advocate believes that an investigation is warranted she/he should be able to conduct an investigation on her/his own motion in relation to the above.

3. The power to investigate complaints should be supported by the following additional powers:

- a. serve a written notice on a person requiring them to give the Public Advocate specified documents or other materials relevant to an investigation being undertaken
- b. serve a written notice on a person requiring them to give written answers to questions
- c. require a person to attend a conference for the purposes of seeking to resolve a matter being investigated.

4. It should be an offence for a person to refuse or fail to provide information, or to attend a conference or interview, when directed by the Public Advocate to do so.

5. The Public Advocate should have power of entry and inspection.

6. The Public Advocate should be permitted to apply to the appropriate Courts and Tribunals for a warrant authorising entry to any premises when she/he believes that a

⁵⁷¹ Evidence, Mr Graeme Smith, NSW Public Guardian, 7 March 2016, p 9.

⁵⁷² Evidence, Ms Imelda Dodds, Chief Executive Officer, NSW Trustee and Guardian, 7 March 2016, p 4.

⁵⁷³ Submission, 111, NSW Trustee and Guardian, p 9.

⁵⁷⁴ Evidence, Ms Dodds, 7 March 2016, p 8.

person who is on the premises is being abused, exploited or neglected. The appropriate Courts or Tribunals should be permitted to issue a warrant authorising entry to any premises in these circumstances if they are satisfied that it is appropriate to do so.

7. The Public Advocate should be permitted to give the Chief Commissioner of Police a report concerning any investigations she/he conducts and allow the Chief Commissioner to have access to any evidence gathered during the Public Advocate's investigations if she/he believes that the Chief Commissioner should consider initiating criminal proceedings against an alleged wrongdoer.

8. The Public Advocate should have the function and power to advocate for the rights and interests of all the people of NSW with impaired decision-making. The Public Advocate should also have the power to engage in both individual and systemic advocacy.

9. The Public Advocate's advocacy powers should include seeking leave in any Court or Tribunal proceedings when the rights and interests of a person with impaired decision making are in question.⁵⁷⁵

8.58 Mr Smith advised that the Queensland Public Guardian's investigation powers can only be triggered by complaints concerning abuse, neglect or exploitation of a person with disability.⁵⁷⁶ Asked about the extent to which vexatious complaints are a problem for Queensland's investigative body, Mr Smith explained that these are dealt with via the preliminary investigation stage which applies to all complaints:

In all jurisdictions where public guardians and public advocates have the power to investigate complaints, investigative processes have to enable them to make quick and preliminary investigations that rule out those more vexatious complaints. ... The experience in other jurisdictions is that it is not beyond their capacity to do that.⁵⁷⁷

8.59 Mr Nick O'Neill of Capacity Australia indicated that he strongly supported this longstanding proposal to convert the Office of the Public Guardian into a Public Advocate's Office, with broader powers of investigation, similar to that operating in Queensland and Victoria.⁵⁷⁸ He advised that it would not be expensive to operate, and attested to the cautious way that such bodies utilise their investigative powers.⁵⁷⁹ Asked about vexatious complaints, Mr O'Neill responded that these do occur, and but proposed that they simply be dealt with 'quickly and honestly'.⁵⁸⁰

⁵⁷⁵ Submission 111, NSW Trustee and Guardian, pp 8-9.

⁵⁷⁶ Evidence, Mr Smith, 7 March 2016, pp 5-6.

⁵⁷⁷ Evidence, Mr Smith, 7 March 2016, p 9.

⁵⁷⁸ Submission 81, Capacity Australia, p 21.

⁵⁷⁹ Evidence, Mr Nick O'Neill, Director, Capacity Australia, and Professorial Visiting Fellow, Faculty of Law, University of New South Wales, 18 March 2016, p 40.

⁵⁸⁰ Evidence, Mr O'Neill, 18 March 2016, p 41.

- 8.60** Asked whether this advocate role should go to a new statutory authority or to the Office of the Public Guardian, Mr O'Neill suggested that because its role would be focused on people lacking capacity, the Office of the Public Guardian is well equipped to perform this function:

It probably has to be limited to investigations in relation to people who obviously would not be able to make decisions for themselves or are marginally that way ... That makes the Office of the Public Guardian a good place to start because those officers have developed very good expertise in dealing with people with decision making difficulties who are put under their guardianship and have very good policies in relation to trying to give them as much say in life decisions as possible but also being realistic about what needs to be looked at. I believe they would be the best place for doing this.⁵⁸¹

NSW Civil and Administrative Tribunal, Guardianship Division

- 8.61** An important element in the infrastructure that responds to allegations of elder abuse is the Guardianship Division of NCAT. As noted in chapter 2, the division hears and determines applications for the appointment of guardians and financial managers for people who are found to be incapable of making their own decisions and who require the appointment of a substitute decision maker. It also has the authority to review enduring powers of attorney, to review enduring guardianship appointments, and to provide consent to medical and dental treatment.
- 8.62** The role and functioning of NCAT with respect to elder abuse was not a major focus for our inquiry. Nevertheless, the limited evidence we received was significant in content, and is discussed below.
- 8.63** Mr Malcom Schyvens, Deputy President and Division Head of the Guardianship Division, advised the committee that in 2014-15 over 7,500 applications were made to the division, ranging from non-contentious applications to highly conflictual and contested matters. He reported that the more complicated cases often involve multiple applications and parties and applications for the review of enduring power of attorney, and frequently involve allegations of exploitation or abuse.
- 8.64** Mr Schyvens went on to report that approximately 55 per cent of all applications were made by family members or friends of the person with the alleged disability, with the remainder being made by service providers such as health and disability professionals. Reflecting the ageing of the population, the largest proportion of applications, 44 per cent, were for people with dementia; 16 per cent concerned people with a diagnosed mental illness; and another 16 per cent concerned people with an intellectual disability.⁵⁸²
- 8.65** Mr Schyvens provided insights into the work of the Guardianship Division, NCAT when he advised the committee:

⁵⁸¹ Evidence, Mr O'Neill, 18 March 2016, p 41.

⁵⁸² Evidence, Mr Malcolm Schyvens, Deputy President and Division Head, Guardianship Division, NSW Civil and Administrative Tribunal, 7 March 2016, p 2.

Anyone with a genuine concern for the welfare of a person with a disability has standing to make an application and there is no fee to lodge an application with the division. By way of example, an application may be received from someone who is concerned that their elderly neighbour is losing capacity to make their own decisions and is vulnerable to abuse and exploitation from those around them. The applicant may be able to provide only the most basic of details about their neighbour and be unable to source or gain access to crucial medical information about their capacity. The practices and procedures of the division enable it to both undertake the necessary preparation of an application for hearing, identify which matters may be resolved without the need to go to a hearing and, most importantly, to support the understanding and the participation of the person with a disability themselves in all stages of the process ...

The tribunal has identified in a number of matters a history of financial abuse or exploitation, sometimes by third parties such as internet scammers or new friends but more typically by family, friends or partners. In many of these cases the exploitation is exposed by a family member, sometimes a friend but often by a healthcare professional such as a social worker, a nurse, a case manager or the manager of an aged care facility when there are unpaid fees. The Guardianship Division cannot make monetary orders for the repayment of money alleged to have been misappropriated. However, authority is provided to a financial manager which allows an appointee to commence legal proceedings they deem appropriate to seek to recover the protected person's estate.

Given the volume of applications to our division and the circumstances of risk and vulnerability confronting some of the persons for whom applications are made, all applications received by the division are assessed for risk and urgency by experienced staff, usually on the day they are lodged. Matters identified as high risk will be listed for hearing within three days and, if warranted, actually on the day the application is lodged with the tribunal.⁵⁸³

- 8.66** Two key issues in respect of the Guardianship Division's work emerged from the evidence of inquiry participants. The first concerned the inability of NCAT to order compensation for losses arising from the misuse of enduring powers of attorney. In chapter 6 on financial abuse the committee explored the strong concern shared by numerous stakeholders that the law in New South Wales as it stands makes very inadequate provision to compensate such losses. If a person wants to seek restitution of misappropriated funds, in most cases their only option is through a civil claim against the perpetrator via the Supreme Court. However, the committee heard that this is a lengthy, stressful and expensive process that is unlikely to result in the recovery of funds (see paragraphs 6.28 to 6.35).
- 8.67** In light of the view of numerous participants including Alzheimer's Australia, Legal Aid NSW, Capacity Australia, and the Office of the Legal Services Commissioner that the Guardianship Division of NCAT would be a much more affordable and accessible forum for the resolution of these complaints, the committee recommended that New South Wales adopt recent changes under the Victorian legislation for powers of attorney. Specifically, we envision that the reformed New South Wales legislation would include an additional power for NCAT to order compensation for loss caused by an enduring attorney who contravenes the legislation (see paragraphs 6.100 to 6.102).

⁵⁸³ Evidence, Mr Schyvens, 7 March 2016, pp 2-3.

8.68 The second key issue raised by inquiry participants concerned the timeliness of NCAT's decisions. Here, the Australian Association of Gerontology acknowledged that the number of matters relating to older people dealt with by the Guardianship Division of NCAT has been increasing significantly over recent years, and asserted:

When older people no longer have capacity to make important decisions and/or are no longer able manage their finances, it is important that allegations of financial abuse can be dealt with quickly so that assets are not dissipated irrevocably. Access to guardianship and/or financial management orders through the NCAT Guardianship Division must be timely and quick.⁵⁸⁴

8.69 Similarly, Aged and Community Services NSW and ACT emphasised that it is essential that the investigation and hearing process occur in a timely manner, and stated, 'Our members have reported significant delays in some matters getting to hearing even when there are significant concerns about financial abuse occurring. This can mean that an older person's finances can be eroded further during the delay.'⁵⁸⁵

8.70 On this issue, Mr Schyvens told the committee:

The division is very mindful of the importance of moving quickly to finalise matters, where possible, given the vulnerability of many of those for whom applications are made. In the last reporting financial year 95 per cent of all applications were finalised within 21 weeks, with more than 75 per cent completed within 13 weeks. Over 90 per cent of the most high risk matters were finalised within three days of receipt of the application.⁵⁸⁶

Committee view

8.71 In the committee's view the barriers to reporting documented at the start of this chapter represent significant challenges to all who have a role in responding to abuse, whether at the policy or service delivery level. In chapter 4 the committee recommended that the government develop a new prevention framework, of which community education, awareness and engagement initiatives would form a key element. In making this recommendation, we appreciate that these initiatives will not only help to prevent abuse from occurring; they will also help enable victims to recognise that they are being abused and to seek help. In this sense, community education and awareness initiatives would also be aimed at mitigating many of the individual barriers brought to our attention. At the same time, government decision makers, service providers and others with a role in this area all carry a responsibility to address the systemic barriers that mitigate against timely and effective access to support.

⁵⁸⁴ Submission 23, Australian Association of Gerontology, p 4.

⁵⁸⁵ Submission 22, Aged and Community Services NSW and ACT, p 3

⁵⁸⁶ Evidence, Mr Schyvens, 7 March 2016, p 3.

- 8.72 With respect to policing, it is clear to the committee that the NSW Police Force leadership is seeking to improve front line police responses to vulnerable communities, including older people. We recognise that police face a number of challenges in responding effectively to elder abuse, not least the current laws in respect of enduring powers of attorney, which make little provision for the misuse of these instruments to be treated as a crime. Our recommendation in chapter 6 that the *Powers of Attorney Act 2003* be amended to become consistent with Victoria's equivalent legislation, would, if adopted, address this discrepancy between community expectations and the police force's ability to act.
- 8.73 We acknowledge the other challenges for police that were brought to our attention: the difficulty of gaining evidence of sufficient standard to give confidence of conviction; the perceived or actual limitations in the evidence of victims with cognitive and other disabilities; the importance of factoring the vulnerability and care needs of victims into the police response. Each of these challenges also represents a responsibility on the part of the Police Force to ensure that older people, most especially who are vulnerable, obtain an effective front line police response.
- 8.74 While we were concerned by reports from stakeholders that police responses vary from excellent to less than adequate, we were encouraged by the evidence that the Police Force has cultivated an active working relationship with the Helpline that enables guidance for and collaboration with individual officers in their responses to elder abuse. The mechanism by which a senior officer gains feedback from the Helpline and seeks continuous improvement by acting on the education and training needs of individual officers is to be commended. We are also encouraged by the excellent reports on the work of the one Vulnerable Community Support Officer currently operating in the Police Force.
- 8.75 While we consider that the right balance needs to be struck between supporting all front line officers to respond effectively to elder abuse and investing in specialist positions, like numerous inquiry participants we see enormous value in the Vulnerable Community Support Officer role being rolled out around New South Wales, noting that their role is aimed at improving responses to, and addressing barriers to justice for, older people, people with disability and other vulnerable groups. These positions would have a role in responding to allegations of abuse as well as education, awareness and engagement with community groups. Significantly, this position would also have a specific role in training and supporting other front line officers to respond effectively to elder abuse. We agree with inquiry participants that it is desirable for there to be a Vulnerable Community Support Officer located in each Regional Command. In addition, we emphasise the importance of elder abuse remaining part of the Police Academy curriculum into the future in order to furnish a baseline understanding of elder abuse among all new officers. That curriculum will need to be further developed and refined on an ongoing basis.

Recommendation 10

That the NSW Police Force establish a Vulnerable Community Support Officer in each Regional Command in New South Wales, with the position entailing training and support to front line officers, police response, liaison with local service providers and other government agencies, community education, awareness and engagement.

- 8.76** There was a clear call across a range of stakeholders for a body that has the power to investigate allegations of elder abuse. The committee heard that powers of the police, the Helpline, the Guardianship Division of NCAT and the Public Guardian are all circumscribed and that the gap between them leaves people unprotected when they are very much at risk. There was also a clear call among many participants that the investigation gap should be filled by a statutory office of the Public Advocate, with that body being responsible for both investigating allegations and facilitating their resolution.
- 8.77** Beyond this, the evidence before the committee diverged on two counts. The first was whether the Public Advocate should have the power to initiate its own investigations, or rely solely on complaints made to it. According to Professor Lacey, no state or territory currently has this power. A number of participants saw merit in the Victorian model (which investigates complaints and allegations) without actually addressing this aspect of its functions. However, the Public Advocate model proposed by Ms Dodds explicitly included the power to initiate its own investigations. Indeed, Ms Dodds emphasised that this power was critical.
- 8.78** The second count in which the evidence diverged, which was in fact a greater point of difference than the first, concerned the target group for the Public Advocate. Ms Dodds, Alzheimer's Australia NSW and Capacity Australia all envisaged that the Public Advocate would serve to protect the rights of adults with impaired decision making ability. By contrast, the EAHRU, Professor Lacey and Dr Chesterman all highlighted the investigations gap that exists for other older people. Professor Lacey, for example, pointed to the gap that exists for victims who do not have mental illness or mental incapacity and those who are subject to criminal acts. She also emphasised filling this gap delivers greater opportunity for early intervention. Dr Chesterman saw his own office's inability to investigate situations beyond those involving adults with cognitive impairment or mental ill health as a deficit. The case study provided by the EAHRU, along with their evidence that the Helpline commonly receives calls from people seeking intervention in respect of an older person who has capacity, highlighted the desirability of a broader investigation net.
- 8.79** The committee did not seek an explanation from Ms Dodds as to why her proposal was limited to those who lack capacity, nor what the implications of extending its target group would be. Nor did we explore this issue with other witnesses. Beyond this, we saw much merit in the model proposed by Ms Dodds, including its functions and powers.
- 8.80** Based on the high degree of support among inquiry participants, the committee strongly supports the establishment of a Public Advocate in New South Wales with the power to investigate complaints about abuse and also to initiate its own investigations. We consider that the functions and powers of the Public Advocate should include:
- promoting and protecting the rights of vulnerable adults at risk of abuse, exploitation and neglect
 - receiving and investigating complaints about abuse, exploitation and neglect by individuals or organisations
 - conducting investigations on its own motion, where it believes an investigation is warranted
 - powers to require specified documents, written answers to questions, and attendance at a conference for the purpose of resolving a matter under investigation

- power of entry and inspection
- engaging in both individual and systemic advocacy.

8.81 The committee considers that a Public Advocate with investigative powers of this nature would deliver much greater protection for vulnerable older people than is currently available in New South Wales. Mindful of our *in camera* witnesses and many other inquiry participants who experienced great frustration and dissatisfaction about the resolution of their concerns, including the accountability of perpetrators, we also consider that such an investigative body will be of benefit to those who identify and report abuse. The operation of the Public Advocate's Office should be reviewed after three years.

Recommendation 11

That the NSW Government introduce legislation to establish a Public Advocate's Office along the lines of the Victorian model, with powers to investigate complaints and allegations about abuse, neglect and exploitation of vulnerable adults, to initiate its own investigations where it considers this warranted, and to promote and protect the rights of vulnerable adults at risk of abuse. Further, that the operation of the Office be reviewed after three years.

Appendix 1 Submissions

No	Author
1	Confidential
2	Seniors Rights Victoria
3	Office of the Public Advocate (Victoria)
4	Australian Longitudinal Study on Women's Health
5	Name suppressed (<i>partially confidential</i>)
6	Cooma Monaro Legal Services (<i>partially confidential</i>)
7	Confidential
7a	Mr John Clair
8	Name suppressed
9	Name suppressed
10	NSW Nurses and Midwives' Association
10a	NSW Nurses and Midwives' Association
11	Mr Richard McCullagh
11a	Mr Richard McCullagh
11b	Mr Richard McCullagh
11c	Mr Richard McCullagh
11d	Mr Richard McCullagh
12	Ministerial Advisory Committee on Ageing (MACA)
13	Dr Nicole L Asquith
14	Confidential
15	Ms Carolyn O'Callaghan (<i>partially confidential</i>)
16	Confidential
16a	Confidential
17	Confidential
18	Name Suppressed (<i>partially confidential</i>)
19	Justice Connect Seniors Law
20	Name Suppressed
21	Ms Lise Barry, Macquarie Law School
22	Ageed and Community Services NSW & ACT
23	Australian Association of Gerontology
24	Northern NSW Abuse of Older People Collaborative (Northern Rivers Social Development Council)

No	Author
25	Seniors Rights Service (The Aged-care Rights Service Inc) (<i>partially confidential</i>)
26	Australasian College for Emergency Medicine
27	Catholic Women's League of Australia - NSW
28	Australian Indian Aged Care Support Holistic Association (AASHA)
29	Mental Health Carers ARAFMI NSW Inc.
30	Leading Age Services Australia NSW-ACT
31	United Voice, NSW Branch
32	Eastern Community Legal Centre (Vic)
33	NSW Elder Abuse Helpline and Resource Unit
34	Protecting Seniors Wealth
35	Alzheimer's Australia NSW
36	Mid North Coast Community Legal Centre
37	Professor Susan Kurrle
38	Council on the Ageing NSW
39	Tenants' Union of New South Wales
40	Financial Rights Legal Centre
41	Combined Pensioners & Superannuants Association of NSW Inc (CPSA)
42	Health Services Union
43	The Gender Centre Inc
44	Women's Legal Services NSW
45	National Seniors Australia
46	Name suppressed (<i>partially confidential</i>)
47	Name suppressed (<i>partially confidential</i>)
48	Ms Basima Rabie (<i>partially confidential</i>)
48a	Ms Basima Rabie (<i>partially confidential</i>)
48b	Ms Basima Rabie (<i>partially confidential</i>)
48c	Ms Basima Rabie (<i>partially confidential</i>)
49	Legal Aid NSW
50	Ms Sue Field and Ms Mary-Ann de Mestre
51	Name suppressed (<i>partially confidential</i>)
51a	Confidential
52	Mr Seppy Pour
53	Hastings Elder Abuse Protection Network
54	Name suppressed (<i>partially confidential</i>)
55	Women's Electoral Lobby NSW and Older Women's Network NSW

No	Author
56	J Walker (<i>partially confidential</i>)
57	Name suppressed (<i>partially confidential</i>)
58	Name suppressed (<i>partially confidential</i>)
59	Mr Rodney Lewis
60	Name suppressed
61	Name suppressed
62	Name suppressed (<i>partially confidential</i>)
63	Ms Myra Demetriou and Mr John Dunn (<i>partially confidential</i>)
64	Friends of Millers Point (<i>partially confidential</i>)
65	Redfern Legal Centre
66	Australian Services Union
67	Quality Aged Care Action Group Incorporated (QACAG Inc)
68	Ms June Neilson (<i>partially confidential</i>)
69	Name suppressed (<i>partially confidential</i>)
70	Confidential
71	Name suppressed (<i>partially confidential</i>)
71a	Name suppressed
72	Dr Maree Bernoth, School of Nursing, Midwifery and Indigenous health, Charles Sturt University
73	Australian Medical Association (NSW)
73a	Australian Medical Association (NSW)
74	Name suppressed (<i>partially confidential</i>)
74a	Confidential
75	NSW Government
76	Australian College of Nursing
77	Dr Ian Evans OAM, PhD (<i>partially confidential</i>)
78	Carers NSW
79	Confidential
80	Mr Des Hartree
81	Capacity Australia
81a	Capacity Australia
82	Name suppressed (<i>partially confidential</i>)
83	Mr Brian Maher OAM
84	Mr David and Mrs Valarie Williams
85	Confidential

No	Author
86	Ms Linda White
87	Name suppressed (<i>partially confidential</i>)
88	Name Suppressed (<i>partially confidential</i>)
89	Name suppressed
90	Name suppressed
91	Name suppressed (<i>partially confidential</i>)
92	Name suppressed
93	Australian Lawyers Alliance
94	Name suppressed (<i>partially confidential</i>)
95	Confidential
96	Name suppressed
97	Name suppressed
98	Name suppressed
99	Mr Philip Johnson
100	Ms Sarah Breusch, University of Newcastle Legal Centre
101	Anti-Discrimination Board of NSW
102	Ms Trish Doyle MP, Member for the Blue Mountains
103	Blue Mountains Coalition Against Violence and Abuse
104	People with Disability Australia
105	Name suppressed
106	Name suppressed
106a	Name suppressed
107	The Law Society of New South Wales
108	Confidential
109	Immigrant Women's SpeakOut Association (IWSA)
109a	Immigrant Women's SpeakOut Association (IWSA)
110	Aged Care Crisis
110a	Aged Care Crisis
111	NSW Trustee and Guardian
112	Professor Wendy Lacey, School of Law, University of South Australia
113	Australian Bankers' Association
114	Name suppressed (<i>partially confidential</i>)
115	Ms Alix Goodwin
116	Mr Reuben Brown and Mrs Gwendoline Brown
116a	Mr Reuben Brown and Mrs Gwendoline Brown

No	Author
117	Ms Judith Nicholas
118	Confidential
119	Confidential
120	Ms Susan Henderson
121	Confidential
121a	Confidential
122	NSW Ombudsman

Appendix 2 Witnesses

Date	Name	Position and Organisation
Friday 20 November 2015 Macquarie Room Parliament House	Mr Ian Day	Chief Executive Officer, Council on the Ageing NSW
	Ms Kerry Marshall	Manager, NSW Elder Abuse Helpline and Resource Unit
	Mr Tom Cowen	Manager Legal Services, Principal Solicitor, Older Persons Legal Service, The Senior Rights Service
	Ms Melissa Chaperlin	Solicitor, Older Persons Legal Service, The Seniors Rights Service
	Ms Sue Field	Adjunct Fellow in Elder Abuse, School of Law, Western Sydney University

Date	Name	Position and Organisation
Monday 22 February 2016 Macquarie Room Parliament House	Hon Susan Ryan AO	Age and Disability Discrimination Commissioner, Australian Human Rights Commission
	Prof Susan Kurrle	Hornsby Kur-rin-gai Hospital and the University of Sydney
	Mr Paul Versteegen	Senior Advisor, Research and Advocacy, Combined Pensioners and Superannuants Association
	Ms Helen Macukewicz	Professional Officer, NSW Nurses and Midwives Association
	Mr Rob Sheehy	Area Manager for Aged Care, Health Services Union
	Ms Mel Gatfield	Assistant Secretary, United Voice NSW Branch
	Mr Angus McFarland	Assistant Secretary, Australian Services Union NSW and ACT (Services) Branch
	Ms Jane Brock	Executive Officer, Immigrant Women's SpeakOut Association
	Ms Mary O'Sullivan	Older Women's Network and Convenor, Women's Electoral Lobby, Affordable Action Housing Group
	Dr Jane Mears	Older Women's Network, Associate Professor, School of Social Sciences, Western Sydney University
	Mr Brendan Moore	General Manager, Policy, Research and Information Alzheimer's Australia NSW
	Dr Anthony Brown	President of NSW Division, Australian Association of Gerontology
	Ms Sarah Fogg	Member of Executive, Australian Association of Gerontology
	Ms Janene Eagleton	Member of Executive, Australian Association of Gerontology
Dr John Chesterman	Director of Strategy, Office of the Public Advocate, Victoria	

Date	Name	Position and Organisation
Monday 7 March 2016 Law Society of NSW	Consultation with Aboriginal elders	
	Ms Imelda Dodds	Chief Executive Officer, NSW Trustee and Guardian
Monday 7 March 2016 Macquarie Room Parliament House	Mr Graeme Smith	The Public Guardian
	Mr Malcolm Schyvens	Deputy President and Division Head. Guardianship Division, NSW Civil and Administrative Tribunal
	Ms Illana Halliday	Chief Executive Officer, Aged and Community Services NSW/ACT
	Mr Paul Sadler	Director, Aged and Community Services NSW/ACT
	Ms Loula Koutrodimos	Chief Executive Officer, Leading Age Services Australia NSW/ACT
	Ms Kate Spurway	Aged Care Consultant, Leading Age Services Australia NSW/ACT
	Assistant Commissioner Denis Clifford	Corporate Spokesperson on Vulnerable Communities, NSW Police Force
	Superintendent Robert Critchlow	Commander, The Hills Local Area Command, NSW Police Force

Date	Name	Position and Organisation
Friday 18 March 2016 Jubilee Room Parliament House	Witness A	Individual with personal experience of elder abuse
	Witness B	Individual with personal experience of elder abuse
	Witness C	Individual with personal experience of elder abuse
	Ms Maree Walk	Deputy Secretary, Programs and Services Design, Department of Family and Community Services
	Ms Helen Rogers	Executive Director, Participation and Inclusion, Department of Family and Community Services
	Ms Lee Crichtley	Civil Law Division Practitioner, Legal Aid NSW
	Ms Pam Suttor	Chair, Elder Law and Succession Committee, Law Society of NSW
	Ms Penny Musgrave	Member, Criminal Law Committee, Law Society of NSW
	Mr Richard McCullagh	Retirement village lawyer, Kincumber
	Ms Sarah Breusch	Solicitor, University of Newcastle Legal Center
	Mr Nick O'Neill	Professional Visiting Fellow, Faculty of Law, University of New South Wales, Director, Capacity Australia and former President of the NSW Guardianship Tribunal
	Prof Carmelle Peisah	Conjoint Professor, Faculty of Medicine, University of New South Wales and President, Capacity Australia
	Prof Wendy Lacey	Dean and Head of the School of Law, University of South Australia
	Ms Lise Barry	Senior Lecturer, Macquarie Law School
Ms Ngila Bevan	Human Rights Adviser, People with Disability Australia	
Ms Meredith Lea	Project Assistant – Violence Prevention, People with Disability Australia	

Appendix 3 Tabled documents

20 November 2015

Macquarie Room, Parliament House

- 1 Seniors Rights Service document 'Law Reform for Elder Abuse', *tendered by Mr Cowen.*
- 2 Seniors Rights Service document 'Elder Abuse...what is it and what can be done about it?', *tendered by Mr Cowen.*

22 February 2016

Macquarie Room, Parliament House

- 3 Older Women's Network four pamphlets giving legal and financial advice for older women, *tendered by Ms O'Sullivan.*
- 4 Older Women's Network document detailing strategies to address violence against older women, *tendered by Ms O'Sullivan.*
- 5 Document authored by Ludo McFerran, 'It could be you: female, single, older and homeless', *tendered by Ms O'Sullivan.*
- 6 Alzheimer's Australia NSW 'Preventing Financial Abuse of People with Dementia', *tendered by Mr Moore.*
- 7 Office of the Public Advocate 'Side by Side: A guide to appointing supportive attorneys', *tendered by Dr Chesterman.*
- 8 Office of the Public Advocate 'Take Control: A guide to making enduring powers of attorney', *tendered by Dr Chesterman.*
- 9 Office of the Public Advocate 'Annual Report 2014-2015', *tendered by Dr Chesterman.*

7 March 2016

Macquarie Room, Parliament House

- 10 Aged and Community Services NSW/ACT Report 'One Report Too Many?', *tendered by Mr Sadler*
- 11 Aide memoire for front line police 'Identifying Elder Abuse/Responding to Elder Abuse', *tendered by Assistant Commissioner Clifford.*

18 March 2016

Jubilee Room, Parliament House

- 12 Witness A – document regarding financial abuse
- 13 Witness A – document regarding financial abuse

Appendix 4 Answers to questions on notice

The committee received answers to questions on notice from:

- Mr Ian Day, Council on the Ageing NSW
- Ms Kerry Marshall, Elder Abuse Hotline
- Mr Tom Cowen and Ms Melissa Chaperlin, Seniors Rights Service
- Ms Sue Field, School of Law, Western Sydney University
- Mr Paul Versteeg, Combined Pensioners and Superannuants Association
- Dr Jane Mears, School of Social Science, Western Sydney University
- Dr Anthony Brown, Australian Association of Gerontology
- Ms Loula Koutrodimos, Leading Age Services Australia
- Ms Imelda Dodds, NSW Trustee and Guardian
- Ms Illana Halliday, Aged and Community Service NSW/ACT
- Mr Paul Sadler, Aged and Community Services NSW/ACT
- Assistant Commissioner Clifford, NSW Police Force
- Prof Wendy Lacey, University of South Australia
- Ms Lise Barry, Macquarie Law School
- Mr Richard McCullagh Patrick McHugh and Co. Solicitors
- Professor Susan Kurrle, University of Sydney
- Professor Carmelle Peisah, Capacity Australia
- Mr Nick O'Neill, Capacity Australia
- Ms Sarah Breusch, University of Newcastle Legal Centre
- Ms Ngila Bevan, People with Disability Australia
- Ms Pam Suttor, Law Society of NSW
- Ms Maree Walk, Department of Family and Community Services

Appendix 5 Minutes

Minutes No. 1

Wednesday 27 May 2015
 General Purpose Standing Committee No. 2
 Room 1136, Parliament House, Sydney, at 10.30am

1. Members present

Mr Donnelly, *Chair*
 Mr Green, *Deputy Chair*
 Ms Cotsis
 Mr Farlow (substituting for Mrs Taylor)
 Dr Faruqi
 Mr Pearce (substituting for Mr Mason-Cox)
 Dr Phelps

2. Meeting declared open

According to Standing Order 213(1), the Committee Clerk declared the meeting open.

3. Tabling of resolution establishing the Committee

The Committee Clerk tabled the resolution of the House of 6 May 2015 establishing the committee.

1. Six General Purpose Standing Committees, reflecting Government Ministers' portfolio responsibilities, be appointed as follows:

(a) General Purpose Standing Committee No. 1

Premier
 Western Sydney
 Treasury
 Industrial Relations
 Finance, Services and Property
 The Legislature

(b) General Purpose Standing Committee No. 2

Roads, Maritime and Freight
 Transport and Infrastructure
 Family and Community Services
 Social Housing
 Ageing
 Disability Services
 Multiculturalism

(c) General Purpose Standing Committee No. 3

Education
 Health
 Early Childhood Education
 Aboriginal Affair
 Mental Health
 Medical Research
 Women

Prevention of Domestic Violence and Sexual Assault

(d) General Purpose Standing Committee No. 4

Justice and Police
Arts
Racing
Planning
Attorney General
Trade, Tourism and Major Events
Sport

(e) General Purpose Standing Committee No. 5

Industry, Resources and Energy
Primary Industries
Lands and Water
Environment
Heritage

(f) General Purpose Standing Committee No. 6

Local Government
Regional Development
Skills
Small Business
Innovation and Better Regulation
Corrections
Emergency Services
Veterans Affairs.

Referral of inquiries

2. (1) A committee is to inquire into and report on any matter referred to the committee by resolution of the House.
- (2) A committee may inquire into and report on the expenditure, performance or effectiveness of any government department, statutory body or corporation, relevant to the portfolios allocated to the committee.
- (3) A committee meeting to consider a self-reference may be convened at the request of any three committee members in writing to the Committee Clerk.
- (4) The Committee Clerk must convene a meeting within seven days of the receipt of the request, providing that members are given at least 24 hours' notice.
- (5) A majority of committee members is required to adopt the self-reference.
- (6) The terms of reference are to be reported to the House on the next sitting day.

Membership

3. Each committee is to consist of seven members, comprising:
 - (a) three government members,
 - (b) two opposition members, and
 - (c) two crossbench members.

Substitute members

4. (1) Members may be appointed to a committee as substitute members for any matter before the committee, by notice in writing to the Committee Clerk.
- (2) Nominations for substitute government or opposition members are to be made by the Leader of the Government, Leader of the Opposition, Government or Opposition Whip or Deputy Whip, as applicable.
- (3) Nominations for substitute crossbench members are to be made by the substantive member

or another crossbench member.

Electronic participation in deliberative meetings

5. (1) A committee member who is unable to attend a deliberative meeting in person may participate by electronic communication and may move any motion and be counted for the purpose of any quorum or division, provided that:

- (a) the Chair is present in the meeting room, and
- (b) all members are able to speak to and hear each other at all times.

(2) Notwithstanding paragraph 5(1), a member may not participate by electronic communication in a meeting to consider a draft report.

Conduct of committee proceedings

6. Unless the committee decides otherwise:

- (a) submissions to inquiries are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration,
- (b) the Chair's proposed witness list is to be circulated to provide members with an opportunity to amend the list, with the witness list agreed to by email, unless a member requests the Chair to convene a meeting to resolve any disagreement,
- (c) the sequence of questions to be asked at hearings alternate between opposition, crossbench and government members, in that order, with equal time allocated to each,
- (d) transcripts of evidence taken at public hearings are to be published,
- (e) supplementary questions are to be lodged with the Committee Clerk within two days, excluding Saturday and Sunday, following the receipt of the hearing transcript, with witnesses requested to return answers to questions on notice and supplementary questions within 21 calendar days of the date on which questions are forwarded to the witness, and
- (f) answers to questions on notice and supplementary questions are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration.

4. Election of Chair

According to the Standing Order 213 (2), the Committee Clerk called for nominations for the Chair.

Ms Cotsis moved: That Mr Donnelly be elected Chair of the committee.

Dr Phelps moved: That Mr Green be elected Chair of the committee.

Mr Green declined the nomination.

There being no further nominations, the Clerk declared Mr Donnelly elected Chair.

5. Election of Deputy Chair

Mr Donnelly took the Chair.

The Chair called for nominations for Deputy Chair.

Dr Faruqi moved: That Dr Faruqi be elected Deputy Chair of the committee.

Dr Phelps moved: That Mr Green be elected Deputy Chair of the committee.

The Chair informed the committee that, there being two nominations, a ballot would be held.

The Chair announced the result of the ballot as follows:

Dr Faruqi – 3 votes

Mr Green – 4 votes.

Mr Green, having a majority of the votes of the members present, was therefore declared elected Deputy Chair of the committee.

6. Conduct of committee proceedings – Media

Resolved, on the motion of Dr Phelps: That unless the committee decides otherwise, the following procedures are to apply for the life of the committee:

- the committee authorise the filming, broadcasting, webcasting and still photography of its public proceedings, in accordance with the resolution of the Legislative Council of 18 October 2007
- the committee webcast its public proceedings via the Parliament’s website, where technically possible
- the committee adopt the interim guidelines on the use of social media and electronic devices for committee proceedings, as developed by the Chairs’ Committee in May 2013
- media statements on behalf of the committee be made only by the Chair.

7. Next meeting

The committee adjourned at 10.38 am, *sine die*.

Madeleine Foley

Committee Clerk

Minutes No. 6

Tuesday 1 September 2015

General Purpose Standing Committee No. 2

Jubilee Room, Parliament House, Sydney, at 1.45 pm

1. Members present

Mr Donnelly, *Chair*

Mr Green, *Deputy Chair*

Ms Cotsis (until 2.28 pm)

Dr Faruqi

Mr Mason-Cox

Dr Phelps

Mrs Taylor

Mr Mookhey (participating)

Ms Sharpe (participating)

2. Correspondence

The committee noted the following item of correspondence:

Received

27 August 2015 – Letter from Mr Donnelly, Mr Green and Ms Cotsis requesting a meeting of GPSC No. 2 to consider a proposed self-reference into elder abuse.

3. Consideration of terms of reference

The chair tabled a letter proposing the following self-reference:

That the General Purpose Standing Committee No. 2 inquire into and report on matters relating to elder abuse in New South Wales including:

1. The prevalence of abuse (including but not limited to financial abuse, physical abuse, sexual abuse, psychological abuse and neglect) experienced by persons aged 50 years or older in New South Wales
2. The most common forms of abuse experienced by older persons and the most common relationships or settings in which abuse occurs
3. The types of government and/or community support services sought by, or on behalf of, victims of elder abuse and the nature of service received from those agencies and organisations

4. The adequacy of the powers of the NSW Police Force to respond to allegations of elder abuse
5. Identifying any constraints to elder abuse being reported and best practice strategies to address such constraints
6. Identifying any strength based initiatives which empower older persons to better protect themselves from risks of abuse as they age
7. The effectiveness of NSW laws, policies, services and strategies, including the 2014 Interagency Policy Preventing and Responding to Abuse of Older People, in safeguarding older persons from abuse
8. The possible development of long-term systems and proactive measures to respond to the increasing numbers of older persons, including consideration of cultural diversity among older persons, so as to prevent abuse
9. The consideration of new proposals or initiatives which may enhance existing strategies for safeguarding older persons who may be vulnerable to abuse, and
10. Any other related matter.

Resolved, on the motion of Mr Green: That the committee adopt the terms of reference.

4. Conduct of the inquiry into elder abuse

4.1 Timeline

Resolved, on the motion of Mr Green: That the committee adopt the following timeline for the administration of the inquiry:

- Submissions close – Mid November
- Initial hearing – Late November
- Further hearings/potential site visit – February/March 2016
- Report date – May 2016.

4.2 Closing date for submissions

Resolved, on the motion of Mr Green: That the closing date for submissions be 15 November 2015.

4.3 Stakeholder list

Resolved, on the motion of Ms Cotsis: That the secretariat circulate to members the chair's proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

4.4 Advertising

Resolved, on the motion of Mr Green: That in addition to advertising the inquiry via twitter, stakeholder letters and a media release distributed to all media outlets in New South Wales, the committee place advertisements in the following publications:

- *The Land*
- *The Senior*
- Targeted ethnic newspapers as follow:
 - Aust Chinese Daily Newspaper
 - Chieu Duong
 - Chinese Herald
 - El Telegraph
 - Ho Ju Dong
 - La Fiamma
 - Kosmos
 - Pardes Express
 - Rabitah International
 - Sing Tao (NSW)

- Spanish Herald
- Vesti

5. Inquiry into Budget Estimates 2015-2016

5.1 Public hearing: Budget Estimates 2015-2016 – Transport and Infrastructure

Witnesses, the public and media were admitted.

The chair made an opening statement regarding the broadcasting of proceedings and other matters. The chair noted that members of Parliament swear an oath to their office, and therefore do not need to be sworn prior to giving evidence before a committee.

Minister Constance was admitted.

The following witnesses were examined under a former oath:

- Mr Tim Reardon, Secretary, Transport for NSW
- Ms Margaret Prendergast, CBD Coordinator General, Transport for NSW.

The following witnesses were sworn and examined:

- Mr Fergus Gammie, Deputy Secretary, Infrastructure and Services, Transport for NSW
- Mr Rodd Staples, Project Director, Sydney Metro, Transport for NSW
- Mr Peter Gemell, Project Director, Sydney Light Rail, Transport for NSW
- Mr Howard Collins, Chief Executive, Sydney Trains
- Mr Peter Rowley, Chief Executive Officer, State Transit Authority
- Mr Jim Betts, Chief Executive Officer, Infrastructure NSW.

The chair declared the proposed expenditure for the portfolio of Transport and Infrastructure open for examination.

The Minister and departmental witnesses were examined by the committee.

Ms Cotsis left the hearing at 2.28 pm.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.48 pm.

The public and media withdrew.

5.2 Supplementary hearings

Resolved, on the motion of Dr Phelps: That the committee hold a further meeting to deliberate on whether to hold supplementary hearings for the portfolio of Transport and Infrastructure on a date to be determined following receipt of answers to questions on notice.

6. Adjournment

The committee adjourned at 4.49 pm, *sine die*.

Merrin Thompson
Clerk to the Committee

Minutes no. 10

Friday 20 November 2015
General Purpose Standing Committee No. 2
Macquarie Room, Parliament House, Sydney at 9.30 am

1. Members present

Mr Donnelly, *Chair*

Mr Green, *Deputy Chair*

Ms Barham (substituting for Dr Faruqi for the duration of the inquiry into elder abuse)

Ms Cotsis

Dr Phelps

Mrs Taylor

2. Apologies

Mr Mason-Cox

3. Previous minutes

Resolved, on the motion of Dr Phelps: That draft minutes no. 9 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 5 November 2015 – Email from Ms Meagan Lawson, A/Manager, Ageing, Programs and Service Design, Department of Family and Community Services, to secretariat, requesting an extension for the NSW Government submission to the inquiry into elder abuse
- 17 November 2015 – Email from Ms Vicky Kuek, Principal Policy Lawyer, Policy and Practice, the Law Society of NSW, conveying an offer for the Indigenous Issues Committee of the Law Society of NSW to facilitate a consultation with Aboriginal Elders as part of the inquiry into elder abuse.

Resolved, on the motion of Mr Green: That the committee accept the offer of the Indigenous Issues Committee of the Law Society of NSW to facilitate a consultation with Aboriginal Elders as part of the inquiry into elder abuse.

5. Inquiry into elder abuse**5.1 Stakeholders who will not be making a submission**

The following stakeholders have advised that they will not be making a submission to the inquiry:

- Australian Taxation Office
- Commonwealth Department of Human Services
- Office of the Director of Public Prosecutions.

5.2 Hearing dates and site visits

The following dates for hearings/site visits are confirmed:

- Monday 22 February 2016
- Monday 7 March 2016
- Friday 18 March 2016 (reserve).

5.3 Public submissions

- The following submissions were published by the Committee Clerk under the authorisation of the resolution appointing the committee: submission nos. 2-4, 7a, 10-13, 19, 21-24, 26-32, 34-45, 49, 50, 52, 53 and 55.

5.4 Submission no. 33

Resolved, on the motion of Dr Phelps: That submission no. 33 be published.

5.5 Partially confidential submissions

The Chair proposed that, given the sensitivity of the matters in many submissions, the committee not utilise the option for the Committee Clerk to publish partially confidential submissions prior to a

resolution of the committee. Instead, all partially confidential submissions will be considered by the committee before publication.

Resolved, on the motion of Mrs Taylor:

- That the committee authorise the publication of submission nos. 5, 8, 9, 18 and 20 with the exception of identifying and/or sensitive information which is to remain confidential, as per the request of the author.
- That the committee authorise the publication of submission nos. 6, 25 and 47 with the exception of identifying and/or sensitive information which is to remain confidential, as per the recommendation of the secretariat.
- That the committee authorise the publication of submission nos. 15, 51 and 54 with the exception of potential adverse mention which is to remain confidential, as per the recommendation of the secretariat.

5.6 Confidential submissions

Resolved, on the motion of Mr Green:

- That the committee keep submission nos. 1, 14 and 16 confidential, as per the request of the author, as they contain identifying and/or sensitive information
- That the committee keep submission nos. 7 and 17 confidential, as per the recommendation of the secretariat, as they contain identifying and/or sensitive information.

5.7 Chair to write to NSW Bureau of Crime Statistics and Research

Resolved, on the motion of Ms Cotsis: That the Chair write to Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, to see seek information on the data currently available about elder abuse in New South Wales, and advice as to potential improvements to data collection.

5.8 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Ian Day, Chief Executive Officer, Council on the Ageing NSW. The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Kerry Marshall, Manager, NSW Elder Abuse Helpline and Resource Unit.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Tom Cowen, Manager Legal Services, Principal Solicitor, Older Persons Legal Service, The Seniors Rights Service
- Ms Melissa Chaperlin, Solicitor, Older Persons Legal Service, The Seniors Rights Service.

Mr Cowen tendered the following documents:

- 'Elder Abuse ... what is it and what can be done about it?'
- 'Law Reform for Elder Abuse'.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Sue Field, Adjunct Fellow in Elder Law, School of Law, Western Sydney University.

The evidence concluded and the witness withdrew.

The public and media withdrew.

6. Deliberative meeting

Resolved, on the motion of Mr Green: That the committee accept and publish the following documents tendered during the public hearing:

- ‘Elder Abuse ... what is it and what can be done about it?’, tendered by Mr Cowen’
- ‘Law Reform for Elder Abuse’, tendered by Mr Cowen.

Resolved, on the motion of Dr Phelps: That the committee publish on its website the poster that Ms Marshall, NSW Elder Abuse Helpline and Resource Unit, undertook to provide on notice.

Resolved, on the motion of Mr Green: That the committee note on its website that it will accept submissions until Friday 12 February 2016.

Resolved, on the motion of Dr Phelps: That the committee invite the following witnesses to give evidence at a future hearing:

- Superintendent Robert Critchlow, Commander, Hills Local Area Command, NSW Police Force
- Australian Medical Association.

Resolved, on the motion of Mr Green:

- That the committee invite up to five individuals who have indicated in their submission an experience of elder abuse to give evidence as part of a panel
- That the evidence be taken in camera, with a view to publishing the transcript with names and other identifying information suppressed
- That the evidence focus on:
 - What went wrong in the system?
 - What could have been done better?
 - Recommendations for the future.

7. Adjournment

The committee adjourned at 1.23 pm until 9.15 am, Monday 22 February 2016, Macquarie Room, Parliament House (*public hearing*).

Merrin Thompson
Committee Clerk

Minutes no. 11

Monday 22 February 2016

General Purpose Standing Committee No. 2

Macquarie Room, Parliament House, Sydney at 9.03 am

1. Members present

Mr Donnelly, *Chair*
Mr Green, *Deputy Chair*
Ms Barham
Ms Cotsis
Mr Mason-Cox
Dr Phelps
Mrs Taylor

2. Previous minutes

Resolved, on the motion of Dr Phelps: That draft minutes no. 10 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 18 November 2015 – Email from Ms Lynette Garrick, Executive and Research Assistant to the Hon Susan Ryan AO, Age and Disability Discrimination Commissioner, Australian Human Rights Commission, forwarding two of Ms Ryan’s recent speeches on elder abuse
- 30 November 2015 – Letter from Minister John Ajaka MLC, forwarding the NSW Government submission to the inquiry into elder abuse
- December 2015 – Letter from Mr Andrew Took, Director, Medico-Legal and Employment Relations, Australian Medical Association NSW, to secretariat, declining the committee’s invitation to appear at a hearing for the inquiry into elder abuse
- 22 January 2016 – Letter from Mr Malcolm Schyvens, Deputy President and Division Head – Guardian Division, NSW Civil and Administrative Tribunal, to secretariat, regarding his invitation to appear at a hearing for the inquiry into elder abuse
- 8 February 2016 – Email from Mr Greg Cameron to Chairs, General Purpose Standing Committees No. 1 and 2, regarding rail privatisation
- 10 February 2016 – Letter from Mr Clem Dodd, speaker for and on behalf of the Dharrivaa Elders Group, to secretariat, regarding potential input into the inquiry into elder abuse
- 12 February 2016 – Letter from Dr Elizabeth Coombs, NSW Privacy Commissioner, to Chair, raising concerns about the failure to respect the right to privacy of older people as a form of abuse.

Sent:

- February 2016 – Letter from Chair to Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, requesting research or information on the prevalence and forms of elder abuse, and suggestions as to how data collection could be improved.

4. Committee briefing on NDIS

The committee deferred consideration of whether to request a private briefing from Hon John Ajaka MLC, Minister for Disability Services, and/or officials from the Department of Family and Community Services, until the Minister provides a briefing to all members of Parliament which is anticipated to occur in March 2016.

5. Inquiry into elder abuse

5.1 Attachments to submissions

Members were reminded that attachments to submissions are available on request from the Secretariat.

5.2 Public submissions

The committee noted that the following submissions were published by the Committee Clerk under the authorisation of the resolution appointing the committee: submission nos. 65, 66, 67, 72, 73 and 75

Resolved, on the motion of Dr Phelps: That the committee authorise the publication of submission nos. 10a, 11a, 59, 73a, 76, 78, 80, 81, 83, 84, 86, 93, 99, 100, 101, 102, 103, 104, 107 and 109.

Resolved, on the motion of Dr Phelps: That the Committee invite the Law Society of New South Wales to appear as a witness on 18 March 2016.

5.3 Partially confidential submissions

Resolved, on the motion of Mr Mason-Cox:

That the committee authorise the publication of submission nos. 89 and 90 with the exception of identifying and/or sensitive information which is to remain confidential, as per the request of the author
That the committee authorise the publication of submission nos. 56, 63, 87, 88 and 91 with the exception of identifying and/or sensitive information which is to remain confidential, as per the recommendation of the secretariat.

5.4 Confidential submissions

Resolved, on the motion of Dr Phelps:

That the committee keep submission nos. 16a and 79 confidential, as per the request of the author, as they contain identifying and/or sensitive information

That the committee keep submission nos. 85 and 95 confidential, as per the recommendation of the secretariat, as they contain identifying and/or sensitive information.

5.5 Submission nos. 48, 48a and 48b

Resolved, on the motion of Mr Green: That the committee authorise the publication of the recommendations in submissions nos. 48, 48a and 48b, along with the submission author's name, and that the remainder of the submissions remain confidential.

5.6 Consultation with Aboriginal elders – 10.00 am to 1.00 pm, Monday 7 March 2016 at the Law Society of New South Wales

The secretariat briefed the committee on arrangements for the consultation.

5.7 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- The Hon Susan Ryan AO, Age and Disability Discrimination Commissioner, Australian Human Rights Commission.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Professor Susan Kurrel, Hornsby Kuringai Hospital and the University of Sydney.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Paul Versteeg, Senior Advisor, Research and Advocacy, Combined Pensioners and Superannuants Association.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Helen Macukewicz, Professional Officer, NSW Nurses and Midwives Association
- Mr Rob Sheehy, Area Manager for Aged Care, Health Services Union
- Ms Mel Gatfield, Assistant Secretary, United Voice NSW Branch
- Mr Angus McFarland, Assistant Secretary, Australian Services Union NSW and ACT (Services) Branch.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Jane Brock, Executive Officer, Immigrant Women's Speak Out
- Ms Mary O'Sullivan, Older Women's Network and Convenor, Women's Electoral Lobby, Affordable Action Housing Group
- Dr Jane Mears, Older Women's Network and Associate Professor, School of Social Sciences, Western Sydney University.

Ms O'Sullivan tendered the following documents:

- Older Women's Network, four pamphlets giving legal and financial advice for older women
- Older Women's Network, *The disappearing age: a strategy to address violence against older women*

- Ludo McFerran, *It could be you: female, single, older and homeless.*

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Brendan Moore, General Manager, Policy, Research and Information, Alzheimer's Australia NSW.

Mr Moore tendered the following document:

- Alzheimer's Australia NSW, *Preventing Financial Abuse of People with Dementia.*

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Anthony Brown, President of NSW Division, Australian Association of Gerontology
- Ms Sarah Fogg, Member of Executive, Australian Association of Gerontology
- Ms Janene Eagleton, Member of Executive, Australian Association of Gerontology.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr John Chesterman, Director of Strategy, Office of the Public Advocate, Victoria.

Dr Chesterman tendered the following documents:

- Office of the Public Advocate, *Side by Side: A guide to appointing supportive attorneys*
- Office of the Public Advocate, *Take Control: A guide to making enduring powers of attorney*
- Office of the Public Advocate, *Annual Report 2014-2015.*

The evidence concluded and the witness withdrew.

The public and media withdrew.

5.8 Request for submissions

Resolved, on the motion of Mr Mason-Cox: That the committee invite submissions from the following stakeholders:

- Financial Services Council
- Australian Bankers' Association
- Aged Care Complaints Commissioner
- Office of the Legal Services Commissioner
- Financial Planners Association.

5.9 Tendered documents

Resolved, on the motion of Ms Taylor: That the committee accept the following documents tendered during the public hearing:

- Older Women's Network, four pamphlets giving legal and financial advice for older women, tendered by Ms O'Sullivan
- Older Women's Network, The disappearing age: a strategy to address violence against older women, tendered by Ms O'Sullivan
- Ludo McFerran, *It could be you: female, single, older and homeless.* , tendered by Ms O'Sullivan
- Alzheimer's Australia NSW, *Preventing Financial Abuse of People with Dementia*, tendered by Mr Moore
- Office of the Public Advocate, *Side by Side: A guide to appointing supportive attorneys*, tendered by Dr Chesterman

- Office of the Public Advocate, Take Control: A guide to making enduring powers of attorney, tendered by Dr Chesterman
- Office of the Public Advocate, Annual Report 2014-2015, tendered by Dr Chesterman.

6. Adjournment

The committee adjourned at 5.15pm until Monday 7 March 2016.

Madeleine Foley

Clerk to the Committee

Minutes no. 12

Monday 7 March 2016

General Purpose Standing Committee No. 2

Law Society of New South Wales, Sydney at 10.05 am then Macquarie Room, Parliament House, Sydney at 2.15 pm

1. Members present

Mr Donnelly, *Chair*

Mr Green, *Deputy Chair*

Ms Barham

Ms Cotsis (*apologies*)

Mr Mason-Cox (from 2.15 pm)

Mr Mookhey (substituting for Ms Cotsis from 10.00 am until 1.00 pm)

Dr Phelps

Mrs Taylor

2. Apologies

Ms Cotsis (from 2.15 pm)

Mr Mason-Cox (from 10.00 am until 1.00 pm)

3. Consultation with Aboriginal elders, inquiry into elder abuse

The committee held a consultation with Aboriginal elders facilitated by Mr Ricky Welsh and Ms Bobbi Murray of the Indigenous Issues Committee, Law Society of New South Wales.

4. Previous minutes

Resolved, on the motion of Dr Phelps: That draft minutes no. 11 be confirmed.

5. Correspondence

The Committee noted the following items of correspondence:

Received

- 25 February 2016 – Email from Ms Emma Lancaster, Research Analyst, United Voice, requesting that the committee publish an amended version of submission no. 31
- 26 February 2016 – Letter from Ms Rae Lamb, Aged Care Complaints Commissioner advising that the Commissioner will not be making a submission to the inquiry into elder abuse
- 29 February 2016 – Letter from Mr Malcolm Schyvens, Deputy President and Division Head, Guardianship Division, NSW Civil and Administrative Tribunal, forwarding three annual reports
- 1 March 2016 – Email from Dr Jane Mears, Associate Professor, School of Social Sciences and Psychology, Western Sydney University, seeking to clarify a statement in her evidence on 18 February 2016.

Resolved, on the motion of Mr Mason-Cox: That the committee authorise the publication of the amended submission no. 31.

Resolved on the motion of Dr Phelps: That page 38 of the transcript of Dr Mears' evidence on 22 February 2016 be amended by inserting 'specialised' before 'counselling services at all for older women as a result of sexual abuse'.

Resolved on the motion of Ms Barham: That the committee authorise the publication of the correspondence from Dr Mears dated 1 March 2016.

6. Inquiry into elder abuse

6.1 Partially confidential submissions

Resolved on the motion of Mrs Taylor: That the committee authorise the publication of submission nos. 60, 61, 62, 71, 77, 94, 97, 98 and 105, with the exception of identifying and/or sensitive information which is to remain confidential, as per the request of the author.

Resolved on the motion of Mrs Taylor: That the committee authorise the publication of submission nos. 58 and 69, with the exception of identifying and/or sensitive information which is to remain confidential, as per the recommendation of the secretariat

Resolved on the motion of Mrs Taylor: That the committee authorise the publication of submission no. 57, with the exception of potential adverse mention which is to remain confidential, as per the recommendation of the secretariat.

6.2 Hearing with representatives of the NSW Trustee and Guardian, the Public Guardian and the NSW Civil and Administrative Tribunal

The Secretariat briefed the Committee on matters with respect to the hearing.

6.3 Panel of individuals, 18 March 2016 hearing

Resolved on the motion of Mr Green: that the following submission authors give evidence as a panel on 22 March 2016:

- Mr John Clair, submission nos. 7 and 7a
- Name suppressed, submission no. 51
- Name suppressed, submission no. 90
- Name suppressed, submission no. 94.

6.4 Public hearing

Witnesses, the public and the media were admitted.

The following witnesses were sworn and examined:

- Ms Imelda Dodds, Chief Executive Officer, NSW Trustee and Guardian
- Mr Graeme Smith, The Public Guardian
- Mr Malcolm Schyvens, Deputy President and Division Head, Guardianship Division, NSW Civil and Administrative Tribunal.

Ms Dodds tendered a submission to the inquiry.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Illana Halliday, Chief Executive Officer, Aged and Community Services NSW/ACT
- Mr Paul Sadler, Director, Aged and Community Services NSW/ACT
- Ms Loula Koutrodimos, Leading Age Services Australia NSW/ACT
- Ms Kate Spurway, Aged Care Consultant, Leading Age Services Australia NSW/ACT.

Mr Sadler tendered the following document:

- Paul Sadler, Director, Aged and Community Services NSW/ACT, Elder Abuse: One Report Too Many?

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Assistant Commissioner Denis Clifford, Corporate Spokesperson on Vulnerable Communities, NSW Police Force
- Superintendent Robert Critchlow, Commander, The Hills Local Area Command, NSW Police Force.

Mr Clifford tendered the following document:

- Aide memoire for front line police, NSW Elder Abuse Helpline and Resource Unit, NSW Government and NSW Police Force, *Identifying Elder Abuse/Responding to Elder Abuse*.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

6.5 Tendered documents

Resolved, on the motion of Dr Phelps: That the committee publish Ms Dodd's submission.

Resolved, on the motion of Dr Phelps: That the committee accept and publish the following document tendered during the public hearing:

- Paul Sadler, Director, Aged and Community Services NSW/ACT, *Elder Abuse: One Report Too Many?*, tendered by Mr Sadler.

Resolved, on the motion of Dr Phelps: That the committee accept the following document tendered during the public hearing:

- Aide memoire for front line police, NSW Elder Abuse Helpline and Resource Unit, NSW Government and NSW Police Force, *Identifying Elder Abuse/Responding to Elder Abuse*, tendered by Mr Clifford.

7. Adjournment

The committee adjourned at 5.23 pm until Monday 18 March 2016.

Merrin Thompson
Committee Clerk

Minutes no. 13

Friday 18 March 2016

General Purpose Standing Committee no.2

Jubilee Room, Parliament House, Sydney at 9.30 am

1. Members present

Mr Donnelly, *Chair*
Mr Green, *Deputy Chair*
Ms Barham
Ms Cotsis
Mr Mallard (substituting for Mrs Taylor)
Mr Mason-Cox
Dr Phelps

2. Previous minutes

Resolved, on the motion of Mr Green: That draft minutes no. 12 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received

- 3 March 2016 – Email from Ms Mel Gatfield, Assistant Secretary, United Voice NSW Branch, requesting that the transcript of evidence for 22 February 2016 be corrected to address an error of fact
- 10 March 2016 – Email from Mr Benjamin Marshan, Professional Standards and Advocacy Manager, Financial Planning Association of Australia, responding to the committee's request to make a submission to the inquiry into elder abuse
- 17 March 2016 – Email from Mr Jim Milne, Assistant Commissioner (Complaints), Office of the Legal Services Commissioner, regarding the role of the Office in dealing with complaints about lawyers and offering to respond to specific requests from the committee.

Resolved, on the motion of Ms Barham: That the committee authorise the publication of the correspondence from:

- Ms Gatfield, United Voice NSW Branch, dated 3 March 2016
- Mr Marshan, Financial Planning Association of Australia, dated 10 March 2016
- Mr Jim Milne, Office of the Legal Services Commissioner, dated 17 March 2016.

4. Committee briefing on the NDIS

Resolved, on the motion of Ms Barham: That the committee request a private briefing from the Hon John Ajaka MLC, Minister for Disability Services, and/or officials from the Department of Family and Community Services, regarding the implementation of the National Disability Insurance Scheme (NDIS).

5. Inquiry into elder abuse**5.1 Delay in transcript delivery**

The committee noted that Hansard advised the delivery of the transcript for the 18 March 2016 hearing will be delayed until at least 24 March 2016.

5.2 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 112 and 117.

Resolved, on the motion of Mr Mason-Cox: That the committee authorise the publication of submission nos. 11b, 113, 115 and 116.

5.3 Partially confidential submissions

Resolved, on the motion of Dr Phelps:

- That the committee authorise the publication of submission nos. 71a, 74, 96, 106 and 114, with the exception of identifying and/or sensitive information which is to remain confidential, as per the request of the author.
- That the committee authorise the publication of submission nos. 46, 48c, 64, 68, 82 and 92, with the exception of identifying and/or sensitive information which is to remain confidential, as per the recommendation of the secretariat.

5.4 Submission no. 110

Resolved, on the motion of Dr Phelps: That the committee:

- authorise the publication of submission no. 110, with the exception of identifying and/or sensitive information which is to remain confidential, as per the recommendation of the secretariat
- retain reference to the web-links to media articles on pages 7-8 and in the list of references at the end of the submission.

5.5 Confidential submissions

Resolved, on the motion of Dr Phelps: That the committee keep submission nos. 70 and 108 confidential, as per the recommendation of the secretariat, as they contain identifying and/or sensitive information and potential adverse mention.

5.6 Panels of legal academics and other experts

The secretariat briefed the committee on how the panels will operate during the 18 March 2016 hearing.

5.7 *In camera* hearing

The committee previously resolved that the husband of Witness A be permitted to be present in the audience during the *in camera* hearing.

Resolved, on the motion of Dr Phelps: That the committee proceed to take evidence *in camera*.

Persons present other than the committee: Madeleine Foley, Merrin Thompson, Jodi Rahme, Hansard reporters and the husband of Witness A.

The following witnesses were sworn and examined:

- Witness A
- Witness B
- Witness C.

Witness A tendered a number of documents concerning an allegation of elder abuse.

6. Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Maree Walk, Deputy Secretary, Programs and Service Design, Department of Family and Community Services
- Ms Helen Rogers, Executive Director, Participation and Inclusion, Department of Family and Community Services.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Penny Musgrave, Member, Criminal Law Committee, Law Society of NSW
- Ms Pam Suttor, Chair, Elder Law and Succession Committee, Law Society of NSW
- Ms Lee Critchley, Civil Law Division Practitioner, Legal Aid NSW
- Mr Richard McCullagh, Retirement village lawyer, Kincumber
- Ms Sarah Breusch, Solicitor, University of Newcastle Legal Centre.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Lise Barry, Senior Lecturer, Macquarie Law School
- Professor Wendy Lacey, Dean and Head of the School of Law, University of South Australia
- Professor Carmelle Peisah, Conjoint Professor, Faculty of Medicine, University of New South Wales and President, Capacity Australia
- Mr Nick O'Neill, Professorial Visiting Fellow, Faculty of Law, University of New South Wales, and Director, Capacity Australia.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

7. Deliberative meeting

Resolved, on the motion of Mr Green: That the committee accept the documents tendered by Witness A concerning an allegation of elder abuse, and that these be kept confidential.

8. Adjournment

The committee adjourned at 4.50 pm, *sine die*.

Merrin Thompson
Committee Clerk

Minutes no. 14

Thursday 12 May 2016

General Purpose Standing Committee No. 2

Room 1136, Parliament House, Sydney at 1.10 pm

1. Members present

Mr Donnelly, *Chair*

Mr Green, *Deputy Chair*

Mr Amato (substituting for Mr Mason-Cox)

Ms Barham

Ms Cotsis

Dr Phelps

Mrs Taylor

2. Briefing on the National Disability Insurance Scheme (NDIS)

Resolved, on the motion of Dr Phelps: That the committee move immediately to Item 6 on the agenda, 'Briefing on the NDIS'.

The committee was briefed on the implementation of the National Disability Insurance Scheme (NDIS) by the following officials from the Department of Family and Community Services:

- Mr Jim Longley, Deputy Secretary
- Ms Samantha Taylor, Executive Director, NDIS Implementation.

3. Previous minutes

Resolved, on the motion of Dr Phelps: That draft minutes no. 13 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 21 April 2016 – Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, to secretariat, suggesting potential sources of information on the prevalence of elder abuse
- 26 April 2016 – Mr John McKenzie, Legal Services Commissioner, to Chair, responding to a request for further information regarding the handling of complaints about lawyers
- 27 April 2016 – Mr John McKenzie, Legal Services Commissioner, to secretariat, agreeing to the committee's request to publish his correspondence dated 26 April 2016

Sent:

- 4 April 2016 – Chair to Mr Jim Milne, Deputy Commissioner (Complaints), Office of the Legal Services Commissioner, requesting further information regarding the handling of complaints about lawyers

The committee noted that the following correspondence was published by the committee following agreement via email: Mr John McKenzie, Legal Services Commissioner, to Chair, received 26 April 2016.

5. Inquiry into elder abuse

5.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 11c, 81a, 110a, 116a, 120, and 122.

5.2 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published under the authorisation of the resolution appointing the committee:

- Ms Helen Rogers, Executive Director, Participation and Inclusion, Department of Family and Community Services, received 27 April 2016.

Resolved, on the motion of Ms Barham: That attachment B2 (contract with Catholic Healthcare Ltd for the Elder Abuse Helpline and Resource Centre) to the answers to questions on notice and supplementary questions from Ms Helen Rogers, Department of Family and Community Services, be kept confidential at the request of the Department.

Resolved, on the motion of Dr Phelps: That the committee authorise the publication of the following answers to questions on notice and supplementary questions:

- Answers to questions on notice – Dr Sue Field – Adjunct Fellow – Western Sydney University – received 18 December 2015
- Answers to supplementary questions – Ian Day – Chief Executive Officer – Council on the Ageing NSW – received 18 December 2015
- Answers to questions on notice – Melissa Chaperline – Solicitor – Older Persons Legal Service – Seniors Rights Service – received 14 January 2016
- Answers to questions on notice – Tom Cowen – Manager – Legal Services – Seniors Rights Service – received 2 February 2016
- Answers to supplementary questions – Tom Cowen – Manager, Legal Services – Seniors Rights Service – received 2 February 2016
- Answers to supplementary questions – Kerry Marshall – Manager – NSW Elder Abuse Helpline and Research Unit – 16 February 2016
- Answers to questions on notice – Dr Jane Mears – Associate Professor, Western Sydney University – received 26 February 2016
- Answers to questions on notice – Paul Versteeg – Senior Advisor, Research and Advocacy – Combined Pensioner and Superannuants Association – received 4 March 2016
- Answers to questions on notice and supplementary answers – Lise Barry – Senior Lecturer – Macquarie Law School – received 18 March 2016
- Answers to questions on notice and supplementary questions – Professor Wendy Lacey – University of South Australia – received 18 March 2016
- Answers to questions on notice – Dr Anthony Brown – Australian Association of Gerontology – received 21 March 2016
- Answers to questions on notice – Loula Koutrodimos – A/Chief Executive Officer – Leading Aged Care Australia – received 30 March 2016
- Answers to supplementary questions – Loula Koutrodimos – A/Chief Executive Officer – Leading Aged Care Australia – received 30 March 2016
- Answers to questions on notice – Imelda Dodds – Chief Executive Officer – NSW Trustee and Guardian – received 1 April 2016
- Answers to supplementary questions – Imelda Dodds – Chief Executive Officer – NSW Trustee and Guardian – received 1 April 2016

- Answers to questions on notice and supplementary questions – Assistant Commissioner Denis Clifford – NSW Police Force – received 5 April 2016
- Answers to questions on notice – Illana Halliday, Chief Executive Officer – Paul Sadler, Director – Aged and Community Services NSW and ACT – received 5 April 2016
- Answers to questions on notice – Professor Susan Kurrel – University of Sydney – received 12 April 2016
- Answers to questions on notice and supplementary questions – Richard McCullagh – retirement village lawyer – received 11 April 2016
- Answers to questions on notice and supplementary questions – Professor Carmelle Peisah – President – Capacity Australia – received 15 April 2016
- Further answers to questions on notice – Dr Jane Mears – Associate Professor – Western Sydney University - Questionnaire – received 15 April 2016
- Answers to questions on notice and supplementary questions – Mr Nick O'Neill – Director – Capacity Australia – received 18 April 2016
- Answers to questions on notice and supplementary questions – Sarah Breusch – Solicitor – University of Newcastle Legal Centre – received 20 April 2016
- Answers to questions on notice and supplementary questions – Meredith Lea – Project Assistant – People with Disability Australia – received 20 April 2016
- Answers to questions on notice – Pam Suttor – Chair – Elder Law and Succession Committee – Law Society of NSW – received 9 May 2016

5.3 Indigenous consultation – summary report

Resolved, on the motion of Dr Phelps; That the committee authorise the publication of the summary report of key themes and messages arising from the consultation with Aboriginal Elders held on 7 March 2016, and conducted in collaboration with the Law Society of New South Wales's Indigenous Issues Committee.

5.4 Publication of 22 March 2016 in camera transcript

Resolved, on the motion of Dr Phelps: That:

- the committee authorise the publication of the redacted transcript of the witnesses who appeared in camera on 18 March 2016, and that the suppressed content remain confidential.
- any person mentioned in the transcript by implication may provide a submission in response.

6. Other business – consideration of terms of reference

The chair tabled a letter proposing the following self-reference.

That the General Purpose Standing Committee No. 2 inquire into and report on matters relating to child protection including:

1. That General Purpose Standing Committee No. 2 inquire into and report on the role of the Department of Family and Community Services in relation to child protection, including:
 - a) the capacity and effectiveness of systems, procedures and practices to notify, investigate and assess reports of children and young people at risk of harm
 - b) the adequacy and reliability of the safety, risk and risk assessment tools used at Community Service Centres
 - c) the amount and allocation of funding and resources to the Department of Family and Community Services for the employment of casework specialists, caseworkers and other frontline personnel and all other associated costs for the provision of services for children at risk of harm, and children in out of home care
 - d) the amount and allocation of funding and resources to non-government organisations for the employment of casework specialists, caseworkers and other frontline personnel and all other associated costs for the provision of services for children at risk of harm, and children in out of home care

- e) the support, training, safety, monitoring and auditing of carers including foster carers and relative/kin carers
- f) the structure of oversight and interaction in place between the Office of the Children's Guardian, Department of Family and Community Services, and non-government organisations regarding the provision of services for children and young people at risk of harm or in out of home care
- g) specific initiatives and outcomes for at risk Aboriginal and Torres Strait Islander children and young people
- h) any other related matter.

Resolved, on the motion of Ms Barham: That the terms of reference be amended by inserting a new point after (g): the amount and allocation of funding and resources to universal supports and to intensive, targeted prevention and early intervention programs to prevent and reduce risk of harm to children and young people.

Mr Donnelly moved that the committee adopt the terms of reference, as amended.

The committee divided.

Ayes: Ms Barham, Mr Donnelly, Mr Green, Ms Cotsis

Noes: Mr Amato, Dr Phelps, Mrs Taylor

Question resolved in the affirmative.

7. Conduct of the inquiry into child protection

7.1 Timeline

Resolved, on the motion of Ms Barham: That hearing dates be considered by the committee after the submission closing date. Further, that hearing dates be determined by the Chair after consultation with members regarding their availability.

7.2 Closing date for submissions

Resolved, on the motion of Ms Cotsis: That the closing date for submissions be 3 July 2016.

7.3 Stakeholder list

Resolved, on the motion of Mr Green: That the secretariat circulate to members the Chair's proposed list of stakeholders to provide members with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

7.4 Advertising

Resolved, on the motion of Ms Barham: That in addition to advertising the inquiry via twitter, stakeholder letters and a media release distributed to all media outlets in New South Wales, the committee advertise in the Early General News section of *The Sydney Morning Herald*.

8. Adjournment

The committee adjourned at 2.25 pm, until 10.00 am Monday 20 June 2016.

Madeleine Foley
Committee Clerk

Draft minutes no. 16

Monday 20 June 2016

General Purpose Standing Committee No. 2

Room 814/815, Parliament House, 10.05 am

1. Members present

Mr Donnelly, *Chair*
 Mr Green, *Deputy Chair*
 Ms Barham
 Ms Cotsis
 Mr Mason-Cox
 Dr Phelps
 Mrs Taylor

2. Budget Estimates

The committee noted that the Budget Estimates timetable for 2016-2017 was agreed to by the House, with the following GPSC 2 hearings:

Date	Time	Portfolio	Room
Monday 29 August 2016	9.00 am – 12.00 pm	Family and Community Services, Social Housing (Hazzard)	Macquarie
	2.00 pm – 6.00 pm	Roads, Maritime and Freight (Gay)	Macquarie
Tuesday 30 August 2016	9.00 am – 12.00 pm	Ageing, Disability Services, Multiculturalism (Ajaka)	Jubilee
	2.00 pm – 6.00 pm	Transport and Infrastructure (Constance)	Jubilee

2.1 Allocation of question time

The committee noted that under the resolution establishing General Purpose Standing Committees, the sequence of questions at hearings is to alternate between opposition, crossbench and government members, with equal time allocated to each, unless the committee decides otherwise.

2.2 Government questions

Resolved, on the motion of Mr Mason-Cox: That with no questions asked by government members:

- On Monday 29 August 2016, the portfolios of Family and Community Services, Social Housing be examined from 9.00 am until 11.00am
- On Monday 29 August 2016, the portfolio of Roads, Maritime and Freight be examined from 2.00 pm to 4.40 pm
- On Tuesday 30 August 2016, the portfolios of Ageing Disability Services, Multiculturalism be examined from 9.00 am to 11.00 am
- On Tuesday 30 August 2016, the portfolio of Transport and Infrastructure be examined from 2.00 pm to 4.40 pm.

2.3 Order for examination of portfolios: If portfolios are not to be considered concurrently

Resolved, on the motion of Ms Barham: That for the Family and Community Services, Social Housing hearing on Monday 29 August 2016 the portfolios be examined in this order:

- Family and Community Services from 9.00 am to 10.00 am
- Social Housing from 10.00 am to 11.00 am.

Resolved, on the motion of Mr Green: That for the Ageing, Disability Services, Multiculturalism hearing on Tuesday 30 August 2016 the portfolios be examined in this order:

- Ageing, Disability Services from 9.00 am to 10.30 am
- Multiculturalism from 10.30 am to 11.00 am

2.4 Witness requests

Resolved, on the motion of Mr Green: That members provide any additional witnesses, or changes to witnesses, listed in last year's hearing notices to the secretariat by 1.00 pm on Wednesday 22 June 2016.

3. Inquiry into elder abuse

3.1 Public submissions

The committee notes that the following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 109a.

3.2 Partially confidential submissions

Resolved, on the motion of Dr Phelps: The committee authorise the publication of submission no. 106a, with the exception of identifying and/or sensitive information which is to remain confidential, as per the request of the author.

3.3 Confidential submissions

Resolved, on the motion of Dr Phelps: That the committee keep confidential:

- submission nos. 51a and 74a, as per the recommendation of the secretariat, as they contain identifying and/or sensitive information and potential adverse mention
- submission nos. 118, 119, 121 and 121a, as per the request of the submission authors.

3.4 Consideration of the Chair's draft report

The Chair submitted his draft report entitled *Elder abuse in New South Wales*, which, having being previously circulated, was taken as being read.

Resolved, on the motion of Mr Mason-Cox: That recommendation 1 be amended by:

- a) omitting 'develop and implement a strong and comprehensive new approach' and inserting instead 'embrace a comprehensive, coordinated and ambitious approach'. Further, that similar words be inserted instead of 'new approach' wherever it appears in the report.
- b) inserting a new dot point at the end:
 - 'an enhanced role for the NSW Elder Abuse Helpline and Resource Unit'.

Resolved, on the motion of Mrs Taylor: That paragraph 4.70 be amended by omitting 'simply' after 'Our view as a committee is that there'.

Resolved, on the motion of Ms Cotsis: That the second dot point in recommendation 2 be amended by inserting at the end 'and engagement with Multicultural NSW and Aboriginal Affairs NSW'.

Resolved, on the motion of Mr Mason-Cox: That paragraph 5.4 be amended to insert after the second sentence: 'FACS subsequently advised that the steering committee had met on an almost monthly basis during 2013 and 2014.'

Resolved, on the motion of Mr Mason-Cox:

- a) That the first sentence in paragraph 5.85 be amended by omitting, 'The committee trusts that the meeting in February 2016, after a long delay, of the Steering Committee on the Prevention of Abuse of Older People' and inserting instead 'Noting that during 2013 and 2014 the NSW Steering Committee on the Prevention of Abuse of Older People met almost monthly, the committee trusts that the meeting in February 2016, after a long delay,'.
- b) That the following new recommendation be inserted after paragraph 5.86:

'Recommendation X

That the NSW Steering Committee for the Prevention of Abuse of Older People meet at least quarterly in order to enhance accountability and drive the implementation of government policy.'

Resolved, on the motion of Mr Mason-Cox: That Recommendation 3 be amended by:

- a) Inserting at the end of the first dot point ‘including with regard to duty of care, reporting requirements in respect of a crime, and privacy and confidentiality’
- b) Omitting from the final dot point ‘determine the most effective means by which to’.

Resolved, on the motion of Mr Mason-Cox: That paragraph 5.92 be amended by omitting ‘massive’ before ‘emotional demands’.

Resolved, on the motion of Mr Green: That recommendation 5 be omitted: ‘That the NSW Government expand the role of the NSW Elder Abuse Helpline and Resource Unit to include provision of case management and coordination, and that, as the government’s comprehensive new approach to elder abuse develops, consideration be given to whether the Helpline should further expand to operate as a round-the-clock continuous service’, and the following recommendation be inserted instead:

That the NSW Government expand the role of the NSW Elder Abuse Helpline and Resource Unit to include:

- provision of case management and coordination
- consideration of Helpline operating hours, based on an assessment of demand
- adequate provision for culturally and linguistically diverse and Aboriginal clients.

Resolved, on the motion of Dr Phelps: That paragraph 6.105 be amended by omitting ‘is attracted to’ and inserting instead ‘notes that there is some support for’.

Resolved, on the motion of Dr Phelps: That paragraph 7.50 be amended by inserting as the second last sentence: ‘This checklist should also address the issue of notification and/or non-notification of family members in relation to the wishes of the principal.’

Resolved, on the motion of Mr Mason-Cox: That paragraph 7.51 be amended by:

- a) omitting ‘finds it extraordinary’ and inserting instead ‘notes’
- b) omitting ‘Surely the time has come for law schools to carefully’ and inserting instead ‘Law schools could’.

Resolved, on the motion of Ms Barham: That the following new recommendation be inserted after paragraph 7.53:

‘Recommendation X

That the NSW Government fund the NSW Elder Abuse Helpline and Resource Unit to conduct information sessions with financial institutions to raise awareness of financial abuse and promote online training tools for staff such as Capacity Australia’s training program to identify financial abuse.’

Resolved, on the motion of Ms Cotsis: That paragraph 8.75 be amended by inserting at the end of the first sentence: ‘, noting that their role is aimed at improving responses to, and addressing barriers to justice for, older people, people with disability and other vulnerable groups.’

Resolved, on the motion of Mr Mason-Cox: That recommendation 8 be amended by:

- a) omitting ‘Local Area Command’ and inserting instead ‘regional command’
- b) moving ‘police response’ to after ‘training and support to front line officers’
- c) inserting ‘and other government agencies’ after ‘liaison with local service providers’.

Resolved, on the motion of Mr Mason-Cox: That paragraph 8.80 be amended by omitting ‘is wholeheartedly supportive of’ and inserting instead ‘strongly supports’.

Resolved, on the motion of Dr Phelps:

- a) That paragraph 8.82 be omitted: ‘In making this recommendation, however, we consider that further consultation and thought is required as to who the target group for a Public Advocate’s Office in New South Wales should be.’

- b) That recommendation 10 be omitted: ‘That the NSW Government consult with relevant stakeholders to determine who the target group of a Public Advocate’s Office should be.’
- c) That recommendation 9 be amended to insert ‘along the lines of the Victorian model,’ after ‘establish a Public Advocate’s Office’.

Resolved, on the motion of Ms Barham: That recommendation 9 be amended to insert at the end, ‘Further, that the operation of the Office be reviewed after three years.’

Resolved, on the motion of Mr Mason-Cox: That paragraph 8.83 be omitted: ‘In respect of the timeliness of the Guardianship Division of NCAT’s hearings and decisions, like others, the committee acknowledges that the work of the division has increased significantly over recent years, and we have no doubt of the complexity of these matters, nor of the skills exercised in handling them. In light of the potentially disastrous consequences that may follow from delayed proceedings, the committee underscores the importance of the division doing all it can to ensure that it prioritises matters effectively and finalises them as expeditiously as possible.’

Resolved, on the motion of Dr Phelps: That:

- The draft report as amended be the report of the committee and that the committee present the report to the House
- The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee
- That the report be tabled on Friday 24 June 2016, and that upon tabling the Chair hold a press conference at 12.00 pm.

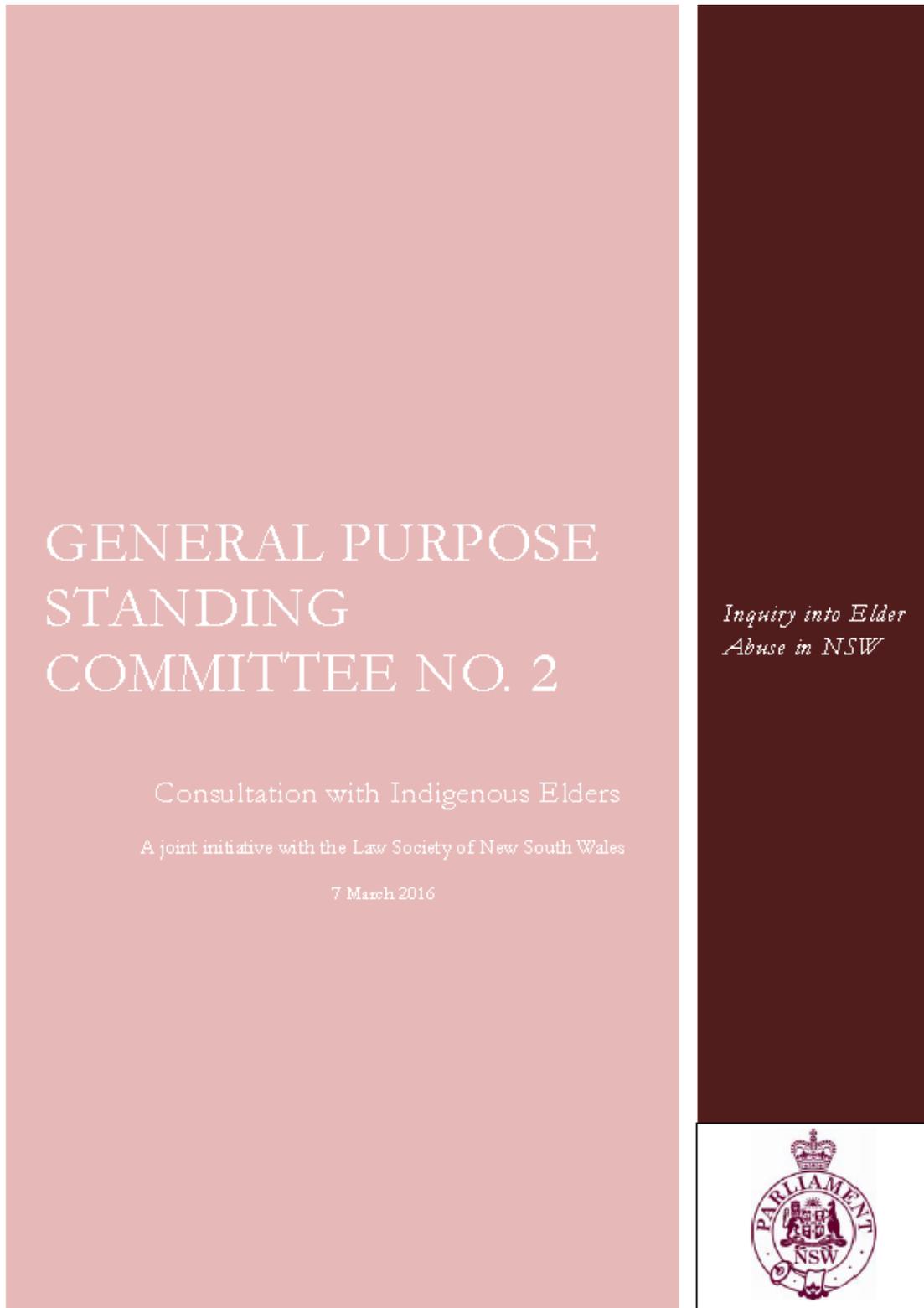
4. **Adjournment**

The committee adjourned at 12.50 pm, *sine die*.

Madeleine Foley

Clerk to the Committee

Appendix 6 Indigenous consultation



Elder abuse inquiry – Indigenous consultation

On 7 March 2016 the General Purpose Standing Committee No 2 conducted a consultation with Aboriginal Elders as part of the inquiry into elder abuse. The consultation was a joint initiative with the Law Society of New South Wales's Indigenous Issues Committee.

The discussion was facilitated by Mr Rick Welsh and Ms Bobbi Murray, members of the Indigenous Issues Committee. Counsellors from Link-Up were also present to provide support to participants, if required. 30 participants attended the consultation which was held at the Law Society's premises in Phillip Street.

Key themes and messages

Participants identified the forms of elder abuse they have seen or experienced in Indigenous communities including financial, psychological, emotional and physical abuse, as well as neglect. Some participants suggested that the experience of elder abuse might be different for Aboriginal people.

Some participants suggested that the perpetrators may not be aware they are being abusive, particularly in the case of psychological and emotional abuse. Elders also identified a need for better supports for families who have members affected by drugs, alcohol and gambling, and noted that these issues can contribute to elder abuse.

Further, several participants said that among Indigenous Australians issues of elder abuse are linked to a level of community disconnectedness and dysfunction which stems from dispossession and the dismantling of Indigenous communities and culture since the arrival of Europeans in Australia. Participants told the committee that political and societal disenfranchisement among Aboriginal people means that you 'keep your family close'. Therefore when elder abuse situations occur in the family, there is a lot of shame and secrecy around the abuse.

Ageist attitudes and lack of respect for older Aboriginal people among younger Aboriginal people

Several elders stated that ageist attitudes are common among Indigenous youth in their communities. They said that they have experienced openly rude and disrespectful behaviour, which they found demeaning and offensive. This contrasted sharply with the way many of the participants were raised to respect their Elders and older Aboriginal people. A number of matters were raised by participants who said that:

- Indigenous Elders attain their status because they are considered to be teachers and leaders in their communities.
- When participants were young they were taught to respect older people in their communities. Age and life experience were esteemed. Younger people now do not value age and experience, which manifests in disrespectful attitudes and actions, and sometimes leads to elder abuse within families.

- There is a disconnection between Indigenous youth and their Elders which some participants attribute to the dismantling of Indigenous culture and dispossession. Opportunities to connect, teach and learn between older and younger Aboriginal people that existed as part of the fabric of traditional Indigenous culture are not being fostered in society today, and it is difficult both for Elders and young people to find their place and their value in an urban environment.
- Young Aboriginal people see that Elders are not respected by government and therefore see no reason why they should respect them either. Many identified addressing the issue of elder abuse to be integral to rebuilding communities and Aboriginal culture.
- Elders need to be empowered to act and support their own communities and government must play a key role in providing support.

Financial abuse

Financial abuse was identified as often being linked to other forms of abuse, particularly emotional and psychological abuse. Several participants identified that an often unacknowledged consequence of financial abuse is when older Aboriginal people are subjected to other forms of deprivation, resulting in emotional and physical suffering or neglect, when monetary resources are drained by relatives and they are forced to go without.

Participants raised a number of issues including that:

Grandparents caring for grandchildren

- A key issue is grandparents caring for grandchildren, particularly where their parents are affected by alcoholism, drug addiction or mental health issues. Gambling can also be connected to elder abuse. Gambling was described as being an invisible addiction, easily hidden but a motivator to access money.
- In many cases grandparents are expected to care for their grandchildren but are unable to access financial assistance because the parents are collecting Centrelink payments. Without proof of care or custody Centrelink cannot change the payments.
- Grandparents are reluctant to alert authorities such as the Department of Family and Community Services in order to obtain the required evidence of care, because they fear that this will result in the removal of children from their family and community, and this deters them from seeking financial assistance and results in financial hardship and suffering for the older person.

Children and older grandchildren as perpetrators of elder abuse

- Children and grandchildren are often perpetrators of financial abuse and this type of abuse can be linked with emotional and psychological abuse, such as threats to welfare and safety, or threats to withdraw care for the older person where an adult child or grandchild is the carer.
- The traditional culture among older Aboriginal people in sharing resources and caring for their families and communities includes sharing money in an open and informal way, including giving access to bank cards. This generosity is not reciprocated and is often abused by young people who take advantage of their older family members and often

drain accounts leaving older people without money for basic needs. Stand-over tactics to demand money were also identified by participants especially where addiction is an issue.

- One participant who works in home care stated that many of his older Aboriginal clients are too scared to say no to family members asking for or demanding money. Instead they resort to withdrawing all their funds and literally sleep on their money so that when family members take them to ATMs to withdraw money there are no available funds.
- One Elder said that he and his wife were viewed as cash cows by their grandchildren and one of their daughters. Several participants concurred that among younger people in their communities, older people are valued only in so far as they are a source of cash by their family members, and that there is a culture among young people of wanting and expecting hand-outs from older relatives.

Resources/services available

Participants identified that victims of abuse are often too frightened to report it. Others stated that many families are not aware of services that are available to provide support or advice. Participants agreed, however, that Aboriginal communities benefit most from local services that are run by local Aboriginal people, and that access to local services provides community support, helps to prevent against isolation and can be a means of facilitating positive interactions between younger and older people.

Elder Abuse Hotline and Police

In utilising the services of the police and the Elder Abuse Hotline in cases of elder abuse, participants observed that:

- The elder abuse hotline is ineffective because it is not an intervention service. Some participants said that giving callers a referral number is 'pointless' and 'not of value'. Older Aboriginal people will usually only call when they are in a desperate situation and then intervention is needed, not advice.
- An intervention service is urgently needed that is separate from the police because the stigma of needing police assistance, mistrust of police or concern for the perpetrator (usually a child or grandchild) deters older Aboriginal people from seeking police help.
- Conversely, some older people become habitual callers to the police and the police do not act, or are not empowered to act, either because the abuse is not a criminal act or because the older person does not want to proceed with formal charges.
- Shame is a huge barrier to seeking help, even from within one's own community.
- There are deep cultural issues associated with involving authorities in family or community problems.

De-funding of community services

The committee was told that:

- Many Aboriginal Community Controlled Organisations that facilitated interaction between Elders or older Aboriginal people and young people have lost government funding.
- The work for the dole scheme fostered positive intergenerational relationships by providing transport and equipment for young people who would visit older people and help them by mowing lawns or other types of maintenance. When the scheme ended,

young people lost their sense of purpose and pride, and without access to equipment and means of transport, no longer visited or assisted elderly family members.

- Aboriginal people are pushed out of service roles. Aboriginal people want to be supported by members of their own communities, not by outsiders.
- There is a disconnect between funding regulations and the types of services that are beneficial to fostering positive relationships between Elders and young people. For example, one Elder used to put on a lunch for older Aboriginal people, and employed young Aboriginal volunteers to cook and serve. It taught them skills, gave them pride and offered an opportunity to speak with Elders and see their Elders being treated with respect.
- Services in rural communities are relocated and become out of reach for many people or require people to move away from family to access them.

Possible recommendations

Participants put forward several potential recommendations to address the issue of elder abuse in Aboriginal communities.

- Establish an intervention service for older Aboriginal people experiencing elder abuse to provide safety and support without the stigma and fear associated with calling the Police or community services.
- Conduct an education campaign to inform the Indigenous community about elder abuse, its forms, how to recognise it, where to get help and to challenge ageist attitudes.
- Empower Aboriginal Elders by including them as a key stakeholder group in the strategic plans of government agencies and local governments.
- Create programs where local Elders could access funding to provide services for their communities and young people.
- Ensure funding regulations are in step with offering services or providing opportunities to rebuild community connections as well as longer funding timeframe for programs.
- Provide healing places for the community on country to heal together.
- Establish a NSW State Aboriginal Elders organisation funded by the NSW Government. The organisation should be a representative body for the Aboriginal Community and an advisory body for the NSW Government, and be responsible for implementing the recommendations identified above.