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**REPORT OF PROCEEDINGS BEFORE**

**GENERAL PURPOSE STANDING COMMITTEE NO. 2**

**INQUIRY INTO ELDER ABUSE**

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**At Sydney on Monday 7 March 2016**

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**The Committee met at 2.30 p.m.**

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**PRESENT**

The Hon. G. J. Donnelly (Chair)

Ms J. Barham

The Hon. P. Green (Deputy Chair)

The Hon. M. R. Mason-Cox

The Hon. Dr P. R. Phelps

The Hon. B. Taylor

**CHAIR:** I welcome everybody present here today and those who might be viewing on the internet to the third hearing of General Purpose Standing Committee No. 2 Inquiry into Elder Abuse. Before we commence I acknowledge the Gadigal people who are the traditional custodians of this land and pay my respects to the elders past and present of the Eora nation and extend that respect to other Aboriginals who may be present with us here this afternoon. At this hearing we will be hearing from the Office of the NSW Trustee and Public Guardian and the NSW Civil and Administrative Tribunal; representatives from Aged and Community Services, Leading Age Services Australia and representatives from the NSW Police Force.

Before we commence I will make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography.

I remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside their evidence at this hearing. I urge witnesses to be careful about any comments they may make to the media or to others after they complete giving their evidence today as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation. The guidelines for the broadcast of the proceedings are available from the secretariat at the table.

There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In these circumstances witnesses are advised that they can take a question on notice and provide an answer within 21 days. I remind everyone here today that Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. While it can be helpful to hear about individual cases, we also wish to protect people's privacy. I therefore request that witnesses focus on the issues raised by the inquiry's terms of reference and avoid naming individuals unnecessarily. Witnesses are advised that any messages should be delivered to Committee members through Committee staff. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing.

**IMELDA MARGARET DODDS**, Chief Executive Officer, NSW Trustee and Guardian, affirmed and examined, and

**GRAEME JOHN SMITH**, New South Wales Public Guardian, and

**MALCOLM DAVID SCHYVENS**, Deputy President and Head of Guardianship Division, NSW Civil and Administrative Tribunal, sworn and examined:

**CHAIR:** Would any of you like to make an opening statement?

**Mr SCHYVENS:** Thank you for the invitation to appear before the Committee. The Guardianship Division is a specialist division of the NSW Civil and Administrative Tribunal, or NCAT, which was established on 1 January 2014 as part of the consolidation of tribunals in this State. Prior to that the Guardianship Tribunal, and before it the Guardianship Board of New South Wales, was established in 1989 to exercise a protective jurisdiction concurrent with that of the Supreme Court. In the past five years we have heard and determined nearly 35,000 applications in relation to some of the most vulnerable members of our New South Wales community. The workload has grown by almost 23 per cent over that period.

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. Guardians make personal, medical and healthcare decisions. Financial managers make decisions concerning a person's estate. The division also has the jurisdiction to review enduring powers of attorney, to review enduring guardianship appointments and to provide consent to medical and dental treatment.

In the last reporting period the division received over 7,500 applications. 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. These applications invariably involve a diverse range of issues—from non-contentious applications made by family, friends or healthcare professionals to highly conflictual or contested matters. The more complicated cases frequently involve multiple applications and parties, often include applications for the review of an enduring power of attorney and not infrequently involve allegations of exploitation or misappropriation.

In the last year approximately 55 per cent of all of our applications were made by family members or friends of the person with the alleged disability, with the balance being made by service providers, such as health and disability professionals. No doubt due to our ageing population the majority of all 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. The division also receives applications for people with brain injury, eating disorders, stroke-related impairment and other disabilities which may impact upon a person's ability to make decisions.

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.

When a financial management order is made the management of the financial affairs of the person is committed to either a private financial manager or to the NSW Trustee and Guardian, otherwise known as TAG. If the estate is committed to a private financial manager, the manager will be supervised through the orders and directions of the TAG. The Guardianship Division has no role in supervising the day-to-day activities of either a private financial manager or the TAG—and this is sometimes confusing for some people.

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.

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.

The division's members and staff have a broad range of qualifications and experience with people with disabilities across the health, disability and community sectors. This expertise is essential in balancing often competing priorities, including the protection and empowerment of the person with the disability and ensuring that all parties, including the person who is the subject of the application, are accorded procedural fairness in a jurisdiction where there is only minimal legal representation. In fact, legal representatives generally are only involved in less than 7 per cent of all matters before the Guardianship Division. Applications for original orders are heard by three-member panels, comprising one legal practitioner, a professional member—usually somebody derived from the medical profession—and a community member, somebody who has the lived experience and understanding of disability.

If any party to an application is dissatisfied with the orders made by the Guardianship Division then they have a right of appeal to either the Supreme Court or the Appeal Panel of NCAT. This is the means by which any errors made by the division can and should be corrected. The rates of appeal in relation to decisions of the division are low. This financial year, as far as I am aware, there have only been 19 appeals from orders of the division to either the Appeal Panel of NCAT or to the Supreme Court, resulting in an overall appeal rate of less than 0.3 per cent. I note that I have already provided the Committee with our recent annual reports providing data as to the operations of the Guardianship Division and would be happy to provide any other data that is available and of use to the Committee. Thank you.

**CHAIR:** Thank you for that detailed opening statement and references.

**Ms DODDS:** In my opening remarks I would like to state for the record that as NSW Trustee and Guardian I am a statutory officer. I am a social worker and I have been the former Public Guardian of Western Australia, a tribunal member here in New South Wales and now trustee. This is an area in which I have worked almost consistently since the early 1990s. I have a written statement of greater length. I do not propose to read it. If I could hand that up.

**CHAIR:** That will be received.

**Ms DODDS:** I will address some of the points within that. The first thing I want to say is that most people think of the NSW Trustee and Guardian and financial abuse of older people in terms of people under a financial management order. That is certainly where we see, in the main, that issue. It would be important for the Committee to remember that we also administer deceased estates and as the executor or administrator of a deceased estate we do see evidence of where financial abuse has occurred historically: it is in the two contexts. Today I am going to focus on financial management matters and powers of attorney. I want to state for the record that the NSW Trustee and Guardian is a merged organisation and brought together two former organisations both of which have, and had, aged data systems, neither of which recorded statistics on elder financial abuse. We are literally currently building the new system which will incorporate into it more detailed recording.

For the purposes of today and in the paper we have done some manual review of files. For the year 1 February 2015 to 1 February 2016, of the 521 legal litigation matters pertaining to clients under management, 65 of these were identified as an older client suffering from financial abuse. In that cohort: 27 of those instances is alleged abuse from a child; 12 another family member; 11 a friend; six a private manager; four a spouse; three a carer; and of course we have to have a category of "other", which is two. Those figures do confirm what the literature says about financial abuse, indeed elder abuse, being perpetrated in the main by people known to the victim of abuse and often close family. Of those categories the following were acting under a power of attorney: 15 children; two other family members; four friends; and two spouses. I have provided manual figures for the years back to 2010-11. In 2014-15 we had 73 matters; in 2013-14 there were 85; and then the numbers go down—38, 35 and 28. Bearing in mind this is manual data there will be some issues there.

The issue of recovery is complex and not always possible. We have given case examples, de-identified, in the paper I have handed up that will explain to the members of the Committee the reasons why this is sometimes difficult to achieve. In my remaining time I will turn to the important issue of powers of attorney. The NSW Trustee and Guardian has a significant role in promoting preplanning for all adults over the age of 18 to make a will, an enduring power of attorney and enduring guardian instrument. We do so always stressing to people that if they make these instruments they need to choose very carefully. In our education and on our websites that we are linked to we raise the issue and risks of appointing someone who may abuse the trust. Trust is an important part in appointing someone with an enduring power of attorney and it is always a balancing case for us. I have referred in the paper to a possible legislative reform, most notably the recent reform in Victoria of enduring powers of attorney.

I would note that as a member of the national body of the Australian Guardianship and Administration Council we have almost from inception pushed for at least interjurisdictional recognition of these instruments, if not harmonisation, both of which are not easy to achieve but important. Finally, as the Chief Executive Officer of NSW Trustee and Guardian and the former Protective Commissioner in this State I have advocated for, and continue to do so, 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 State in my opinion. Those are the remarks I wish to make.

**CHAIR:** Thank you for those detailed opening remarks. With respect to the document that has been provided, are you agreeable that that becomes a submission to this inquiry?

**Ms DODDS:** Perfectly happy for that.

**CHAIR:** Mr Smith, do you have any opening comments?

**Mr SMITH:** Briefly. The New South Wales Public Guardian is a statutory official created by the Guardianship Act. The Guardianship Act contains a rebuttable presumption against the appointment of a public guardian. As the guardian of last resort the Public Guardian is appointed in about 55 per cent of all guardianship appointments in New South Wales. At the end of the 2014 to 2015 financial year there were 2,096 people under the Public Guardian, and 1,688 private guardians. The Public Guardian also provides support to private guardians but we have no supervisory role. One point I would like to emphasise is that the Public Guardian in New South Wales, unlike other jurisdictions, has no investigatory powers under the legislation and we cannot act for someone unless already appointed as their guardian. This differs to a number of the other jurisdictions.

**CHAIR:** Thank you all for those opening statements. What the Committee members agreed to is that we are going to share the questions and it will be fluid.

**The Hon. Dr PETER PHELPS:** The first question is a technical question and the second a little broader. Is there capacity under New South Wales law for a graduated power of attorney so a single document can be created? For example, I might wish to give power of attorney to one of my children because I do not want to deal with the day-to-day rigmarole. But, if I were to hit a tripwire of clinical diagnosis of dementia or severe dementia later on is there currently within the New South Wales system the ability to have a graduated power of attorney?

**Ms DODDS:** I will start that and note in the end that I am not a lawyer. We will be happy to do more research and take it on notice and come back with a better explanation, compared to other States in Australia. We do make enduring powers of attorney now and act upon them with the person's consent while they still have capacity and that continues when they lose capacity as well; it is the point of an enduring power. In other States

there is what is called a springing power. An enduring power only comes into effect when there is an absolute declaration of incapacity. That is not the case in New South Wales. In terms of writing into a power of attorney certain requirements and guidelines I would like to take that on notice for my legal staff to return on that. Not being a lawyer I would suggest that it is possible.

**The Hon. Dr PETER PHELPS:** The second question is the relationship between family members and older people. The majority of powers of attorney, it would appear, are delegated to children or some close relative. Is it a situation that because of increases in average living age, better gerontological medicine, that what previously would have been a contestation of wills now becomes a battle for guardianship and the monetary control, while that person is still alive, between family members?

**Ms DODDS:** The first thing I would like to say about this is that we see a skewed population.

**The Hon. Dr PETER PHELPS:** Yes.

**Ms DODDS:** Having made that observation I regret to say that the issue of a sense of entitlement—it has been used elsewhere in the literature—is tragically alive and well. Equally, when we are looking at private managers there are wonderful examples of appropriate behaviour but we do see that sense of entitlement. I have had it said to me directly, and this was going back to 1992 when I was public guardian in Western Australia, when a then son said, "I am the only one, I am going to inherit it and I want it now." It was as bald as that.

**Mr SCHYVENS:** I think your point is correct, if you look at the figures before the original Guardianship Board the majority of applications related to guardianships, so lifestyle issues. Now, most years, financial management issues around money and legal affairs tips over the balance of guardianship, which clearly goes with an aging population. Also, property values and as people become more and more wealthy by simply having the family home, particularly in Sydney, there are more assets to be disputed.

**The Hon. PAUL GREEN:** I do not think wanting the inheritance now is new; there is a biblical parable about that. Dr Phelps mentioned the graduating powers of attorney. Are there any plans to integrate that with the advanced care directives of a person's healthcare? Those trigger points of springing into the next level are considered within advanced care directives.

**Ms DODDS:** I cannot talk about any proposed changes that I know of in that direction. What I can say is this does speak to the difference around Australia. In some States the enduring instrument is the one instrument which has embedded within it financial and guardian, depending on whether you wish to exercise those or not, versus other States, such as here, where they are absolutely separate documents.

**The Hon. PAUL GREEN:** You mentioned the public advocate role. It has been something bounced around about possibly one of the recommendations of advancing that idea of a public advocate. What would be the triggers on such a role? One of the gentlemen mentioned the public advocate. What are the trigger points for that person coming into being and oversighting some issues? Is it a dollar figure?

**Mr SMITH:** If we took the Queensland legislation as a model it would be on the basis of complaint. The public guardian in Queensland has the power to investigate any complaints that refer to the abuse, neglect or exploitation of a person with a disability, which includes older people.

**The Hon. Dr PETER PHELPS:** Can I follow that up: When you say investigate, do they have their own investigative team or are they compelled by circumstance to outsource to their local police forces?

**Mr SMITH:** No, they have their own investigators. Obviously in circumstances where their investigation turns up prima facie evidence that a crime has been committed, such as fraud, they would refer those matters to the Queensland or Victorian police, whichever.

**The Hon. PAUL GREEN:** One of the things we were trying to drive with this concept of financial abuse is the fact that surely there must be trigger points when it is blatantly obvious that person A — son, daughter, loved one, spouse — is taking \$5 compared to taking \$50,000 or \$250,000. Surely there would be trigger points where that is brought into question. Would a public advocate play a role in assessing whether that trigger point is abuse or a sane decision by the loved one to hand that money over? Anyone can answer that.

**Mr SMITH:** As I said before, it is triggered by a complaint. The investigation of the complaint would reveal whether or not it is a serious matter or non-serious matter or a legitimate exercise of the power. The investigation of the complaint is the trigger.

**The Hon. PAUL GREEN:** My point is that Ms Dodds said that it was only after people had passed it was found there was financial abuse. If there were trigger points at \$5,000, \$10,000 or \$50,000, that would have to be signed off?

**The Hon. Dr PETER PHELPS:** Are you saying that the quantum of the transaction should be the trigger point?

**The Hon. PAUL GREEN:** We have talked about this. The problem is it is not one size fits all. We are trying to capture something that generally identifies it. I think we talked last time about having bank officers who are educated to say, "This doesn't sit right. Mrs Brown never takes out that much money. Suddenly someone is looking in for her and she's signing over 50 grand." If that bank person does not know that, surely there could be something that says that \$50,000 needs to be looked over by the public advocate or someone.

**Mr SMITH:** I think that could be a trigger point. The powers of the Public Guardian in Queensland to investigate cases of abuse, neglect or exploitation are widely known. A bank officer, for example, in the circumstances that you just described could make a complaint to the Public Guardian in Queensland and they would launch an investigation. It could turn out to be an entirely legitimate transaction, but on the other hand the investigation has still verified that it is in fact legitimate.

**The Hon. PAUL GREEN:** I understand the complexity.

**Ms JAN BARHAM:** If a bank teller noticed an irregular transaction in New South Wales today, who would they raise it with?

**Ms DODDS:** In the absence of an investigative body that has the power to do that, I cannot speak for the banks but I would say they are in a challenging situation. It is a very hard for a bank to make an application. I do not know if the tribunal has had one directly from a bank.

**The Hon. Dr PETER PHELPS:** Is that because they do not have standing or because they are concerned that they might be seen as interfering in the legitimate transactions of their customers?

**Mr SCHYVENS:** The standing provisions are very broad: It is anyone with a genuine concern. I must admit in my eight years in this jurisdiction I am not aware of a bank making a direct application, but I certainly can think of some other scenarios. Particularly in a small branch in a regional community I am aware where they have contacted family members to express concern and they have in turn lodged an application.

**Ms DODDS:** I know the Australian Bankers Association have promulgated practice guidelines for their members. That is part of a process to assist on this journey. Essentially what you are looking at in Australia is the choice between highly regulated environments such as the United Kingdom versus a less regulated or self-regulated, for want of a better term, environment that depends on people in the banking industry and in the financial services industry. I just want to say we think first of banks but we cannot forget the whole of the financial services industry as well. Because people's estates today are far more complex than ever, so there is a lot of education out there. That is as opposed to a compulsory registration system with compulsory oversight of powers of attorney, which is what you have in England.

**Ms JAN BARHAM:** You do not think that compulsory registration would work well?

**Ms DODDS:** It is very difficult to have a view on that in a system where boats have already sailed in so many ways. We have so many powers of attorney across Australia and across New South Wales. We do not have an accurate feel for the number of them. We do not know how many are working well. We see the ones that do not work well.

**Ms JAN BARHAM:** But a number of individuals and organisations have said it would be a good step forward. Is there value in initiating it now so at least from here on in we have a clear idea of where they are, how many there are and we are able to monitor and track them?

**Ms DODDS:** I think that needs to be explored and explored carefully because there are significant costs associated. That should not necessarily be a barrier, but there are costs associated. In a system like the United Kingdom the user pays for it. Registration and oversight comes from the estate of the person who has made the power of attorney.

**Ms JAN BARHAM:** I understood there was one jurisdiction that allows for notification by the person involved or their kin by just having it uploaded. Technology lets us do these things. You could simply and easily upload information to a system to at least have the bare bones basics of acknowledgment. The costs involved in everything go to the user rather than the smart use of technology to allow people to get on line and register. In these days of internet banking and everything else you would think that there would be a system to at least allow for the first rung of registration and there could be an opportunity for some documentation to be there at a very low cost if not for free through the smart use of software. If you could give any further information on notice about that it would be appreciated.

**Ms DODDS:** We are happy to take that on notice.

**Ms JAN BARHAM:** We had a submission that spoke of guardianship as breaching the rights of a person with a disability or an older person to enjoy legal capacity on an equal basis. Has the Trustee and Guardian explored supported decision-making processes?

**Ms DODDS:** If I can start with that. Both the Trustee—myself—and the Public Guardian have been involved and funded albeit a modest pilot project which is continuing to look at the capacity for assisted and supported decision-making. I certainly see in the future a continuum of decision-making from current legal capacity through various stages which includes assistance and support to make decisions through to the circumstances of someone who is functionally unable to make decisions for themselves. Yes, we are exploring that.

**Ms JAN BARHAM:** Is that trial to be reported? How long is the trial or will we hear something about it soon?

**Mr SMITH:** That first pilot, which was conducted in 2014, was reported on and the outcome of that pilot is published on the Australian disability and home care department's website. The current pilot is being evaluated concurrently by the Social Policy and Research Centre at the University of New South Wales and that will be reported on upon completion of the pilot. The assertion that guardianship is in some way unlawful as a result of the United Nations Convention on the Rights of Persons with Disabilities is a particularly complicated issue. It is certainly not the current interpretation of the Australian Government.

**Ms JAN BARHAM:** I did not say it was unlawful. It was whether or not it breaches the intent, being that if other support systems are not available then not having it there is a breach.

**Mr SMITH:** There are different interpretations on the intent of the convention in that regard, in particular article 12 of the convention, which is the equality before the law part of the convention. There are different interpretations. For example, the Australian Government's interpretation is that that particular article does not preclude substituted decision-making provided there are safeguards in place. It is worth noting, for example, that in New South Wales decisions of the Trustee or decisions of the Public Guardian are in fact reviewable by the administrative review section of the NSW Civil and Administrative Tribunal [NCAT]. The Australian Government's position is that the safeguards required under the convention are already in place for the most part across Australia. But, as I say, the whole issue about people losing legal capacity and having a substitute decision-maker appointed is a complicated issue.

**Ms JAN BARHAM:** I think in most cases it is a matter of whether or not the options are available, and that is where people might perceive it is a breach.

**Mr SMITH:** The problem with supported decision-making at the present time is that there is a real lack of empirical data around how supported decision-making is conceptualised, how it is defined and how it is implemented. Currently across Australia there are no provisions to enable the courts and tribunals to appoint supporters as distinct from substitute decision-makers. But that may well come in the future. It was certainly a recommendation of the Victorian Law Reform Commission when they reviewed the legislation there. As you know, the legislation in New South Wales is currently under review by the NSW Law Reform Commission. It may well figure in recommendations about reform of the legislation here in New South Wales as well. That is



why I think most jurisdictions believe that there will be provision for supported decision-making in the future and that is why most jurisdictions are engaged in some sort of effort. There is quite a range of academic research underway at the moment with a view to trying to define supported decision-making and how it could be implemented. Part of the problem that we face not just in this jurisdiction but most jurisdictions is that there is no established infrastructure from which support can be accessed. That would need to be in place in the future.

**Mr SCHYVENS:** I have tried to look through a number of submissions before today. A few have alluded to the Victorian legislation that I think came into effect on 1 September last year and allowed for the appointment of supportive attorneys, which is an implementation of one part of that Victorian Law Reform Commission report. That does allow, if you like, the early continuum of someone who may have some level of diminished capacity but is nowhere near giving up the option of making decisions for themselves. This is a very complex area and it is a time of great change and impetus for change. If you like, there is change coming from both directions. With respect, this Committee has obviously got the important task of looking at very much the submissions around protection—protecting people with a disability at the aged end of life, whereas many of the other inquiries and submissions at this stage, particularly those based upon the UN convention, are approaching it almost from the other end of the spectrum, one of empowerment and trying to get people to move away from substitute decision-making which provides protection and move towards supported decision-making.

I think most people in this jurisdiction who have had a long commitment to the disability sector would strongly support supported decision-making. The devil is in the detail. What does supported decision-making mean? If you label something supported decision-making when in fact the person does not have the capacity to be supported then in fact you are going backwards—

**The Hon. Dr PETER PHELPS:** It is de facto guardianship.

**Mr SCHYVENS:** Correct, without regulation.

**The Hon. BRONNIE TAYLOR:** I wanted to draw on a couple of things you have said and Ms Dodds's comment about a public advocate. A lot of the evidence we have heard has centred on financial abuse. I think in your opening statements you all mentioned that as well. Ms Dodds, I think it was you who was talking about this sense of entitlement that has started to exist. People are feeling responsible to help their children and to pay for whatever it is they need. Someone also said that they had not ever received any complaint from a bank, which I find a little bit concerning. Is it that people who work at a bank and see that sort of drawing do not think it is a concern? I am thinking from the evidence that you have given that someone concerned at a bank could ring up and make a complaint but I am happy to stand corrected. Would a public advocate be someone that a person could go to in that sort of scenario?

**Ms DODDS:** For the record I think it is important to clarify that what we said was in our experience a bank has not applied, has not been the applicant, but certainly it has been my experience that banks have assisted where the issue has been raised and in fact they will freeze accounts where they have concerns and before a matter goes to hearing. Of course we regularly, unfortunately, have to contact them within minutes of a hearing and have a bank freeze put on. I would not want it to be thought that banks are not cooperative or concerned, because I do think they are. The issue of educating people across the board is always going to be difficult and for banks there are lots of tellers in lots of places. I think the Deputy Chair mentioned regional areas. Again, it is our experience that local knowledge of your client just cannot replace what happens in the metropolitan area.

**The Hon. BRONNIE TAYLOR:** That is why we love the regions.

**Ms DODDS:** And they find ways and means around it. A public advocate with the power to investigate, be it an individual or be it an organisation, is a really important ability where there are concerns of abuse and neglect. If I can briefly take an historical example, not necessarily of older people but some older people, in the boarding house area where there were, historically, issues. There was an impasse because we did not have a public advocate who could go in and make those applications. They were made eventually after a huge amount of advocacy on the part of the Public Guardian and myself as Trustee and Guardian and our staff; so we got there in the end. The point of having a public advocate is that they have the capacity to do that upfront.

**Mr SMITH:** The reference that was made concerned bank employees being able to make a complaint and there was a reference to the powers the Public Guardian has in Queensland, for example.

**The Hon. BRONNIE TAYLOR:** I just wanted to get it on the record, so thank you for clarifying that.

**Mr SMITH:** 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 myself. If you compare our legislation with that of other jurisdictions then that is a deficiency.

**The Hon. Dr PETER PHELPS:** Just following on from that, it follows that, to a large extent, your applications to the tribunal and other parties' applications to the tribunal essentially rely upon the capacity of the plaintiff, or whatever they are called—

**Mr SCHYVENS:** Applicant.

**The Hon. Dr PETER PHELPS:** —the applicant to fund their own research and investigation into the perceived problem.

**Mr SCHYVENS:** I might start off just to explain. I think I can clarify this for the Committee. I think something like 36, 37 per cent of all applications come from social workers or hospitals. The reason I mention that is those applicants are probably in a very limited position to be able to provide information bar the admission date and what they have learnt. So they very much are unable to provide us great details. We are fortunate in that in our registry we have staff—I would never go so far as to say they are investigation officers, but their role is to prepare the matter for hearing and they will, unlike many different forms of courts or tribunals, make their own inquiries; they will try to locate the person's general practitioner and family friends to get them involved so that by the time the matter gets to hearing we have gathered sufficient evidence to determine whether we should or should not make an order. But in terms of public advocate support I will defer to the Public Guardian.

**Mr SMITH:** Largely what you said is correct.

**The Hon. Dr PETER PHELPS:** You are almost entirely reliant upon third parties to make the case.

**Mr SMITH:** For me to bring an application to the tribunal, and as I said before my standing is automatic before the tribunal with respect to guardianship applications, I would be reliant on the information from third parties.

**The Hon. Dr PETER PHELPS:** I agree absolutely with bringing in a public advocate, however, I want to put a devil's advocate question to you: How do you deal with what will almost certainly happen, and that is, given that it then becomes a cost-free exercise, a rise in vexatious complaints from individuals who believe they have an acquisitive right to take control from another sibling of their parent's financial situation or because they have got a vendetta against a sibling and things like that? How do you deal with the situation of the inevitable—because it will be a cost-free exercise—rise in complaints to the public advocate, were one to be created?

**Mr SMITH:** I think that is largely a challenge for the investigative process. 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. But inevitably you do have to make some form of investigation where the complaint is lodged.

**The Hon. Dr PETER PHELPS:** But it is certainly not beyond the wit or capacity of any properly constituted public advocate to be able to deal with those in a very timely manner.

**Mr SMITH:** The experience in other jurisdictions is that it is not beyond their capacity to do that.

**CHAIR:** Given that these issues that are before us are matters that in some sense, with an ageing population and related matters, will figure larger into the future, at the Federal level, through COAG, is there a

permanent item on a current agenda which is seeking to bring the States and Territories together closer on this, or is it being managed on a more ad hoc basis when someone places it on the agenda?

**Ms DODDS:** If I can commence to comment on that, certainly it was an item on what was the then Standing Committee of Attorneys General for harmonisation and/or interjurisdictional recognition of enduring instruments. One thing I would say about the guardianship field generally—and bearing in mind I have been going around that table since the early nineties in every seat except the most important one in the house, and I have got no appetite to be in that one—is that there has been, compared to many other things, enormous good will and effort to try to bring Australian legislation into as much similarity as possible with interjurisdictional recognition of orders. This has been something that is stuck out there for us. So yes it has been in terms of enduring instruments. I did not attend the elder abuse conference in Melbourne recently but my director of legal, who is here with me today, did and I understand that Senator Brandis announced a national review. I would be happy to put that into a question on notice with more detail rather than me verbal the honourable Senator.

**CHAIR:** We can do that, yes.

**The Hon. Dr PETER PHELPS:** Can I just clarify that? Are you saying that the orders made do not have extra-territorial effect, like the New South Wales order has no effect—

**Ms DODDS:** A Guardianship Tribunal order can, upon application in another jurisdiction, but—

**The Hon. Dr PETER PHELPS:** But you would have to go through that jurisdiction?

**Ms DODDS:** Yes.

**Mr SCHYVENS:** It is different between States. In some States it can be automatic, in some there has to be actual recognition of the other State's order.

**Ms DODDS:** The issue for us all is powers of attorney and particularly with border countries. Here in New South Wales where regularly Tweed Heads, Albury—

**The Hon. Dr PETER PHELPS:** What is to stop you from kidnapping mum and going to a different jurisdiction and getting a new power of attorney there?

**Mr SCHYVENS:** That does occur.

**The Hon. Dr PETER PHELPS:** You're kidding—really?

**Ms DODDS:** No, we are not. That often will trigger an application and then usually it is applications in multiple jurisdictions to work out where mum should be and get her returned.

**The Hon. BRONNIE TAYLOR:** The Cross Border Commissioner is really concerned about this.

**Mr SMITH:** Someone made a reference earlier to the idea of having control over the person. 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 QCAT 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.

**Ms JAN BARHAM:** When you say it is not infrequent, how many are you referring to?

**Mr SMITH:** I probably deal with 10 or 15 matters like that annually where a person has been removed from the jurisdiction.

**The Hon. Dr PETER PHELPS:** But that is only when you are the trustee. Heaven only knows how many times it might happen between family members.

**Ms DODDS:** Frequently. This is often a trigger for why an application is made for the appointment of a guardian and financial manager, because the two are often so closely linked.

**Mr SMITH:** I think the Federal Parliament's legal affairs committee, which inquired into these sorts of issues about five years ago, recommended that there be national legislation for guardianship and financial administration.

**The Hon. Dr PETER PHELPS:** But the resolution of that problem would presumably be done in the NCAT equivalent of that State. There would be no judicial review would there? When you say there is no existing ability at a Federal level to judicially review administrative decisions, essentially you have gone to Queensland and are seeking a review in Queensland of—

**Mr SMITH:** —a New South Wales order.

**Mr SCHYVENS:** This is a real chestnut, to be honest. If the Public Guardian had an order here made by NCAT, the Public Guardian can seek to have that recorded as if it were an order from QCAT; however, there is a divergence between States as to what they can or cannot then do with that order. Some States may simply see it as a piggyback order, some see it as becoming their order and they might vary it. So you cannot be guaranteed as to whether there is harmony, as to what occurs with the orders in different States. But just on this point, which is similar but different, there is also the semantic issue—and I think you would have seen this in some of the submissions—that there can be real confusion on a State-by-State issue given that the power of attorney, for example in Queensland, can have not only financial powers but also medical decision-making, whereas that is not the case in New South Wales. So you can see there are difficulties, particularly in border towns.

**CHAIR:** I understand Ms Dodds has another commitment. Are there any final questions?

**The Hon. MATTHEW MASON-COX:** One question on notice perhaps. Would it be possible to make a list of the anomalies as you see it, particularly interjurisdictional, so far as power of attorney is concerned and cross-jurisdictional imposition orders?

**Mr SCHYVENS:** I think there is already a table in existence.

**Ms DODDS:** The Australian Guardianship Administration Council has a table of differences in legislation. We can easily provide that to the Committee.

**The Hon. MATTHEW MASON-COX:** That is very useful, thank you.

**The Hon. PAUL GREEN:** Could I put another question on notice? Obviously there are financial legal firms that take the role as trustee. I would be interested to know if they are overcharging for the services for estate management and that sort of area, whether there are any cases of overcharging or taking a liberty against those that are more vulnerable.

**Ms DODDS:** I will happily take that on notice.

**Ms JAN BARHAM:** If you could take another question on notice about whether or not there could or should be an easier way to appeal a guardianship decision other than going to the Supreme Court.

**Mr SMITH:** There already is.

**The Hon. Dr PETER PHELPS:** I do not think there is anything easier than going to NCAT these days.

**Mr SCHYVENS:** You have got a right to either go directly to the Supreme Court or you can elect to go to the Appeal Panel of NCAT at the moment. It has actually been enhanced to some degree since the amalgamation of the tribunals.

**The Hon. Dr PETER PHELPS:** We love NCAT—just put that on the record; we think it is fantastic.

**Ms JAN BARHAM:** Is it NCAT where there is a problem where you cannot get access to the decisions or the reporting—

**Mr SMITH:** You can appeal a decision made by the guardianship division of NCAT to the Appeal Panel of NCAT, and that has to be on a question of law. But you can appeal a decision of the Public Guardian or a decision of the NSW Trustee to the administrative division of NCAT, and that is a merits review, so it does not have to be on a question of law; you can simply argue that you do not like the decision for various reasons.

**CHAIR:** Any further questions can be placed on notice. On behalf of the Committee I thank you all for coming along and, on behalf of the Committee and the Parliament, thank you for the most important work you do on behalf of some of the most vulnerable citizens in this State. It is greatly appreciated by this Parliament.

**(The witnesses withdrew)**

**(Short adjournment)**

**ILLANA HALLIDAY**, Chief Executive Officer, Aged and Community Services NSW/ACT,

**PAUL SADLER**, Director, Aged and Community Services NSW/ACT and Chief Executive Officer, Presbyterian Aged Care,

**LOULA KOUTRODIMOS**, Chief Executive Officer, Leading Age Services Australia NSW/ACT, and

**KATE SPURWAY**, Aged Care Consultant, Leading Age Services Australia NSW/ACT, sworn and examined:

**CHAIR:** Welcome. What we are going to do, if you are agreeable, is share the questioning between the Government members, the crossbench and the Opposition and it will be quite fluid. Before we get to that, for those who have provided submissions to the inquiry we do have the submissions that have been made, so you can take those as read. If you could keep the opening statements to a few minutes it will maximise the opportunity for us to ask some questions. Ms Spurway?

**Ms SPURWAY:** I do not have an opening statement.

**CHAIR:** Okay.

**The Hon. BRONNIE TAYLOR:** May I declare?

**CHAIR:** Please do.

**The Hon. BRONNIE TAYLOR:** I just need to declare that I do know Ms Spurway on a personal level. Our children are in a lot of the same sporting teams.

**CHAIR:** Thank you. I appreciate that. Please proceed, Ms Koutrodimos.

**Ms KOUTRODIMOS:** Thank you. I am Voula Koutrodimos from Leading Age Services Australia. We are an aged care association representing private, not-for-profit and charitable providers in the private and for-profit space. With our submission taken as read, the prevalence of our membership is in the residential space with probably about 10 per cent in the community space. So we will be basing a lot of our responses around research that we have done and collaborative feedback from membership.

**CHAIR:** Thank you very much.

**Mr SADLER:** Nothing from me.

**CHAIR:** Ms Halliday, thank you.

**Ms HALLIDAY:** Thank you very much. I do have an opening statement. In taking our submission as read we have actually got a few things we thought should probably be made in addition to having read previous submissions.

**CHAIR:** Yes, please do.

**Ms HALLIDAY:** So we mainly represent the church, charitable and not-for-profit services in retirement living, community aged care and residential aged care. We represent probably the bulk of about 85 per cent of the community care given in the State. The issue of elderly abuse is incredibly complex. There is agreement that the bulk of abuse occurs within the community with most perpetrators being family and friends and yet somehow when this issue is raised discussion typically moves into the residential aged care area. Whilst residential aged care is not without its problems, there are already a number of provisions and monitoring in place. Whilst it may be difficult to find workable strategies within the community, the level of vulnerability can be great and we cannot let this area go overlooked.

Approximately 95 per cent of older people live in private homes. With the move to more choice and control for older people within Commonwealth aged care programs such as the home care packages, an unintended consequence may offer increased opportunity for family members acting as the older person's representative to exclude service providers from oversight of aspects of the older person's care, removing

protections that previously existed. Changes coming in 2017 may allow family members to shop around for a provider who will not scrutinise too closely what is happening.

As noted by Mr Neumann speaking to the second reading of the Aged Care Legislation Amendment (Increasing Consumer Choice) Bill 2016 last week, not all consumers have the capacity to make informed choices and safeguards are clearly essential for the most vulnerable and those with complex clinical care needs, especially those who will be required to pay more due to their means testing arrangements. Elder abuse can occur when unscrupulous family members make decisions based on cost rather than care needs. Approaches to elder abuse need to be empowering, respecting the elder person's autonomy, right and ability to make decisions for themselves unless proved otherwise.

Aged and Community Services [ACS] does not support the introduction of mandatory reporting for elder abuse in the community. We support sustained attention at all levels of government and the community to this issue and we support community awareness raising so people can identify and recognise what abuse is and when it is occurring. It is important that paternalistic and stereotypical views of older people as being frail, dependent and cognitively impaired do not prevail in society. Elder abuse is not the same as child abuse but rather shares greater similarities with other forms of family or domestic violence and should be treated as such. Thank you.

**CHAIR:** Thank you very much. With the completion of those opening statements and comments, I open it up to questions from the Committee.

**The Hon. BRONNIE TAYLOR:** Ms Halliday, thank you again for your submission. It is great to see you at an inquiry again. Thank you very much. It must be very time consuming. Could you please elaborate on why you would not recommend mandatory reporting? What solution do you think might work?

**Ms HALLIDAY:** Mandatory reporting in the community means that some people who are experiencing abuse and have finally become anxious enough to report it may feel inhibited from doing so if they think they are going to be reporting one of their family members for such a thing and it leads to consequences for them. It may actually hamper them taking that very brave act of coming forward and admitting that there is something happening within the community. Mandatory reporting may in fact drive this underground rather than allow us to deal with it. There are better things that we need to do. Not dissimilar to domestic violence, we are unable to force these issues when people are capable—they are adults that have cognitive abilities to make their decisions. Coming forward and accusing one of their children of abuse is something that is untenable for a lot of people. If you make it mandatory, we are less likely to get reports. I know you have done studies in this, Mr Sadler. Did you want to comment?

**Mr SADLER:** Yes. I was involved in some of the initial research in Australia with Dr Susan Kurrle who appeared before you previously. When Sue Kurrle and I did the research back in the late 1980s/early 1990s and then participated in reviews that were undertaken by the State Government at that time—there was a task force on abuse of older people that was established back then—we actually looked at the issue of mandatory reporting: Would it be something that was beneficial or not? And certainly the indications at that time—and in my looking at the international evidence since—were that the sorts of issues that Illana has outlined to you remain serious concerns.

There is certainly some evidence that when the Federal Government brought in its compulsory reporting for assaults in residential care in the mid-2000s there was some improvement in the service providers' training about abuse but there was very little evidence that we actually improved the outcomes for older people in terms of, for example, criminal convictions. So there is limited evidence that having a mandatory reporting process in place actually meant we captured more criminals who were perpetrating very serious assaults against older people in residential care.

Our feeling is that there really is a better model to go with, not a mandatory reporting system but to significantly increase the support that we are providing, I guess, for people to know what to do when abuse occurs and to have places they can go that are safe. ACS has strongly supported in the past the work around the Elder Abuse Helpline. Regarding the evidence you were just hearing before the break in terms of guardianship and power of attorney provisions, we would also strongly support efforts to streamline reporting arrangements across State boundaries.

**The Hon. BRONNIE TAYLOR:** Some of the evidence that was given possibly in the NSW Nurses and Midwives' submission that I thought was a really good idea was that of mandatory education in elder abuse. In a health service you have to do OH&S, physio, fire and safety—whatever the 10 things are; I am sorry to say I cannot list them—I know. I was working there for so long. I just put my foot in it again.

**The Hon. Dr PETER PHELPS:** Your ticket has gone, Bronnie.

**The Hon. BRONNIE TAYLOR:** What do you think about that? We have heard a lot of evidence that this has really started to run ahead of us—it is a really big issue and we are just finding out how intrinsic and endemic it is. So maybe we need to catch up. That idea really resonated with me. What do you have to say about that? I open that question to everyone.

**Mr SADLER:** One of the consequences of the Federal Government legislation back in 2006 was in fact that training did become effectively mandatory. For my own organisation, Presbyterian Aged Care, we do require all our staff to undergo at least annual training refresher courses on the issue of abuse.

**The Hon. BRONNIE TAYLOR:** In elder abuse?

**Mr SADLER:** Yes. I also read the Nurses and Midwives' report on this issue and it certainly suggested that in fact that is what happens for the majority—I think it was well over 70 per cent in their survey actually reported that they were being trained annually on the issue. There clearly are still some gaps there. Research suggested there were some providers where that was not happening, but in effect the Federal Government legislation is requiring it to happen now. So I do not know that a further legislative impetus on that would actually make a difference. It is happening in the majority of cases now.

**The Hon. PAUL GREEN:** Do you think there is a case for working with elderly checks, to weed out those that are more susceptible—for example, had a level 1, 2 or 3 situation with elderly abuse? So it is on the radar that this person might be getting a bit more stressed working with the elderly so they are a bit more risk-taking or there is a bit more chance of the elderly person being abused. Is there anything like that—either across Australia or internationally—where working with elderly checks have come in? If so, what are the implications of such a recommendation?

**Mr SADLER:** In ACS's submission we reference the example in the United Kingdom where there is something that is kind of equivalent to the reporting requirements in child abuse now. It looked at vulnerable adults, so it was not just older people; it was also potentially people with disabilities who might be vulnerable in the UK model. Our feeling is that that one is a bit of a mixed bag. Again it could be beneficial. If the Committee was of a mind to recommend it be examined further I do not know that we would oppose that from an industry perspective, but we are always a bit cautious about things that might work and then when you come to the practicalities, do they actually work in practice?

Certainly what we have as a requirement in aged care now, both through the legislation for residential care and through the Federal Government's funding arrangements in home care, is that we have to police check our staff every three years. That is compulsory. We renew those police checks every three years. But what we do know is that it is unlikely that—for the reasons I mentioned earlier—you have convictions of people for assaults of older people. It does not happen a lot, so even if there has been some incident that has occurred, it is unlikely to have got to the threshold of actually going through a criminal conviction.

**The Hon. PAUL GREEN:** You can probably see the explanation of that being that the waters have been muddied. If you do not have good respite services or opportunity either for the carer to get away or for the carer to put someone in place so that they can get some respite, that stress and tension can devolve into some sort of elderly abuse unintentionally and penalise some really good carers. I do understand that.

**Ms HALLIDAY:** Can I just respond to that as well? If we are talking about staff, whether they be community or residential, I spent some time talking to AHPRA after the Quakers Hill fire. The coroner made a recommendation that we have a record of employment—just a record of employment. That would not seem like it was a difficult thing. And they are not moving on that, because it is an invasion of privacy for the employee. So a lot of the things when you are looking at this—to me it was the old blue book. You would understand what I am saying about "old blue book".

**The Hon. BRONNIE TAYLOR:** Yes.



**The Hon. PAUL GREEN:** Yes.

**Ms HALLIDAY:** I cannot even get a record of employment. There are a lot of protections around the right to privacy for employees as well. So the practicalities of some of these ideas in the Australian system can be quite difficult. It is not that we are not prepared to look at them. It is a juggling act, I guess, between the rights of the employee and the rights of the older person, who is very vulnerable. We were quite prepared to look at employment records but we could not get that up.

**CHAIR:** Forgive me, I am not from the industry. What does the "blue book" mean?

**Ms HALLIDAY:** Back in my nursing days, when you registered, you got your blue book and it became a record of every place you had worked, whenever you worked—the start and the finish date. So if I claimed I had been working in an aged care facility or a hospital and I had actually been at the cheesecake factory, it would show—bang!—because it would not be a registered system. It does not exist anymore, apparently.

**Ms JAN BARHAM:** I want to ask about older people with dementia and whether you think there is enough work being done to train people to deal with it rather than using chemical and physical constraints. Is there much recording of those restraints being used and causing abuse?

**Ms HALLIDAY:** I am conscious we have not let Loula speak.

**Ms KOUTRODIMOS:** Kate, did you want to jump in for this one, being that you are a little more clinical than I am?

**Ms SPURWAY:** I have not got the statistics or the data. I know from the grassroots level, because I work in numerous facilities and mentor and give lots of other industry support, that it is reporting. The structure, the education, the government resource books, the accreditation process, it all backs up what is happening out there. From a grassroots level, chemical restraint and physical restraint is managed according to the framework that is developed by—is that answering your question?

**Ms JAN BARHAM:** No, it is not. A lot of people have real concerns about those restraints being used. From a commercial point of view, in reality a facility might view physical or chemical restraints as a cost effective measure if there are difficult residents. That is what a lot of people fear because, even though it might be anecdotal, a lot of people have heard a story about that happening to someone. That is the trouble with stories if they are not counteracted with facts about good practices. A lot of people have that fear and children fear putting their parents somewhere if they will be doped up and will not recognise them.

**Ms SPURWAY:** That is anecdotal. It is like we bath people in kerosene; we do not do that.

**Ms JAN BARHAM:** There was an awful case recorded in Victoria just last week.

**Ms SPURWAY:** A lot of the facilities I go to have no restraint policies. They are audited and they are under the accreditation quality agency and there is certainly evidence that it is not occurring.

**Ms JAN BARHAM:** Okay.

**Ms SPURWAY:** The one-off case in Victoria—I only work in New South Wales; I have not crossed the borders. I probably visit one or two facilities a week and I have not seen it, but I do not have any documented evidence or data. I am talking from a clinician's—

**Ms JAN BARHAM:** With accreditation, are you saying there is a standardised no-restraint policy that facilities have?

**Ms SPURWAY:** No, it is not standardised, no.

**Ms KOUTRODIMOS:** Nowadays, with the support of behaviour management units, the flying squads, purpose-built facilities, increased staff training, Kate is right, the accreditation agency through their system of announced and unannounced visits—behaviour management is one thing. Even when we have our

funding audited, you can clearly pick up whether behaviours are challenging or not challenging. I do believe from membership and from some of the research that we have had that the behavioural interventions rather than the chemical interventions is really the way that facilities are going. Certainly when residents exhibit more challenging behaviours, that expertise is taken in through psychogeriatricians or specialised management teams. I do not think chemical restraint is the first go-to that will occur. In fact, it is probably the very last thing. There is a decision-making tool that facilities refer to. It obviously needs negotiation with family members. It is not just a case that the general practitioner will come in, write them up and off they go. There is a whole layer before we get to the very last resort of chemical restraint, if we ever get there.

**The Hon. Dr PETER PHELPS:** Is that tool a publicly available document?

**Ms KOUTRODIMOS:** The decision-making tool, yes.

**The Hon. Dr PETER PHELPS:** Would you be able to provide that?

**Ms KOUTRODIMOS:** Yes, certainly.

**The Hon. PAUL GREEN:** Ms Spurway, are your visits notifiable?

**Ms SPURWAY:** No, they are just supporting the membership.

**The Hon. PAUL GREEN:** Do you walk into facilities without announcing your visit?

**Ms SPURWAY:** I am invited to assist and to provide education.

**The Hon. PAUL GREEN:** So they know you are coming?

**Ms SPURWAY:** Yes, they do.

**The Hon. PAUL GREEN:** Obviously you know how the industry works.

**Ms SPURWAY:** Yes.

**The Hon. PAUL GREEN:** If it is known that someone with authority is coming, then patients are unrestrained. My point is, are you surprising them? You are not; you have announced visits so the nurses know you are coming to the facility.

**Ms JAN BARHAM:** That was my question. You said that the accreditation agency makes unannounced visits.

**Ms HALLIDAY:** They certainly do.

**Ms JAN BARHAM:** We had an inquiry and they made it very clear they did not.

**Mr SADLER:** Excuse me, they do.

**Ms KOUTRODIMOS:** They do.

**Mr SADLER:** We are the recipients of them.

**Ms JAN BARHAM:** They give notification.

**Mr SADLER:** No, they do not, and they did not say that in their evidence either.

**Ms HALLIDAY:** They will literally rock up. They knock on the door and, "We are here." You think, "Great."

**The Hon. Dr PETER PHELPS:** As they should.

**Ms HALLIDAY:** Yes, absolutely.

**CHAIR:** To clarify this point, because it sounds like it is an important point, what was the claim?

**Ms JAN BARHAM:** I thought the point that was made that there were not unannounced visits.

**The Hon. BRONNIE TAYLOR:** After hours.

**Ms HALLIDAY:** It was a misunderstanding, I believe. They are called unannounced visits and they will literally be on your premises without you knowing they are there. We have had people coming to a conference and their response is, "Sorry, I am turning around and driving back. My facility has just had them arrive."

**Ms JAN BARHAM:** I am not aware of any correction being submitted to those comments that were made.

**CHAIR:** I do not want to—

**Ms JAN BARHAM:** I will follow up. It was one of the major concerns.

**CHAIR:** It is a different committee. There is an opportunity to respond to questions on notice within 21 days.

**Mr SADLER:** We are happy to take that on notice.

**CHAIR:** That would be appropriate to clarify any matter.

**The Hon. BRONNIE TAYLOR:** It was after-hours visits.

**The Hon. Dr PETER PHELPS:** This question is to anyone. I believe the nurses raised the issue of peer-on-peer abuse, especially among dementia patients in facilities. They ascribed the rise in that largely being due to limitations in staffing levels. Would you be able to comment, first, on peer-on-peer violence, especially among dementia patients, and also whether there has been a notable rise and if that can be ascribed to limited staffing, especially during non-daylight hours?

**Mr SADLER:** It is difficult for us to answer the question in respect of has there been a rise because statistics are not kept for peer-to-peer or resident-to-resident assaults. We know that the number of people with dementia is rising in aged care, both in home care and in residential care, and that is consistent with the increase in dementia in the community. We also know that there is a small cohort of people within the group of people who have dementia who may have a tendency towards physical outbursts or violence. They are quite a small number of the number of people with dementia. Is it then the staffing issue that contributes to those incidents occurring? I guess our viewpoint from the industry would be no, not really. There is not really evidence of a correlation. Some of the incidents that occur are happening in dementia units that are secure units that have the highest level of staffing compared to normal residential aged care environments. Often the interaction between residents is not directly controlled by staff. It is something that is happening and then staff are intervening. I guess we do not have the evidence and our experience would suggest that it is simplistic to say it is all about staffing levels.

**The Hon. Dr PETER PHELPS:** Following up on that, would the industry be amenable to the reporting of peer-on-peer abuse, for example, to a government agency but without necessarily wider publication?

**Ms HALLIDAY:** Could I answer that, because they seem to be reading some of the other submissions that there was another surprising myth. We actually have to record every incident that happens and there is a register within the facility that records all incidents that happen. Peer-on-peer abuse is recorded and is looked at when they do their regular or unannounced visits. It is something they always call out. They are looking to make sure that we have gone through that. Even if it is someone with cognitive impairment, did we recognise that; did they already have the cognitive impairment and we have not made it up as an excuse; do we have an appropriate behavioural management strategy in place; has all due care been taken with the victim of that activity? It is recorded already. If people want to analyse the data—and one thing we said in our submission is that there is a need for better analysis of the data, residential and community. We would be amenable to people analysing that

data, we just do not want to have more reportable things going through. The reason it is not reported automatically at the moment is because of the numbers and the disruption to the care as we start collecting the documentation.

**Mr SADLER:** The other reason it was not included in the original Federal legislation is the recognition of what happens when somebody with dementia or a mental health condition assaults another resident. It is a different environment. It is definitely not something which you would take to the police.

**The Hon. Dr PETER PHELPS:** You could not prove mens rea; you have a problem.

**Mr SADLER:** Exactly. The thrust of the Federal legislation around compulsory reporting was to make sure that visibility was happening about possibly preventable assaults and ones that the police needed to know about, and this was a group that the police did not need to know about.

**The Hon. Dr PETER PHELPS:** The concern that was raised earlier, and I consider it to be a legitimate concern, is we do not know how big the problem is if we do not know how big the problem is. If individual institutions are the only organisations maintaining a record of incidents taking place, I can certainly understand why the industry would not want atomised figures for individual institutions publicised because you have a whole lot of issues about whether that is a bad facility as opposed to the fact that it deals with high-level dementia patients who are volatile. I can understand that. By the same token, for a Health Department or an aged care department not to know about the level of violence and hence the need for resourcing to ameliorate that level of violence strikes me as being a very big gap in our knowledge base.

**Ms KOUTRODIMOS:** The requirement under the Federal legislation is that care plans are reviewed by an appropriate person—a doctor, a psychogeriatrician or a clinical nurse consultant in dementia within 24 hours. Coming back to your comment about facilities not wanting that publicly available, within our own membership we have a handful of facilities that actually take on the most difficult and challenging behaviours. Without a background of knowing those facilities, if I was a person in the general public doing a search on My Aged Care and all of a sudden I saw that these facilities had many more incidences compared to other facilities without knowing they specialise in this area, it paints a skewed picture.

**The Hon. Dr PETER PHELPS:** Absolutely. My concern goes further than that. That is, other facilities might say they will not take people if they believe that reputational damage will be caused by the atomised publication of individual statistics. That is my grave concern. There may well be no place for that person in that case as opposed to a facility that, at the current time, is prepared to take that person.

**Ms KOUTRODIMOS:** Currently through My Aged Care we can accept or reject, so the Government has now facilitated a process whereby that data can be reviewed. It is in its infancy. It was introduced in July last, so we are only a little way in, but that will become more available. If there genuinely are issues about that concern, that will tease some of that out. There is a mechanism but it is just in its infancy.

**Ms JAN BARHAM:** For clarity, the concern that a mandatory reporting process would become published and the facilities known—

**The Hon. Dr PETER PHELPS:** My concern is the publication of atomised data as opposed to aggregated data. I can understand aggregated data because you can go, "We have noticed that there has been a 14 per cent increase in peer-on-peer violence across the industry and maybe additional funding needs to be given to the industry to compensate for this material effect of high levels of dementia-based violence." In my view that is legitimate, but at the current time I am not sure we have anything like industry-wide understanding of the data.

**Ms JAN BARHAM:** But previously someone raised the point that they thought it would deter facilities. It is my concern that it would not be publicly known and published but would be for the information of the Government. My understanding is that the only information made public is the overall numbers and that is not broken down by State under the Report on the Operation of the Aged Care Act. Is that correct?

**Mr SADLER:** Yes, the Report on the Operation of the Aged Care Act does not break it down by State. It also does not tell you anything about the outcomes of the report, so there is no information in the reported data at the moment, for example, on do you end up with a criminal conviction. Shortly after the compulsory reporting legislation was brought in, Aged and Community Services Australia undertook a survey that I assisted in to look

at what had happened about 18 months after the compulsory reporting legislation came in. As best as we could gather at that time, it had somewhere near 1,000 reports registered. We could only track down across Australia less than 10 cases that had even gone to court, let alone actually had a conviction. One of our concerns about any of this sort of compulsory reporting regime is it has to add up to something that makes life better for older people. If we are just going through a bureaucracy of reporting, we would be very happy for somebody to mine in a research context the data that is held at the individual service provider level around the peer-to-peer abuse situation. We think it would be a really useful benefit to understand that data and potentially to repeat that as a time series so we can track if it is getting worse or better.

**The Hon. Dr PETER PHELPS:** So you get the qualitative analysis rather than simple quantitative analysis.

**Mr SADLER:** Indeed, yes. The problem with simple counting back from a Federal agency or a State agency is it does not go into why or what has happened. It is just a number report. We get assault rates brought out usually around Christmastime. We get another swag of negative media stories about nursing homes that bash up older people, and it is terribly disconcerting and disheartening for the staff who work in aged care to have this negative perception of what they are doing put out in the media based on what are after all statistics only about allegations or suspicions of an assault. These are not even substantiated cases of abuse. We are reluctant to think that this has been a positive step forward in Australia.

**Ms HALLIDAY:** Although the allegations come out and you end up with distressed families because the statistics look great on the front page of a newspaper, we support the allegations coming through and we have no problem with mandatory reporting in a residential setting. However, we need to be clear that we spend a lot of time training people not to ever engage in elder abuse and if they have any doubt to report it. We would rather have more allegations that turn out to be false than have something happen that has not been reported. Who is to know what is happening with the level of allegations coming through? We would rather have them investigated and change our processes if need be. Allegations are not necessarily a bad thing. They are sitting around 1 per cent, where they have been for years. But we do not want to see families and staff being completely disheartened by newspaper headlines from a raw statistic that has been manipulated.

**The Hon. Dr PETER PHELPS:** We are not fans of the media either.

**Ms HALLIDAY:** Good.

**The Hon. BRONNIE TAYLOR:** I know you represent facilities but I do not think this question is unfair because you are experts in your field. In your opening statement you acknowledged this inquiry is into elder abuse and the theory behind it. What percentage did you say live at home?

**Ms HALLIDAY:** We said 95 per cent live at home.

**The Hon. BRONNIE TAYLOR:** I know that is important but the issue of elder abuse is glaringly important as well. From your experience, what do you believe would be good recommendations for this Committee to make to get on top of the issue of elder abuse? Elder abuse is horrible and we need to do more about it. Do you have suggestions?

**Ms HALLIDAY:** From my policy background, that is one of those wicked policy questions. It is horrible even to think that it happens, but having said that the closest parallel we can find to elder abuse is domestic violence. They are not children; these are adults and they have complex relationships with their families. They have to be allowed to make choices. If you think back, 20 years ago people did not talk about domestic violence and we have well and truly lifted public knowledge about its awareness and conversations about it. 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—and if your mum or dad is not saying something, that is irrelevant. 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. That would be a start, just as we have turned

around domestic violence. It needs a sustained effort. It cannot be, "Wow, it would be good to have a document from the Government" and, "That was a good launch" and two years later, "Was someone talking about that two years ago? We will have another inquiry." We need a sustained effort to keep it happening. People need to know where to call to get help. Lots of people would like to call to get help if they see something that is not okay.

**Mr SADLER:** Another thing that our research on abuse of older people shows, including the work I did with Sue Kurrle, is there is quite a complex pattern in older people. In the community context around 30 per cent of older people have longstanding domestic violence going on. I interviewed a woman who said she had cried on her first wedding anniversary and she cried on her fiftieth wedding anniversary. People get trapped in long-term violent relationships, which is what Ms Halliday was alluding to. Another group of people is where the family member has a mental health or drug and alcohol issue. When you have that problem—psychopathology is a term often used for it—that family member adds a complexity to what you can do. Often interventions are around mental health and drug and alcohol support that is available for the family member as much as what can be done for the older person. The other major group is people who are developing frailty or dementia and there is a carer burden or carer stress. In these cases it is about the provision of good quality aged-care support services—so what we are all involved in doing. In those instances you are not necessarily after criminalising the condition, but in making sure that the right supports are available. It is a multifaceted approach. You have heard a lot about financial abuse, which needs a different set of responses to physical or psychological abuse.

**The Hon. MATTHEW MASON-COX:** Do you know how prevalent financial abuse is in your institutions? Are you able to give an indication of procedures used to identify it, record it and do something about it?

**Mr SADLER:** We certainly have instances that we report to the guardianship arrangements. We have instances of people abusing powers of attorney that we become aware of and go to NCAT with and make applications. There was earlier mention of the application process from social workers in hospitals, but in fact we are often applicants on behalf of people in residential care or who we are providing homecare services to and we have become aware of potential financial abuse. We are very conscious of training our own staff about what they should do and should not do. We tell them to be very cautious about handling cash on behalf of an older person. Sometimes older people offer to give our staff access to bank accounts to help them out because they cannot get to a bank to withdraw money. You have to be cautious that that does not open the older person to abuse by our own staff.

**The Hon. MATTHEW MASON-COX:** Do you have a warning list of signals?

**Mr SADLER:** Correct. For example, in Presbyterian Aged Care's policy on responding to abuse of older people, we go through a series of things to look out for. Our overall approach is if you are suspicious of something that is going on, report it back—be it something another staff member is doing or a family member is doing.

**The Hon. MATTHEW MASON-COX:** Where would you report it back to?

**Mr SADLER:** In the first instance, within the organisation and then the organisation reports it to an appropriate place that could be the police or, if an aged-care assessment team and other professionals have been involved, we might talk to them.

**The Hon. MATTHEW MASON-COX:** Do you go to the elder abuse hotline or helpline?

**Mr SADLER:** Yes, since that has been established by the State Government. That is not dealing with people in residential care; it is only dealing with people in the community, but we have referred people there as well.

**The Hon. MATTHEW MASON-COX:** So you have an informal reporting system that is mandatory?

**Mr SADLER:** That is part of the process under our policy, yes.

**The Hon. Dr PETER PHELPS:** You said staff occasionally would have limited financial authority—

**Mr SADLER:** We would say they should not have, but often, particularly in the community care context, people are trying to do the right thing for the older person, help them out maybe to withdraw some cash. They may then be given the PIN number to the account. We draw the line there, "Do not go there", but that is the risk.

**The Hon. Dr PETER PHELPS:** Given that it is going to happen, would it not be better to acknowledge it and formalise with a dual-care arrangement, for example, where two people are needed and you would have to have two dodgy people conspiring within one organisation.

**Mr SADLER:** Yes, and sometimes that is also beneficial in family arrangements, so that it is not just one person appointed as a power of attorney.

**The Hon. Dr PETER PHELPS:** All the evidence we have heard so far has indicated that a dual-care arrangement is much better.

**The Hon. MATTHEW MASON-COX:** Please provide that policy document to the Committee.

**Mr SADLER:** Certainly.

**The Hon. MATTHEW MASON-COX:** And the check list in relation to elder abuse I presume is part of that.

**Mr SADLER:** Yes.

**Ms JAN BARHAM:** In relation to support services for older people and their families or carers, do you support having a broader management team like a multidisciplinary team? We seem to be focusing on support at the end point rather than looking at what can be done before getting to that point.

**Ms HALLIDAY:** That is part of the comment I made in the opening address. Yes, we have been doing a lot of that—we have case managers and multidisciplinary teams who go out to do the assessment, develop the care plan with the person, set goals and then do monitoring of where that is going. We automatically put that into a homecare package. In February 2017 the funds for that and complete decision-making around that will be with the person receiving the care of their family. We already have examples of people who decline to have a registered nurse involved or access to a general practitioner when the people are attempting to put the plan together even when the person has complex clinical needs. There has been such a big shift, and that is what we are worried about in that case management is now an optional extra and a lot of people are choosing not to pay for it out of what they consider to be their funds because the choice and control are with the consumer and their family who are making those decisions. We are very nervous about what that will mean, because they can choose to go to the matchmaker site of care seekers and a carer and go whack and that is what happens. In such cases there is no-one doing the extra level and if they are not happy with the care, control and choice over those funds, they can shop around.

**Mr SADLER:** The National Aged Care Alliance, which represents our two national provider organisations but also a range of consumer, professional and union groups, actually included the issue of prevention of elder abuse in its public blueprint for aged care reform because they felt that while the National Aged Care Alliance is encouraging a move to greater consumer control, this risk area does need to be addressed at the same time and it is an area where the Federal Government has the levers on things like pensions and aged care funding but the States actually have the levers around powers of attorney, guardianship, the other support mechanisms that are actually going to be necessary. We certainly argued at the national level that this issue of elder abuse, and particularly some of the financial issues around it, do need to be on the agenda as we move towards further aged care reform.

**Ms KOUTRODIMOS:** And I think if we look at what was happening in the United Kingdom and maybe in the United States when they moved to the consumer holding the funding, which is what we are describing now in 2017, they put some safeguards in place and they had the social workers through. For example, the national health system in the United Kingdom go out and monitor the use and spending of funds to make sure that family members were not making choices inappropriately so that persons were able to still access medical care, dental care or whatever just as a layer of safeguarding, so perhaps that is the element that is currently missing as we move to 2017.

**Ms JAN BARHAM:** Can you explain that a little bit more? Are you saying that social workers go out and do that?

**Ms KOUTRODIMOS:** Yes, they do.

**Ms JAN BARHAM:** How do they engage with a particular person?

**Ms KOUTRODIMOS:** It is a little bit different to the system that is currently going to be operating in Australia but I suppose the funding is devolved back down to national health services and if I equate that maybe to what happens in Australia, maybe primary health networks, so there would be a bucket of money coming to primary health networks.

**Ms JAN BARHAM:** So it is allocated to them but they are not in control of it?

**Ms KOUTRODIMOS:** Correct, and then somebody goes and monitors the use. Perhaps there needs to be an additional layer somewhere, rather than government, consumer and then spend.

**CHAIR:** Thank you very much. That brings us to the conclusion of this session. Thank you for coming along this afternoon, for your submissions and your oral evidence. With respect to questions on notice and clarifications on notice, the Committee has resolved that answers to questions on notice be returned within 21 days. The secretariat will contact you as to what those questions are. Once again, thank you very much for your attendance and your contribution to the inquiry.

**(The witnesses withdrew)**



**DENIS CLIFFORD**, Assistant Commissioner, Commander, NSW Police Force, sworn and examined, and

**ROBERT CRITCHLOW**, Superintendent, The Hills Local Area Command, NSW Police Force, affirmed and examined:

**Mr CLIFFORD:** I am the Commander of the North West Metropolitan Region of Sydney and the Police Spokesperson for Vulnerable Communities, including people with disabilities, the homeless and the elderly.

**Mr CRITCHLOW:** I am the local area commander of The Hills Local Area Command, based at Castle Hill. I assist Mr Clifford in regards to vulnerable communities, in particular, issues surrounding abuse of older people.

**CHAIR:** We have received the whole-of-government submission, which can be taken as read. Would either of you like to make an opening statement?

**Mr CLIFFORD:** I would like to make an opening statement, if I may.

**CHAIR:** Please go ahead.

**Mr CLIFFORD:** The NSW Police Force has submitted a response that was part of the Government's response to the Committee addressing the terms of reference. I would just like to add some personal observations, if I may, and I would offer that to Mr Critchlow as well.

**CHAIR:** Please do.

**Mr CLIFFORD:** It is interesting to see how different people and agencies define elder abuse. The NSW Police Force considers someone is elderly when they reach 65 yet I note that this Committee uses 50 years of age. Whatever age is used to determine elderly, the problem is—and I pose the question: What about someone who is 64, or 49, from this Committee's perspective, if they are subject to abuse due to their vulnerability?

The term "elder abuse" in itself is problematic considering the significance of the word "elder" in the Aboriginal community. Our preference is to use the term "abuse of older people". When our statisticians were asked to provide the number of elder abuse incidents for the 2014-15 financial year they came up with a figure of 2,060, and I refer particularly to the evidence of Ms Halliday, a previous witness, in relation to the data and how reliable that may be. I am told that our statisticians arrived at the figure of 2,060 by searching our computerised operational policing system [COPS] for victims of certain categories of crime against persons aged over 50 years of age where the offender had a relationship to the victim.

I suggest this is not a true indication of abuse committed against older persons due to their vulnerability such as by neglect, social isolation, withholding of treatment, fraud in relation to power of attorney and so on. If I can just expand on that, some of the categories they looked at were, for example, stealing or robbery, and included those numbers where it may have been a son or a daughter who was the offender but it could have been a scenario where the son or the daughter had a drug dependency and stole from the family home to feed their habit, so I am just not that comfortable with the reliability of that figure of 2,060 incidents.

What we do know, however, is that since 2012 we have had three prosecutions for the offence of fail to provide the necessities of life. One offender in one of those matters was convicted of manslaughter and there are two other cases now before the courts. We do not know how prevalent these forms of abuse are but we are told anecdotally that they are underreported for a variety of reasons, particularly when the abuser is a family member or a primary carer. This is also the case for people who have other vulnerabilities such as physical and intellectual disabilities. They fear that if they report abuse by their carer they will have no-one else to care for them and nowhere to live.

It is further compounded if they are from a culturally and linguistically diverse [CALD] background, cannot speak English and/or have a fear of the authorities. Recently some of our multicultural liaison officers told me of cases that they have come across where families had arranged for an elderly relative to come to Australia and basically kept them in the home as cleaners and childminders. These elderly people had little

contact with the outside world and were totally reliant on the family for all of their basic needs. It is very similar to domestic violence where victims are reluctant to report a partner for fear of losing them.

From a police perspective we would encourage greater education and awareness programs aimed at front-line workers, family members and the community in general, similar to the anti-domestic violence campaigns. The NSW Police Force has included abuse of older persons in a number of our internal programs, including our domestic violence, multicultural and lesbian, gay, bisexual, transgender, intersex and question [LGBTIQ] liaison officers and in their training. Superintendent Critchlow has done a lot of work with the helpline and resource unit to develop an aide-memoire that will be used and issued to all front-line police. I suggest this card could be adapted for front-line workers in other agencies. We have a number of these cards, Chair, if the Committee would like to see them.

**CHAIR:** That would be appreciated, thank you.

**Mr CLIFFORD:** As you will see, it is an aide-memoire for front-line workers who may not come across these cases every day, every week or every year even but there are some trigger points on it that get them thinking, "Well, this may be"—as it says on the card, "elder abuse". Thank you, Chair.

**CHAIR:** Thank you for that. Superintendent, did you want to add any comments or observations?

**Mr CRITCHLOW:** I certainly support Mr Clifford's comments. In my role, I perform a quasi-liaison role with a number of different providers, partners and agencies. I notice that the list of witnesses includes many people I deal with quite regularly, which illustrates the need for a team approach to this problem. 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 Mr Clifford's leadership. I am most grateful to the Committee for airing this and allowing us to participate.

**CHAIR:** Before I pass over to members for questions, Assistant Commissioner, were the charges and the successful prosecution you referred to laid under a specific provision of the New South Wales Crimes Act or another piece of legislation?

**Mr CLIFFORD:** No, I believe they were laid under the Crimes Act.

**The Hon. BRONNIE TAYLOR:** What do you do with the cards? Are they mail drops?

**Mr CLIFFORD:** No, these are issued to every police officer, or we are in the process of issuing them, and to recruits from the academy. They will sit inside their notebook cover. I think Mr Critchlow might have his notebook here.

**Mr CRITCHLOW:** Yes. It looks like that. It is designed with those dimensions in mind. It sits there in case of an encounter or an emergency. It is our blue book.

**CHAIR:** It is the second lot of blue books we have heard about today; it is our favourite colour.

**The Hon. Dr PETER PHELPS:** This comes back to a more generalised problem that police have in dealing with situations—let us be frank about this: this is a subset of a domestic violence arrangement in a lot of cases where the victim may well say, "I don't want them arrested. I just want it to stop." If you are a constable out there—not a specialised person who has had lot of experience of elder abuse—what do you do in that situation?

**Mr CLIFFORD:** I am hoping it will encourage them to seek advice, whether that is internally or perhaps from the Elder Abuse Helpline. It is a tough one. As you say, it is very similar to the domestic violence scenario; we often hear that—"I just want it to stop. We don't want you to take the offender away." As I mentioned before, these matters are very similar to domestic violence and that fear from victims who know they are going to lose their carer and maybe have to move to another environment, and particularly in relation to CALD communities, some of them see it as a shame to make a complaint against a family member in particular. They are all the complexities that we are faced with.

**The Hon. Dr PETER PHELPS:** Who would Constable Smith call? Who would he or she go to and say, "I am not going to arrest the offender, however, I am going to call X"? Who do they call or deal with at first instance?

**Mr CLIFFORD:** If you are at the scene of a complaint the supervisor or duty officer would be the first port of call. We have six vulnerable community officers, one in each region. Mr Critchlow is in my region, north-west. We are setting up as much of a network as we can for officers to get support and advice. The elder abuse hotline has been a godsend to us as a resource to get that more professional or expert advice. The constable on the street is not a walking encyclopaedia.

**The Hon. Dr PETER PHELPS:** Or social workers.

**Mr CLIFFORD:** It is difficult to identify the root cause of the problems. We are trying to encourage more communication and cooperation between the support agencies to get advice for the officer on the front-line. I expect that is the same with other frontline agencies.

**The Hon. MATTHEW MASON-COX:** Can I ask you about the elder abuse hotline; that is a 9 to 5 p.m. service with some after-hours support. How does that fit in? These things don't happen between nine and five but after hours?

**Mr CLIFFORD:** I defer to Mr Critchlow. He has done a lot of work with the helpline.

**Mr CRITCHLOW:** When something requires urgent attention in the middle of the night we are pretty well structured to handle that; we would call upon the ambulance service and medical providers. That is not as much of an issue. The helpline has proven itself over time as a referral point and police are now common callers to the service. I have had the situation where constables have called the helpline who have then called me to advise the constable and I liaise directly and give them advice. It is working well. We are three years into the project and I think over time those late night emergency calls have been handled well within acute responses. The more chronic nuanced response has been dealt with during office hours in an effective way.

**The Hon. Dr PETER PHELPS:** But it is fair to say police are not necessarily structured to deal with sustained low level abuse, they are structured for individual critical incidents. That sustained low level abuse is something which is better off handled by someone else other than police; is that not the situation?

**Mr CLIFFORD:** I think that is a fair comment. A lot of times we are there to play an intervention role or crisis management at the time. I think the ongoing support for somebody is a matter for a social service agency or organisation. As we said before, being able to refer to the Elder Abuse Helpline and get advice as to where to refer people to. It is a similar situation to other people with vulnerabilities such as intellectual disabilities and cognitive impairment. The police often find themselves in that situation of what I refer to as the 2 a.m. on a Sunday, and who do you call?

**The Hon. Dr PETER PHELPS:** To that end would there be some benefit in us recommending that the elder abuse hotline be manned 24 hours?

**Ms JAN BARHAM:** Staffed.

**The Hon. Dr PETER PHELPS:** Staffed for 24 hours?

**Mr CLIFFORD:** Certainly at 2 a.m. on a Sunday we would appreciate it. It is the same in relation to a lot of services. There are not the services there for people with an intellectual disability that need our help at 2 a.m. on a Sunday and as Mr Critchlow said we rely on the health services, ambulance and hospitals. We are a 24/7 organisation and any 24/7 assistance we get we would welcome.

**Mr CRITCHLOW:** I believe we are learning through experience. 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.

**The Hon. PAUL GREEN:** In light of not being able to get 24/7 access to a hotline, hospital would not be a bad thing in that situation. It would give you breathing room and allow a full opportunity for a nurse to take a history and get a bit more information and investigation. Is this a long-term consistent pattern, partnering again with the police and the history of the issue, and furthering that for a more complete investigation? That is not a terrible thing to say. At 2 a.m. you have nowhere to go but a hospital, but a hospital can be a safe place for a vulnerable person.

**Mr CRITCHLOW:** It is often the best place to have that proper examination by a nurse, physician or specialist of some description.

**The Hon. PAUL GREEN:** To get a history?

**Mr CRITCHLOW:** The question of whether we are structured to handle low level abuse is valid. When I do training with other groups I give talks from that point of view. The longer we are not involved the better. If other human services and caring agencies can provide that support to difficult relationships before we get involved that is best. Often we are not involved until someone is badly hurt psychologically, physically or financially. The better the response from human services and caring agencies, perhaps led by the hotline, the better off the older person will be.

**The Hon. PAUL GREEN:** What level would most of the responses you make be? Would it be a police discretionary knock on the door with an issue and disarm that with a crisis approach or are they at a higher level that needs removal of someone from the residence—whether that is the vulnerable person or perpetrator? What sorts of levels are we looking at?

**Mr CLIFFORD:** I think it varies. I go back to domestic violence situations: sometimes it is a call from a neighbour who suspects something is going on, the police will attend and it could be a verbal argument, which I guess we all have. If there is a consistent call back or the police suspect more—and Mr Critchlow has done a lot of work with training and awareness for police to look for more, be inquisitive and ask a few questions and that may trigger a more involved response. Or, it could be quite obvious, such as they are called by an ambulance crew that someone has obviously been abused. The grey area, I suppose, is where you have a reluctant victim that says, "No, everything is all right." And no matter what your observations are, or information from neighbours, or whatever, we still look at a standard of proof of evidence. That can be problematic, particularly if somebody has a vulnerability of dementia. There is no black and white answer for a response. We need to be flexible and be able to seek get that advice when we are not sure what we are dealing with.

**Ms JAN BARHAM:** Do you think there has been any rise in the abuse or pressures on older people with the increase in ice use and drug situations where parents or grandparents are being sought as a source of income for procurement of drugs. Do you see that?

**Mr CLIFFORD:** I do not have any data but I suspect you are right. It is the tip of the iceberg with the ice epidemic; we know from other drug abuse that grandparents are caring for grandchildren because sons or daughters are incapable of that. That puts pressure on to the grandparent.

**Ms JAN BARHAM:** They are often more vulnerable and subjected to that sort of abuse?

**Mr CLIFFORD:** I know through personal experience of people who have had a son or daughter who is a drug addict who just rips them off, is the best way I can put it, and steals from them, extorts them, robs them and all sorts of things.

**The Hon. Dr PETER PHELPS:** They never get reported because they are family and they do not want to get them in trouble.

**Mr CLIFFORD:** Often you are right, yes, blood is thicker than water. Particularly with some of the culturally and linguistically diverse communities we are told that people would be ashamed to report a member of their family for anything to the police. They are the issues we are faced with.

**Ms JAN BARHAM:** At what point would there be recognition of that observation with what's happening with some communities with the ice situation and that starts coming through in some of the observations of police? Raising the issue of elder abuse and the relationship for Aboriginal communities, I appreciate that. That is the first time it has been raised and it is a valid point. I take that on board. In relation to law reform, do you have any suggestions about reforms that could improve the situation for the police to be able to act?

**Mr CLIFFORD:** I understand the NSW Law Reform Commission is undertaking a review of the Guardianship Act. For us there is a line that crosses between a criminal investigation and a civil matter. I will not comment on what the Law Reform Commission is looking at. In their work they might look at strengthening the legislation particularly in relation to power of attorney and so forth. As far as criminal procedures are concerned, we have looked at the child protection legislation and legislation from other jurisdictions. From my point of view, as I mentioned before, part of the role I look at is people with disabilities as well. There are a lot of crossovers: you have an older person who has a mental condition, is drug dependent or an alcoholic. It is difficult to put people into one pigeonhole, if I could be so blunt. If somebody is looking at legislation it might be abuse of people with a vulnerability and in that you could include elderly people, older people, children, people with some other disabilities; intellectual and cognitive impairment, for example.

**Ms JAN BARHAM:** Would you support a uniform definition across jurisdictions, particularly where there are cross-border issues? Would it be better to have a national definition?

**Mr CLIFFORD:** Definitely. It is the same for a lot of legislation, it is not identical in different jurisdictions. People do move around. We would always welcome standard definitions.

**The Hon. Dr PETER PHELPS:** You mentioned the limitations of the computerised operational policing system. Would it be possible to take on notice victims over 50, assaulted or worse, forget the financial side, up to manslaughter you mentioned earlier, by a perpetrator known to the person: is COPS able to disaggregate that figure?

**Mr CLIFFORD:** I do not know. If we can we will supply that data. I was told they put in age range and certain crime categories with an associated factor of "related to".

**The Hon. Dr PETER PHELPS:** I do not think the data you have on the financial side would go anywhere near to being useful to this Committee. On the physical assault side it would be useful. But in many cases it is a civil matter—John thinks that Mary is ripping off mum through her power of attorney—which is not something for the police, that is for the public guardians. If you eliminate the financial side of things, is it possible to see if we can get assaults or worse for victims over 50 with a perpetrator known to the person?

**The Hon. MATTHEW MASON-COX:** I was wondering about the idea of a public advocate, which is a model in Victoria that has investigative powers working with the public guardian. Is that something you think might be useful in augmenting response for vulnerable people or elder abuse?

**Mr CLIFFORD:** I think for matters that are not strictly criminal offences it may be useful. I can only comment on criminal matters that we investigate and put before the court. That is the arbiter of criminal matters. Unless Mr Critchlow has a view, I have not thought through that idea.

**Mr CRITCHLOW:** I would just rely upon my previous observation that it is a team effort to counter this problem. If someone had that role to coordinate across agencies and we accepted that it was probably a whole-of-government response and not sitting within a particular sector, there would be some facility in that perhaps.

**The Hon. BRONNIE TAYLOR:** Do you think an issue that has contributed to this becoming a bigger problem is that there is not good coordination across the different services?

**Mr CRITCHLOW:** I would say yes, especially because of the impact of trustee and guardianship issues and the financial abuse that goes with it. I personally in my role do not really split financial abuse and physical abuse because the evidence shows—

**The Hon. Dr PETER PHELPS:** If you are likely to do one you are likely to do the other.

**Mr CRITCHLOW:** It is that but also the physical effects will manifest themselves. If an older person is defrauded, especially by a loved one, they feel a sense of humiliation and betrayal which can then become a psychological harm to the person which can manifest itself in physical decline. There are studies by Dong and Lachs, et cetera, that show a 300 per cent increase in mortality for any older person who suffers any form of abuse. It is a great risk and I do not think it is that helpful to split the different issues. When we split the Trustee and Guardian from the police, from aged care and from health I think there will be a lot of people falling through the cracks because these issues are multifaceted and complex. I do not think you can split them with any great benefit.

**The Hon. BRONNIE TAYLOR:** We have got these great services but then—

**Mr CRITCHLOW:** And lots of good people that want to work together.

**The Hon. PAUL GREEN:** This morning one of the Aboriginal elders we met with mentioned that in the Northern Territory they had ACPO, who are Aboriginal community police officers. They were specifically trained to assist police in these matters. Are you aware of that? Does the NSW Police Force have such an initiative?

**The Hon. Dr PETER PHELPS:** As I understand it, they are Aboriginals who become special constables and assist police in their duties, especially in relation to Aboriginal communities.

**Mr CLIFFORD:** I am aware of the role they play in the Northern Territory. We have Aboriginal liaison officers. They are not sworn officers. They are not special constables. They work in many of our areas, particularly those with a high population of Aboriginal people, and they are part of what we call the crime management unit. You will have various liaison officers in there and they will work with domestic violence liaison officers and crime prevention officers and so forth. Mr Critchlow mentioned a team approach. That is our approach to it, because there are so many crossovers with associated factors. Someone who is an older person who is Aboriginal might have mental health issues. I am not one for trying to categorise and pigeonhole people. We would rather see that team approach not only internally but with the other agencies as well.

**CHAIR:** Is the issue of elder abuse part of what is covered in the curricula at the police academy at Goulburn?

**Mr CRITCHLOW:** 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 through Goulburn to have as they leave, so they will have that from their first day out.

**CHAIR:** We can see through both of you a high level of commitment, understanding and appreciation of the challenges associated with elder abuse as an issue and how it is dealt with. It is not always necessarily criminal. You get there and you find that a neighbour has put the call through and the person does not want to go any further with it and what have you. Where would you say we are across the State with the NSW Police Force having an understanding of the complexity and the challenges of this issue? We can presumably say that in parts of the Sydney metropolitan area, particularly in the Hills district, it is well covered but across the State have we got a long way to go? This is not passing a value judgement of slowness of adopting and understanding; rather, it is about the size of the task. Perhaps it will happen in the same way that domestic violence has been front and centre in the community. As the Hon. Bronnie Taylor said earlier, we are catching up with this issue. Have we got some way to go to get thorough coverage of it across the State?

**Mr CLIFFORD:** I think we can always do better. It was not so much solely in relation to abuse of older persons but in relation to the vulnerable community portfolio we have started to have each region commander identify a senior officer as our point of contact as part of the network and basically a counterpart of Mr Critchlow in each of our other five regions.

**CHAIR:** And that covers the State?

**Mr CLIFFORD:** Exactly, the three metropolitan and the three country regions. We have phone hook-ups with them and we get together and meet at least annually. It is that communication network and any information that we want to send out we do through those contacts. In turn they raise it usually at what we call a

region meeting where all their commanders come together. So we are getting that communication, that network happening. That has been happening for the last couple of years.

What we stress with those liaison officers is to encourage each local area to identify who is in their local community that they can call on, rely on and work with in relation to whatever the challenge is with vulnerable communities. So I think we are getting there; I do not think we are 100 per cent. The other issue of course is finding those services in remote locations because the further from Sydney you go the more problematic that is. That is the way we have approached it and we will continue the communication. We have regular articles in our *Police Monthly* magazine and that sort of form of communication.

**CHAIR:** My next question is with respect to contacting the hotline. Say there is a call-out and a constable turns up and decides that making contact with the hotline would be a worthwhile thing to do for the matter. Is that something which is initiated pretty much there and then on the spot? Would the constable put the call through with the affected person present and commence to talk about the issue? Is it then effectively handed over in the sense that is it then up to the hotline to provide advice and directions to be followed through with?

**Mr CRITCHLOW:** The first thing the hotline does is remind them that they are a hotline and not a responding agency and remind the constable that the constables have the ball. But I will give you a case study. I will not name the city. In a town in northern New South Wales a constable did a random breath testing stop and heard some screaming coming from a house. He investigated and found a lady who was imprisoned in her bedroom. She was covered in urine and faeces. There was a bucket there for a toilet. Her finger was gangrenous because it had been slammed in a door allegedly by the partner of the older person's child. He essentially rescued the older person, got medical treatment for them and then called the helpline. The helpline transferred him to me or made contact with me and I called him. I congratulated him on his initiative and gave him some further advice about apprehended violence orders and investigation practices, which produced a good result. The situation worked. He realised what the issue was, sought advice and then through our connections and our networks we were able to respond. I rang him back within half an hour.

**CHAIR:** Are there any recommendations you would care to make or take on notice about how to enhance or improve or augment the hotline procedures or what the hotline offers that may be of assistance to the NSW Police Force in dealing with these matters? We cannot ensure the Government will necessarily follow through with that but with the practical articulation between the police force on the ground making contact with the hotline is there something within the hotline arrangement that could be enhanced that would assist the police force?

**Mr CLIFFORD:** I do not know about enhancing the service. I think the ongoing funding of the service is one issue but it is not for me to actually comment on. But it would be a shame to lose that resource, not that I am suggesting anyone is contemplating that. But, as I said, it has been a godsend for us and for other front-line workers.

**The Hon. Dr PETER PHELPS:** What is the ability to extend it a little further than police officers? For example, nurses, ambulance officers and even bank tellers might get use out of something that makes them say, "Hold on. Three of these dot points are met. Maybe there is something." They may do it out of their own recognisance, they may say they already know what to look for, but there might be people out there who have no idea about warning signs for elder abuse and would like a card to be able to check and say, "That sounds awfully like systematic abuse."

**Mr CRITCHLOW:** The helpline is not just the helpline; it is also the resource unit. They do a lot of material for promotions. They do posters and they do these great little pens with all the details on them. I am sure they showed you.

**Ms JAN BARHAM:** We didn't get a pen.

**Mr CRITCHLOW:** We have a got a new one with a little tag that you pull out with the information. It is fantastic.

**CHAIR:** We feel deprived. We will follow that up.

**The Hon. BRONNIE TAYLOR:** The people were very impressive.

**Mr CRITCHLOW:** They are very committed. I would say that there is definitely benefit in widening the scope and scale of the helpline, but the resource starts at the phone. If someone calls the helpline and the phone is not answered it is a negative result.

**The Hon. Dr PETER PHELPS:** In many ways it could help obviate the need for further expensive training. Yes, we would like to have it but it would be good if you have a checklist and you can go, "Hold on. I can read English. I know what these things are. These things are happening to this person." Home care workers might find it useful, for example. There are a range of people who might find this sort of document useful.

**Mr CRITCHLOW:** In different languages too. They are now doing their own brochures in simplified Chinese and a few other languages. There is again scope for increasing interaction with the CALD community, as Mr Clifford said. We have had the India Club seek our assistance in providing training to their members to look at internal issues relating to people of Indian heritage. That was very successful and very brave on behalf of that community. I think the more resources we have in languages other than English would be of great assistance as well.

**Mr CLIFFORD:** I attend the regional leadership group for greater Western Sydney. I am attending there tomorrow. That has got membership from all of those agencies you mentioned. I intend to raise that tomorrow. I suggest that they might take it back to their organisations. We have got no caveat on that. We are quite prepared and we look forward to sharing that with other agencies and anyone else that can use it.

**The Hon. Dr PETER PHELPS:** I am thinking about people like ambos and nurses. In a situation where you do not want to call the police you are still going to present to hospital with a broken arm. If you are coming in with a broken arm one week and a black eye the next week, then—

**Mr CLIFFORD:** If I may, I would like to see greater community awareness. The domestic violence campaign has been fantastic. You may have seen the commercial; it is a silent commercial. Mr Critchlow mentioned translating this information in different languages but if you have seen that commercial you will know there are no voices in it at all but it gets the message across. It is a very powerful message. It is not only the emergency responders and the healthcare workers; it is the neighbours, the other community contact groups, the people that make Meals on Wheels and those sorts of people. We do not want to alarm people but we certainly want to raise awareness of what to look for. I think Ms Halliday, the previous witness, talked about reporting matters. We can investigate them, we can look at them. We are not afraid of over-reporting. We would rather investigate an allegation, look at it and dispel it rather than have people not reporting matters.

**Ms JAN BARHAM:** What is the procedure when something is reported? Do you have a special unit that investigates those cases that might be referred to you?

**Mr CLIFFORD:** The first responders are mostly our general duty police. Depending on how the matter is reported it may go straight to a detective and be investigated by the detectives or escalate up. Then there is oversight of the cases by the supervisors and they are there to ensure there is the appropriate level of response. It can get into some grey areas though. We have talked about physical abuse and financial abuse. When it gets into that really complicated area of financial abuse that is where we need to ensure that it is properly investigated. If it is not clear-cut or not a criminal matter then it can be referred to somebody like the Public Guardian.

**Ms JAN BARHAM:** Do you have special staff to deal with sexual abuse reports within the Police Force, particularly for older women? If there is sexual abuse do you have like a joint investigation response team [JIRT] or a special team to deal with older people and make sure that there is a woman present to deal with them?

**Mr CLIFFORD:** Not particularly for older women, but we have got sexual assault-trained officers in every command.

**Ms JAN BARHAM:** So they are called in?

**Mr CLIFFORD:** They are trained to take statements and so forth, and it would be very unlikely that it would not be a female officer.



**Ms JAN BARHAM:** Do you agree that there is possibly underreporting, particularly if it is family members, of all sorts of abuse against older people because of the shame or the fact that it is family and all those other influences? Do you get a sense of that or do you have feedback anecdotally, or whatever, that there are things that are reported or that you investigate that are not progressed?

**Mr CLIFFORD:** I have certainly had that sense.

**The Hon. Dr PETER PHELPS:** Go to any police station and say, "Have you heard, 'I just want it to stop, I don't want them arrested'" and you will know exactly what they are talking about.

**Mr CRITCHLOW:** The studies clearly say that domestic violence is about 50 per cent underreported, and that is in relation to physical violence. Non-physical violence there is obviously a greater rate of underreporting and I think this is even worse again; I think it is iceberg sort of material. We do a lot of guessing as to numbers and prevalence is a big issue. There was a prevalence study done in Western Australia, which gave us a figure of 4.6 per cent as an average between 3 and 6. Nationally, 6 per cent roughly is the average that is given, but we do not know.

**CHAIR:** That is 6 per cent of what?

**Mr CRITCHLOW:** Of the older population. As Mr Clifford says, it is very difficult identifying what an older person actually is. I know the helpline does not put a bottom age on their clients—nor do I; I think if you are affected by vulnerability as a result of age, well, you are an older person. But prevalence is an issue and I think if there was some recommendation supporting prevalence—I know there has been talk of a national prevalence study.

**CHAIR:** It has been raised by the witnesses, yes.

**Mr CRITCHLOW:** And I spoke to Dr Kurrle about it, that there was a crying need for it, just to give us some data to work from. If we do not know the prevalence we do not know the underreporting—that is the chicken and the egg.

**Ms JAN BARHAM:** Can I just thank you for the great work that you do. It is widely acknowledged and recognised and there is lots more support for it—more staff.

**Mr CRITCHLOW:** It is our honour, thank you.

**CHAIR:** Thank you very much for the outstanding work you do. Your reputation precedes you because your names do come up, but that, of course, is a reflection of what you do and what you should be very proud of. For what are some of the most vulnerable people in this State the NSW Police Force is there ready, willing and able when that need arises and we thank you very much for the great work done by the NSW Police Force for these vulnerable people.

We provide a period of 21 days to respond to questions on notice. Our secretariat will liaise with you over those questions that we identify in *Hansard*.

**(The witnesses withdrew)**

**(The Committee adjourned at 5.17 p.m.)**