

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE NO. 2

INQUIRY INTO ELDER ABUSE IN NEW SOUTH WALES

At Sydney on Friday 20 November 2015

The Committee met at 9.45 a.m.

PRESENT

The Hon. G. J. Donnelly (Chair)
Ms J. Barham
The Hon. S. Cotsis
The Hon. P. Green
The Hon. Dr P. Phelps
The Hon. B. Taylor

CHAIR: Welcome to the first public hearing of the General Purpose Standing Committee No. 2 Inquiry into Elder Abuse. The inquiry is examining the effectiveness of law, policies, services and strategies in New South Wales in safeguarding older people from abuse. It will also consider new initiatives to enhance existing safeguards and empower older people to better protect themselves from risks of abuse. I would like to acknowledge the Gadigal people who are the traditional custodians of this land. I also pay respect to the elders past and present of the Eora nation and extend that respect to other Aboriginals who may be present today or listening to the hearing.

Today we will hear from the Council of Ageing NSW, NSW Elder Abuse Helpline and Resource Unit, The Seniors Rights Service, and Ms Sue Field who is a legal academic at Western Sydney University. I am pleased with the substantial number of submissions that the Committee has received to date—approximately 55; I think we will receive more in the weeks ahead—and the thoughtful contributions that stakeholders are making to this important inquiry, which is a difficult and complex issue. The Committee intends to take further evidence from key Government and non-government stakeholders in February and March 2016 before handing down its report with recommendations to Government by no later than the middle of the year or perhaps earlier.

Today's hearing is open to the public and is being broadcast live via the parliamentary website. Welcome to anyone who may be watching. 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 media representatives 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.

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 it to the secretariat 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. I therefore request that witnesses focus on the issues raised by the inquiry's terms of reference and avoid naming individuals. 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.

IAN DAY, Chief Executive Officer, Council on the Ageing NSW, sworn and examined:

CHAIR: Mr Day, welcome to the public inquiry. Would you like to start by making an opening statement? If so, keep it to a few minutes, maybe up to five minutes maximum, to provide an opportunity for Committee members to ask questions.

Mr DAY: Very short opening comments. The Council on the Ageing NSW submission concentrates on what we believe are the major issues in dealing with elder abuse. I am, however, very happy to respond to other issues that may concern any of the members of the Committee. As a peak body dealing with issues relating to ageing, we are acutely aware of ageism, stereotyping, paternalism, and the myths relating to ageing and how it can negatively affect and influence considerations of the issues. I raise that for this group as well, but I would make the point that one of the most pervasive and destructive myths is that older people are less capable than they were when they were younger. We often see evidence that older people are assumed to be frail. In turn, those who exhibit frailties are assumed to have lost their capacity to make decisions and, therefore, should no longer be living or acting independently.

The consequence of this myth is that carers, family members, providers and others feel justified in taking over responsibility for many aspects of an older person's life without considering their wishes or the effect on their wellbeing. The consequence of this myth is that the older person's rights are diminished. I stress the issue of the rights of older people here. The simplistic response to elder abuse is often that somebody else should take over responsibility because the carer's responsibility has not been well handled.

In the broadest sense, we believe that a community education campaign should be launched to make people understand the dimensions of elder abuse and to create wider awareness of the helpline. Importantly, wider awareness of what elder abuse is and the conditions under which it operates, in particular, conditions relating to the abuser. Secondly, there needs to be an engagement strategy introduced throughout the community to prevent elder abuse by minimising the risk. One of the major risks in elder abuse is isolation.

This is an engagement strategy to engage the community groups to actually get up and do something and try to encourage people to talk to somebody else. This is not a recruitment exercise for the community groups nor is it anything to do with adding another choice in the portfolio of various things that somebody can attend. It is a matter of knocking on the door and saying, "Are you okay? Would you like some sugar? I have not seen you for a while. How have you been?"

The final side of that is then the major issue in actually dealing with the issues of the abuse related to the abused assuming capacity, and that is the abused needs to make that decision themselves and what do we have in place to actually empower, encourage and support the abused person to make the decision to make it stop. Our position is we believe that there are plenty of weapons in the arsenal, if you will, to actually address the abuse once the abused person says, "I want it to stop." That is the critical issue that is not addressed in any of the current activities relating to elder abuse.

CHAIR: Thank you, Mr Day. Just so you appreciate, there are cross-party members in this inquiry. We have Government members, Opposition members and crossbench members. To facilitate the best opportunity to maximise the information we obtain from your presence today, we have decided to share the questions quite openly, if you are okay with that.

Mr DAY: Yes.

CHAIR: We will start with the Hon. Bronnie Taylor.

The Hon. BRONNIE TAYLOR: Thank you very much for your submission and for coming here today. I found very interesting the statement you made on page 3, "I just want it to stop". It is akin to what we hear from people suffering from child abuse, domestic violence and things like that. Your recommendation about a community education campaign is a terrific idea. I do not know if you saw the segment on the *7.30 Report* last night?

Mr DAY: Yes.

The Hon. BRONNIE TAYLOR: It actually showed the financial side that you talk about and how it is becoming a growing concern. People are starting with education campaigns around that, which is terrific. The question to you is: With things like that and when, as you say, people want it to stop, they have to be cognisant of wanting it to stop. My real concern, reading through a lot of the submissions, is about people with Alzheimer's, dementia and vulnerable people.

Mr DAY: Absolutely.

The Hon. BRONNIE TAYLOR: An example of that was the woman they showed last night?

Mr DAY: Yes.

The Hon. BRONNIE TAYLOR: How do we address that with so many of our elderly, who are vulnerable and suffer from some type of dementia, whether it is Alzheimer's or whatever? What are your suggestions for dealing with that?

Mr DAY: I think there are a number of issues here. One is that Alzheimer's is a continuum. There are low levels of capacity loss right up to full capacity loss. Interestingly, when one assesses capacity, you assess it for a specific purpose. I think I said somewhere, or have said elsewhere, that a poor decision is not proof of loss of capacity. We all make poor decisions. It is the ability to make a decision at all. Even somebody having dementia to a reasonable extent can still say, "I want it to stop."

Certainly, though, the issue of power of attorney is a major one and there is a community perception about power of attorney. Many people think, "I now have power of attorney. Therefore it is my money." No, it is not. You could say that it should be covered by the Trustee Act but at the end of the day it is not your money. You are there to spend that money for and on behalf of the person that you have the power of attorney for. That is an education exercise because it is very common people saying, "I now have this money. I have got full access to it." I think that is an issue. So there are issues relating to power of attorney.

The other side is that whole issue of isolation and that is the family cannot pass it off to the brother that is going to look after it or what have you. They actually have to keep going and have to keep part of it and the people around about need to keep links with the person who is being abused. The way of getting out of it might be fairly easy: moving them onto an aged care facility or some sort of aged care-related exercise. Capacity is the big problem and the issue related to power of attorney needs to be looked at.

The Hon. BRONNIE TAYLOR: Following on from that, when you talk about community education campaigns are you talking about, say, an Aged Care Assessment Team [ACAT] going in. They are experts in aged care. Do you think there is a deficit there? Do you think that some of those teams are not looking for things? Is the issue that they do not know that it may be a risk or a potential risk, or is it that they do not know what to do about it if it is?

Mr DAY: In many cases there is not much that they can do. I go back to the prevention side. I know that Rob Critchlow from the NSW Police Force has been doing a lot of work. There have been presentations by the resource unit. The issue of who is your substitute decision-maker is critical. It is all about education well and truly before any of this comes about. We have seen situations where the son or daughter is divorced, they do not have any money and they go back and live with mum. That subsequently turns into a situation of supposed caring et cetera. That is the easy case. Let me paint another scenario. Four siblings are sitting there considering mum, who has just got out of hospital and asking, "What are we going to do with mum?" If three of those siblings are high functioning and one is low functioning, guess who gets the job. It is the low-functioning sibling.

The decision about who is the substitute decision-maker is a problem. Certainly, from the readings I have done I have learnt that when you investigate issues of elder abuse, there are major problems with the abuser. Sometimes it is because of caring overload or caring stress but in many cases the carers have gone into those roles with their own problems. They may be inappropriate carers.

The Hon. SOPHIE COTSIS: Good morning, Mr Day. It is good to see you here. I would like to acknowledge that your organisation has been pushing for this inquiry, so good on you. On the first page of your submission you state:

It should be noted that the NSW Steering Committee – Prevention of Elder Abuse has not met since the end of 2014.

Have they still not met?

Mr DAY: They have still not met.

The Hon. SOPHIE COTSIS: Who is responsible for this New South Wales Steering Committee—Prevention of Elder Abuse?

Mr DAY: The Department of Family and Community Services [FACS].

The Hon. SOPHIE COTSIS: Who from FACS is on the committee?

Mr DAY: The problem with FACS has been the turnover of staff. The current manager of Ageing, Disability and Home Care would be on it, one would expect, but she has never been at a committee meeting. I am sure the director would be on it, but again he has not been on it because the committee has not met since he got into the role.

The Hon. SOPHIE COTSIS: Is it overseen by Minister Hazzard or Minister Ajaka?

Mr DAY: It is overseen by Minister Ajaka.

The Hon. SOPHIE COTSIS: Is this committee the steering committee that has a whole lot of people representing different agencies, including the NSW Police Force, and brings them together to look at strategies?

Mr DAY: Yes.

The Hon. SOPHIE COTSIS: Have you raised this with the Government?

Mr DAY: It was raised yesterday at an IDC meeting on the ageing strategy.

CHAIR: For the purposes of the *Hansard* transcript, what does IDC stand for?

Mr DAY: IDC stands for interdepartmental committee.

The Hon. SOPHIE COTSIS: That committee needs to meet?

Mr DAY: Absolutely.

The Hon. SOPHIE COTSIS: It needs to meet regularly.

Mr DAY: Yes.

The Hon. SOPHIE COTSIS: I will take that up with the Government. Thank you for bringing that to our attention.

The Hon. PAUL GREEN: If that committee has not met since 2014 what has it produced to date that would have been effective in the way of addressing elder abuse? Are there recommendations from when the committee did meet?

Mr DAY: Leading up to 2014 the preparation of the policy document was a major output of the steering committee. It enabled many of us around the table to push for particular approaches. The committee was probably halfway through the discussions until prevention got into the heading but it has been a valuable process. I am sure the guys from the NSW Elder Abuse Helpline will be able to tell you what has happened since then. There certainly has not been an ability to meet.

The Hon. PAUL GREEN: Are you saying that prior to all this—when the committee was meeting—the Government has embraced some recommendations coming out of the committee?

Mr DAY: From that committee there was a recommendation about an interagency policy on how to address it.

CHAIR: Can I just clarify? Is the document you just referred to the document you referred to in the first paragraph of your submission: the Review of the Interagency Protocol for Responding to the Abuse of Older People?

Mr DAY: No; that review was done in 2011. From that review, came a rewrite of the policy. So it was not a protocol any longer; it was a policy. That is the document mentioned further down, which came out in 2014.

The Hon. SOPHIE COTSIS: I have a couple of other loaded questions but I know that there are other colleagues who would like to ask you questions. What is happening in other States? Do other States have models?

Mr DAY: The guys from the helpline would be able to answer that. Certainly Queensland has a very strong model with their Elder Abuse Prevention Unit. Victoria has a strong model, which has a different emphasis. South Australia has a model. Tasmania has recently started to do something. I cannot answer for Western Australia. I think it does, and I think Northern Territory is looking to do something.

The Hon. SOPHIE COTSIS: Commissioner Susan Ryan has recently stated that there needs to be a national framework. Do you support the national framework proposal?

Mr DAY: It depends on what a framework is. If it is a framework of how the agency should interact I am fairly neutral. If it is a framework that looks at discussing, around the nation, various responses that work, then I would be totally supportive of it. I think we have an issue of process versus outcome.

Ms JAN BARHAM: Thank you for coming in to give evidence at this important inquiry. I am interested in the social isolation factor and how you see that that could be addressed. Should some level of Government funding be made available so that people can have a responsibility to regularly check on people? Is that seen by your organisation as an important role, separate to meals or clinical care? It would just be a connection.

Mr DAY: I will give you a broad response, firstly, and then a more specific response for elder abuse. The broad response—because it is an issue for older people generally—is the whole issue of isolation. There are simplistic responses that if we had more choice there would be less isolation. The people who are isolated, even if there is a quilting club, a gambling club or whatever else, are not going to go and join it. Choice is not the issue; the issue is getting those people engaged and motivated.

In the first instance there is a preventative response. Those people who are starting to drop off—I am talking about the visibility factor—need to be re-engaged with, and there needs to be a response on the same sort of basis as the R U OK? Day and some of the Grandparents Day stuff that we have done. We need to have something where the community is engaged and encouraged so that the clubs are not totally insular about all the things that they do—having the meals that they have together—but also look outward and encourage people to go out and to engage with those down the street and those that are at risk of isolation.

Coming down to the specifics of elder abuse in the first part of that previous discussion, work is the prevention side. The next side is the empowerment and engagement. Those people are probably already isolated and very difficult to get to so it is a matter of finding the right people to actually get to them. So it is not a community response there, it comes down to specific people who can put up their hands and receive training from the resource unit, et cetera, as to how to deal with these people, and they need to be in positions of trust. So people like the general practitioner who can talk to a person by themselves. Even if their carer brings them in the general practitioner can ask them to go out.

The general practitioner can then start talking to them about the issue of abuse and something can be done. There are no quick fixes for this. This could take six months of general discussion that siblings rather than children get involved in, in many cases. It is old friends; people that people trusted in the past. It could be for some people their religious leaders to come in and talk, but it needs that trust in the first place to start talking to the people and encouraging them to actually take that decision and that can take some time, and they need training.

Ms JAN BARHAM: We do not seem to value that role about keeping up the connections and reducing isolation as being an important role like nutrition and medical needs.

Mr DAY: That is right.

Ms JAN BARHAM: We seem to have lost it within our communities. We are seeing the outcomes for not having that.

Mr DAY: That is right.

Ms JAN BARHAM: Do we need to establish it as a professional role?

Mr DAY: No, not as a professional role. I think it needs to be a community-driven role. I think it needs to be encouraged from the grassroots up otherwise we start ending up with agencies. There is a consideration that agencies need to be supported and trained. Which agencies are going to be supported and trained to help a person? Meals on Wheels do not even go through the front door any more. They leave the meals at the front doorstep. The people that go through under Commonwealth home support or home care, federally funded et cetera are there to clean. Are you going to ask the cleaner to help somebody? Or they are there to shower somebody, they are not a nurse. The nurses are there to dress wounds and they are out quickly. There is not a group of people that go in there.

The Hon. PAUL GREEN: Surely that comes down to education and training. When you employ someone like that you teach them about holistic care and that delivering the meal is one part of feeding that person; psychologically you could be feeding them another way.

Mr DAY: Absolutely, wonderful, except the agency will not let them do it.

The Hon. SOPHIE COTSIS: Is it cost?

Mr DAY: The agency will encourage them to report up to the next level, so that it is reported up because those people are not properly trained and they will report it up to the next level. My question then is: so now that it is reported up, what happens?

CHAIR: Just to be clear, what is being reported up?

Mr DAY: There is a risk of, or somebody is suspicious that abuse is going on in this household. Say, somebody has gone in to shower an older person or clean their house, et cetera. So it is maybe passed up the line but then nothing else happens because there is no compulsory reporting, nor should there be. These people are independent and are managing their own life.

The Hon. PAUL GREEN: That is a very important point.

Mr DAY: Absolutely.

The Hon. PAUL GREEN: There is mandatory reporting on sexual assault and child sexual assault and issues like that. You just made a very strong comment. Will you elaborate why you said, "nor should there be"?

Mr DAY: Firstly there is no elder protection Act. There is a child protection Act and under that Act there is an assumption the child has no rights. In other words, the rights are through their parents and if the parents are not doing a decent job then the Government can come in and remove the child from the parents because the child is a minor.

The Hon. PAUL GREEN: What about the United Nations charter of children's rights crossing over it?

Mr DAY: General rights, general charter but as far as it is concerned somebody is caring for the child; there is an expectation that somebody is caring for the child, and the child is therefore under their control and care.

The Hon. PAUL GREEN: Is there any reason why this Committee should not consider an elder protection Act—

The Hon. Dr PETER PHELPS: Yes, adults are adults.

Mr DAY: An adult is an adult

CHAIR: This is not a policy debate.

The Hon. PAUL GREEN: Because certainly at some stage of their life many of them are as vulnerable as a child.

Mr DAY: Yes, absolutely, they may be. Whilst somebody has capacity they can make a decision and have full rights. Under no circumstances would anybody suggest that anybody here should have somebody come in and take their rights away from them.

The Hon. BRONNIE TAYLOR: Therein lies where you need to be very careful. Very often the assumption is that you are taking away the right that they can make that decision themselves. I think that that in itself is a big as issue as this. I challenge what was said in response to the question from Ms Jan Barham because I think that when services are working well together and if there were a risk that in a lot of cases those risks would be addressed. As a registered nurse if I go in to dress someone's wound and I think something is wrong I have a duty of care to address it.

Mr DAY: Absolutely. If there is physical abuse it is a crime under the criminal Act and you can call the police. Financial abuse is not under the criminal Act, but is under common law et cetera, and you cannot call the police for financial abuse.

The Hon. BRONNIE TAYLOR: I understand the police cannot be called but I am trying to clarify for the record, and having been in a situation like that, I know there are avenues to take it up. You take it up within an organisation and speak to the specialist elder nurse on the Aged Care Assessment Team who then comes in to facilitate exactly what you spoke about before and working with the client to say "I have had enough" and then take it through channels. I think there are existing frameworks and I have seen them working.

Mr DAY: There will be some but we are trying to take the broadest approach to get as many people covered. Things like elder abuse, financial abuse, are extraordinarily difficult. One of the ways of getting through the issue of capacity, and the wrong person has got the power of attorney, is through the Guardianship Tribunal and you change the power of attorney to somebody else. Somebody needs to get that action going and generally it is either the family or, in many cases, it is the aged care facility because they are not being paid by the person who has the power of attorney and they have brought it before the Guardianship Tribunal.

The potential actions by people that are going through the front door, the agencies do not have time. When I talk to the agencies they say, "Yes, we would elevate it. We would lift it up. We will then know and we will be suspicious of something going on and as best we can we might try to help", but they are not going to be the trusted person. In many cases that person they have elevated it to does not even know the lady or man, so they are not the trusted person to then encourage them and empower them to make the next decision.

The Hon. SOPHIE COTSIS: I refer to culturally and linguistically diverse communities [CALD] and language barriers, isolation and different cultural issues. Are you contacted by different CALD members? How do you collect the data? How do we reach out to those communities?

Mr DAY: Firstly—again it comes down to, I think, the trust side of it—the culturally and linguistically diverse communities have their own particular issues and that is because they are a much smaller community and in many cases the language issue means that they can talk only within that community. In some cases they are not even out in their community. There is a particular concern at the moment where some people are bringing their parents in from overseas to look after their children. They are supported. The immigration requirement is that they are fully supported by the family. Those people, in many cases, are 100 per cent of their time in that house. They are isolated even from those who speak the same language. They are effectively brought in to basically look after the kids. That is a particular group that we have major concerns about.

But broadly within the other communities, it has got to be within those communities. Some of the stuff I was talking about before in terms of prevention of isolation comes down to the community group. Again, do not let them get isolated. Later on, if they are getting isolated, is there a trusted person within that group? Is it the religious leader, et cetera, who can actually encourage them to do it? But the big problem with elder abuse is that the perpetrator is family, and the person being abused most times does not want to do the person in. "Retribution", "recompense" and "restitution" are words that come to bear. As I said, they just want it to stop.

The Hon. SOPHIE COTSIS: They want it to go away?

Mr DAY: Yes.

The Hon. SOPHIE COTSIS: But currently are there any programs or outreach programs for members of CALD communities? I know just in terms of my other portfolio, multiculturalism, that, yes, you are right; elderly people, particularly those who have retired and who have worked all their lives and now they may be getting in some community activity, and they do a lot of looking after their grandkids.

Mr DAY: Yes.

The Hon. SOPHIE COTSIS: Yes, you are right: If they are feeling that they are abused, whether it is financial or feeling neglected or not being visited, et cetera, it is a taboo to do on your child.

Mr DAY: Sure.

The Hon. SOPHIE COTSIS: It is very much a taboo.

Mr DAY: Yes.

The Hon. SOPHIE COTSIS: Do we need to look at special types of information or outreach programs to get the information out there in a kind of non-taboo manner, just for them to be aware that they have rights? A lot of people do not know that they have these rights.

Mr DAY: Absolutely. As I said, there is the need to educate, there is a need to address the isolation and then there is a need for the trusted person to help them through. The education needs to be delivered across the communities. It needs to be delivered in the appropriate languages and so forth. The issue of addressing the isolation needs to be delivered appropriately. This is why it is really important for the community groups to get involved so that if it is a particular ethnic group that has taken on that responsibility, so much the better, and then there is the support of the trusted person.

The Hon. PAUL GREEN: I note from your submission at page 2 in about the second-last paragraph you state:

People do not generally take on the role of carer with intent to abuse. However when cases of abuse are investigated in almost every case the carer is under considerable external pressure.

Now, more than ever, we know that there is mortgage stress, housing stress, economy stress, job stress, education stress for parents and then suddenly you have to look after mum or dad, who is in a very vulnerable state.

Mr DAY: Absolutely. That is right.

The Hon. PAUL GREEN: Given all the stuff we have just been talking about, how do you basically come to dobbing in a loved one when that loved one is under incredible pressure to perform at every level—from their own marriage, their own family, their own kids into paying the mortgage and into looking after mum or dad and keeping them fed and looked after and participating socially? That is a lot of pressure. Dobbing someone in then, when they are doing their very best and when they are at burn-out level—what do you do? Who takes over when they burn out?

Mr DAY: Absolutely. I was talking before about isolation. It is not just the isolation of the abused person. It is the isolation of the abuser, if you will. That needs to be part of the community engagement stuff. But the person down the road says, "Listen, I'll come in and have a cup of tea with your mum. Why don't you go to the shops? Why don't you go and spend half the day away?" That is part of it. The other part of it which is

critical, and I do not minimise it, is the choice of carer—the choice of the substitute decision-maker. In many cases they can be two different people. You are adding risk when you make the carer the full substitute decision-maker, particularly a financial substitute decision-maker.

They have got the money sitting there in front of them. They have got the bank account. All they need is the personal identification number [PIN] number, or the bank—it is far easier for the bank—recommends that you have a joint bank account with only single signatures, rather than a power of attorney. Because they are too difficult—and banks are national bodies whereas powers of attorney are State issues anyway—have a joint cheque account and only one signature on the joint cheque account. That makes it easy for everybody, including the abuser. That is why the carer and the financial substitute decision-maker probably need to be different.

The Hon. PAUL GREEN: That is a key recommendation that you would want us to come forward with, to look into?

Mr DAY: Within this discussion, I think it absolutely is. There is another one to recognise here in New South Wales. We have the powers of attorney, which deal with financial issues. We then have the guardian, which deals with the caring and medical issues and so forth: Two people in a family—one is the accountant and one is the nurse. Which one do you give each job to?

The Hon. PAUL GREEN: The nurse—because they do all things at all times for all people.

The Hon. SOPHIE COTSIS: You're just biased.

The Hon. BRONNIE TAYLOR: Absolutely the nurse. There are two of us here today.

The Hon. SOPHIE COTSIS: You guys are just biased, that's all.

The Hon. Dr PETER PHELPS: Thanks very much for your testimony today. I presume that a lot of this comes out of the atomisation of family life in the immediate post-war period of the forties and fifties—the idea of the move from an extended family, which was basically the family norm prior to World War II, to a nuclear family—and the subsequent idea that you moved away from your parents and you lived separate lives, and then your children moved away from you and they lived separate lives. I was interested to hear your comments in relation to CALD families; for example, the mother—and it is usually the mother—comes out and then takes over. Surely that is a more optimal model because what you at least have is integration within a circle of people, your own family, that provides comfort and support in a way that the atomised model—the Anglo model, if you like—does not.

Mr DAY: Yes.

The Hon. SOPHIE COTSIS: It takes a village.

Mr DAY: Look, I totally agree. One of our directors is a Sikh. He basically lived with his mother and father—or his mother died recently—and he had lived with her for all but five years of his life, which was when he came to Australia to study. They then came out and so forth. That was part of that bigger group. The comments that I was making before are comments that we have picked up from groups where some of these people are brought out—and I do not want to use words that are too emotive—but words like almost slavery come into it when they are brought out just to do the caring.

The Hon. Dr PETER PHELPS: Do they see themselves as slaves, though, or do they see themselves as simply fulfilling what is a traditional role in many communities?

Mr DAY: It might be sold that way. Certainly the comments that we have been getting back, and from community groups in those communities, are in some cases that it is absolutely they are seeing themselves that way. They are not able to get out. They are not able to even get out of the house. That is coming through. Now, am I saying there is a lot of it? I do not know. All I am doing is talking about anecdotal stuff, but your point of broadly the extended family in those positive situations where it works, it is absolutely fantastic. To address one other part of that issue, it has then been further exacerbated of recent times from an economic perspective because children are having to leave home, older people are having to leave the city. We are getting to a stage now where older people are up the coast; there is no family there to look after them at all. We are getting to a

stage where mum looks after dad, traditionally, because mum lasts longer, and then mum ends up in a nursing home somewhere up the coast.

CHAIR: You might have answered this question in part a moment ago but I will go back to it because you might like to make some further comment. You can also take the question on notice. Many of the submissions we have received thus far have raised the issue of powers of attorney. Obviously, that is a matter that you have considered in a bit of detail. Do you have any specific thoughts around what our recommendations could be to improve the system of powers of attorney in New South Wales or other measures to address the financial abuse that we understand is happening? It is a very broad question.

Mr DAY: I know you have Sue Field speaking later on. She did some work on powers of attorney, which she did in conjunction with us. Some of the stuff that she will talk about is getting down to the nitty-gritty of the powers of attorney. My response to you, and my response earlier on, is a broader response to the issue of power of attorney. There could be a change in what a power of attorney was and it actually came closer to a trustee so that there was a far greater onus on the person that takes on the power of attorney role and there was far greater education of people that take on that role in the first place so they actually understand their obligations. It is the issue of putting those obligations into some sort of statute, regulation or what have you or under a trustee type Act. I am not saying put it into a trustee but I am just saying widen it, make it stronger.

The Hon. Dr PETER PHELPS: I just do not see any legislative solution. I have agreed entirely with everything you have said today but the only thing I can think of is wouldn't it be great if families were nicer to each other.

Mr DAY: Absolutely.

The Hon. Dr PETER PHELPS: I am just not sure that government can make families nicer to each other. In an extended family you can see as a child how your parents treated their parents and you then have a model. "You can't be what you can't see" is the great feminist line, but it is also applicable in a wide range of situations. If you see your parents looking after their parents then you say, "When it comes to the time that's what I'll do." I am just not sure that government can do that much. Even an advertising campaign that raises awareness—I am deeply suspicious of awareness raising campaigns by government in the first place.

The Hon. SOPHIE COTSIS: Of course you are.

The Hon. Dr PETER PHELPS: If awareness raising campaigns worked then there would be no domestic violence in Australia. I am just not sure what awareness raising about elder abuse can do other than to tell people to be a bit nicer to their parents.

The Hon. PAUL GREEN: Which I think comes through the special religious education program in schools.

The Hon. Dr PETER PHELPS: Sometimes you just have to say that government cannot wave a wand, that it is a structural and societal problem.

CHAIR: The policy debate will be for later. It is a very valid point.

Mr DAY: I think it is a very valid point and you are absolutely right. Can government legislate against elder abuse? No, because it will happen behind closed doors whether it is there or not. What the Government can do is provide funding for campaigns. There is an education campaign which is necessary. We have very small numbers that are calling the help line in reality when there is an issue out there. There needs to be a far greater understanding of what elder abuse is, what causes it, what happens and what the abuser is doing. That is for the abuser as well; they need to understand. But the second part that I think is critical is not an education campaign but a social campaign of one sort or another. That is to encourage groups to not just be inward looking for their own little communities but to actually get out there and to do something. Ten or 20 years ago it was Neighbourhood Watch or what have you. There is a thing called something streets. I have forgotten the name of it.

Ms JAN BARHAM: Sustainable Streets?

Mr DAY: Yes. It is good stuff. The R U OK? campaign is powerful stuff. That is the sort of stuff that is really needed. That needs to be encouraged. Firstly, it needs to be understood by the departments rather than them saying, "No, here's another agency. We'll get the agency to go and do something." They must understand that this is a community-based thing and then fund it.

Ms JAN BARHAM: My particular interest is the point that Dr Phelps raised about what government can do. Your submission highlights carers. Are we not saying that those people who are charged with or end up with the responsibility for caring for the elderly need more support?

Mr DAY: Absolutely.

Ms JAN BARHAM: Is it not a role of government to ensure that those people who are placed in those roles by default or by choice have specific care? We are hearing it across the board from all vulnerable people. Carers are being forgotten.

The Hon. Dr PETER PHELPS: How would government find them? In the majority of cases they are informal arrangements.

Ms JAN BARHAM: That is where a campaign might work. What if people are respected for being in that role and then know that support is there before they turn into an abuser or, because of their own circumstances, behave in a way that ends up as neglect? I am certainly hearing it in my portfolios.

The Hon. Dr PETER PHELPS: There is a difference between abuse by intent and abuse by neglect and there are two different audiences there.

Ms JAN BARHAM: Not always distinguishable from the outside.

The Hon. Dr PETER PHELPS: I do not agree.

CHAIR: Would you like to have the final say, Mr Day? The question was directed to you.

Mr DAY: On that quick exchange, one of the things with elder abuse and the same with domestic violence is that it escalates. It escalates over time and it escalates with the degree of frustration that the abuser has. In elder abuse it escalates from just simply being unkind, to loud words and to other things as it goes along. Yes, the people that are doing the abusing start to understand something but they are getting frustrated themselves. They do need some level of support. My view is that, yes, in the first instance if the Government could encourage the community base that is great. If there is more that can be done that is excellent. We deal with grandchildren and grandparents, who cover most of the informal care in child protection, and there is no money for those people at all. Same thing goes here: It needs to be a community thing in the first instance and if people then put their hand up and call for assistance something needs to be available.

CHAIR: We have to leave it there. Thank you for coming along. I thank the Council on the Ageing for the wonderful work it does advocating on behalf of the elderly. It has been really great to have you as our first witness to lay out a whole range of issues for us to explore.

Mr DAY: I was not sure whether it was good to be first or last.

CHAIR: It was very good. You have made the field a wide one.

Mr DAY: Thank you very much for your interest.

(The witness withdrew.)

KERRY MARSHALL, Manager, NSW Elder Abuse Helpline and Resource Unit, sworn and examined:

CHAIR: Welcome, Ms Marshall. Would you like to commence by making a short opening statement, bearing in mind you made a very detailed submission and members have had an opportunity to study it.

Ms MARSHALL: It is a privilege to represent the Elder Abuse Helpline and Resource Unit and older people across New South Wales at risk of abuse and experiencing abuse. For those who are not familiar with the Elder Abuse Helpline and Resource Unit, we are funded by the Department of Family and Community Services and were established in March 2013. We act as a central point for information, support and referrals regarding the abuse of older persons living in a community setting. The unit also provides awareness and education for both front-line workers and community members.

The help line takes calls from anyone who has witnessed, suspects or is experiencing elder abuse, both community members and professionals. This model has proven vital in many cases of identifying abuse and achieving an outcome for the older person involved. The model also puts the help line in a unique position as we both hear and experience the personal, professional and systematic obstacles that can be and often are experienced when trying to help an older person experiencing abuse. The guidance required by many callers involves multiple calls often over a period of time, giving us insights into these obstacles. This process and these stories form the basis of our submission, as you know.

All too often the concluding recommendation of all research is that more research is done. Breaking from this tradition, our recommendation is that action is needed in the following priority areas. Promoting the dignity and inherent value of older persons is a crucial component of elder abuse identification, intervention and prevention. We see ageism played out all the time; it is pervasive and often facilitates poor decision-making on behalf of older people. Ageism excuses and discredits abuse, often resulting in devastating outcomes for older people.

Mandatory education across all organisations that serve older people is essential. Further, this education needs to be supported by government and local policies and procedures that are compatible with the law and made explicit to staff, and provide explicit directions and responsibilities. Community members, including older persons themselves, also need to be aware of abuse. They need to know what it is, how to identify it, who can help them and, most of all, what measures they can take to protect themselves. Education and training in many cases facilitate identification, but there are times when the suffering experienced by an older person is unnecessarily prolonged due to a lack of appropriate laws and powers for police, health and community services to intervene.

Carers, guardians and powers of attorney need further support on one hand, along with more accountability on the other. They need education regarding their responsibilities and ongoing access to training to ensure they are supported and capable of their associated caring roles. However, when these positions or instruments are used to take advantage of and abuse an older person, processes of accountability need to be in place, along with associated offences relating to the abuse.

The Elder Abuse Helpline and Resource Unit is very proud of what we have achieved thus far. As you see in the submission, there is great potential for the Elder Abuse Helpline and Resource Unit, along with other agencies, to fulfil many identified gaps with further resourcing.

The Hon. SOPHIE COTSIS: Thank you for your very comprehensive submission and the work you do. Are you funded by the New South Wales Government?

Ms MARSHALL: Correct.

The Hon. SOPHIE COTSIS: Is your funding on a year-to-year basis or do you have a long-term contract?

Ms MARSHALL: Three years.

The Hon. SOPHIE COTSIS: When is it coming up?

Ms MARSHALL: It is coming up in June 2016.

The Hon. SOPHIE COTSIS: How much funding do you receive?

Ms MARSHALL: I assume I am free to say—it is around \$600,000 a year.

The Hon. SOPHIE COTSIS: How many people work on the helpline?

Ms MARSHALL: There are five us in the helpline and resource unit. The helpline itself takes up about 40 per cent of both our time and funding.

The Hon. SOPHIE COTSIS: Sorry, the helpline?

Ms MARSHALL: It is the NSW Elder Abuse Helpline and Resource Unit, so all staff do all parts of that role. As far as time and funding are concerned, it is probably a 40-60 split, so 40 per cent helpline and 60 per cent resource unit.

CHAIR: Is that five full-time equivalents?

Ms MARSHALL: Yes.

CHAIR: How many staff do you have all up on the books, so to speak? Do you have part-time and casual staff?

Ms MARSHALL: We do, but it is five FTEs.

The Hon. PAUL GREEN: So you have five plus how many more?

Ms MARSHALL: It is five.

The Hon. PAUL GREEN: Inclusive?

Ms MARSHALL: Correct.

The Hon. PAUL GREEN: Do any calls to your helpline come in through Lifeline or other helplines like that are funnelled to you? Is that how it works?

Ms MARSHALL: Yes. Anyone can call but occasionally Lifeline will put a call through to us, as do the domestic violence [DV] line and occasionally the sexual assault line, although usually it is us going the other way on that one. If there are other things involved, such as family issues and other types of abuse, they put those calls through to us. So we do work with each other.

The Hon. BRONNIE TAYLOR: Thanks for your great submission. It is nice to start with recommendations and solutions. From evidence you have from people ringing the helpline, are they often not sure where to go or what framework exists in which to seek help so you provide a way for them to have the available services coordinated? I have been on another committee inquiry where this has been an issue as there are services but people do not know how to navigate them or get to them. Do you think that is or is not an issue? Is that one of your bigger roles?

Ms MARSHALL: It is not supposed to be a bigger role; however, that role does not necessarily exist in the community. That is even more the case with the newer funding, with the Commonwealth funding coming through. Consumer Directed Care [CDC] packages do not necessarily have case management as a part of them, so organisations are not paid to do the extra work required. That does not mean they do not do the extra work, but there is not the finance there to coordinate. The recommendations we are giving are right from the very beginning when someone rings us and suspects elder abuse. It is as simple as how to talk to an older person about what is happening to them and ensuring that person knows you need to speak to them by themselves. Some of it is really simple suggestions that we start with for professionals and community members.

The Hon. BRONNIE TAYLOR: One of your recommendations is looking at training and identifying responding to elder abuse for all front-line staff. In thinking about practising as a nurse and going into someone's home, I knew what to do if I thought something was not right. Do you think some front-line staff

almost need to go through a checklist when someone contacts a service? Do we need to flag to people to start thinking more about elder abuse? It is not just an issue like high blood pressure or homelessness.

Ms MARSHALL: I think it is both. My understanding is that the new Regional Assessment Service [RAS] do actually have a box to tick to say that they have checked for elder abuse. But we are still going back to the question of whether they have a basic understanding of what they are looking for when it comes to elder abuse, because there are so many different symptoms or things that they could be checking for to know. A lot of it is quite practical information and knowledge that they need but do not have.

The Hon. BRONNIE TAYLOR: I would say that that would vary a great deal. For example, in the areas in which I worked it was absolutely paramount; but obviously in other areas it is not. It is about knowing where to go and what to do.

Ms MARSHALL: Yes, it is still a very grey area even for very well-educated clinicians who are going out. That is where we get into ageism or just the systems behind what happens, for example, when someone has bed sores. What we are finding is that it is not that the person has not recognised them but rather that the older person has to get to such a state of illness as a result—in some cases they become septic—until it actually gets recognised as neglect; in fact it is, and I am not saying that it always is. There still just does not seem to be an eyes wide open approach to the fact that this could be elder abuse.

CHAIR: Could you just help me understand this: Where does the RAS fit into the whole scheme of things?

Ms MARSHALL: The Regional Assessment Service are the new services that are all done through My Aged Care. Everybody calls My Aged Care and they request a service. If they go to the Commonwealth home support program, which is the low-level support programs, there is a regional assessment service that goes and does the assessment. That assessment then goes through a portal and goes out to a community service. If the person needs a package, it goes through to a person from the ACAT for assessment.

Ms JAN BARHAM: Is the helpline a 24-hour service?

Ms MARSHALL: No, it runs during business hours so from 8.30 a.m. to 5 p.m.

CHAIR: And that is Monday to Friday?

Ms MARSHALL: That is correct.

Ms JAN BARHAM: Is there a need for the service to be extended?

Ms MARSHALL: We do not receive a lot of calls outside hours, and we are not an emergency service.

CHAIR: Do you have an answering service?

Ms MARSHALL: Yes, there is a person on call so it is not even a recorded message. Callers actually do speak to a person. That person will ask when it is safe to call them back if they would like a call back.

Ms JAN BARHAM: In your recommendations, and it is always great to get recommendations, you made a recommendation for the prioritisation of housing for people who need it. How great is that need? Could you give us a bit more information about where you think that is a priority?

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

The Hon. PAUL GREEN: Is there a model anywhere in the world that has figured out the situation?

Ms MARSHALL: I am not aware of one. But I will be honest in saying that I have not done the research into that either.

The Hon. PAUL GREEN: It is just a general question. Often in inquiries we look to see if someone is doing it well and whether we can piggyback off that. I also want to comment on what the Hon. Bronnie Taylor said earlier when she was talking how, when you walk into someone's house, as a nurse you are assessing everything in that environment—you are listening for the kettle and whether it is boiling or whether it has boiled over; you are smelling whether the cat has been going in one place; you are looking at the water taps to see if they are leaking—even if you are just there to do something as simple as hand over a business card or something. All of that is going on, and that is intuitive thinking.

We are talking about all these different people picking up on elder abuse but many people do not have that intuitive thinking. It can be taught, and I know that because I never had it before I went into nursing. I worked with a lot of nurses who taught me to think intuitively and to get a feeling and an understanding when something is not right—and to work out what it is and where it is. But there is a lot of gift in that and a lot of education involved in that, and a lot of time invested. It took a lot of time invested in me to get me to that point. So how do we get these people to that point? I am thinking about the person who is delivering the meals on wheels and the person who is delivering their mail and saying a quick g'day. How do we get them to be aware of the trigger points?

Ms MARSHALL: I think I probably would not start with the person delivering the mail; I would start with our people who are delivering services. As Mr Ian Day was saying before, they are coming in and they are just providing the shower or they are just vacuuming the floor.

CHAIR: Or they may be delivering their meals. Would you like to just run through the list of those people you would nominate who have that interface? We have mentioned the washing, the bathing and the showering.

The Hon. PAUL GREEN: Home care and Meals on Wheels.

Ms MARSHALL: It is pretty much the Commonwealth home support programs or anybody receiving I guess, or paying for, a service within the home. As the Hon. Paul Green was saying before, it is not an easy thing for people to have. But I do not agree that it is necessarily that hard to learn. Even when we call the police about issues we talk to them about simple things like checking the older person's clothes to see if they look like they are a bit too big for them. Is there evidence of food in the fridge or evidence that they have eaten breakfast that day? In any training we do we talk to people about these kinds of things, and it does seem to click.

The Hon. BRONNIE TAYLOR: But surely it is actually about what Mr Day also talked about—building a relationship. I would go and meet someone for the first time and form an idea of them but I would not have the same idea of them after I had been seeing them for three months. You build up a relationship and a level of trust. So perhaps a lot of this is about continuity of service. May I just say also that whether you are a registered nurse, an enrolled nurse, an assistant in nursing or a home care worker showering somebody the knowledge, the information, the assessment and the absolute trust that you build up with someone, regardless of your skill set, when you are providing personal care is absolutely immense. So whenever anybody says, "Oh, they're just going in to give them a shower," really gets me—because it is such an integral part of somebody's experience of daily living. I have done quite a few of those in my time, and that relationship is a deeply personal and trusting one—and that is when people will tell you things. So I think we have to be cognisant of that and realise that even people who are not extensively trained have an ability in that relationship, and sometimes that actually means just as much if not more.

Ms MARSHALL: I should clarify that when I was saying before that they are just going in I was not at all diminishing the role that they play but rather saying that their eyes are not always open. It sounds like yours are so it may be hard to comprehend that some people's are not. I am speaking based on what I hear and the calls that come through. So I hear about those who are not doing what they should be doing. I am at one extreme of those people coming through the helpline. So I guess that is where I am speaking from.

The Hon. SOPHIE COTSIS: Ms Marshall, do you know how many calls you may be missing per day?

Ms MARSHALL: We are under the auspices of Catholic Community Services. Catholic Community Services has a call centre which is really well staffed so a call is always answered and then put through to us. It

may be that we are not available—all our staff may be on calls—but that caller will speak to somebody and they will always have the option of us calling them back or of calling again.

The Hon. SOPHIE COTSIS: And so then you call back within 24 hours?

Ms MARSHALL: That is correct.

The Hon. SOPHIE COTSIS: Are you a member of the New South Wales Steering Committee on the Prevention of Elder Abuse?

Ms MARSHALL: Yes.

The Hon. SOPHIE COTSIS: We are informed through COTA that the committee has not met since the end of 2014. To me that is a problem in terms of not having met in the past year and you have a lot more information, being in your second year of operation. How do you report to the Government?

Ms MARSHALL: We give six monthly reports. I submit a project plan every year which has KPIs and measurables, and I submit statistics to look at and inform them of what is going on and how it is relevant to other programs they are involved with.

CHAIR: You submit the plan and then reports: What level of Government comes back to you in providing you with comment or feedback in regard to what you submit?

Ms MARSHALL: The manager of ageing is usually the person who talks to me. Our information goes through to the interdepartmental committee.

The Hon. SOPHIE COTSIS: Ms Marshall, do any of the five people you have on the helpline speak another language; are they bilingual?

Ms MARSHALL: No, we use a translator service when required.

The Hon. SOPHIE COTSIS: How does it work for the culturally and linguistically diverse communities?

Ms MARSHALL: They usually are aware of how to use the translator service and they will use that and call through. We have had situations where they have asked somebody else who can speak English to call and request us to call them back using a translator service. We have only had 30 or so translator services used.

The Hon. SOPHIE COTSIS: Do you break down that information in terms of ethnic groups or nationality?

Ms MARSHALL: Not consistently at the moment. Because we are a new service we have been using a lot more broadly generic categories. We do categorise according to pretty much CALD and we could look at qualitative data and try and extract out of that but I would not say it is a great reference point. We do keep the number of CALD groups that call through.

The Hon. SOPHIE COTSIS: Would you think it is a good idea to break down the number of calls from Asian speakers, Arabic, Greek or Italian, that would help in targeting information to those groups?

Ms MARSHALL: We have gone through our data and had a look. It is probably not that reliable but we have gone through our own and extracted that out. We worked with multicultural health and Australian Bureau of Statistics [ABS] data to try and find different CALD groups, not just the biggest represented but those that have poor literacy and English skills. That is where we have targeted our brochures, for example.

The Hon. SOPHIE COTSIS: That is one of the problems that many elderly people from CALD communities have. They are in their 70s and 80s and came to Australia in the 50s and 60s from war-torn countries. They are semiliterate, they brought up kids but have very little English skill. It is a concern I have in terms of how to reach out and let them know where to go and what information they can get. Is that one of the recommendations?

Ms MARSHALL: One of the recommendations was around engaging different CALD community members who are the key players in that community, where do they meet, and getting the word out through those people.

The Hon. Dr PETER PHELPS: Page 27. I would like to have a look at the legal side of things. On page 18 you recommend criminalisation of elder abuse with specific offences accordingly. Does this not fall into a problem which was raised by the previous witness? That is, you do not want to infantilise elderly people and the creation of a specific abuse provision might be acceptable for children, for minors and things of that nature, but is not the real problem not criminalisation of elder abuse, given it could range from a benign neglect to an amoral exploitation or outright physical abuse. I have concerns about criminalisation of it. Surely the better response would be a better understanding amongst law enforcement officials about the nature of the offences which make up the broad subset of things called elder abuse?

Ms MARSHALL: You will notice that both of those recommendations are in my submission.

The Hon. Dr PETER PHELPS: I like dot point one, not so happy about dot point three.

Ms MARSHALL: I highlighted the second point very clearly in the need for us, not just law, but everybody to understand which parts of the Crimes Act are relevant to elder abuse. There is no use saying in a policy, if it is a crime you need to call police. Well, which crime? What is a crime? What constitutes a crime? That is in there. What we found in different cases is that the current crimes do not seem—Rob Critchlow is probably much better at explaining why. In the few cases we had it has been when you are trying to charge somebody, an older person, and taking in the vulnerabilities of an older person, whether or not the current laws are good enough. When someone has been charged—we find it quite difficult to charge them. I have used the case in here on page 18, it was quite difficult to go through the Crimes Act—and this was an horrific case—and go, "What can we charge them with?" And what they are actually charged with is pretty minimal, even though they have pleaded guilty. This person was a few weeks away from death yet our laws do not necessarily reflect that well enough. I do not think I can articulate this area well enough for you.

The Hon. Dr PETER PHELPS: As you make out in each of those instances an earlier identification would have helped. Quite frankly domestic violence [DV] and intimidation and failing to provide the necessities of life are all serious offences.

Ms MARSHALL: Correct.

The Hon. Dr PETER PHELPS: It is a matter then for the courts to apply it. One of the problems we face—it is a comparable situation to DV amongst younger people—is the attitude, "I do not want them charged, I just want it to stop." That is always a problem. I am not sure that legislating an offence is going to make the victims of elder abuse any more comforted.

Ms MARSHALL: Yes.

The Hon. Dr PETER PHELPS: I really like your recommendations in relation to power of attorney and guardianship. Can I clarify this: there is no current requirement for a general practitioner, clinician or psychiatrist to actually sign off as to activation as to the mental incapacity of a person under the current arrangements? Is that correct?

Ms MARSHALL: My understanding is that once a person has power of attorney or guardianship there is no tick-a-box where the person takes that back, the piece of paper, and says, "I now want to act upon this, can I do so?" What we are finding is people are acting on them when the older person still has capacity on a regular basis and there is nothing that can be done. We have people calling us saying—I think I used the example where a man called us and said, "My brother has me father locked up at home spending all his money. Dad still has capacity." And we could not get access to get a GP to see him to assess capacity because the brother would say, "No, I am the guardian and I have power of attorney as well." There was no way to access this person. This is where it comes back to another part of my suggestion that we need in some way to allow services to get in there in situations like this. The person still has capacity but they can do nothing.

CHAIR: Going back to a response to an earlier question about the divvying up of the ratio when dealing with the calls—

Ms MARSHALL: Sure.

CHAIR:—roughly speaking it was a 60:40 split. With respect to the 60 part of the split, what is done with that amount of the budget? You have it allocated to doing something?

Ms MARSHALL: Sure.

CHAIR: Can you go through what that is?

Ms MARSHALL: I provided some examples at the back of the resources we have put together. We have staff doing resources and staff development.

CHAIR: Developing that material?

Ms MARSHALL: Yes, developing material and awareness campaigns, and doing face-to-face education and awareness presentations.

CHAIR: What has been done in the past couple of weeks? Where have they been delivered?

Ms MARSHALL: Yesterday, two staff were out; one was in the Blue Mountains helping to establish a collaborative we have there that involves a group of people from all different organisations who have come together to talk about elder abuse and how it applies to their geographical area. Another staff member was out speaking at a Cantonese day centre.

CHAIR: I did not mean to put you on the spot. I simply wanted some indicative examples.

Ms MARSHALL: Most days there is a staff member out doing education or awareness or some kind of presentation.

The Hon. Dr PETER PHELPS: I love your material, but presumably it is provided on the basis of a request. Is there no proactive linkup with, for example, federal agencies to send this out to people of a certain age?

Ms MARSHALL: The information we take out to a presentation—

The Hon. Dr PETER PHELPS: I am talking about the financial abuse and power of attorney fact sheets. You cannot know what you want unless you know what you want. Is there not an argument for perhaps having additional funding to link up with State agencies that have a comprehensive database of the elderly and proactively send material to people? Would you support such a recommendation?

Ms MARSHALL: Collaboratives are linking up with local government more to find out where it applies. That is the idea behind the collaboratives. They are trying to work out how we get it out to the elderly. They are the harder target. We have done mass mail-outs to and have had a fantastic response from major general practitioner clinics and emergency departments. That includes a letter to the nurse unit manager about why it is relevant to them.

The Hon. Dr PETER PHELPS: But if your carer is not letting you go to your general practitioner—

Ms MARSHALL: This is sent to emergency departments because they need to be able to identify. General practitioners need to do screening. We should not get caught up in thinking about people who are at the extreme end; we also have the prevention end where general practitioners—

The Hon. Dr PETER PHELPS: Yes, you might have a situation where a person is not physically abused but they are being financially abused because their son is dipping into the trust account and taking their money. Surely it would be more advantageous rather than spending \$3 million on a television advertising campaign to spend that money producing fact sheets and sending them directly to the elderly. They might not realise that what is happening to them is a problem. They could receive information and they might say, "Hang on a moment, this should not be happening."

Ms MARSHALL: My recommendation is that a bit of both is still required.

The Hon. SOPHIE COTSIS: The Hon. Dr Peter Phelps' point is good. Have you spoken to the Government about providing those fact sheets? All elderly people get a Seniors Card and seniors' information.

The Hon. Dr PETER PHELPS: That is a good idea.

Ms MARSHALL: There is also the Seniors Card Discount Directory. We are in that every year. We also usually write a small column for the online Seniors Card newsletter.

The Hon. SOPHIE COTSIS: We are talking about a couple of million people. Would it help if the Committee were to make a recommendation along those lines?

Ms MARSHALL: Absolutely, yes.

The Hon. SOPHIE COTSIS: I will write to Mr Ajaka this afternoon.

CHAIR: Information could also be provided to those who attend the Premier's concert.

Ms JAN BARHAM: I want to follow up on your recommendations about carers. Can you provide any other information about whether there is a need for better screening or training for carers who might be experiencing stress or be at risk themselves? What can we do?

Ms MARSHALL: It is not always the case, but often the most dysfunctional family member ends up looking after mum or dad because they do not have a job, and there might be a lot of other things going on for them. That is not always the case, and please do not think I am generalising. However, when it is, those people need to be identified and provided with training. There could be a system where we have an occupational therapist going to the home to provide information about how to help mum or dad with showering and advice about what kind of equipment they need. They could help the carer to put together a daily dot point roster of what is required so that mum is not lying in bed for five hours and ending up with bed sores. If she does, they could provide advice about when she needs to be rolled and how much water she needs. People are given the role and often the money that goes with it. Unfortunately, the money then drives wanting to keep—

Ms JAN BARHAM: You have identified that sometimes that person might be in need of help themselves.

Ms MARSHALL: Yes.

Ms JAN BARHAM: Is there a way to ensure that people who take on a role like this because they do not have a high-powered job or five kids do not have other problems? Is there a specific awareness of their needs and the supports that they require to be able to do that caring? Unfortunately, I have seen and heard of circumstances where a person is driven to some kind of abuse because their own needs are not being addressed. We do not see that correlation being properly prioritised.

Ms MARSHALL: Carers NSW offers a lot of emotional support; it is there to help people. I am talking about how they do this within their own home. How can they make it work? Someone might come to them and tell them about respite. While the elderly person is in respite, they can talk to the carer about how they manage their finances if they change as a result of the carer pension being stopped. If someone goes into respite or hospital for a certain time, the carer stops getting the pension for that period. We have people discharging them from hospital or not putting them into respite even though the carer desperately needs it.

The Hon. BRONNIE TAYLOR: Respite is crucial; it is often a circuit breaker. Like the Hon. Dr Peter Phelps, I think this is terrific stuff. I particularly love the part showing the women in swimming caps. That is tremendous. Is there a flipside to this? I know this is targeted at people to empower them, and to make them realise that it is not okay and that they should seek help. This sort of information should be available in aged care facilities or in other places. You said that not everyone has their eyes open. We need to make people think that it is not okay to do that to that person because it could be perceived as abuse. It could almost work as a deterrent for people providing care who perhaps do not have, as the Hon. Paul Green said, the intuition. Even the most professional people can pick up a practice and do it wrong the first time and it becomes a habit. What is abnormal becomes normal, and that is not okay. It is not until it stops that it prompts you to look at it and realise that it is not okay. How do you feel about that and do you believe it could have that impact?

Ms MARSHALL: As I said, we have used that throughout hospitals. We have had good feedback as far as people saying that they like it and that is what ageing should be like. However, they responded better to the one below it—that small picture was reproduced as a poster.

The Hon. BRONNIE TAYLOR: I have seen that.

Ms MARSHALL: That was done for them and they responded a little better to that. It was challenging them to—

The Hon. PAUL GREEN: Could we get that in electronic form? I would love to put that on our website.

Ms MARSHALL: Absolutely.

The Hon. PAUL GREEN: It is part of the solution.

Ms MARSHALL: As you were saying before, are we moving on to things that are more direct? Yes, we are. We started by supporting the ageing strategy and positive ageing. It was #positive ageing #free from abuse. To set the scene on what it should be, we are now moving on to the last page of the booklet. As you can see, we are getting pretty direct.

The Hon. BRONNIE TAYLOR: Look at the stickers.

Ms MARSHALL: I know. The important thing we are trying to do is keep the older person empowered throughout. We do not support the cigarette packaging idea. We still want to give older people a voice, even when we are talking about the direct abuse that is happening.

The Hon. BRONNIE TAYLOR: I commend you for it. I think it is terrific.

Ms MARSHALL: Thank you.

CHAIR: I am sure we could take questions for another half an hour, but time is against us. Thank you very much, Ms Marshall, for coming along today. The Committee has resolved that answers to any questions taken on notice and any questions we may have following today's hearing will be provided to you, and you have 21 days to return them. I do not think you took any questions on notice, but you undertook to provide an electronic file of the poster.

The Hon. PAUL GREEN: The infographic.

CHAIR: Yes. The secretariat will contact you about any questions or other matters that we have discussed today. On behalf of the Committee, thank you very much for the work you do as manager. Would you please extend to the whole team our thanks for the work they do for and on behalf of the elderly in the State.

Ms MARSHALL: I will. Thank you.

(The witness withdrew)

(Short adjournment)

MELISSA CHAPERLIN, Solicitor, Older Persons Legal Service, The Seniors Rights Service, sworn and examined:

THOMAS COWEN, Manager, Legal Services and Principal Solicitor, Older Persons Legal Service, The Seniors Rights Service, affirmed and examined:

CHAIR: Welcome. Would you like to add anything about the capacity in which you appear?

Mr COWEN: The Seniors Rights Service was formerly known as the Aged-care Rights Service. We are officially changing our name on Tuesday. We are starting to use it.

The Hon. SOPHIE COTSIS: I will be there.

Mr COWEN: I am jumping the gun.

CHAIR: That is all right. The Committee appreciates your detailed and thorough submission. The members of the Committee have had the opportunity to peruse it. I invite one or both of you to make a short opening statement, if you wish to, then we will proceed to questions from Committee members.

Mr COWEN: We have both prepared a two-minute statement.

CHAIR: Please go ahead.

Mr COWEN: Before I launch into that, I raise two points that we have not put in our submission that are probably important for this Committee to consider. I am aware that Seniors Rights Victoria has also made a submission. It emphasises the engagement of medical practitioners and the staff of medical clinics in identifying and recognising elder abuse. It also emphasises working with community legal centres such as ours, and other legal practitioners, to assist older people. We find that older people suffering abuse are more likely to reveal it to their doctor before they will reveal it to a solicitor.

CHAIR: Thank you for that.

Mr COWEN: The second point relates to the enduring power of attorney, which was discussed with the last witness. Enduring powers of attorney can be both a shield and a sword. The difference is the education and advice that is provided to both the principal and the attorney. I have looked at hundreds of enduring powers of attorney. We have to do that when somebody rings us up and wants us to advise them as an attorney on behalf of an older person. Very rarely, in what is now paragraph 3, do they ever put any conditions. Paragraph 3 is the place where a principal can give direction to their attorney on how they should proceed in making decisions. For instance, they can indicate which assets should be sold first if funds need to be raised for them to go into an aged care facility. That section could say, "The family home should not be sold", and that type of thing.

Very rarely do people take advantage of that clause in the enduring power of attorney instrument. That is probably because they are not advised about it. I do not know any attorneys that have received independent legal advice about their responsibilities and what they should and should not be doing. Very often, an attorney says, "Yes, I will do the job", without delving into what it entails and the right way to go about it. Mention a conflict of interest to them and they are startled and say, "What is that?" That is a fundamental piece of knowledge that all attorneys should have. Now I will begin my two-minute statement.

CHAIR: That was a good introduction. The Committee needs to know that. Please proceed.

Mr COWEN: Elder abuse is real. About five per cent of people over the age of 60 in New South Wales have experienced abuse by people that they trusted. Most perpetrators are their adult children. The statistics are in our submission. It is their sons and daughters, usually. In many ways elder abuse is one kind of domestic violence which until now has not been given the attention that it has warranted. Overcoming elder abuse means first recognising it for what it is.

Elder abuse is a relatively recent term for a form of mistreatment that in reality is just one part of a spectrum of violence that occurs when differences in power exist in relationships between people. Simply put,

where there is an imbalance of power in a relationship there is a risk of abuse occurring from the dominant person or persons. Failure to recognise that elder abuse is occurring is a problem for older victims as well as well-intentioned carers, family and close friends. For example, many older people do not realise that what they are experiencing is abuse. They may pass off their poor treatment by loved ones as just part of their normal existence.

Most older people who recognise that they are being abused—they may be in very real physical or emotional pain—just want the abuse to stop. And I think that phrase was mentioned in the last session. They often do not want to take punitive action against their children or loved ones. They often do not have the stamina or health to endure a long and torturous trial, be it civil or criminal, to get back what is rightfully theirs. Abusers will rely on this to continue their abusive activities, when they know that their actions are wrong and causing harm.

Overcoming elder abuse means putting in place systems that make it harder for perpetrators to abuse and/or financially exploit their aged relatives. Overcoming abuse means putting in place preventative measures that reduce the risk of abuse and financial exploitation occurring in the first place. Overcoming abuse means educating our communities on their responsibilities and inculcating respect for the older members of our society and reducing the tendency towards and incidence of ageism. Overcoming abuse means empowering older people by educating them about their rights and creating a society where respect for each other is paramount. Overcoming abuse means streamlining justice systems to reduce barriers and delays for older people to be fairly treated and restitution made for wrongs perpetrated against them. Older people often do not have the time or the emotional, physical or mental capacity to undertake lengthy and expensive court processes to redress their problems.

Ms CHAPERLIN: I take this opportunity to highlight some of the submissions raised in our report. Elder abuse in the home can be perpetrated against the elderly in a variety of domestic environments. An adult child may return home to live with an older person for various reasons. They may have alcohol, drug, gambling or dependency issues and leave the older person vulnerable and unable to evict their child. Other scenarios which have come through our telephone service include domestic violence between an older person and a spouse. In one case an older person rang us and said their spouse had said to them, "I will put a knife through you."

We also have carers that are dealing with partners who are suffering from dementia and have aggressive behaviours. These carers need support in managing these behaviours in order to cope. Other calls we get relate to older people in Department of Housing accommodation, where other tenants with mental health issues move into the facility and abuse occurs in these situations. The Tenants' Union does not have resources to assist in all these cases. Our service provides assistance where we can.

We would recommend that the Police Force in each area of command have designated vulnerable persons officers. These officers would be specially trained to deal with elder abuse in the domestic situation. They would be able to look at such issues as the capacity of the victim—are they able to give evidence?—and also elements relating to elder abuse such as whether they are being intimidated by their abuser; what protections can be afforded to the older person, both legal and non-legal; and what the older person wants to achieve from the situation.

Another systemic problem we get through our service is what we call granny flat issues, where an older person makes a significant contribution to a child's property to reside there on the understanding they will be able to do so for their life. This might be in the form of building extensions, contributing to a mortgage or having a separate granny flat built on the same property. Often the older person is not on the legal title. When the relationship breaks down the only legal remedy currently in New South Wales is to commence proceedings in the Supreme Court claiming an equitable interest and a caveat on the property, which can sometimes result in expensive and lengthy proceedings.

It is submitted that it would be worthwhile to have legislation where model provisions were in place as to the sorts of clauses that could be included in family agreements before these relationships are entered into. We would also recommend a jurisdiction be set up in the NSW Civil and Administrative Tribunal to dissolve agreements or to make compensation payments to older persons, similar to the Victorian Civil and Administrative Tribunal.

In relation to enduring powers of attorney, our service gets lots of calls about attorneys who act outside the scope of their power or are not aware of their obligations to the older person. Whilst these obligations are set out in schedule 2 of the Powers of Attorney Regulation 2011 in prescribed form, some attorneys still need to be educated in these obligations. We would recommend a system of registration of enduring powers of attorney and any forms revoking them so that if there were issues raised attorneys could be held to account; and that attorneys submit accounts every six to 12 months in relation to the older person's assets. We would also support the introduction of criminal offences in relation to attorneys committing theft or fraud or acting outside the scope of their appointment. We note that there was previously section 169 of the Criminal Code which created an offence for fraudulent misrepresentation by an attorney, but this has since been repealed.

CHAIR: Thank you, Ms Chaperlin. Thank you both. That has set the scene very nicely.

The Hon. Dr PETER PHELPS: Mr Cowen, in relation to what you said in your preliminary statement, would it be fair to say that many attorneys who are brought in are operating on the misapprehension that, because this is a family matter and because it appears to be an amicable arrangement, they do not have to apply the same sort of stringency to protecting the rights of the older person—because it appears to be amicable and they work on the basis that what we are doing is simply something which makes it easier for the older person and passes the responsibility onto someone who is friendly and is always going to be friendly because they are a family member? Is it a case of attorneys not being as diligent as they should be in protecting the rights of one party because they make this assumption—ironically, an assumption which they would not make in a prenup, for example?

Mr COWEN: I could not possibly comment on prenups. Yes, I think that is the case. Of course our service is designed to assist older, vulnerable people—people over the age of 60—and we only get people calling us who are in difficulty. Often we are the last resort.

The Hon. Dr PETER PHELPS: That is right. I think the majority would be made by suburban solicitors who would think, "Mrs Smith and her son, John Smith, are entering into this as an amicable arrangement. It is quite clear. I do not have to be too thorough because they will always be friendly with each other because they are family." They work on the assumption that there is never going to be a dispute and so are a little less rigorous in protecting the rights of the older person.

Mr COWEN: Solicitors who do that would be making a grave mistake. Solicitors have been rapped over the knuckles by the Supreme Court in several cases dealing with the degree to which they must advise usually the principals rather than the attorneys. But the suburban solicitor needs first to decide who the client is. If the son or the daughter brings in the aged mum and says, "We need an enduring power of attorney," who is actually giving the instructions? Obviously it should be the principal, but often the solicitor could be listening to the person who is going to be appointed as the attorney and taking instructions from them. That is a mistake the solicitor should avoid making.

The Hon. Dr PETER PHELPS: Do you think that it would be useful if the Law Society just reminded its members of the importance of taking into account the principal's interests as the primary consideration when drafting up powers of attorney?

Mr COWEN: Yes, but I think the Law Society does do that on a reasonably regular basis.

The Hon. SOPHIE COTSIS: Thank you very much for your very, very comprehensive submission. Are you funded by the State Government?

Mr COWEN: We get funding from various sources. When I heard you ask that question of the last witness I thought, "I hope they do not ask that question of me." We do get Commonwealth funding for our aged care service, for our advocacy service and our education service. We also get State funding from the Attorney General, from the Department of Ageing, from Fair Trading and through Legal Aid.

The Hon. SOPHIE COTSIS: Can I ask how much you receive from all those State agencies?

Mr COWEN: I am afraid I do not have that, but I can find out that information.

The Hon. SOPHIE COTSIS: You can take that on notice.

Mr COWEN: I will take it on notice, if I can. I was just saying earlier I should have brought up our annual report and I could have handed it around, because it would have that information in it.

The Hon. SOPHIE COTSIS: Are you on the steering committee on the prevention of elder abuse?

Mr COWEN: I was on a subcommittee of that steering committee in terms of education, but I only actually attended two meetings and then it seemed to, I do not know, stop meeting.

The Hon. SOPHIE COTSIS: Do you talk to government, different Ministers' agencies? You have got many issues in this submission that cover from the Attorney General's department to Ageing to Minister Ajaka's department. Do you talk to them regularly about many of these issues in your submission?

Mr COWEN: That is a job that our CEO, Russell Westacott does fairly regularly. He is constantly on the phone to various government departments and Ministers and so on trying to raise the profile. Of course our service is much broader than just elder abuse. Elder abuse is a part of what we try to help people with, but we help them with other legal problems or issues that they may have. We have a retirement village service where the residents may have a problem with the operator; we help those people. In the aged care facilities we help the residents who are not receiving perhaps the services they should be receiving. So we have a very broad scope; elder abuse is one part of it.

The Hon. SOPHIE COTSIS: In your submission on pages 5 and 6, mainly on page 5, you talk about older people experiencing elder abuse, including financial exploitation, and you talk about how they cannot afford assistance and they come to you; it is very hard for them to access legal and financial support. How many of those people do you think miss out? Obviously, due to your resources being stretched you cannot help all of those people and they are on pensions and have a very limited income. How do they seek legal assistance otherwise?

Mr COWEN: We do try to identify unmet needs, and obviously we can only get facts from the people who do call us. When somebody calls us, if they are in dire circumstances we will try to obtain legal aid for them. People are in a difficult situation when they are in this sort of circumstance in that they may have an asset—their home usually—which would put them outside the legal aid category of assisting them, although they may be on the pension and still vulnerable for other reasons such as poor health or just simply their age. The *7.30 Report* last night had on a 93-year-old lady who had lost her home to a ne'er-do-well son. Those are the sorts of people that we find out about and we try to assist, but we do not really know the figures of people who are not being assisted.

Ms JAN BARHAM: If I can follow up on those issues and pick up on the point you made about those circumstances where parents can find themselves having financially supported their children but have no rights. Is there a standard agreement available for people who are entering into any of those situations? Do you produce something that lays out the agreement that someone can access, or an information pack about that, like a will kit or something, for those arrangements?

Ms CHAPERLIN: In terms of family agreements, there are some model agreements out there. In Victoria there is an "Assets for Care" publication and they have got a family agreement there. There is no agreement as such, though, that is supplied across the board. I think if there was legislation that had clauses of crucial things that arise when a relationship breaks down, like: when would I get my contribution back; how much am I paying for the care being provided by my child; in what situation would the house be sold if the relationship broke down; what are the arrangements with the grandchildren; what if I need aged care? I think when these arrangements are entered into they are often done informally amongst the family having an informal chat, and parties do not go and see their own solicitor, the older person does not see their own solicitor and the family member does not see their own solicitor, and get an agreement to say "What about the future? If things happen, how are we going to address this?"

Ms JAN BARHAM: That is my point. It is family and they think they do not need to go to a lawyer. But if there was a kit that could inform them to make sure that these are the things that they very clearly define—the obvious one about a for-life arrangement that if you provide the money for the mortgage or the building of that granny flat then you are there and you be careful, it would be a prevention tool rather than waiting until something goes wrong. My other point is that local government is a point of good contacts about where to get approval for some of those things, either positive ageing strategies or the approval mechanism that happens, getting at that level of community. Do you engage at that level?

Ms CHAPERLIN: I just want to mention that Legal Aid NSW do have a publication on moving in with the family and they do highlight all the things I have raised in terms of having those sorts of family agreements in place and we do distribute those through our service to try and alert people before they enter into these arrangements of the sorts of things they should be considering and the importance of seeing a solicitor rather than leaving it until the end.

Ms JAN BARHAM: I must admit I have not read all the submissions yet, but I have not come across that yet. If we have not received it would it be possible for you to make it available for the Committee?

Ms CHAPERLIN: Yes, we could.

The Hon. Dr PETER PHELPS: Ms Chaperlin, I love your recommendations in relation to enduring power of attorney. I think that it would set a very nice marker that instead of an elderly person having to go through civil proceedings to recover lost moneys, you would actually criminalise the action to remind people that this is, in fact, if not stealing under the current definition of the Crimes Act, you are still stealing: you are taking someone else's money and converting it and using it for your own purposes. So I think that is a very, very good thing. It also obviates the need for the elderly person to institute civil proceedings against, in many cases, a family member and the attendant pressures which can be placed upon a person, formally or informally, by that. So I think that is a great idea.

The devil in the detail for the first two points otherwise, and that is, registration of enduring power of attorney: who do you register with? Secondly, submission of accounts, who would you submit those with?

Ms CHAPERLIN: I guess with registration of a power of attorney you do currently register powers of attorney with the Department of Lands if you want to deal with land. So perhaps if there was some organisation, government body, which that could be registered with, or even with the Department of Lands. But just to have a uniform register, I do not know.

Mr COWEN: I imagine that the Registrar General would be the first place to start. But the key point of this recommendation is to require attorneys to put in returns, either six-monthly or perhaps annually, that actually put in some detail as to decisions they have made, the expenditures they have incurred and so on. Now whether anybody ever looks at those returns or not probably would not matter all that much; there would be evidence there if somebody else raised an alarm about a misuse of funds.

The Hon. Dr PETER PHELPS: So the registration and the accounts would go through to the same body, which was—

Mr COWEN: The same body, yes.

The Hon. Dr PETER PHELPS: It sounds expensive.

Mr COWEN: And that registration would be publicly available. I do not know how much a kilobyte is worth these days.

The Hon. Dr PETER PHELPS: How many powers of attorney would be out there?

Mr COWEN: That is an absolutely impossible question to answer.

The Hon. Dr PETER PHELPS: Because we do not have registration of powers of attorney.

Mr COWEN: Exactly.

CHAIR: What percentage of the population is likely to make a power of attorney? Are we talking about a relatively small percentage of people? If you do not know that is okay.

Mr COWEN: I will correct something I heard in the last discussion before us, that a power of attorney can be set to commence on a particular date, or in case of a particular event, or for some other reason. We always advise our clients that if you are going to make an enduring power of attorney, you should make it

commence at a time when you have lost capacity as determined by your general practitioner, in consultation with a specialist. Take it out of the hands of the attorney.

The Hon. Dr PETER PHELPS: Except, Mr Cowen, there are a lot of people who say, "I do not want to deal with this crap any more. I am going to give it to my son who is an accountant and let him deal with it." There is still a lot of that.

Mr COWEN: Yes, there is, but we are simply advising people on what we think is the best way to set it up, as to when it commences. There are advantages to having it commence immediately while you still have capacity, because then you can see whether the person you have appointed has the capacity to do the job properly or whether they are a bit funny about it; are they fulfilling their fiduciary duty?

CHAIR: Can you have two bob each way?

Mr COWEN: You can, because if you find that the person you have appointed does not do the job properly, you can revoke it.

The Hon. SOPHIE COTSIS: Ms Chaperlin, earlier you mentioned model clauses in relation to the family agreements and you went through it step by step. We are talking about families who are experiencing a difficult and challenging time. When do you have the conversation about these family agreements? I know many families, including my own, would be horrified if this was raised with their parents.

The Hon. Dr PETER PHELPS: "Are you going to put me in a home?"

The Hon. SOPHIE COTSIS: I will not say what they would say to me. It is a taboo issue, particularly in culturally and linguistically diverse communities.

Ms CHAPERLIN: It is important that people are educated to realise that even though it is family, when you are looking at making these sorts of decisions, like having to care for mum or dad in your home, or having them contribute to the home, it is important that people realise they are actually entering into a legal arrangement, because the older person's rights need to be protected. The difficulty is that if they make this contribution and then things go wrong, it is very, very difficult to get that money back through legal proceedings. An elderly and frail person probably is not going to want to bring proceedings against their family. In some cases they may do that and get an outcome. We have been aware of cases where they have got their contribution back, but the proceedings have been very lengthy and quite stressful on the older person. There needs to be more education and awareness, because people are looking at these arrangements. Often they come to us after they have been made. If people were able to get information beforehand and get some sort of agreement drawn up, it would make it a lot more beneficial for them to be able to rely on that if things went wrong.

The Hon. SOPHIE COTSIS: On the issue of GPs, is there currently a protocol? I know it is not legally enforceable, but is there a protocol?

Ms CHAPERLIN: I am aware in aged care there is mandatory reporting time.

Mr COWEN: There is no mandatory reporting for GPs, as far as I am aware.

CHAIR: You may not know the answer to this question. If you do not, feel free to say so. Do you know whether the Australian Medical Association [AMA] provides information or even has a policy on this issue which is provided to GPs around Australia?

Mr COWEN: I do not know that the AMA does, but I know that gerontologists have done a lot of work in that area, so maybe they feed through to the Australian Medical Association.

The Hon. SOPHIE COTSIS: We have a shortage of housing and there are thousands of granny flats that go up every year and they are on one title. How does this work?

Ms CHAPERLIN: You need to make people aware of the need to get legal advice at the time they were entering into the arrangement. I do not know how you would access that. Tom, do you have any thoughts?

Mr COWEN: The key point is to make a life interest for the older person, the parents in this case, and have it registered on the certificate of title. You do not need to subdivide the property or anything like that.

The Hon. SOPHIE COTSIS: You include the interest on the title, is that what you are saying?

Mr COWEN: That is the way we would go.

The Hon. SOPHIE COTSIS: Recommendation 5 is about the police force. You have mentioned having special police officers for elder abuse. Would you recommend that the domestic violence liaison officers have—

The Hon. Dr PETER PHELPS: Expand the remit.

The Hon. SOPHIE COTSIS: Yes.

Ms CHAPERLIN: We envisaged that they would be like domestic violence liaison officers. They would be specialists and they would be your point of connect if you had an elder abuse situation.

Mr COWEN: We probably should have put vulnerable officers in capital letters because there are vulnerable persons officers now. Robert Critchlow, superintendent of the North West Local Area Command has been pushing this idea.

The Hon. SOPHIE COTSIS: What is his name?

Mr COWEN: Robert Critchlow. If you have not invited him to give an oral submission, he would be very good value to invite, if I can recommend him.

CHAIR: Thank you.

Mr COWEN: He has now developed two. There is one in the Chatswood Local Area Command and one in the North West Local Area Command. He is trying to get other superintendents throughout the State to pick up on this idea. The vulnerable persons officer does not just deal with older people. They deal with vulnerable people, in particular—a lot of whom are older people. They are trained up on how to treat these people. We suggest they should also be trained themselves to train general duty officers in how to respond to elder abuse accusations and instances.

The Hon. PAUL GREEN: Mr Cowen, are you suggesting that is not happening in police training in Goulburn; that it is not part of the curriculum?

Mr COWEN: I could not say. I am not aware.

The Hon. PAUL GREEN: You are not aware, so we need to become aware from those superintendents.

Mr COWEN: I know that it is just starting. Rob Critchlow is just getting the ball rolling now. We are trying to encourage anything that might support that process.

The Hon. PAUL GREEN: That might be a good question for the Police Commissioner.

The Hon. BRONNIE TAYLOR: That was my question, Mr Green.

CHAIR: We stole the Hon. Bronnie Taylor's question. You can ask for an elucidation.

The Hon. BRONNIE TAYLOR: I am not like you in the House, Chair. I think it is a terrific idea for people with an interest. I have my pink pen all over that recommendation. I think it is a really good one.

The Hon. PAUL GREEN: We must ensure that there are lots of gateways in our communities so that we can find a way through. This sounds like a good, trusted gateway.

The Hon. BRONNIE TAYLOR: Would you say it would be an opportunity? If you have someone who has an interest in something, they are going to own it a lot more if they are based in the community. The previous presenter from the elder abuse helpline had some terrific information. Perhaps if you had an officer who was designated to collaborate with that officer having the connections in the community, they could use that material to go out into the community and do the education and awareness.

Mr COWEN: Yes.

CHAIR: In respect of looking outside the borders of New South Wales into other States and Territories and information you may have or may be able to obtain from sister organisations in those States and Territories, do you think there are things we could be learning from or finding out about in what is essentially an exploratory exercise of collecting information and finding out what might be best practice or new initiatives that are being developed in this area?

Mr COWEN: Yes, I do. Before I came down to The Seniors Rights Service in Sydney I was the foundation solicitor for the SLASS in Cairns, the Seniors Legal and Support Service. That involved a solicitor and social worker/counsellor working together with older vulnerable people to provide whole support for them rather than just a legal response to the situation that they would find themselves in and in that process I actually did draft family agreements. It is very difficult to get a model because every family is different; the resources are different, there are different members in it, they all have different attitudes and so on. But it is not impossible to draft agreements tailored to those families.

The big step they have to take, of course, is that the families have to recognise that we are going to take that step to making this a legal relationship rather than just a family relationship and a lot of families do not particularly want to do that but we would say to them, "Well, you want to act in the best interests of mum or dad. You need to come together to work out what is the best way to do that and if things do go wrong, you want to be able to point to an instrument or a document of some sort and say, 'Well, this is what we said we would do if something went wrong'".

That actually settles people down a lot and it makes them more acceptable to the process of looking after their aged parents as they go on into their lives. As I have also said, older people who are at risk of losing their homes—if you are 85 or 86 you do not have a lazy six years to undertake Supreme Court action to try to recoup what you have lost, to get some compensation or whatever the process outcome might be; you just do not have that and you probably do not have the health. If anyone in this room has actually undertaken litigation, you would know that it can be an extremely stressful process and older folk generally do not have the same sort of health, stamina and stability in their bodies of younger people who would willingly take on litigation.

CHAIR: Particularly vis-à-vis if it is against a family member.

Mr COWEN: Yes.

The Hon. Dr PETER PHELPS: Just following on from that, you recommend in recommendation 4 greater use of the NSW Civil and Administrative Tribunal [NCAT] but in that regard you recommend also that they be given jurisdiction to approve family agreements in the accommodation and care of elderly parents. I could understand why you might wish to have them arbitrated or litigated in NCAT but why would you want them to be approved at first instance by NCAT?

Ms CHAPERLIN: Yes, the emphasis probably should be more having them either dissolved and/or made—

The Hon. Dr PETER PHELPS: Oh, I see, new ones created?

Ms CHAPERLIN: Yes.

The Hon. Dr PETER PHELPS: Sorry, yes. That is fine.

Ms JAN BARHAM: I ask about the situation with Aboriginal and Torres Strait Islander people. How often are these cases brought to you and what is your awareness of what the circumstances might be?

Mr COWEN: We mention that in the submission. In fact, if there is any failing, it is a failing in that area of our service and probably in the system generally. We need to be cautious here about the language we use with Aboriginal people because they have elders in their community who are given that title of being an elder and it is a term of respect; it elevates their status and so on, so we do not want to be talking about elder abuse and confusing that with those.

CHAIR: Yes.

Mr COWEN: And there are some religious organisations that also have elders in their communities so we need to be careful about our language there. We do know that abuse of older people in Aboriginal communities occurs because we go out on education sessions. One of our solicitors particularly is working with different women's groups in Aboriginal communities and is aware that older people are being abused but we are not seeing that reflected in the number of calls we receive by people who identify themselves as Aboriginal and claim to be the subject of abuse. A lot more research needs to be done.

Ms JAN BARHAM: Research and training offered for Aboriginal workers who do go into those communities so that they know what to do?

Mr COWEN: Yes.

Ms CHAPERLIN: We do training for Aboriginal groups and we have given education to Aboriginal workers as well in different areas. We do travel and we have solicitors who go to different areas like Young for example. We have spoken to Aboriginal workers out there so we do try to access them.

Ms JAN BARHAM: Are any of those programs coordinated through Family and Community Services or any agency within government?

Ms CHAPERLIN: The one that I was working on was done with Alzheimer's Australia but Meg, another solicitor at our office, does a lot of work with Aboriginal groups around Sydney and other areas.

Ms JAN BARHAM: It is just that the Government is doing significant work providing opportunities and empowerment for the establishment of Aboriginal-specific organisations so the question is whether or not it needs to have aged people's abuse factored into the training?

Ms CHAPERLIN: Yes.

Ms JAN BARHAM: You are not aware of it?

Ms CHAPERLIN: No.

Ms JAN BARHAM: Other than Alzheimer's?

Mr COWEN: I think that would be an important area to look at. My experience in working with Aboriginals in North Queensland was when the Seniors Legal and Support Service up there did brochures advertising the fact that we were going to start coming out to Aboriginal communities and set up a little office one day a month. We had to make the decision that we would do it whether we received any people coming in the door or not and we would continue to do it for a very long time. Secondly, no offence, but we deliberately drew up our brochures to make them look as ungovernment-like as possible.

CHAIR: That was probably very wise.

Mr COWEN: Well, yes, and it took us a couple of years—

CHAIR: To build up a relationship.

Mr COWEN: —to actually get people to trust us and to get them to understand that we would actually be there; it was not just a fly in, fly out arrangement.

CHAIR: Thank you both very much for coming along today to provide us with the opportunity to ask questions about your very detailed submission. It has been very informative. Thank you for the great work you do in The Seniors Rights Service on behalf of the seniors in this State. We wish you well.

Mr COWEN: Thank you for offering us the opportunity to come in.

(The witnesses withdrew)

SUE FIELD, Adjunct Fellow in Elder Law, School of Law, Western Sydney University, sworn and examined:

CHAIR: We have received your submission, which has been entered as submission No. 50, so you can take it as read. However, you are most welcome to make an opening statement to set the context. Please proceed.

Ms FIELD: Thank you. In view of the fact the submission is only seven pages the opening statement will not be even two minutes. I have been involved in this area of law probably for close on 20 years but before I even go into that I would like to thank the Committee for conducting this inquiry because obviously it is one that we consider of great importance. I have worked in practice in Queensland in a firm that specialised in elder law as it affects older people and then I took the job at what was then the University of Western Sydney in the only centre for elder law in the country. I was fortunate that the final Public Trustee of New South Wales funded my position so it was the only funded position in Australia peculiar to elder law. You might get the big firms funding tax law or something but this was elder law.

The job really involved community engagement. So I have spent nine years talking to communities throughout Australia and overseas on the issue of elder law, including elder abuse. I teach the subject Elder Law to undergraduate law students. I taught it once a year, then I taught it twice a year. Now I teach it three times a year. I have just finished teaching one semester. In two weeks time I start the next one. I have a cap of 60 students and a waiting list of 61. I have probably put through 1,000-odd students, who I would hope know something about elder law and powers of attorney. That is my introduction.

CHAIR: Thank you. That is a very good context to set the scene. I will pass to Committee members to ask questions.

The Hon. PAUL GREEN: You would have heard the prior questioning of Mr Cowen. Are you aware if the police, in Grafton, have a course—

CHAIR: Goulburn.

The Hon. PAUL GREEN: What did I say?

CHAIR: Grafton.

The Hon. PAUL GREEN: That is where the prison is. It would be a bit late to have it there. Prevention is better than cure. Do you know whether it is part of the curriculum in Goulburn?

Ms FIELD: No, I am not. Thank you for reminding me: I need to make full disclosure here in view of—

The Hon. PAUL GREEN: About Grafton?

Ms FIELD: No. I need to disclose that I used to sit on the board of the Council on the Ageing [COTA] for many years. I was on the education working party for the helpline for the period of its existence. Until Tuesday, when we have the annual general meeting, I will remain the deputy chair of the board of the Aged Rights Services [TARS]. I just wanted to put that on the record.

The Hon. Dr PETER PHELPS: On page 6 of your submission you mention the four desirable characteristics of an attorney. You cannot know the first one—that the attorney must have integrity—with any degree of surety. You might know the second one—that they must have financial acumen—with some degree of surety. I raised this with the previous witnesses. Surely, a stick focuses the mind quite notably so that your temptation to do the wrong thing, if you know that there is a potential for criminal action against you, would be substantially reduced to the point where you may not wish to take on the attorney position in the first place.

So, while it is all right to talk about pre-vetting, the simple fact is that there is never going to be an effective pre-vetting arrangement in most cases and there is going to have to be a legislative stick. Would you care to comment on that?

Ms FIELD: Yes. Whilst, basically the premise of our submission is to amend the Powers of Attorney Act in this jurisdiction, I agree with you in respect of those characteristics. However, I think that sometimes—quite often, perhaps—the issue with powers of attorney is that people do not understand them. I took note of all your comments about family. I was in Queensland when the Powers of Attorney Act was introduced in 1998. It was quite common to have parents come in and say that they would appoint their son for the financial matters—“Because he is a boy and good with money.”—

The Hon. Dr PETER PHELPS: In fact, in most cases the exact opposite is true.

Ms FIELD: Yes. And they would appoint their daughter as the equivalent of the enduring guardian, “Because she is a girl and she will be caring.” The other point is that they automatically assumed that they would appoint their children. The comment was, “If I don't appoint them they will be upset,” to which my standard response was, “Not half as upset as you will be when you are in the gutter and penniless because you did not have the discussion in the first place.” That is harsh. I have an enduring power of attorney in this State and I have one in Queensland. My adult children are not my attorneys in either jurisdiction.

When they asked why, I told them. So I am happy for this to go into *Hansard*. I said, “You cannot look after your own money; why would I think that you could look after mine?”

The Hon. Dr PETER PHELPS: I am glad that you put that on the record. Good luck on Mother's Day! Taking that a little further, is that not an argument for a much clearer direction from a person's solicitor in relation to what should be expected? The solicitor should be saying, “I know you would like to do this. However, you have to realise this, this and this before you make your decision.” If the person is still of the original view then the solicitor has to set out to the person who is going to be the attorney—if we do change the law to criminalise the misappropriation of funds by attorneys—a standard script. On that script you would tick off everything for the principal and then tick off everything for the person. You could then say, “I told the person that he was not able to take funds out for his horseracing.”

Ms FIELD: Or renovations.

The Hon. Dr PETER PHELPS: That is right.

Ms FIELD: I could not agree more, irrespective of who the attorney is. Quite often parents would say, “I want to appoint this one and this one.” I would ask, “Do you have other children?” When they said yes, I would ask, “What about them?” The answer is, “They wouldn't be interested.” I ask, “Have you asked them?” My standard comment is—I have been quoted in the press talking about this—“Why not have a family barbeque, invite them all around and make the announcement? Then let the initial silence tell you just how interested the rest of the family are.”

In my experience, appointing family members—children—often creates disharmony, particularly if one, not necessarily through malevolent means, is misusing the funds of the parent. Sometimes it is through lack of knowledge. They may think, “Mum would have paid the school fees; she always did pay the school fees,” but it is not written in the power of attorney. Far more time needs to be spent with the principal and with the attorney making sure that they each understand what it means. I noted Mr Cowen's comment—I think it was him—about the fact that very few people make use of the limitations of the attorney. Preparing the power of attorney can be a quick job, and perhaps sometimes it is too quick.

The Hon. SOPHIE COTSIS: Thank you very much for being here today. In terms of the power of attorney, do you think that it should be an independent person? I am throwing the cat amongst the pigeons.

Ms FIELD: Not at all. That is my view. You cannot dictate it, though.

The Hon. SOPHIE COTSIS: No.

Ms FIELD: You have to allow someone with capacity to make mistakes, if they want to. But I do not think we can allow them not to be educated. I would much rather someone said, “Yes, I knew that by appointing this one that this could go wrong. I was aware of it,” rather than have someone say, “No-one told me that this could happen.”

Some people say that they have no-one, in which case there are trustee companies that the person can appoint. They charge; it is a business. Other people might use their accountant or a trusted friend. I have these discussions all the time with my friends. When I appeared before the House of Representatives inquiry I asked the members—I will not do it today—if they had powers of attorney. They did not. You also asked how common they were. They are not. I would agree that someone independent—someone distant—should be chosen. Having said that, people do not come to tell us, as lawyers, how happy their families are and how happy everything is. They do not pay money for that.

CHAIR: It is not billable.

Ms FIELD: Absolutely not. They come in; something's gone wrong. In fairness to society we perhaps have a skewed view, those of us who work in the area.

The Hon. Dr PETER PHELPS: Or they come when they think they have to do a pro forma tick and flick and they are not putting too much thought into it?

Ms FIELD: If there were, perhaps, more stringent requirements because, as you are aware, on the form for an enduring power of attorney the witness signs a section 19 certificate which effectively states, "I explained this enduring power of attorney to the principal and they appeared to understand it."

Ms JAN BARHAM: We talk about what people need to know, and how they can get that knowledge. This is not a legal question but obviously you have a lot of experience in this area: is this just a product of a society that does not have these conversations early enough or does not talk about the only sure thing that we know is going to happen, that is an end-of-life experience and how we should all be prepared for it? Do you have any ideas about how we could bring those conversations in earlier?

Ms FIELD: I could not agree more and even then with end-of-life decisions, we do not do an advance care directive—that is another inquiry. But with the discussion, I think someone commented you cannot ask the question unless you know something about the area. My experience has been that the general public confuse or combine powers of attorney, enduring guardianship, advance care directives and wills. When we talk about powers of attorney they will say, "I don't need that, love, because my executor will take care of that." You smile and say, "Not 'til you're dead." It could be the other way around, "No, I don't need a will because I have a power of attorney."

I think those of us in the know are guilty of not getting the message out in appropriate forums and in appropriate manner, taking into account culturally and linguistically diverse communities, communities where people are not highly educated. And if we are looking at older people, many of them were not fortunate enough to go to university; they were not privileged to finish high school and many did not even finish primary school. Then we come along and we talk about these documents. I talk about it ad nauseum and I watch people's eyes glaze over because it is all so complicated. Recently I had to go to my grand-daughter's school for a grade 10 talk on the Higher School Certificate and ATARs. I could feel the expression on my face resembling the expression on the faces of those I talked to on this topic.

Ms JAN BARHAM: Earlier I asked a question of another witness about whether there is a standard document that people could have because of those educational standards and also the low income earners who I do not think could afford or would not think to get legal advice on something like that.

Ms FIELD: They could not afford it.

Ms JAN BARHAM: Is there a place for a plain-speak education program that would give people not only an understanding of those different powers of attorney but also a document that could be used as a template to define what is in, what is out and what needs to be decided?

The Hon. Dr PETER PHELPS: I think you are conflating two things: a plain-speaking document yes, a template will have to be some sort of legal document.

Ms JAN BARHAM: I wonder because if you can plain-speak something, and define the things that need to be established and with different responsibilities, it empowers people to then maybe know that they need legal advice to establish a document that sets out clearly what is acceptable in their relationships. A lot of people cannot afford to go to a lawyer.

Ms FIELD: No, they certainly cannot—most of us could not afford to go to a lawyer when you look at income.

Ms JAN BARHAM: Until they know the importance of doing it.

Ms FIELD: Even then, and that is why I firmly believe that a statutory body such as the Public Trustee in various nomenclatures, the NSW Trustee and Guardian should do these as a service without a cost. I know in Queensland, for example, you could get your will done at the Public Trustee and you did not need to appoint the Public Trustee as your executor. It should be a service that is available to people of low income. As for getting the message out there—and I think I said it in here—I am a firm believer of 3.00 a.m. radio because a lot of older people listen to the radio of a night time. The partner of the firm I worked for years ago who was well known in this area was asked to do an interview at 3.00 a.m.

Ms JAN BARHAM: Not realising how many people listen.

Ms FIELD: Yes, they said, "You will be surprised." Anyway he did the interview. He was in his late forties and later in the day his mother rang and said, "I heard you on the radio during the night" so he changed his views. It is all well and good for those of us who sit on committees; we pontificate about it but getting it out to the people who do not know is different. And I do have a nursing background—

The Hon. BRONNIE TAYLOR: Good for you.

The Hon. Dr PETER PHELPS: We are being overrun on this Committee.

Ms FIELD: I am a great advocate for Patricia Benner's "From Novice to Expert". At what stage do you just know? Educating the people who go into the homes, not to the extent that they prepare it or discuss it in depth but "Have you thought about who could look after your finances?" The first question I ask when I do these presentations is, "If, God forbid, you are hit by the proverbial bus when you leave here today who can look after your finances?" No matter what the venue the answer is "My wife, my husband, my first born" and people have no idea. You cannot ask questions if you are not aware of the existence of something so I think those of us who work in the area need to revisit the way we get the information out there.

The Hon. BRONNIE TAYLOR: I understand about campaigns and I am all for awareness: I have seen them work really well, I have seen them work really badly. You mentioned end of life but sometimes it is a difficult message because I think generally speaking we are a glass half full. We like to believe that our family will look after us and we will be okay, there will be people coming in and services will provide things. In terms of end-of-life care I think there are many similarities to what your just raised. I think sometimes it is a very difficult message to talk about unless things actually start to escalate.

The Hon. Dr PETER PHELPS: A case too late.

The Hon. BRONNIE TAYLOR: Therein lies a big part of the issue. I spent my life as a clinical nurse specialist [CNS] in palliative care and I thought I could do everything but in relation to my father that conversation was very difficult to have. I think in relation to the legal matters it is a difficult conversation to have so we need to target the message to those trusted people that have an established relationship.

Ms FIELD: I agree. Adding on to that, this is an inquiry on elder abuse but why are we leaving powers of attorney to an older cohort? As I say to the students I teach who are all over 18 years of age, "What's going to happen?" You turn it into a positive. "What about when you are backpacking around Europe? Who will be looking after your financial affairs?"

The Hon. BRONNIE TAYLOR: They've got no money.

The Hon. Dr PETER PHELPS: The only financial affair is to call mum for an extra top-up.

Ms FIELD: When you talk to, perhaps baby boomers, they might say they have got a power of attorney in place for their parent. I say, "What about you?" I do not think we have the discussion early enough and that is why at least the students I teach are certainly aware of it. We actually prepare the instruments in class as well.

The Hon. BRONNIE TAYLOR: We need to think about the target of the message and the messengers in terms of the difficult messaging.

Ms FIELD: Yes, that is it—and not waiting until the very end, which so many people, or most of us do.

CHAIR: With respect to the teaching of elder law in our tertiary institutions—

Ms FIELD: One.

CHAIR: With respect to particular units of elder law at your institution, beyond your institution and the teaching of elder law units, you believe it is not taught elsewhere, as far as you can gather?

Ms FIELD: As far as I am aware, I am the only one who teaches it at an undergraduate level.

CHAIR: Is that right?

Ms FIELD: The College of Law has an elder law unit in its applied masters and there is a subject at masters level at the University of Sydney. There may be postgraduate in some places, but I get students from other universities, sometimes from interstate, because I teach on weekends and I have a take-home examination. So it is doable.

The Hon. BRONNIE TAYLOR: Just following on from that, if the School of Law at the University of Western Sydney is one of the few institutions teaching elder law—

CHAIR: The only one—that is the submission.

The Hon. BRONNIE TAYLOR: —how will we get the message to the people who then enforce and apply the law?

CHAIR: You can take that on notice, if you wish.

Ms FIELD: Thank you.

The Hon. BRONNIE TAYLOR: Please answer.

CHAIR: We will give you the weekend to think of the answer!

Ms FIELD: I actually teach the subject based on the film the *Best Exotic Marigold Hotel*, which I thoroughly enjoyed.

The Hon. BRONNIE TAYLOR: I loved that.

The Hon. Dr PETER PHELPS: Does that have Bruce Willis or Sylvester Stallone in it?

Ms JAN BARHAM: Don't mind him.

CHAIR: He is our agent provocateur on the Committee. Please continue.

Ms FIELD: The issues facing those seven older English people, when I thought about it, I thought, "My God! That's everything I teach in elder law." Now it is prescribed previewing. Then the students are divided into six groups and they are each given one of the characters. I keep one back for the purpose of the assessment. Everything we do—when they prepare the power of attorney, it is based on Muriel or Madge or whoever; when they prepare an enduring guardianship and an advance care directive and one of them is going into the retirement village, the contract is prepared around that—or the aged-care facility or the granny flat or the reverse mortgage. That way, they are focusing on a person. Their first comment is, "But what do we know about them?" I say, "Considerably more than you will know about the client who walks in the door."

The Hon. BRONNIE TAYLOR: One of your recommendations to this Committee would be to ensure that whoever is in charge of setting the syllabus—

Ms FIELD: Includes elder law? Absolutely.

The Hon. BRONNIE TAYLOR: Thank you, Ms Field.

The Hon. SOPHIE COTSIS: On page six, you talk about, in its current form, a lay person can obtain a general power of attorney. One of your recommendations is that all general powers of attorney should contain a certificate by an approved witness. That is not happening now?

Ms FIELD: No. General power of attorney, which ceases to have effect once a person, the principal, loses mental capacity, can have a witness over the age of 18 years. We harp on or emphasise the abuse of enduring powers of attorney, but that also depends on when the enduring power of attorney comes into effect. For both of mine, I stated they were to come into effect immediately. My attorneys have never used them, obviously. But with a general power of attorney, you can still financially abuse someone under a general power of attorney while they have capacity. The argument I would put forward is their vulnerability—that they may be in a situation where the person who is their attorney is their support person; the person who is visiting them; their only contact, if they are housebound. So they might think it is a small price to pay.

The Hon. SOPHIE COTSIS: The other thing you have here is a national register. I think one of the other witnesses mentioned this as well.

The Hon. Dr PETER PHELPS: Tom Cowen did.

The Hon. SOPHIE COTSIS: It would be similar to justice of the peace where there is a register?

Ms FIELD: I have to say that when I appeared before the House of Representatives inquiry I was opposed to a national register. Over the years I have seen the error of my ways and I totally support it because, as it stands at the moment—someone asked the question; I think it was the Chair—how many powers of attorney exist? We have no idea—no idea whatsoever. Also, how does a third party know that this is a valid document? How do they know it is the most recent document?

The Hon. SOPHIE COTSIS: If we did have a national register—I do not know how the State would work out a way of working it out—you register, but then how do you deregister if it is revoked?

Ms FIELD: If it is revoked or cancelled? Well, that is it. Any principal can revoke their power of attorney, preferably in writing, as long as they have the mental capacity to do so. It goes back to the question: Whom do we appoint as an attorney? I mean, I still stand by my four criteria.

The Hon. Dr PETER PHELPS: At the current time, to whom do you send that revocation letter?

Ms FIELD: That is a good point because it does not actually have to be in writing in this State. The Land and Property Information [LPI] unit has a one-pager, a simple revocation form, on its website. To whom would you give it? Well, you would give it to the attorney. If the power of attorney has been registered with Land and Property Information, obviously you would give it to them. If it has been given to a bank to have on file, then you would do that. But, otherwise, no-one knows, firstly, if there is one in existence; and, secondly, if it has ever been revoked.

The Hon. Dr PETER PHELPS: Of course an unscrupulous attorney who received a revocation notice would just shred it and say, "I never received a revocation notice and I intend to use the existing document."

Ms FIELD: Absolutely.

The Hon. Dr PETER PHELPS: Whereas if you had to register with a government agency—it sounds like I am big government now—or extend the LPI's registration to include all powers of attorney, or ship it off to the Attorney General's department or someone like that—and then require revocation also through the Attorney General's department, at least you would have a third party that could corroborate the existence or non-existence of a power of attorney.

Ms FIELD: That is it. That is the problem.

The Hon. Dr PETER PHELPS: It is also a solution.

Ms FIELD: It is a solution if we did it—if you did it. The other point is when you want the power of attorney to come into effect. One of the options on the enduring power of attorney form is: When my attorney thinks I need assistance with my financial affairs. If you have an unscrupulous attorney—

The Hon. Dr PETER PHELPS: That is "immediately".

Ms FIELD: Obviously. No-one can tell me what evidence a third party would want. So I, as an unscrupulous attorney, go into the bank—or any other financial institution or company—and say this, and what is going to happen then?

The Hon. Dr PETER PHELPS: I think the previous witness suggested you would require some sort of third party affirmation—either medical or psychological assessment—which deemed at that point that the person was incapable of dealing with that particular section of their affairs.

Ms FIELD: That is one option.

The Hon. Dr PETER PHELPS: That could be the switch that turns on your power of attorney.

Ms FIELD: That is one of the options for when it is to come into effect. We argue that, as it stands at the moment, the options are a bit loose. Also, why would you have to wait—this was Tom Cowen's comment too, I think—for that incident to actually occur? Also, psycho-geriatrician specialists are a bit thin on the ground in rural areas, so you might have to wait a considerable time before one of these can come into effect, if that was the option or the absolute requirement. It goes back to prevention is better than cure, and appointing the right attorney. We have also said we think that not only witnesses but perhaps principals and attorneys themselves could undertake a short half-day course or something, with light refreshments served, to find out about their roles and responsibilities.

Ms JAN BARHAM: Is there a need for some sort of online explanation tool or have you had any experience with that? It is a big ask that everyone be educated in this and it would take some rolling out, but with technology we can do that stuff quite easily and make it known.

Ms FIELD: It could be an option. I would not have it as the only way because not everyone is computer literate, not everyone wants to do that. I detest online learning, whether I am the teacher or the pupil. I would much prefer an interactive process.

Ms JAN BARHAM: But you gave an example that was creative and contained some great advice for us. Research tells us that people learn better from contemporary cultural tools like the *Best Exotic Marigold Hotel* that provide information in a human, personalised way. When you were saying it I thought that students would engage with a personal story much better as well. Do know of any other examples where technology is being used to provide this information so that people can access it at 3.00 a.m. or 11.00 p.m. or wherever they might want to do it?

Ms FIELD: Alzheimer's Australia has done a wonderful DVD on financial abuse and banks recognising it. They used actors inside a bank with all their logos hidden. It is a wonderful resource because it could be any one of us. That is what people relate to. I agree with you. They think, "That could be me." We, as in the Older Women's Network and I, did a series of brochures some years ago in a series called "How Could They?" They were not legal advice; they were brochures with great graphics. We looked at guarantor loans versus gifts, granny flats and then two had to do with relationships later in life. These were brochures that gave a scenario that could be any one of us. In fact, one of them was based on some real life experiences I knew of. They contained the questions to ask. Particularly in the granny flat brochure a question was, "Will my name be on the title?" If you cannot ask the questions at the outset you are not really going to be able to ask them when it has all gone belly up.

Ms JAN BARHAM: Are those brochures still available?

Ms FIELD: You can google the Older Women's Network NSW. It is the "How Could They?" series.

The Hon. SOPHIE COTSIS: At page 10 of the submission from the Seniors Rights Service is a chart courtesy of Seniors Rights Victoria that lists the types of matters for older persons seeking financial advice and support. The chart includes social abuse, banking matters and family financial agreements. Financial abuse comes in at 31 per cent. If we were to make changes to powers of attorney as a remedy would that help to reduce financial abuse?

Ms FIELD: I think some of the recommendations which we have just bullet pointed would go a way towards reducing it. I also think—dare I say it, the stick approach—that perhaps attorneys should have to present audited accounts, as do financial managers. But no-one knows at the moment. As I said, no-one knows if there are powers of attorney in existence. In fact, it only comes to the surface when someone perhaps with a vested interest, be it a good, bad or indifferent interest, brings it to the notification of the Seniors Rights Service or goes straight to the guardianship division of the NSW Civil and Administrative Tribunal. The amendments, yes, or suggestions, would help but we also need to educate in a format better than what we are doing now.

The Hon. SOPHIE COTSIS: We need a coordinated strategy.

Ms FIELD: We do, and one that can target people that are not normally targeted with mainstream advertising or just online tool kits. I should not say the tool kit. I do not refer to the capacity tool kit. But looking at where people get their information from. It is night-time radio, it is papers like the *Senior*, which you find in the shopping centres, and putting out brochures. They were produced by the Older Women's Network. We produced them for that. We make no apologies for the fact they are for women because it was the Older Women's Network and we had some funding. But they could equally be applicable to men. It is making it relevant to the target audience. People can talk about whether you put a cap on the amount of money and say for anything over this amount of money this should be done. That is not really appropriate because \$5,000 can be everything to some people. I think sometimes those of us involved in this area forget that a small amount of money is everything to someone with limited means.

The Hon. Dr PETER PHELPS: My question follows on from that, and it was raised by the previous witnesses. I noticed you recommend the registration. I think that is a good idea. They recommended registration and the submission of accounts every six months, which I think would be impractical. Perhaps it could be every 12 months. Is it creating an unreasonable burden on the person who is taking on the attorney role to go through an accounting process, or do you believe that every 12 months would be a fair thing?

Ms FIELD: I think every 12 months. Six months I think is—well, you can create havoc in a six-month period; however, I think 12 months is feasible. A private financial manager does not get any remuneration and an attorney does not. I think if you keep accurate records then I do not believe it is an undue onus, I think it is a requirement.

CHAIR: At the end of this process of inquiry we will put together a report to be tabled in Parliament. We have started to receive submissions and within them are some quite harrowing examples of elder abuse. As I have been reading through those submissions I have been thinking forward to what we might be putting in our report and, I will use this word, how shocking we should be. We dearly want this report to come out with recommendations that will be taken very seriously by the Government, just as any government of any political colour takes seriously all recommendations from Legislative Council reports. There is a sense of waking up the community at large perhaps, although I am not saying we can do that through our single report. There are various discussions we can have about advertising campaigns and what have you.

Given that this Committee is probably one of first to undertake a formal analysis of this issue at a parliamentary level, do you think that we should at least be a bit shocking in some of the examples we use to try to make people realise that whilst there might not be large numbers of these instances taking place—we really do not know—there are some pretty awful instances of elder abuse out there? As a society we have an obligation to try to come to terms with this or appreciate the situation perhaps more quickly than we are.

Secondly, in regard to the issue of teaching about elder law in universities, what textbook or text do you use, or do you essentially use papers from overseas or a House of Representatives report? I am curious about the teaching material you have at your disposal for the units you teach at university.

Ms FIELD: Would you like me to comment on your statement first?

CHAIR: Please, yes.

Ms FIELD: How effective is it when harrowing stories hit the front page? Sometimes they are a bit of a flash in the pan—someone says, "Oh, isn't that disgusting", and then moves on. I think examples should be used but not to the extent where they become—

CHAIR: Gratuitous.

Ms FIELD: Absolutely.

The Hon. SOPHIE COTSIS: Sensational.

Ms FIELD: Thank you. Then one is inclined to lose credibility. You asked about the textbook. There is only one textbook on elder law in Australia and that is Rodney Lewis's. It is a recommended text. I do not make it the prescribed text, the reason being that it is the only textbook so students will just use the textbook to the extent that they may use just the references in the textbook without citing the original source—as cited in Lewis, R.

CHAIR: Is Mr Lewis a solicitor or a barrister?

Ms FIELD: He is a solicitor who started teaching elder law many, many years ago and works in the area. I understand—I have to say I understand because I do not own a television—he was on the 7.30 program last night.

The Hon. BRONNIE TAYLOR: He was.

Ms FIELD: A friend contacted me to tell me that. What do I use? I use various resources. I use papers—as I said, we start with the film but the film does not give the answers. We use the legislation, various papers and I work my way through the subject like that. All my classes are interactive so the students have to answer in class and prepare the documents according to their client from the film.

The Hon. Dr PETER PHELPS: Is the problem if we do get too dramatic in terms of case studies that people will look at them and say, "That's outrageous; I would never, never slightly touch mum but I am executing my power of attorney to have extensions to the house because I am going to get it in the will anyway"?

Ms FIELD: Inheritance impatience.

The Hon. Dr PETER PHELPS: It is not the bad stuff—which is bad—but it is the casual larceny because it is in the family and that is alright.

Ms FIELD: That is the emphasis I would have.

The Hon. Dr PETER PHELPS: That is 33 to 36 per cent of cases, depending on which study you take.

Ms FIELD: That is it. We said we relate to the characters in the film or scenarios. I would look at the ones that make people stop and think, "Oh, so that 10 grand that I borrowed, I wasn't meant to do that." The odd harrowing one but definitely not the—

Ms JAN BARHAM: The ordinary ones.

Ms FIELD: Yes, but the ordinary ones which, as you rightly say, we would not assume to be financial abuse.

The Hon. SOPHIE COTSIS: Inheritance impatience—

The Hon. Dr PETER PHELPS: Yes, "I'm going to get it; why don't I get it a few years early."

Ms FIELD: This is where I say I do not believe anyone has a God-given right to an inheritance.

The Hon. BRONNIE TAYLOR: It seems to be becoming an expectation.

Ms FIELD: It absolutely is.

The Hon. Dr PETER PHELPS: It is the Prince Charles problem: that is, everyone is living too damn long.

Ms JAN BARHAM: That is why I asked about whether there is a template. Often people judge that things are wrong when in fact some older people feel great pride in passing stuff on. We need to be very careful about that judgement. Often older people think passing on an inheritance makes them feel their life was worthwhile.

Ms FIELD: That is why I would be vehemently opposed to something like an older persons Act which prohibits people from making this gesture. Of course there are people who scrimp and save to give their kids a good start in life. But the fact is we are living longer and by the time we cast off our mortal coil our children are nearing retirement. Why should we fund their retirement when they have enjoyed their income?

The Hon. PAUL GREEN: Given that it is Christmas and you talked about casting off mortal coils, can I say that everyone is entitled to a spiritual inheritance.

Ms FIELD: Absolutely, but not necessarily financial.

CHAIR: Thank you for your very good submission and for appearing before us today. Thank you also for your great research and the advocacy work you have been doing for decades. Please keep it up. There may be questions on notice arising from our exchange. If so, please liaise with the secretariat. You will have 21 days in which to return your answers to us.

Ms FIELD: Okay, thank you.

(The witness withdrew)

(The Committee adjourned at 1.06 p.m.)