



# ***COMMUNITIES, DISABILITY SERVICES AND DOMESTIC AND FAMILY VIOLENCE PREVENTION COMMITTEE***

## **Members present:**

Ms LE Donaldson MP (Chair)  
Miss N Boyd MP  
Ms AM Leahy MP  
Mr MF McArdle MP  
Mr MJ McEachan MP  
Mr RJ Pyne MP

## **Staff present:**

Mr P Rogers (Acting Research Director)  
Ms L Manderson (Principal Research Officer)

## **PUBLIC HEARING—INQUIRY INTO THE ADEQUACY OF EXISTING FINANCIAL PROTECTIONS FOR QUEENSLAND’S SENIORS**

### **TRANSCRIPT OF PROCEEDINGS**

**WEDNESDAY, 3 JUNE 2015**

**Brisbane**

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### **Committee met at 10.21 am**

**CHAIR:** Good morning and welcome. I would like to acknowledge the traditional owners of the land upon which we meet today. I declare open the Communities, Disability Services and Domestic and Family Violence Prevention Committee’s public briefing.

Our purpose today is to receive information from witnesses to assist the committee’s inquiry into the adequacy of existing financial protections for Queensland seniors. My name is Leanne Donaldson MP. I am the chair of the committee and the member for Bundaberg. With me today are: Mr Mark McArdle MP, deputy chair and member for Caloundra; Miss Nikki Boyd MP, member for Pine Rivers; Ms Ann Leahy MP, member for Warrego; Mr Matt McEachan MP, member for Redlands; and Mr Rob Pyne MP, member for Cairns.

I remind those present that these proceedings are similar to parliament and are subject to the Legislative Assembly’s standing rules and orders. I confirm that witnesses have been provided with a guide to appearing as a witness at a committee hearing. Hansard is making a transcript of the proceedings. The committee intends to publish the transcript of today’s proceedings, unless there is good reason not to. Our proceedings today are also being broadcast live on the parliament’s website.

I note that we have certain time frames. So for those witnesses who have provided a submission, I would ask that they do not repeat their submission verbatim but provide an outline. As we have read the submission, we will be in a position to ask questions about that.

### **HAY, Detective Superintendent Brian, Fraud and Cyber Crime Group, State Crime Command, Queensland Police Service**

**CHAIR:** I welcome Detective Superintendent Brian Hay, Fraud and Cyber Crime Group, State Crime Command. I invite you to make a brief opening statement to start the hearing.

**Det. Supt Hay:** Thank you very much, Chair. I have been in charge of the Fraud and Cyber Crime Group now for 12 years. It is a broad function of the State Crime Command, so that includes the arson squad, major fraud investigation, proceeds of crime, money laundering, digital evidence, high tech crime, identity crime, stolen property and fraud prevention, a case assessment unit, a forensic accounting unit and a financial intelligence unit. So it is quite broad. I know that some of the questions pertain to cyber in particular, and some of my responses or advices actually pertain to other elements of fraud such as Adult Guardian issues that I have encountered in the past 12 years. I will try to be as non-technical as possible. It is a broad array. It is a very challenging area. I think financial and cybercrime will continue and is destined to grow and impact upon the communities of Queensland and Australia for a number of reasons, and the seniors in our community, I would suggest, will continue to be targeted.

If my submission is accepted as read, I would like to clarify a couple of additional points. In respect of any material regarding victim depression associated with cyber fraud including some cited AIC, Australian Institute of Criminology, research, I said there was no specific material that was cyber fraud related. But there is some work that has been done around advance fee fraud, also known as Nigerian fraud. I have a couple papers which I could provide to the committee in respect of that. A lot of our information or experience anecdotally on suicide and depression is that Nigerian crime is not generally reported to police. Around Christmas 2005 I received advice that a gentleman who was a small business owner, a self-employed builder, attempted suicide by driving his ute off a cliff to kill himself because he had sent \$275,000 to Nigeria in something to do with a fraud. His business was now bankrupt and life was no longer worth living.

I had been in a fraud environment for a couple of years and you hear these myths about Nigerian fraud but I had never actually seen a case file. So I got my intel people to check: ‘Do we have any complaints about Nigerian fraud?’ They came back and said, ‘We’ve got nothing.’ We had some colleagues who we work with at the national level and I asked them for data on transfers of cash to Nigeria. There was a list of names brought back to me and I picked a block and said, ‘Contact these people.’ There were 26 names on the list. I asked, ‘Could you please ask them why did they send money to Nigeria?’ They came back and 25 of the 26 were victims of fraud. They had lost in

total \$7.2 million. Some had been sending money in excess of 10 years. I was shocked—not one complaint. I said, 'Go through the rest of the list.' We contacted 139 people—134 people were victims, with losses in excess of \$18 million. Again, none had made complaints to police. We did a similar thing three years later. We contacted 200 people and asked, 'Why did you send money to Nigeria?' One hundred and eighty-four were victims. They had lost in excess of \$21 million. Sadly, the situation possibly has improved to some extent, but I would be reluctant to say because there is not enough data to ascertain what it is.

It is a global problem. It is not a Queensland problem or a national problem. We are standing generally at about one-fifth of the average losses in this sort of crime type. We were put into a position where we were contacting people and shattering their dreams. That bore a burden of responsibility of how do we help these people to get through. I should point out that 76 per cent of people and business investment continued to send money after we told them it was a fraud, because they believe. They are in a mindset—some of these people have been living this dream for 10 years. The last thing they want is an ugly copper to turn up on their doorstep or to phone them and say, 'Everything you have hoped and wished for is not going to come true.' Many had spent the kids' inheritance. They had borrowed money against their house. They had taken out additional mortgages. They had borrowed from friends. They are in a position where they just could not give up that dream and they continued to send money. That is something we see constantly—all the time.

So my concern was how do we assist them with their emotional recovery. So we established—we were the first in Australia; in fact, we are still the only one in the world that I am aware of—a specific victim support group because the community response to this type of victimology is that they are stupid and greedy. Their friends tell them that. Their relatives tell them that. At the first meeting I remember there was a lady Joan, who has since passed on. We got them to talk about their experiences. I said, 'At least you had your family there when all of this came out.' She said, 'No, not at all.' I said, 'What do you mean?' She said, 'They were happy.' I said, 'Joan, what do you mean they were happy?' She said, 'They were happy they were right, because they told me it was a scam and I didn't believe them.' One of the first things the fraudster does is isolate the intended victim from their support networks and their family. They become the most important person in their lives. We see it time and time again and it is quite extraordinary.

We brought this group of people in and we put them in an environment where no-one was going to judge them, that everyone had walked a mile in their shoes, and they could emotionally recover. It has been going now for probably five years. We have had over 200 people come through the process and it helps them get back on their feet. We have just had a visit from an associate professor from the university, I think it is Leicester or Cambridge, who had just come out to look at what we do and the program that we run, because there are lessons in there for people. But it is still around the world a silent victim group. It is overrepresented by seniors. In our first profile of typical victims in 2006, you were talking about a person who is generally male in the business investment sphere, over the age of 45, tertiary qualified, professionally experienced in life, successful in life. For some of these people, the largest individual loss was just over \$8 million and that was actually a financial investor. The largest syndicate loss, where they get other people involved, was over \$12 million. Five businesses went bankrupt, from memory, in that instance. So it has a massive impact on the community. We are talking about people who were once self-funded retirees on private health cover now financially destitute on the public purse for the rest of their lives, generally suffering from the signs of depression or on some sort of medication for the stress and the trauma that they have endured and now on the public health system for the rest of their lives.

On that point, I remember we asked the group—we had to speak openly about these things—the question, 'Who has considered suicide?' Nearly every person put up their hand. It was quite shocking. I said, 'Well, who has attempted suicide?' I would suggest that we still had about 80 per cent of the room with their hands up and then some people started talking and one woman up to three times, because there is nowhere for them to turn. They do not make a complaint to the police. They are not treated as a victim of crime. They are isolated from their families and support networks. They are proud people who have been financially independent but now they are completely financially destitute with no hope of recovery for the rest of their years and they are embarrassed. There is that fear of losing independent financial control, which is quite harrowing for them as well. I know that I do not paint a pretty picture, because it is very ugly.

We found that everyone thinks of Nigeria and it is a high-risk country to send money to. Ghana has since moved up the ranks. Back in those days they were a minor player. We have worked closely with the Nigerian Economic and Financial Crimes Commission and the Ghanaian Economic and Organized Crime Office. We have had some prosecutions taken place. I have gone over there with a

documentary team and set up stings. Media, prevention and public awareness are the key drivers for us. These offenders are overseas. One thing we will say is, 'Don't expect the person to get caught'—we cannot give false hope—and 'Don't ever expect to see your money back.' We have got money back on the very rare occasions, but we do not promote it because we do not want to give people false hopes. They have lived that for too long.

I think the committee has been provided with some figures of how many funds are still going. Where we saw in 2006 male dominated victimology and business investment being the greatest fraud, that is now transferred to romance fraud, which accounts for about 90 per cent of the money that we see going to Ghana and Nigeria. Just as indicators, we are talking about, I think, \$1.5 million a month to those two countries. Ninety per cent of that would be romance fraud related. Women are now the biggest victim group and seniors are over represented. So that puts some of that around the suicide and the emotional trauma issues. It is more anecdotal based on our experiences. We have done more work in this than probably most agencies in the world outside of Africa.

**Miss BOYD:** Detective superintendent, you have talked a lot today about the underreporting of these crimes. In your view, what strategies can be put in place to ensure reporting into the future?

**Det. Supt. Hay:** Thank you for the question. I think that we need to change the culture of the community—that recognises that these people who go through this process are indeed victims and should be accorded the respect as such. We need to put out some programs there that gets the family involved, because these people are genuinely in love, or they are genuinely committed emotionally and have invested so deeply and emotionally that it is a family responsibility.

If I can give you an example—and I apologise; I talk too much. I get contacted by people all over Australia, from families saying, 'My mum's sending this money. Can you help me?' Sometimes you are successful; sometimes you are not. I will give you another example. We have done a couple of *60 Minutes* stings over the years and I was contacted by this gentleman, Rob, in Victoria. He rang me and said, 'Listen, Brian, I hope you don't mind. I saw you on *60 Minutes* last night. I think I'm involved with one of those things.' I said, 'What's your name?' He said, 'Rob.' I said, 'Okay, Rob. Tell me your story,' and he did. I said, 'Listen, I hate to tell you, mate, but you are indeed involved with one of these situations and you are not going to see your money again.' He said, 'I thought so.' I said, 'Mate, can you do me one favour?' He said, 'Sure. What's that?' I said, 'Please do not send any more money.' He said, 'Brian, I've got nothing left to send.' I said, 'How much have you sent?' He said, '\$800,000.' I said, 'Okay. Look, I'm sorry, but you know you're not going to see that money again.' He said, 'Yes, okay.' We had a chat and I said, 'If you're right, give me a call any time.' He called me the next day and he said, 'Brian, it's Rob here.' I said, 'Yes, mate. How are you going?' He said, 'Look, I know I promised you I wouldn't send any more money, but I've just got to tell you I've sent another \$250.' I said, 'Mate, why did you do that?' He said, 'They told me it was the final transfer. The money was in a bank in Hong Kong' and he said, 'After sending \$800,000, what was \$250?' So there is a sort of logic there that you can apply.

To go back to my original story, what we found is that if it is just police talking to these people, or a member of the family in isolation, they tend not to respond very well because they want to believe in the dream. However, we have had more success when we involve the family, we educate the family in the process, and make them involved in part of the treatment.

I think I mentioned before we filmed a documentary with a sting in Ghana and we got some crooks. I gave the DVD to a gentleman whose mother was involved with a romance fraud and who was about to borrow money to send overseas. She lost about, I think, \$78,000. It was about 8.30 at night and they called me up at home and they said, 'Listen, we've just watched that. I have sat mum down.' I said, 'How is she?' She said, 'Fine.' Her brother was there as well. She said, 'She's wavering.' I said, 'Does she want to talk to me?' She jumped on and I chatted for a little bit and then she burst into tears and then I knew we had her and she has not sent any money since. But that was the advantage of having the family onside. So we have to make it a community responsibility. We cannot expect the victim to have the emotional stability and sensibility to accept the reality of the situation. So by involving the family network, in my opinion, we are going to be more successful at resisting these overseas threats, because they are nearly always from overseas, and get our community members on a safer footing.

**CHAIR:** Any other questions?

**Mr McARDLE:** The issue of the web is a federal issue at this point, not really a state issue. What work is being done at a federal level to try to assist people with these scams? Secondly, with the Adult Guardian issue that you raised earlier, I would not mind hearing your comments about what you have found or seen in the Adult Guardian space as well.

**Det. Supt. Hay:** Thank you. If I could respond to the first question. At a national level, we have a strong participation at a national strategy in terms of cybercrime. I am on the National Cybercrime Working Group. I was the inaugural chair for five years of the Australia New Zealand Policing Advisory Agency e-Crime Working Group.

Queensland was actually the first to develop a national online cybercrime reporting portal. When we first saw it, the big drive was eBay fraud, online auction fraud. We took the initiative and set up a portal to allow people to report online first up. We then set up the world’s first advanced e-fraud online reporting portal and people could make reports direct to the EFCC in Nigeria and to the Ghanaian authorities. That provided an evidence base for what is now ACORN, which went live on 3 November last year—the Australian Cybercrime Online Reporting Network—which provides prevention advice as well as garnering reports. It is a very efficient process. It takes and reduces the burden of front-line police officers to understand some of these cyber issues. We have always had a strong prevention focus and we use the media as much as possible to highlight the threats, because most of these offenders are overseas and it creates a whole array of nuances.

We support national cyber safety week. My view of the cyber environment is that we still have to grow culturally. We still see it as a little bit of the wild west—that you can go online and get away with things that would you not ordinarily do. If I could put this to you as an example. I walked into this room and you laid eyes on me and you started to form an opinion—‘He has a head like a beaten favourite. I wouldn’t trust this bloke. He looks dodgy.’ Your instinct says, ‘No way would I trust this bloke.’ That is built of all the fiscal attributes—sight, sound, smell, touch. You call it instinct, but it is actually a cognitive function subconsciously working, sometimes not subconsciously, but making an assessment from the get-go. It is all based on the physical. But when you go into the online world and you sit in front of a computer screen, you are devoid of all of those skills.

As a human being, we have not yet developed all of those skills attuned to how to pick up the nuances on a computer screen. We are devoid of the social defence skills and our instincts, if you wish. We have something called text. We grew up on a diet of believing what we read, because that is the way we learn and how we grow is through reading. So our natural propensity is to believe what we read. What makes the written word more toxic is that if someone says, ‘I love you,’ you go back and read it again and again and you reinforce that. That is why we see people absolutely falling head over heels in love or committed to a passion, or a hope, or an ambition, so much more readily because they are devoid of their natural protective abilities and they believe it and they constantly reinforce it. We have a large group in the community who are very lonely. A fraudster will reach out 20 times a day when they may not see their siblings or their family 20 times a time. So we are doing a lot of work.

**Mr McARDLE:** Just the Adult Guardian issue, too.

**Det. Supt. Hay:** What we have worked over the past few years is try to work out to assist the Adult Guardian area. We do not seem to get as many files as we once did. Where I saw one of the threats, we constantly had files coming in where you had disputes between siblings over the power of attorney of a parent or a relative. One of the disturbing things was that sometimes in a retirement village we would see the cleaner and we would get stories that they would be bequeathed amounts of money from wills and estates unbeknownst to the family.

I am not familiar with the retirement industry. We have worked with them to develop fraud prevention programs and education sessions. I am not sure if they have their own code of conduct or should it be regulated in some form that, if you are an employee within one of those estates, you cannot receive a bequeathed amount from an estate or a will. It just gets messy.

One of the greatest challenges from an investigator’s perspective when dealing with those matters is that you may have a will that was taken out three to five years earlier. Normally, the person is always in some sort of impaired state or has been given control over. Trying to prove that at a given point in time historically is very, very difficult. It is an area that I believe is appropriate for review with a growing demographic of seniors in our community. It would be nice to have it cleared up. I am sure the retirement industry itself would not begrudge a review and some recommendations to help it through the process.

**Mr McARDLE:** Thank you.

**CHAIR:** I think we have time for one last question.

**Mr McARDLE:** Since you started your victims process and engaged the community, are you finding more people reporting Nigerian scams or other scams online or not?

**Det. Supt. Hay:** Thank you for the question. Yes, I think we seem to have more reports in Queensland. I think there is greater awareness in Queensland than some of the other areas and because we have the support group, they come along and they can remediate more quickly. Looking at the ACORN data—and we have only had it since November, so there is still work to do to analyse everything that is coming in—we seem to have a slightly higher reporting rate.

**CHAIR:** Thank you, Detective Superintendent. If there are further questions from the committee members we may follow up with you. Thank you so much for your time this morning and we appreciate your attendance and coming in.

**ROWE, Mr Geoff, Chief Executive Officer, Queensland Aged and Disability Advocacy Inc.**

**Mr Rowe:** Thank you for the opportunity to address the committee this morning. My apologies for the delay in forwarding our submission. It is coming, and I suppose it reflects the busyness of the organisation and the small amount of resources that we have to invest in this work and the busyness of our staff that are currently working in that area.

To give you a very brief overview, QADA is a Queensland based organisation that operates out of Brisbane but has seven regional offices across the state. We provide individual advocacy support to older people who are accessing the aged care system or seeking to access the aged care system as well as people who are using the community care system. The bulk of our clients are the frail aged and perhaps not the mainstream seniors that the broader community talks about in matters like this.

To give you an idea of scope, we supported 5,000 seniors last year with individual support, information and referral. We provided education and training to 18,000 people across the state and distributed some 160,000 resource materials. We also provide a very small guardianship service. That service provided support to around 200 people in Queensland in the last year who are subject or are likely to be subject to guardianship and administration orders. We also supported 100 people through the QCAT process in guardianship.

I did ask the broader staff that we have just how much of our business focuses on the issue of financial abuse of older people, and the estimate is that about 10 to 15 per cent of the people that we see identify that as an issue for them. In broad terms I wanted to talk about financial abuse as it relates to people who are accessing the aged care system, the abuse that occurs by family and friends, including within the context of the enduring powers of attorney which is brought about by people's lack of understanding of the EPOAs, and also financial abuse from scams, although certainly we do not see the sorts of issues that the previous presenter identified.

I would also like to just highlight the needs of Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds, because the issues that impact on those two populations are significantly amplified on those experienced by the mainstream.

We will provide more detail in our formal submission, but there are currently gaps in the support and advice that is available to assist seniors with their independent financial decision-making. We are not aware of any education services in Queensland specifically targeted to older people that would assist them to build their skills and knowledge in relation to financial decision-making. We often have contact with clients who are seeking or who would benefit from a referral to such a service, and often the context is that the older person's capacity to manage their finances is being called into question. That might be because the elder person is having difficulty managing debt, has suffered financial detriment due to a scam or a granny flat arrangement, or that the money is being used in a way that others in their family believe is unwise, and that can include loaning or giving away money to another person.

We often see older people who have lost a partner and who have never had the responsibility for managing the finances. Very much with the older population where we are talking about couples, it is generally the husband or the wife who has been responsible for that and so suddenly, upon the death of a partner people, are confronted with something that they have had no exposure to. We certainly recommend the developing of funding for education programs in that area that are tailored towards older people and the financial decisions that they make and that the committee, in considering that, might want to look at the example of some of the financial literacy tools for older income women which have been developed in Canada and has come out of the work by the Canadian Centre for Elder Law, and we will provide details of that in our submission. Interestingly, one of the programs or one of the training packages they have utilises peer education to increase the financial literacy of older adults. Perhaps touching a little bit on the previous presenter's comments, when you are talking about older people they want to talk to someone that they trust, that they understand and that has lived some of the experience.

As you may be aware, there are huge reforms happening within the aged care system at the moment. Older Queenslanders can face extremely complex financial decisions relating to entry into residential aged care and understanding the new CDC or consumer directed care home care package contracts and agreements. The complexities of these decisions often require older people to access legal and/or financial advice, and where appropriate legal and professional services are not accessible, the elder person's ability to make decisions in their legal and financial interest is undermined. I guess some of the examples that we are seeing, putting that into context, are within

the consumer directed care packages. Some organisations take up to 46 per cent of the funding package for administration for case management fees, and so the individual is left with just over half of their package to actually buy the support that they need. So we are seeing that services are being reduced to people. I am aware that is a Commonwealth responsibility and perhaps outside the jurisdiction of the committee, but I guess I am raising this matter because as older people need to be educated, they need to understand what are fair and reasonable charges. These are matters that we as an organisation have taken and are taking up with the federal minister.

One of the other comments that was made by my staff in relation to the changes to the aged care reform that we are seeing is that because of the huge bonds that are required under the new arrangements, we are seeing families who are offering—demanding, requiring—that they continue to provide for their father or mother rather than going into aged care. This is not necessarily reflecting the will of that individual, but more the desire of the family member not to lose their inheritance to the aged care system. Potentially over time that is an issue that is going to increase.

The other matter I wanted to touch on was substitute decision-making. As you are aware, it is often used to respond to seniors requiring financial protection. From QADA's perspective, it is often an inadequate response arising from a lack of other appropriate supports and often very heavy-handed. The scenario that regularly arises in our guardianship casework is where an older person is having some difficulty managing their financial affairs and would benefit from specifically targeted education support. Those with concerns in relation to the adult will often make an application to QCAT for the appointment of an administrator to make decisions on the adult's behalf. Financial protection through a substitute decision-maker then comes at the expense of the client's right to make their own decisions and to be supported through appropriate programs and education. The financial protection through a substitute decision-maker also often occurs after financial exploitation has already occurred and does not necessarily lead to the older person's financial loss being redressed.

One of the matters I wanted to highlight was in relation to financial abuse of an older person by a family member or someone close to them or by their EPOA. It is a matter that often does not take the interest of police, and certainly the likelihood of that person getting their money back in any shape or form does not occur. I use the example that for me as an employer, if I have a staff member who is stealing money from the organisation I can go to the police and the police will follow it through. They can be charged and they can be asked to make restitution. That is not our experience in relation to family matters.

Touching on scams, our experience with the cohort that we see is not one of cyber scams; it is one of the door-to-door salesmen who turn up on people's doors who sell them products that they do not want. I guess one of the recurring themes that we see is the expensive bed that is going to make your life easier and that costs \$4,000 to \$5,000. People sign up and buy something that is worth a lot more than it really is worth, so it is that vulnerability.

My closing comments, bearing in mind the time: older people need the opportunity to talk through their financial issues. They need advice sessions rather than just information and referral, which is what exists at the moment. Our current system needs to educate and support rather than adopt a legal response which disempowers the individual. Our current system focuses on doing to or for rather than with. We need supported decision-making rather than substitute decision-making; systems that promote the older person to make the decisions that they can make. I suppose the contact that we have around EPOAs is where, with the lack of understanding about what it means to have an EPOA, people really abuse it. They make all of the decisions for the individual and do not encourage the individual. We often see people disempowered to the point where they cannot access their own money. We also need a register of EPOAs so that it is easy to validate a person's status, because at the moment it is often just taken as word that that person is the attorney responsible.

**CHAIR:** Are there any particular trends amongst the people that contact and use your service that you are noticing?

**Mr Rowe:** I suppose the biggest trend that we are seeing is around complexity of the systems that they are having to deal with and their inability to. We are seeing an increasing number of situations where a person has an enduring power of attorney and that attorney arrangement is being abused. I do not know whether it is purposefully. I guess our experience with some attorneys is that they think they are doing the right thing, but there is not a lot of training. It is easy to sign up and become one, but no-one gives you the skills to actually do it and to understand the implications of what you signed up for. So I suppose they are things that I would like to see you pick up.

**Mr McEACHAN:** Just picking up on the enduring power of attorney, to me reading through it it seems to be quite a low bar to be granted that power over someone's health and finances. Is there a possibility that we could look at raising that bar through having education or a form of a test of some



kind to really look at the suitability of people taking on that role, and would a consequence of that be more people going into the care of the Public Trustee and would that be a better outcome for some people?

**Mr Rowe:** My initial comment is that I think we jump into an EPOA arrangement or a public trust arrangement almost as the default position as the first place we go rather than saying, ‘What is the least restrictive alternative that is available? Can we support someone for a short time so that they skill up and are able to manage their own affairs? Can we walk side by side with them until they get to that point?’ But what we seem to do is say, ‘They are at risk; therefore, we will provide this very heavy-handed intervention.’ We also see people, who are subject to an EPOA because of an accident or because of a stroke, and they actually improve and they get their cognition and abilities back. To get that EPOA removed or the public trust removed and out of their life is quite a difficult process to go through. I guess while I am saying perhaps the bar should be higher before we jump in there, the bar to jump out perhaps should be a little bit lower or it should be easier for people if their circumstances change so that they are able to get out of those circumstances.

**Mr McEACHAN:** The seriousness of getting it wrong with enduring power of attorney is if elders in this position suffer total financial loss with very little hope of recovering of the money and almost no capacity to earn money to restore their financial position, they are left in a very vulnerable position.

**Mr Rowe:** I absolutely agree. I guess that is why I am talking about the training of EPOAs and the capacity of an individual to understand what it means to have an attorney involved in their life. We even see it with some of the aged care service providers where an attorney says, ‘my mother’, ‘my father’, ‘this person, as their attorney I am saying they are not to get any phone calls, they are only to get \$20 a week spending money’, and that is not challenged. It is not challenged about what is fair and what is reasonable. People accept that the attorney has spoken and, therefore, what the attorney says is god, but it is actually not like that.

We need arrangements that, in the first instance, look at using the skills that people have; in the second, it should be that least restrictive alternative. I talked about assisted decision making rather than substitute decision making. How do we assist a person to make decisions about their life, rather than replacing their decision making capacity? It might be interesting for the committee to also look within the disability sector at some of the work that has occurred there around people with a cognitive impairment. The systems that support them, whether it is the Public Trustee or the Office of the Public Guardian, are the same systems. The issue is lack of cognition. Whatever recommendations that you are likely to make as a committee will impact on a huge population of people with a disability, as well. It is something to keep in mind.

**CHAIR:** I have one last question: you mentioned reversing a power of attorney if somebody does improve or no longer requires it. Do you have any data around how often that happens or does not happen?

**Mr Rowe:** Not off the top of my head. I am happy to take that on notice and come back to you. As an organisation, we have just put out some promotional material. One of the videos that we use features a woman who had a car accident and acquired a brain injury. Twelve or 18 months in, even though the order was long term, we were able to go back and support her through the QCAT process and get that back. It is something that does happen, but it is often difficult. I am happy to get some information for you.

**CHAIR:** That would be great, thank you. Thank you so much for your time this morning. If the committee has any further questions, we will be in contact with you. Thank you again for your time.

**CAMPION, Ms Vivienne, Manager, Seniors Legal and Support Service, Caxton Legal Service Inc.**

**MACKIE, Ms Kirsty, Coordinating Solicitor, Seniors Legal and Support Service, Caxton Legal Service Inc.**

**CHAIR:** This morning we have Ms Vivienne Campion and Ms Kirsty Mackie from Caxton Legal Service. I invite you to make a brief opening statement. We have received your submission and have had time to read that, thank you. Could you provide an overview and then we will ask you some questions?

**Ms Campion:** Thank you very much for the opportunity to present to the committee. Again, we must apologise for the lateness of the submission. We pulled out all stops to get it in yesterday. I think, as will be apparent from our submission, we do highlight the fact that concerns have been present for many years and addressed in other documents referred to in our submission, which have outlined some of the pressing issues for seniors and financial vulnerability in Queensland. Our focus in our service, of course, is elder abuse. An enormous amount of the work that we do is actually around financial elder abuse. In fact, this morning I pulled some statistics and, for the past two years, 47 per cent of all the case work that we do is financial abuse. I would like to say that anecdotally it feels like 90 per cent and I am not convinced that it is not. I think it just may be a feature of the way our material gets recorded for Commonwealth purposes. We use a particular data recording system. It certainly feels that almost every case we do is financial abuse.

There are five SLASS services altogether across Queensland in Cairns, Townsville, Hervey Bay, ours in Brisbane and Toowoomba, which also covers Ipswich, but of course that leaves large sections of Queensland and rural remote areas that do not have a service like ours. I would like to say up-front that we do take calls from all those further-out areas and we do as much as we can by phone.

Bearing in mind the urgent nature of the rapid ageing of the population, as well as the current concerns about the costs of aged pensions and superannuation concessions, which I completely realise are federal matters, the implications for financial abuse of Queenslanders also carry health implications because invariably we find with our clients that there is a strong connection between loss of health and the onset of mental health issues such as anxiety and depression when there has been financial abuse. One of the reasons for that is that financial abuse is very seldom a clear-cut dynamic: bingo! X, Y and Z happens and the older person loses their money. There is usually a whole pattern of behaviour that leads up to it, which ranges across a number of forms of abuse. The chief ones are psychological and social abuse, which rank behind financial abuse prevalence, which frequently coincide. It is very seldom just financial abuse; almost never. It is almost always with a pattern of other forms of abuse and, in fact, I think that complements what Mr Rowe was saying about some of their clients at QADAI.

There are certainly many situations in which older people are abused by non-family members such as, I hate to say it, providers of services, aged care services and paid carers. It can occasionally be professionals—accountants, lawyers and so forth—who are responsible. Tragically, by far and away the greatest financial abusers of older people are their adult children. At the moment it appears that, as far as the statistics we have go—and this has actually been anecdotally our experience for the past several years—adult sons and daughters pretty much are even-steven. The adult sons might be a little bit ahead.

The way in which this is usually played out for older people—and again this is something that Mr Rowe referred to—is through social isolation. This is absolutely key: getting that older person away from other supportive and genuinely caring family members, cutting off their friend network, their social activities. We have certainly had many clients where their phones have been confiscated or removed, so there is no way for that older adult to get access to the kinds of supports that would assist them. Those, of course, are the situations that make it very difficult for us to get involved. We must contact the older person and the possibilities we have to help, if we cannot contact them, are actually very limited. It may be then through the police to do a welfare check, just so that we know that they are still alive and well.

One factor that has come out in research that I know has just become available is the sense of entitlement of adult children. We all may be aware of things that we read in the paper that adult children have an expectation of inheritance, but it seems that this is actually a very, very strong feature and it is certainly a characteristic of the work that we see. The supposition is, 'Well, mum's old now anyway; what's she going to do with it?' 'I really need it; my business is failing.' 'I am in a new

relationship; I have kids from my last relationship to support.' You add into that mix possible mental health issues on the part of the adult child, gambling problems and addiction problems, and you tend to have a fairly wide range of the kinds of things that might be happening in families.

The consequences of financial abuse can be absolutely devastating. We have seen clients lose their homes and, in cases like that, it is because we have been involved too late and the process is too far down the track for the situation to be retrieved. I am very glad to say that we have also been in a position of helping save clients' homes. Some of the key problems that we have are clients making transfers of their property to adult sons or daughters while they are under pressure, while they are ill. I think we provided a case study where a client had been suffering from cancer and had been removed from the hospital in order to go and attend a lawyer and basically transfer the property, agree to a mortgage and so forth. Those are the situations in which it can happen.

We know that education is a massive key. I think we indicated in the submission that we are very well aware that, in the kind of clientele that we have, they are going to be financially disadvantaged. Basically it is unlikely we would see clients who had fairly robust means, because they could then afford to get private advice elsewhere. However, I would make an exception to that by saying that occasionally we have clients with substantial means, but they have been deprived of all of them as a result of financial abuse and currently have nothing. That can happen, too.

Education is the key. Financial literacy is particularly lacking in certain kinds of older people, which I think Mr Rowe indicated too: clients for whom English is a second language; older women, for cultural reasons and again I think that has been mentioned. If they are in that group particularly of the older old—80 to 85 plus—often they have grown up with engendered relationships where they did not take part or they were not allowed to take part or it was assumed that they would never take part in financial decision making. Therefore, actually requiring them suddenly to acquire this literacy is going to be hard work. Financial literacy is desperately needed and certainly we have suggested ways in which that might be done.

I do not want to take up too much more time. I was very interested in what Mr Rowe had to say about substitute and supported decision making. We have a very passionate belief in supported decision making. We have very strong concerns about the way in which substituted decision making is often used. That is also around the way enduring powers of attorney are abused, which they frequently are. We regard them as a licence to steal. We say that knowing that there are many fine families out there whose children would always do the right thing and for whom, if they are the attorneys, there is going to be no question of bad behaviour. Unfortunately, the nature of our work is that we see the bad eggs and we see the terrible rip-offs that occur as a result of abuse of enduring powers.

We do believe that protections need to be strengthened by a greater awareness of the problems of financial abuse. It needs to be done on a number of levels by community awareness campaigns. We have suggested the improvement of financial counselling services, which I think are critical, and Kirsty's proposal for family-elder mediation, which is a very good proactive, protective mechanism. However, there is no doubt generally that an aware and educated community is a really positive step towards achieving some of these aims. What we really want to underline is that the problem is massive. It is highly underreported for reasons of shame, embarrassment, humiliation. I cannot tell you how often we have actually had clients say to us, 'I can't believe my child would do this to me. I am so ashamed. I must have been a terrible parent.' That is at the heart of what you are dealing with, and the difficulty of getting this matter highlighted and into the public arena. Thank you very much.

**CHAIR:** Thank you. Ms Mackie, is there anything that you would like to add?

**Ms Mackie:** In terms of the barriers to reporting, and Vivienne has referred to it, one of them is the fear of losing their home, because they are threatened with, 'We'll put you into a home'. That is a big threat that our clients get and it takes place in the family environment. They are ashamed, as Vivienne just said. South Australia, in conjunction with the Public Trustee and their adult guardian, has an elder mediation pilot, which I believe is still running. It is a really interesting model. I think it would be worthwhile trialling it.

I understand dispute resolution from the department of justice here. They have their mediation and we refer a lot of our clients to their dispute resolution. I think it would be quite worthwhile to investigate—and it is one of our recommendations—a specific elder mediation component of the dispute resolution. They have had some good results. I understand that it is in conjunction with a couple of the universities down there and they are very focused on the outcome and empowering the older person. So it is not so much that the older person is put in a room and pitted against a table of

people; it is a collaborative process and it is something that everyone is educated. Even people who were skating on thin ice in terms of potentially misusing powers of attorney, they are educated to think, ‘Oh, I thought it was okay to pay for my cruise out of mum’s money,’ or ‘I thought it was okay to pay my rates because I’m a bit short and I’ve got access to mum’s internet banking.’ People do that and they think that it is okay and then they get told that it is not and they go, ‘Oh, okay.’ So it is a forum for education and it is a forum to prevent any further escalation. It keeps it out of the courts, it keeps it out of the tribunals, because our clients run a mile from those courts. We have great difficulty convincing people to go to court. I am in there maybe once, twice a month if I am lucky and it is all domestic violence related.

On that point—it is a good segue—domestic violence legislation we find, in terms of the definition of ‘relevant relationship’ misses out a key component in what we see in that paid service providers are second in ranking in the abusers of our clients. So it is sons and daughters—and it is a bit of a race between sons and daughters; sometimes it is more sons and sometimes it is more daughters. But the second significantly is paid service providers who are abusing the clients. It is not covered in a ‘relevant relationship’. It is not an informal care relationship. So we find that we cannot get in under financial abuse, which was a great addition to the new legislation. We can get in under financial abuse, but we have no relevant relationship. So we would be really interested in having that reconsidered, considering that the statistics are showing that the service providers are turning into No. 2 for the perpetrators.

In saying that, statistics are very hard to come by. One in four is underreported. Like our first presenter represented, older people are loath to make a complaint and the second problem in terms of statistics is that we have not had a decent prevalence study that has been funded, which is something that we would also be banging the drum about here, too. I think that covers our recommendations and probably puts a bit more perspective around it. Thank you very much.

**CHAIR:** Okay. Are there any questions from any of the committee members?

**Mr McARDLE:** You mentioned a study and that has been raised before in other papers as well. Can you define the type of study that you are talking about, who it would cover, how long it would take, and perhaps a model somewhere overseas or even interstate that has been looked at for this sort of study?

**Ms Mackie:** There are plenty of models. I might defer to Vivienne here, because she is our research guru. South Australia is doing some excellent work in terms of these prevalence studies, but Canada is really the worldwide leader in these studies. Did you want to say anything?

**Ms Champion:** I think there are quite a wide range of models around. The UK did one in about 2006. Ireland did one in 2009. There are many from the US, but one of the problems that we have with them is around definitions. There is a lot of murkiness around the definition of not only elder abuse but financial abuse. Just a quick example of how that can come about is that we have a very strong view at SLASS that domestic violence as intimate partner violence is not elder abuse. Unfortunately, it frequently gets treated like that in that they might be in a long-term relationship, there might be a history of domestic violence, which somehow mysteriously ceases at the age of 50, reappears at the age of 60 and it is elder abuse. But it is not; it is still domestic violence. Even I think in the Canadian studies there is some difficulty around the way they define elder abuse. They tend to include spousal violence in with it.

I think that in Queensland there are a number of excellent researchers who are ready to look at how we set up the parameters for a prevalence study. As I say, there are models available. I am not aware that any state in Australia so far actually has one, but there are certainly states that are further along the track than we seem to be.

**CHAIR:** Okay. Thank you. Thank you both for your time this morning. If the committee has any further questions, we will be in touch with you. Thank you for your submission and for your appearance today.

**MARTIN, Mr Kevin, Public Guardian, Office of the Public Guardian**

**Mr McARDLE:** Can I just make a disclosure? I know Mr Martin on a personal basis as well. So I just make the committee aware of that fact.

**Ms LEAHY:** I have to make that disclosure as well.

**Mr Martin:** And I know Mr Pyne from many, many years ago.

**Ms LEAHY:** I have to make that disclosure as well. I know Mr Martin as well.

**CHAIR:** As I have said to previous witnesses, we have about 15 minutes. So if you could provide us with an overview and the committee members will ask questions and then we will follow up with you afterwards. Thank you again for your time this morning and I invite you to make an opening statement.

**Mr Martin:** One of the issues that I think the committee needs to take into account when it addresses this issue is the fundamental principles under which Queensland legislation is based and that is that each individual is presumed to have capacity to make their own decisions, accept responsibility for their own decisions and that society intervenes in that decision-making process only when it can be established through appropriate evidence that the person in actual fact lacks the capacity to make the decision. One should not presume that once a person achieves the rank of a senior, whatever that might be—whether it is 65 or 70 years of age—one loses the capacity to make one’s own decisions and one loses the capacity to accept responsibility for that decision. Oftentimes you will get situations where the decisions that a person will make may be decisions that are not accepted by their families and friends—they are quite contrary to community standards et cetera—but at the same time they are decisions that they are properly able to make.

Capacity is a very nebulous concept. Capacity is an issue that needs to be determined on the basis of circumstances, time et cetera. An individual, no matter their age, can have a variety of capacities all at the same time. You may have a capacity to make a decision about what clothing you will wear but lack the capacity to make the decision about whether or not you should engage in a complex financial transaction. So our legislation, our schemes in Queensland, are based upon that fundamental principle and I would suggest to the committee that it would be wrong to move away from that fundamental principle.

What needs to be done, as I have outlined in my submission to the committee, is to focus on the vulnerability of the individual about whom you are concerned. That is a vulnerability that does not depend on age. Vulnerability goes from birth to death. What you should be doing as a committee is focusing upon systems that will protect vulnerable people no matter their age and no matter their characteristics.

My organisation focuses upon the protection of people in two fields: one, children in the child protection system, which is beyond the scope of what this committee is looking at at the moment; and, secondly, the issue of protection of people who lack relevant capacity. Under the Queensland guardianship regime, which was in evolution from the early 1990s, we have mechanisms whereby independent decision tribunals, namely by QCAT, can make determinations as to whether or not a person lacks capacity. If the tribunal makes that decision, then the tribunal can appoint a guardian for personal services and an administrator for financial and property matters. Individuals in Queensland may also make their own decisions to determine who will act for them when they lose capacity by way of advanced health directives and enduring powers of attorney. So long as an individual retains capacity, they may at any time withdraw any AHD or EPOA made in advance. Again, QCAT is a mechanism whereby the question of the operations of those AHDs and EPOAs can be determined.

My office operates an investigation branch whereby anyone who alleges that an adult is lacking in capacity and is, therefore, subject to neglect or abuse can have that neglect or abuse investigated. We investigate an average of 100 to 120 files at any one time. Oftentimes, as previous witnesses have been talking about, those allegations relate to allegations concerning financial abuse under EPOAs. It is a very difficult area to do, because the presumption is that the EPOA is valid until you can prove that the individual has lacked the capacity to withdraw it or you find yourself in a situation where it is alleged that the attorney has failed to carry out their illegal duties under the EPOA.

Attorneys have extremely wide powers as a matter of law. It can at times be a very difficult question to get relevant evidence upon which you can say that the attorney is abusing their power. There is a difference, in my view, between what the community regards as abuse and what the tribunal and the courts would regard as abuse. If you were going to challenge the actions of an attorney you need to get good admissible evidence, even on the balance of probabilities whereby you make an application to the tribunal to remove the attorney.

As part of the investigations, I also have a statutory power. Where I consider that an abuse has occurred, I have the power to suspend the operations of an attorney for a period of up to three months, during which time we conclude investigations and bring the matter before QCAT. QCAT will, in the majority of cases, support the decisions that I make because of the evidence that we are able to produce. There are occasions where QCAT will find that, when it is all fully considered, the concerns about neglect or abuse are not justified that would justify the removal of the attorney.

I could go on about our powers in relation to protecting other people. We act as guardian for them. We make decisions for them. Many of the comments that Vivienne was making before about the operations of carers and providers are matters of concern to us as an organisation as well. Particularly, when the NDIS comes into being in Queensland, it is a real concern. I want to put on the record that we have real concerns about the quality and standards of protections for vulnerable people that are currently being developed in relation to the NDIS. We have made submissions to strengthen those. Fundamentally, I believe that, with the NDIS, which will apply to a large cohort of the senior population in due course, there needs to be proper, adequate, arm’s length, publicly funded, publicly supported, mechanisms to protect people.

The other thing that I wish to just mention is that, in my submission, I also refer to our community visitor program. Our community visitor program is, in my view, a vital mechanism to protect vulnerable people in institutions and in various care and support processes. They are people from the community who go in, talk to, observe, monitor and see how people in care situations are being protected. In my view, again, it is a vital mechanism in protecting vulnerable people and it is something that I firmly believe needs to be expanded as the NDIS develops. It needs to be expanded into many areas of mental health and other forms of care for people. I will leave it at that and ask the committee if it has any questions.

**Miss BOYD:** Thank you for your submission. I found it very interesting and I have two questions in relation to it. The first question actually goes to the concept of having legislated attorneys—so actually having a mandatory requirement for people to determine who their attorney will be regardless of their age. I would like to gather your view on that because I believe that is happening elsewhere. The second question goes to the matter of education. In your view, what would be the mechanism by which to roll out education programs to people on financial literacy that really ensures that people are informed around their financial decision-making?

**Mr Martin:** I will answer your question in this way. We, and I personally, would encourage every person once they reach the age of 18 years to make enduring instruments that will protect them if they ever lose capacity. People need a will at the age of 18, the age of adulthood. They need in my view an enduring power of attorney to cover the potentiality that they lose capacity, and they need an advance health directive to enable them to determine what healthcare decisions will be made for them should they suffer a terminal or fatal illness. All too often we in our society do not accept that death is inevitable. We tend to ignore it. We also tend to think when we are 18 years of age that we are invincible. I have always argued for the necessity for the government to run a well-funded education program, both as part of the leaving school syndrome and also for the community as a whole, to encourage people to exercise their rights to make those decisions for themselves. If they do not make those decisions for themselves through enduring instruments, they are left with organisations such as mine and the Public Trustee, the statutory organisations, to have to make those decisions, which fundamentally is wrong. Statutory bodies should not be making personal decisions for individuals.

That leads into the other area of education. I think there is an obligation upon the government to try to get a series of community education mechanisms going whereby we encourage people to make these provisions for themselves and encourage people to address the issues that they are inevitably going to face as they age. Again, it comes back to a question of willingness and of course government resources. I know with the Public Trustee and the Elder Abuse Prevention Unit through Elder Abuse Week we do engage in a series of public relations and public education processes. We do not have a lot of resources to do it, but there has been some good work done, particularly in some of the cohorts of the seniors, in encouraging people to address these issues and make these necessary preparations.

I do know in my discussions with the health department that they are encouraging people on admission into the public hospital system to have an enduring power of attorney in place, and that is increasingly becoming possible. We also know through our work with nursing homes et cetera that, as people are introduced into the nursing home area, the nursing homes are in effect not requiring but strongly encouraging the family and the individuals who are going into the nursing home, if they

have capacity, to do enduring powers of attorney and to make AHDs. Unfortunately, of course with nursing homes, often times when you go there you have lost the capacity to make those, but there are many people who do have capacity to make these things.

We have been encouraging through the department to introduce legislative changes to make the making of EPOAs and AHDs a far easier and simpler process than exists at the moment—given that the legislation is a sign of the product of the thoughts of the 1990s and particularly of an oversensitivity about issues of euthanasia, which AHDs were regarded as a precursor to by certain elements when we first introduced them there. So I think it is a question of encouragement on a lifetime basis of people to face their frailties, face the inevitabilities of life and exercise their rights as citizens to make provision in advance to devise solutions which they are happy with. That avoids a lot of the problems that can occur.

**Miss BOYD:** Thank you.

**Mr PYNE:** Mr Martin, could I have your thoughts on the role of advocacy organisations, the adequacy of funding for them and how that may change into the future?

**Mr Martin:** Advocates are a very important element of the overall vulnerable person’s space. Once a person is vulnerable and is characterised as vulnerable, often times you get the situation where they are unable to advocate for themselves. Once you get that situation, then there is a need for someone to speak. If they have good family and friends, the family and friends occupy the role. But, unfortunately, in our society, with the breakdown of the family unit and the multiple relationships which now occur, we are increasingly finding there are an enormous number of people who have no family or friends to be the advocate, to be the supporter. In those situations, there is arguably a very strong case for there to be provision through the community for advocacy services.

One of the problems with the introduction of NDIS is that the current support for advocates in Queensland, which is provided through the disability services department, is in question as the Commonwealth seems to be waxing and waning about the level of support that the NDIS will provide for advocacy services. As best I understand it at the present through their ‘Information, Linkages’ program, they will be providing some funding for general advocacy services. However, at this stage, the advice from the trial sites has been that, when it comes to advocacy for a particular individual, it will not be funded as part of the NDIS funding package, although there has been some shifty footwork done to enable some of those trial sites to have some advocacy services provided to the individuals.

My view is that advocacy is vital. It is a way in which the rights of individuals can be protected. It needs to be a wideranging form of advocacy, from the formal advocacy to the informal advocacy. It needs to be provided by organisations, it needs to be provided by individuals. If we are going to be a society that looks after our vulnerable, we have got to accept the financial responsibility of providing the funding to support that advocacy.

**Mr PYNE:** Thank you.

**CHAIR:** In the interests of time, we need to leave it there. The committee will be in touch with you if we have further questions. Thank you again for your time this morning.

**Mr Martin:** Thank you, Chair.

**TUCKER-EVANS, Mr Mark, Chief Executive Officer, Council on the Ageing**

**CHAIR:** Welcome, Mr Tucker-Evans. Thank you for your time this morning. I invite you to make a brief opening statement and then we will have some questions for you.

**Mr Tucker-Evans:** Thank you for the opportunity to talk with you today. COTA, or Council on the Ageing, is the seniors peak service in Queensland. We actually have been around since 1957; we started out as the Old People's Welfare Council, with a change of language over the years. We work with seniors organisations throughout the state and advocate on the needs, rights and interests of older people. We are particularly working under the World Health Organization's Active Ageing policy framework which recognises that it is health, security and participation that enables people to age actively. We are also advocating for an age-friendly Queensland which looks at eight elements of how states, cities and communities need to support an ageing population. I will not go into details about that, but I thank you very much for the opportunity to talk to the submission that we have made.

Just listening to the Public Advocate, we would certainly support a lot of the things that Mr Martin was communicating to you. We feel that there is a significant role that the state has to play in educating older people around financial decisions. We have made a number of recommendations within our submission. It is important that when people are ageing they get information that is easily understood, and particularly before making some significant decisions in their lives, such as going into retirement villages or aged-care facilities. One of the recommendations that we have made to the committee is to in fact pick up on a service that has been running in the UK for a number of years and that is certainly around providing independent advice around housing decisions and financial decisions. There is also a service that COTA, the Council on the Ageing, in WA provides that is funded by the state government that assists people to make those well-informed decisions.

One of the questions that the panel asked Mr Martin was around community education. One of the things that we have certainly found as an organisation is that older people tend to listen to their peers. COTA runs a community education program based on peer education. We have got some 50 peer educators located throughout the state. We have worked with organisations like beyondblue to raise the awareness of depression and that in fact it is not something to be ashamed of and it can be treated. When you are getting those messages from health professionals, it is still frightening but when you are getting them from your peers then it starts to break down some of those barriers.

One of the things that we have certainly recommended in our submission is that we support a strong community education program funded by the state government. This would take into account educating older people about scams and the like. Unfortunately, as people become much more vulnerable as they age and as they become socially isolated, they are much more vulnerable to scams. I will leave it there with those brief introductions and then respond to your questions.

**CHAIR:** Thank you very much. I will start with one question. You talked about a number of proactive services and we have seen and heard from a lot of reactive services. Do you think we have got the balance right in that area, or do you think there is another way that we should be providing services in both a preventive and reactive way to seniors?

**Mr Tucker-Evans:** We certainly would support a strong community education program. The Queensland Police Service offers a very good advice line around scams and is very active when they hear about scams. Brian Hay is often featured on the news but often that is too late. We really need to get to people to enable them to understand that, unfortunately, there are people out there who want to take advantage of vulnerable people.

**Mr McARDLE:** Thank you, Mark, for your submission. We hear a lot about education, and I accept that, but how do we get to the children because the Caxton Street legal service is saying to us overwhelmingly that it is the children who are causing the problem. As people age, they rely upon their children. Do we educate the children as well as the parent? Secondly, Mr McEachan raised the issues about powers of attorney. I can buy one or pick one up on the internet. I can buy one in a newsagent. I do not need a qualification to sign one. Do we need strengthening around those issues to explain what the document really means to the older person? More importantly, people who are given the power under the power of attorney often have no idea of the power they have got and they tend to use that in a manner that is not to the advantage of the parent or the older person. So there are two questions—one about the power of attorney itself and the other about the first point that I raised.

**Mr Tucker-Evans:** I certainly agree with the Public Guardian about the need to educate people much younger. We need to start to educate people around the age of 18 that they need to have those instruments in place, such as wills and powers of attorney. It is part of an overall community education program that we need to work. Firstly we talk to the people who are experiencing elder abuse and



then sometimes we actually get to talk to the children and the children, in fact, do not know that they are causing elder abuse at all. This actually comes into a much broader community education program around ageing. Often what we hear from talking to consumers is, ‘Well, of course mum and dad are ageing and we need money to put our kids through private school’. They are not necessarily seeing that as financial abuse. They do not know that, in fact, their parents are going without to actually help their grandchildren. We need a community education program to say that people are living longer, they need to manage their finances over a much longer period and we need to be educating people that it is unlikely in generations to come that they are going to inherit their mum’s or dad’s house, because, in fact, the equity in those houses is going to be needed to care for them in their older age.

This is a very broad community education program that we are talking about. I am a baby boomer and we have grown up with the expectation that at the end of our parents’ lives we are going to get this financial balloon. In fact, many people have planned their own retirement based on income from their parent. That is not going to be the case any longer. The ageing of the population is not a burden, but it is a very different world that we are going to be living in. As such, we need to educate and we need to start educating at a much younger age.

**Mr McARDLE:** And the power of attorney issue and education: what I am signing, what the attorney has to do?

**Mr Tucker-Evans:** That is absolutely part of it. People need to understand what that entails, both when you are signing it as the person whose power of attorney it is, but also what responsibilities you are taking on when you are being handed the power of attorney.

**Mr McARDLE:** Thank you.

**CHAIR:** I have one quick question: in terms of the current services available around detection of financial exploitation, do you think there are enough of those services or are the ones that are there easily accessible by seniors?

**Mr Tucker-Evans:** We are concerned that both at the state and federal levels there has been a cutback on financial counsellors at a time when people—not just older people, but particularly older people—are becoming much more vulnerable. We will see some major changes that will come into effect in aged care on 1 July, where people will need to make co-payments. In some parts of Queensland, that has not been the case. Some charities and certainly some government services in the past have provided those free of charge. Already we are hearing that some older people are not taking up those services because they cannot afford them. There is really a need for some independent financial counselling services. There has been a growth industry in for-profit financial counselling services, but we are hearing fees of \$5,000 for some of that advice. Many older people will not be able to afford that. Some support for financial counselling would be very welcome.

**CHAIR:** Thank you for your time this morning. If the committee has any other questions that we think of, we will certainly ask them of you or provide them in writing to you.

**Mr Tucker Evans:** Thanks very much.

**CHAIR:** Thanks again for your time this morning.

## **CROFTON, Mr Mark, Acting Public Trustee, the Public Trustee**

**CHAIR:** I invite Mr Mark Crofton, Public Trustee, to brief the committee. My apologies for skipping ahead. I read 'Mark' and my eyes went to the next person. My apologies for that. Thank you for attending this morning. I invite you to make a brief opening statement.

**Mr Crofton:** Thanks for the opportunity to appear before the committee. If I may, I will speak to the submission, but paraphrase it rather than read it verbatim. What we were attempting to do in the submission was to paint a picture of the role and the function of the office. The submission first makes some observations about a demographic survey, that is, in terms of the nature and dimensions of ageing within Queensland, what is the committee to look at? I made the point that I am sure the committee has, in fact, seen those statistics. We were fortunate at the office that we retained the government statistician to break down by postcode the ageing demographics of Queensland. Broadly, in 2011 there were 586,000 people aged over 65 and that is expected to grow to 1.4 million in 25 years. The committee has a wealth of information sufficient to observe that the Australian bureau notes that currently 13 per cent of Australia's population is aged over 65 and that is going to rise to 23 per cent in 50 years. That is a fundamental and significant shift.

In terms of the committee's particular focus and attention, which from the Public Trustee's point of view has interest in respect of financial elder abuse, I thought it might be useful to also give the committee some insight into some of the academic research done on the prevalence of financial abuse. The leading Australian study was conducted by Monash University in 2015. They put elder abuse broadly at between 0.5 and five per cent of those aged over 65 who suffer some form of elder abuse. United States studies take it to as high as 10 per cent and in the UK it is roughly the same, between two and five per cent. However, all of those studies do observe that one of the characteristics of elder abuse is that the majority of cases go under reported, so those statistics are, in fact, very conservative in respect of prevalence.

Third, the issue that my office sees frequently is the direct impact of financial elder abuse on seniors in particular suffering dementia-type illnesses, in the main. It ought not be forgotten, in my respectful view, that the impact is immediate and profound for the senior concerned, because seniors almost by definition lack the capacity to re-establish themselves if they suffer a malady such as financial abuse. All of the studies suggest, also, that there is a profound effect upon the psychology and the health of the adult concerned when elder abuse and, in particular, financial abuse occurs. Frequently, it is not just a loss of money. Even though there might be equivocal or lost capacity in the legal context, great pain is suffered psychologically by those adults. Moving from that, of course, the family and the community is impacted. There is not a lot of research in Australia. The last 1996 study in New South Wales suggested the impact of financial elder abuse in that state—and remember, that is almost two decades ago now—was \$300 million.

The state is ageing, the prevalence of elder abuse is significant and the impacts are great. For its part, the Public Trustee Office has a number of roles to play, but is by no means the primary actor in respect of these types of matters. First, the office offers a will-making service and an enduring power of attorney service. Kevin Martin, the Public Guardian, offered a view as to the importance of it and that view is shared by the office. Second, the office provides advisory services and community presentations in terms of future planning for seniors on request, and the requests are frequent. Third, the office, of course, acts as a financial administrator when appointed by QCAT—sometimes by the courts, but primarily QCAT—to look after the property of adults, including seniors, who have lost decision-making capacity. There are about 8,300 adults for whom we act and a little over 3,200 of those people are aged over 60 presently. Some of them have had money or property stolen from them, so the role includes investigating those actions and activities, sometimes by attorneys as we have just heard discussed, and sometimes by others. It is the case statistically that family are more likely to commit financial elder abuse. The Monash University studies I referred to suggest that 23 per cent of financial abuse occurs by adult sons, followed closely by adult daughters. That is just simply the statistical research; the reality. The office's function and role then is to investigate and sometimes civilly litigate to recover property and money.

I have identified a couple of the more high-profile cases I have been involved in. They are not particularly unique other than there was lots of money involved—millions of dollars. We have many hundreds of others each year where the money or property misappropriated, we say, is much more modest and perhaps the financial imperative is such that litigation cannot be pursued to its ultimate. Those are provided only by way of illustration, rather than anything else. That is the role of the office.

The final part of the submission deals with some of the interesting things that have occurred overseas and in the Australian jurisdiction in respect of combatting elder abuse. The first observation

is obviously that education campaigns are pivotal, but there are different kinds of education campaigns that can be run and have been run. Second, there are different approaches to attorneys, as Mr McArdle was questioning before, both what is in the power of attorney and what kind of oversight occurs in respect of those who are appointed attorneys by seniors whilst they had capacity. There are different mechanisms to prudentially oversight substitute decision makers appointed by the state. There are issues about whether there ought be mandatory reporting of elder abuse, like other types of abuse. Some jurisdictions do require it, particularly in the United States and California is the most outstanding example in that respect. There are a range of other issues in terms of the civil law and the criminal law that have been looked at in Queensland by the Queensland Law Reform Commission, most recently in 2010. If the committee is content, I am happy to take questions.

**CHAIR:** Thank you. Are there questions from members?

**Mr McARDLE:** You referred to the registration of powers of attorney. Was that debated a few years ago in Queensland?

**Mr Crofton:** Yes.

**Mr McARDLE:** I cannot recall the outcome of that. There was a reason why it did not go ahead, I think?

**Mr Crofton:** Yes. It was a matter referred to the Queensland Law Reform Commission and it reported in report No. 67 of 2010. They recommended against the registration of powers of attorney. There is a cost and benefit part of registration. In Australia, you do not need to register a power of attorney but for land transactions in Queensland. Tasmania does have compulsory registration of powers of attorney and in England every lasting power of attorney—which is the analogue in the UK of our enduring power of attorney—must be registered.

In terms of the issue of whether the registration of itself prevents elder abuse, respectfully, I think the evidence is equivocal. The argument is simply this, as I understand it: if an attorney is aware that there is a register of any kind identifying them as the decision maker for another, they are less likely to commit financial abuse. There are some variations on that theme. In the United Kingdom you can appoint another person to be told of the activation of the power of attorney so that they oversight the attorney; that is the intention. However, in Queensland there was a debate. The Queensland Law Reform Commission recommended against it. The Victorian Law Reform Commission, interestingly, in a report given not later than, I think, within 12 months of the Queensland commission, recommended an online registration system for powers of attorney. The Australian Bankers' Association similarly called for a registration system. As I understand their arguments, they have a difficulty knowing who has power to make decisions. In short, yes, there was a debate and it was answered by the Queensland Law Reform Commission.

**Mr McARDLE:** There was also a debate, I thought, at one point of time on having uniform powers of attorney across the nation.

**Mr Crofton:** Yes.

**Mr McARDLE:** It did not go ahead, I do not think?

**Mr Crofton:** No.

**Mr McARDLE:** For the same reason? There was some sort of inability to reach agreement?

**Mr Crofton:** I suspect the reason is the elegant nature of the federal system. It was most recently discussed at AGAC, the Australian Guardianship and Administration Council, at which all public trustees, public guardians and members of tribunals who sit on this matter debated it earlier this year and again last year. There is some difficulty getting uniform positions on documents and legislation.

**Mr PYNE:** In terms of registration of instruments, I have taken the time to prepare an advance health directive. It is in the filing cabinet at home. How confident can we be in the emotional turmoil of a tragic accident resulting in loss of capacity that people will know about those instruments? Is there a way of registering those instruments so people will know about them?

**Mr Crofton:** The answer is no. This is probably a more powerful argument for a registration system than to combat elder abuse in my respectful opinion—and, that is, it is difficult to know. This is what the Australian Bankers' Association complain of. It is difficult to know that an instrument exists or which is the last instrument. If I could assist, the Public Trust Office will hold your AHD in safe custody and maintains a formal register to that effect, and it is free of charge.

**Mr PYNE:** Excellent.

**CHAIR:** What is your experience in terms of the general level of awareness amongst stakeholders in this area—professionals, health professionals, lawyers, bankers, carers?

**Mr Crofton:** Perhaps ‘concerning’ would be the word.

**CHAIR:** Concerning in terms of experiencing, identifying, being aware of or advocating?

**Mr Crofton:** To be fair, the majority of those disciplines do not, as their core, deal with instruments like enduring powers of attorney. They are incidental. One of the effects of the Aged Care Act that was talked about before is that increasingly before somebody is released after an ACAT assessment an aged-care home will require, if somebody lacks capacity, an enduring power of attorney to be signed. If it is not, they have trouble. They have to go to QCAT. Therefore, people end up staying in hospitals presently.

For the social worker at the hospital, an enduring power of attorney is an instrument and they are not expected as part of their profession or their activities necessarily to fully understand its implications. That is probably fair. Lawyers either practice in the area or they do not. Sometimes there are some equivocal views on what powers of attorney can and cannot do. So even lawyers sometimes do not have the specialised level of knowledge that sometimes they are called upon to have to provide advice, because it is all very situational.

The general community probably it is fair to say have a general view as to what an enduring power of attorney is, but the nuance discussions about perhaps having more than one attorney—because your son is great but maybe his brother might also be there; it serves a useful purpose in terms of decision-making but it is a very useful device to prevent financial abuse, for example—I think are generally not had.

**Ms LEAHY:** Can I clarify with you, Mr Crofton, in relation to the services of the Public Trustee, that you do allow a voluntary registration of AHDs and EPOAs?

**Mr Crofton:** Perhaps that is an overstatement of the system. By virtue of the Public Trustee Act 1978, anybody can deposit a will or a document with the Public Trust Office. When you do so we do not register it but we, of course, have an information system which records its existence—where it is, who made it and who the attorney is—if you ask. It is not a registration system. It has no force beyond its recognition in a statute that we can take documents. It is quite different from a registration system. The point I was attempting to make is that, if you are concerned about others knowing of the existence of the power of attorney or the will, frequently people will ask our office whether we hold one on behalf of others and we are able to tell them whether we do or do not, provided they are a proper person to ask.

**Ms LEAHY:** That is the clarification I was trying to get—

**Mr Crofton:** I apologise if I was not clearer.

**Ms LEAHY:**—so that we have a good understanding of what services are currently there.

**Mr McARDLE:** Mark, you referred to the Monash study some years ago now.

**Mr Crofton:** Yes.

**Mr McARDLE:** Is it now time for a new study, do you think, given we have moved ahead and also society has changed, or is that study still current?

**Mr Crofton:** I think any body of evidence which assists a committee such as this and will assist future committees would be helpful, frankly. There is no study or a sense of study that is done in the Queensland context. My expectation would be that the results would not differ greatly from those studies done previously, but it depends. There are many questions which have not been asked in such studies in the Australian context. Why people commit elder financial abuse is a question which has not been focused upon greatly. The Monash University study was a prevalent study. So it was about how many people steal money, how many people commit physical acts of violence, how many people deprive older people of the necessities of life, and is there any difference between ethnic groups.

But the step further would be of interest, I am sure, to policy and lawmakers such as yourselves—that is, how can we stop it and what will resonate? Is it opportunistic or is it carefully planned? Why do people sometimes have an entitlement mentality in respect of taking money? It would be useful to refresh the prevalent survey, but beyond that it would be even more useful to understand why because, armed with the answers or some of the answers to that, the committee could respectfully be better positioned.

**CHAIR:** In your submission you had a recommendation about a separate offence dealing with financial abuse and exploitation. Could you expand on that?

**Mr Crofton:** Yes. If I could clarify, it is not my recommendation; it is a recommendation by the Queensland Law Reform Commission. I think there is a typographical error in that paragraph as well. So the current state of the criminal law is that section 398 and section 408C of the Criminal Code proscribe fraud and stealing. The remark that was made was that there is a likelihood of a greater sentence if you happen to steal or commit fraud as an attorney, for example. The Queensland Law Reform Commission recommended that, if you are in a fiduciary capacity—an attorney or an administrator—you could add that as an aggravated circumstance which would then attract a higher sentence. That was the recommendation, and they went further and postulated about the possibility of a separate offence in respect of elder abuse more generally. The only observations I would make beyond the recommendations of the Queensland Law Reform Commission are two: first, the Victorian Law Reform Commission seized upon or spoke about the same thing and said we should make it a civil crime—that is, a civil penalty; and, second, there are jurisdictions that have a criminal framework particularly for vulnerable adults. So there is a particular statute.

**CHAIR:** If the committee has any further questions, we will be in touch with you with those. But thank you again for your time this morning.

**Mr Crofton:** Thank you.

**CHAIR:** The time allocated for this public hearing has expired. I thank the witnesses for this morning and everyone else who has been here this morning. I declare the briefing closed.

**Committee adjourned at 12.08 pm**