



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

Reference: Older people and the law

FRIDAY, 23 MARCH 2007

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Friday, 23 March 2007

Members: Mr Slipper (*Chairman*), Mr Murphy (*Deputy Chair*), Mr Michael Ferguson, Mrs Hull, Mr Kerr, Mr Melham, Mrs Mirabella, Mr Secker, Mr Kelvin Thomson and Mr Tollner

Members in attendance: Mr Murphy, Mr Slipper and Mr Kelvin Thomson

Terms of reference for the inquiry:

To inquire into and report on:

The adequacy of current legislative regimes in addressing the legal needs of older Australians in the following specific areas:

- Fraud;
- Financial abuse;
- General and enduring 'power of attorney' provisions;
- Family agreements;
- Barriers to older Australians accessing legal services; and
- Discrimination.

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Committee met at 9.33 am

CHAIRMAN (Mr Slipper)—Good morning, ladies and gentlemen. I formally declare open this public hearing of the inquiry of the Standing Committee on Legal and Constitutional Affairs into older people and the law. As you may be aware, the Attorney-General has invited the committee to look into the adequacy of current legislative regimes in addressing the legal needs of older Australians. We have been asked to focus in particular on the areas of fraud, financial abuse, general and enduring power of attorney provisions, family agreements, discrimination and any barriers to older Australians accessing legal services.

This is the first in a series of public hearings for this inquiry and today we will be hearing from four Commonwealth government departments: the Attorney-General's Department, the Department of Health and Ageing, Centrelink and the Financial Literacy Foundation located within Treasury. We will also speak with representatives from Family Services Australia, the Australian Institute of Criminology and the Australian Medical Association. In each of our public hearings we are giving the public the opportunity of participating, and we will have an open forum at the end of the day.

The committee has been particularly impressed with the wide range of submissions. They are not only geographically well spread but also well spread across those groups interested in representing seniors and also many individuals. The topics have included the need for greater legal education services for elderly Australians, greater national oversight, and consistency in many of the areas noted in the terms of reference. Age discrimination and financial abuse of the elderly have the potential to increase as the Australian population ages, and the committee would be particularly interested to receive any comments on these issues and any other issues of relevance.

[9.35 am]

ANDRUSKA, Ms Aurora, Deputy Chief Executive Officer, Stakeholder Relationships, Centrelink

COWAN, Mr Paul Bernard, National Manager, Seniors, Carers and Means Tests Branch, Centrelink

JACOMB, Mr Brendan, National Manager, Legal Services Branch, Centrelink

CHAIRMAN—I welcome today's witnesses, in particular the representatives of Centrelink. The committee no longer requires you to give evidence under oath, but if you do not tell the truth we will still lock you up! But these are proceedings of the parliament. Obviously you have appeared before parliamentary committees before and you are aware of the penalties that extend to those who do not recognise that fact. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament.

The way we usually handle this is to invite one of you—not all of you—to deliver a brief opening statement. We have read your submission and you may like to elaborate on certain aspects of your submission in your opening statement. Mr Murphy, the deputy chairman, and I will then ask you a number of questions. Depending on time, if we do not get through all the questions we might give you some 'homework' questions, in a sense, to take away and answer, because there were certain aspects of your submission which we would like to tease out. Over to you.

Ms Andruska—Chair, we did not actually make a submission—

CHAIRMAN—Sorry, yes.

Ms Andruska—but would you still like us to make a couple of comments?

CHAIRMAN—Take five or 10 minutes if you wish with an opening statement.

Mr Cowan—We did not make a submission because we did not have a specific array of issues to raise with the committee. We are quite happy to help the committee in their investigations and to respond to the invitation that was offered last week. That is why we are here.

CHAIRMAN—We did have something that appeared to us to be a submission.

Mr MURPHY—It was taken from your website and we took that to be your submission. Although it is not your submission, it is on your website, so we will still ask some questions.

Mr Cowan—Feel free. We have an indication of the areas of interest that you have and we are ready to go.

CHAIRMAN—I understand that you supplied a number of public documents to the committee as well, for which we thank you. Given the section of Centrelink that you seem to run and given the ageing of the Australian population, do you see Centrelink as being well placed and well focused on the needs of seniors, particularly as a lot of the abuse of seniors would be from family members and there would be an element of embarrassment on the part of seniors at having to make complaints?

Mr Cowan—It is an issue for us that we recognise. We certainly see ourselves as well placed to manage our program of age pensions and engage with the seniors cohort. There is an issue, though, that we have identified. It is not a major issue numerically with respect to abuse, but we have seen instances of it. We have mechanisms in place through which we identify them and, when we come into contact with those issues, to address them.

Ms Andruska—Generally speaking, in the age pension population we are seeing a shift from five years ago, when 70 per cent of people would have been on the full pension and 30 per cent on partial pension. With the changes to the assets taper rate, we are going to see even more people getting a partial pension and people with more complex arrangements than has been the case in the past.

CHAIRMAN—To what extent do you believe that elder abuse is a problem in our society, particularly given the area of the bureaucracy that you represent? Is it a major problem or is it just something that we ought to take note of?

Mr Cowan—Where it occurs it is a major problem, but we do not see that as affecting the majority of our customers. We do not see much incidence of it. That may mean that we do not see them but they may or may not exist, but where we do come into contact with them we have mechanisms to refer cases to our social workers, who deal with the customers directly and do what they can to refer them to other specialist services or other state based, locally based or Commonwealth based agencies. We do not ignore those cases when we come into contact with them, but it is probably fair to say that, with a large number of our customer group in the age pension group, we are not in regular contact with them in the same way that we would be with Centrelink's working-age customers, who we have on regular two-weekly reporting and we are actively engaged with them.

CHAIRMAN—What you are saying is that Centrelink is largely reactive as far as the seniors community is concerned, rather than proactive?

Mr Cowan—No, I am saying that we react to instances that we see but we are active in our engagement with the seniors community. We have regular correspondence with them. There are various publications where we provide information to people about their entitlements and access to facilities. We have a national older persons reference group that we convene regularly.

CHAIRMAN—Who is on that? What groups are represented?

Mr Cowan—I have gone blank on that. I will be able to provide you with that information, but it is the normal national bodies that represent seniors, including—

CHAIRMAN—Like National Seniors, Pensioners and Superannuants, the Association of Independent Retirees and so on?

Mr Cowan—Yes, and the Alzheimer’s group, as well as people representing disabled older people. It is a broad based group representing the interests of older people. We also have close contacts at the local level with seniors groups through our network of offices and social workers and our network of people whose primary role is to maintain close contact with community agencies.

CHAIRMAN—I am not wanting you to criticise Centrelink but, in a perfect world, if Centrelink were to look at the problem as you see it, is there something more that Centrelink could do—maybe it would have to be further resourced—to nip in the bud what is obviously a growing problem?

Mr Cowan—There is always more that we can do certainly. As you said, there are always resourcing issues. We will be very interested in the findings of this committee, which we will be looking at very closely, to see what sort of guidance that might provide us and our major client agencies in how we should proceed in this area.

CHAIRMAN—Would you mind if we picked your brains, to the extent of maybe asking you to go away from the meeting today and reflect on what Centrelink could do to better improve its services to older Australians? Maybe you could then drop us a line and give us your views on matters that we could consider when making our recommendations.

Mr Cowan—Sure.

Ms Andruska—We are happy to do that. There is a policy difference. We see the majority of working-age Centrelink customers on a fortnightly basis. The older customers, the pension customers, we are not seeing at that level. Most of them are quite happy with that arrangement—they do not have to come in or contact us on a regular basis.

CHAIRMAN—If you wanted to see them fortnightly, the government would get a lot of complaints.

Ms Andruska—Yes. There is a balance in how you treat them. We can have abuse referred to us from state government authorities, our social workers, customer service officers, even our financial information service officers. Any contact that is made where abuse is identified is referred to our social workers. Those complaints come into Mr Jacomb’s branch. To give you a sense of that, he would get probably two to three issues raised per week. You might like to talk a bit about what you do with those complaints.

Mr Jacomb—In being able to provide information, there are issues around the social security law and protected information, and the nominees provision provides a mechanism to provide information. Under the public interest guidelines there is a provision which states:

Relevant information may be disclosed for the purpose of this section if the disclosure is necessary to prevent, or lessen, a threat to the life, health or welfare of a person.

In my branch, two or three times a week we will get a request for information from, say, the equivalent of a state nominee, seeking information because of this issue. We are, through that mechanism, able to provide that information.

CHAIRMAN—What worries me is not what you do when you get a complaint—I am sure that you handle it very professionally—but the complaints that you do not get. That is what we are looking at.

Mr MURPHY—Some of the submissions to the inquiry have raised a concern that Centrelink has a policy of overriding powers of attorney and enduring powers of attorney in favour of own nominee arrangements. What is Centrelink's policy on the recognition of powers of attorney and enduring powers of attorney?

Mr Cowan—We do not seek to override any powers of attorney or any state based arrangements. We do have, though, an arrangement in place under the Social Security Act to establish nominee arrangements for either correspondence or payment. Of course, we take into account current arrangements that are in place—powers of attorney or otherwise—in making that determination. With the variation of arrangements state by state—there is quite a degree of difference—we run a national universal comprehensive welfare system that needs a national consistent method of dealing with issues, and this is one of the issues. The nominee arrangements are specific to and quite explicit in the Social Security Act and, when we are making judgements on establishing those nominee arrangements, we take into account any current arrangement that may exist, such as a power of attorney.

Mr MURPHY—If a person who holds the power of attorney insists on having that power of attorney for one of your clients, you would not challenge that?

Mr Cowan—It is not a matter of insisting; it is a matter of someone seeking to set up a nominee arrangement. A customer seeks to set up a nominee arrangement and we look at who they are seeking to have as a nominee and we look at their circumstances and we make a judgement. In most cases, if someone already has a power of attorney in place—

Mr MURPHY—That suffices.

Mr Cowan—Yes.

Mr MURPHY—I want to run through some questions very quickly and, if necessary, perhaps we can give these to you in writing later, if we run out of time.

Mr Cowan—Yes.

Mr MURPHY—The committee has been advised that the Australian Guardianship and Administration Committee is alarmed that state tribunal orders are not binding on Centrelink. Non-recognition of these orders ultimately further disadvantages those with decision-making disability. What is your response to that issue?

Mr Jacomb—That leads back to the question that Mr Cowan was answering before. In relation to those state and tribunal orders, in my understanding, they are not binding on

Centrelink. However, they are very much taken into account when determining those nominee arrangements. In terms of those orders, it is not the case that they are ignored or there is no recognition of them: it is a factor that is considered under the nominee arrangements.

Mr MURPHY—Some of your documents on the website say that Centrelink is also not obliged to accept a nominee arrangement unless it is in the customer's best interests. How does Centrelink judge, evaluate, assess the best interests?

Mr Cowan—They take a number of factors into account. As I said, in the normal course of events such an arrangement would be sufficient. But there have been cases where it has not been; where someone who may have had a power of attorney may have been found to have not acted in the interests of the customer, and the nominee arrangements can be terminated on our part. It is a rare thing to occur but it can happen. When it says that we are 'not obliged to accept' it means that we are not duty-bound to accept those arrangements as sufficient to establish a nominee arrangement but, in the normal course of events and in general practice, they would be seen as a pretty strong recommendation for establishing a nominee arrangement.

Mr MURPHY—Other Centrelink documents say, 'A payment nominee can be asked to supply records of how the money received was used.' Could you tell the committee how often such a request occurs and under what circumstances?

Mr Cowan—I might have to confirm this later, but as I understand it there is no set schedule for these reviews. This would form part of our ongoing review framework that we have within Centrelink with respect to reviewing people's circumstances so as to ensure that their entitlements are correct. It is just part of our general review framework. I will take that question on notice, if I could, and give you detailed answers on the normal cycle of reviews. We also have the capacity to make exceptions, so if we get information to indicate that perhaps there is something that we need to look at pretty closely, we would initiate such a review. We are not bound to the cycle of reviews.

Mr MURPHY—You might want to take this on notice, too. How does Centrelink monitor potential financial abuse in relation to nominee arrangements involving the elderly? How prevalent is abuse of nominee arrangements? How do these come to light?

Mr Cowan—Not very prevalent. A very small number of cases come to light annually. It is a very large customer group of two million people. Ten per cent of the Australian population are on the age pension and very small numbers would fall into these categories of review. Our monitoring regime is both active and reactive. We would regularly contact the customers, regularly send them out information on what we understand to be their circumstances by way of our customer account, and we also act upon information that we might find outside of our normal process of engagement with customers.

Mr MURPHY—What training does Centrelink give to its staff to detect financial abuse, or potential financial abuse?

Mr Cowan—We have financial experts within our organisation. We have a network of financial information services officers, and their primary focus is to provide financial information to people who are about to become age pension age or age pensioners, and their

nominees. We have experts who can provide that level of assistance. Our people within the network are trained in identifying people who may be under duress or in difficult circumstances, irrespective of the customer group, and we have a network of social workers throughout the country who are experts in dealing with such cases. So we have a number of mechanisms in place where we can identify these issues and then pass them on to experts who can actually provide a remedy and seek to assist.

Ms Andruska—We do profiled reviews. We also have service profiling that we do on a regular basis, but also another area we have is tip-offs. I thought I might mention that to the committee. All of those are potential areas where we might identify the sorts of issues that you are looking for.

Mr MURPHY—I know what you are talking about. I was a fraud investigator myself in a previous life and I relied on tip-offs too.

Ms Andruska—Having said that, we have a business integrity area where we have specifically trained people to do that sort of work. They are not just the run of the mill; they are people who are specifically skilled and trained in that area.

Mr MURPHY—How does Centrelink handle a family agreement in its consideration of elderly customers?

Mr Cowan—We take that into account. It depends what the family agreement involves and whether it is to do with things like gifting. We take those things into account. Again, it depends what it is with respect to. It is a complex issue. If it is with respect to setting up a business or establishing a granny flat or various other arrangements, there are various provisions that need to be taken into account. We look at each case on its merits and make a judgment of the impact on the person's entitlements.

Mr MURPHY—Caxton Legal Centre has noted:

It is the experience of our SAILS' workers that Centrelink can be very difficult to engage in these types of matters—

applications for consideration of the hardship test—

and that the hardship test is applied very rarely.

Would Centrelink comment on the circumstances regarding the hardship test and the application for elderly people, and how would Centrelink respond to the claim by Caxton Legal Centre?

Mr Cowan—They are entitled to their opinion, but generally we are a very receptive organisation and open to contact from individuals and/or agencies who represent their interests. The hardship provisions essentially relate to people who, under the normal arrangements, would not be entitled to assistance on the basis of them having assets but who are in a situation where their assets are not delivering a return. They are not in a position to sell them—such as a house that might be occupied by an invalid relative and they cannot sell the house—and therefore they cannot realise the asset. We look at it in those situations. The hardship provisions are quite restrictive, and the person has to have very little cash, very little income and not be able to

access their assets. I can give you quite detailed information on the actual provisions, but that is generally how it applies.

Mr MURPHY—That is sufficient. Thank you very much.

CHAIRMAN—Thank you very much for attending today. There could be some other questions that we might submit to you, and if you could get back to us we would really appreciate it. If you do, after the hearing today, think of other things you would like to tell us, feel free to contact the secretariat. Thank you very much.

[9.57 am]

O'DEA, Mr John F, Director, Australian Medical Association

YATES, Dr Mark, Federal Councillor, Australian Medical Association; and President, Australian Medical Association, Victoria

CHAIRMAN—On behalf of the committee, I would like to welcome the Australian Medical Association. Do you have any comments to make on the capacity in which you appear?

Dr Yates—Yes. I am here as the deputy chair of the AMA's Care of Older People Committee. I am a practising geriatrician and clinical director of subacute medicine at Ballarat Health Services, where I run and manage a specialist service in complex care of older people, rehabilitation and palliative care medicine and psychogeriatrics. Ballarat Health Services auspices approximately 550 residential aged-care beds, as one of the largest public providers of residential aged care in Victoria.

CHAIRMAN—Are you based in Melbourne?

Dr Yates—No, I live and work in Ballarat. Buninyong is where I live. My other hat, I suppose, is that I am President of AMA Victoria.

CHAIRMAN—You are sort of Victoria's Dr Zelle Hodge.

Dr Yates—I would like to think I could excel to that level. I also sit on the minister's national dementia task force and the PBAC.

CHAIRMAN—The federal minister's?

Dr Yates—Yes.

CHAIRMAN—Thank you very much. Although the committee does not require you to give evidence under oath, these are proceedings of the parliament and there are certain penalties if you do not observe the rules and regulations. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament.

We have received the submission from the Australian Medical Association and we have perused it. We would like you to make a brief opening statement of, say, five minutes and then we will ask you some questions. If we do not get through all the questions we would like to ask you, we might give you some to take away and come back to us with answers on.

Dr Yates—Thank you very much. In opening, I would like in particular to address two specific issues that are highlighted in the AMA's position statement, *Role of the medical practitioner in advance care planning*. Perhaps as a preamble to that, I note that this policy paper emerged in the Care of Older People Committee, which is a committee that is represented by doctors with specific interests in the care and needs of older people. Through the broad AMA

membership, which obviously carries both those with an interest in the care of older people and also others with very broad ethical interests, we have worked through that process. I think it was quite a complex process for the AMA, which now clearly has a policy which supports legally binding advance care planning.

The two or three highlights of this position paper which I think need to be addressed are, firstly, that we look to achieve at least nationally consistent types of policy in relation to advance care planning or guidance, acknowledging of course that this falls within the jurisdictional powers of states and territories. We believe the Australian government can give leadership as to the direction and the thrust of the policy paper.

The second and perhaps more unique piece of policy that surrounds our view around advance care planning is addressed in the letter by Dr Mukesh Haikerwal in the submission, which I will read. It says:

Whilst respecting the role of patient autonomy in the advance care planning process, doctors' clinical independence must be protected in order for them to act in the best interests of their patients, whether following an advance care plan or deciding not to comply if they have reasonable grounds to believe it is inconsistent with good medical practice.

The term 'good medical practice' has already been defined in a number of pieces of legislation, and I would draw attention to the Queensland legislation in relation to advance care planning which defines 'good medical practice'. That is also defined in our policy paper as having regard to the recognised medical standards, practice and procedures of the medical profession in Australia and the recognised ethical standards of the professions in Australia.

We believe that this particular clause is important, for two reasons. Firstly, it protects patients. Secondly, I think it will provide medical practitioners with security. They need to know that they will not be in a position where they are asked, by instrument of law, to act in a way that is not consistent with good standards of medical practice. I think that is a very important position to have in this sort of situation.

The analogy I would draw would be the difficulties we currently face with financial enduring powers of attorney. I note in the Alzheimers Australia paper that they are concerned and are requesting urgent review for protection in some issues of financial enduring powers of attorney. In fact, doctors are independent, non-conflicted members of a healthcare treatment team in relation to the decisions about health care. They do not have a conflict.

There is a patient need, a patient interest which the family would address, but families can be conflicted internally and the individual enduring power of attorney can have other conflict which may affect their ability to address the advance care directive. Secondly, in order to achieve successful advance care planning, the advance care directive needs to be refreshed on a regular basis. That is a time-consuming process and knowledge about changes in medical treatment and changes in the perspective of a patient as healthcare state changes is very difficult.

For instance, I know of a number of older people who have said to me in my rehabilitation service, pre amputation of a leg, 'Doc, just let me go. I'm never going to be any good after I've lost my leg.' If an advance care directive were written to that effect and post the rehabilitation they were back playing bowls, which I have seen in an 80-year-old, we would have lost an

ability. There was a misunderstanding of what the capability is, what is possible. After they have had their amputation, they are very happy, and they remember the conversation.

I think that at some point we have to acknowledge that, and we hope that the community has sufficient faith in the profession to say that as a profession we will attempt to act as an independent arbiter, basing our decisions on evidence not ideology, because if there is an ideological problem with the position that is necessary because of the evidence base then you should hand it over. That is another component of our policy document: when ideologically a doctor feels limited to provide what is being requested by a patient, then they should be transparent about that ideological principle and make it clear to the patient so that patient can choose, or the enduring power of attorney can choose, to seek another opinion or be directed by that practitioner for another opinion.

CHAIRMAN—You said that people ought to have confidence in their medical practitioners, and that is a reasonable statement, but there are good doctors and bad doctors, just like there are good lawyers and bad lawyers, and so on.

Mr MURPHY—Good members of parliament and bad members of parliament.

CHAIRMAN—Indeed. You get rotten apples in every barrel or, even if not a rotten apple, you might get some whose value system might be somewhat different from others. What you seem to be saying is that doctors ought to be able to take action to, say, preserve life in circumstances where, on a technical reading of some document, maybe that should not happen. How do you feel about the doctor working in the reverse situation, where the person essentially wants the benefit of any medical assistance around but the doctor may—and I understand this happens from time to time—make a medical decision, if not that life should be terminated, that it ought to be allowed to drift away?

Dr Yates—That is a very important point.

CHAIRMAN—That is more dangerous, isn't it?

Dr Yates—It is. I think in that situation, where you have a family who are having major difficulty accepting that someone is in the terminal phase of a terminal illness and want high levels of intervention which in fact would not be consistent with good medical practice, at that point most medical practitioners would seek support from another independent body. Certainly in my state, in Victoria, in that situation I would ask the guardianship board through VGAB to appoint an additional alternative, because I would believe at that point that the enduring power of attorney medical is not acting in the best interests of that patient, and that is a trigger to go to the Guardianship Administration Board because I have a patient with a disability—clearly they cannot make decisions for themselves—they are over the age of 18 and I am in conflict with that patient, so I would seek that at that point.

The other alternative to consider—and this is what initially drove this policy—is the residential aged-care environment, where 70 per cent of people, be that high- or low-level care, have cognitive impairment of varying degrees and the average survival in high-level care is one year in this country, with 40 per cent of the population dying in the first six months. At the moment there is no legal standing for advance care directives.

CHAIRMAN—Nowhere in the country?

Dr Yates—No, sorry, in Victoria. Queensland has legislated. In Victoria we have a Medical Treatment Act but that is only for a current condition. It was there specifically really to address issues of blood transfusions for Jehovah's Witnesses and others who have a specific and defined need, but when it comes to a patient who no longer is competent medically, it is much more difficult. The Medical Treatment Act in Victoria does not apply.

In that setting, where there are a high number of locum services—I think about 60 per cent of contacts for residential aged care are from locum services—the issue doctors have is that they fear situations where they have a consensus between family, themselves and the treatment team in a residential care facility but an independent third party, as has happened in Victoria in relation to a late-term abortion, appears out of the blue with a particular ideological view.

For example, when a decision has been made regarding a patient with severe dementia in their third episode of pneumonia not to transfer them to hospital and perhaps even not to use intravenous antibiotics because it is seen as unnecessary and oral antibiotics are difficult to give, and that patient dies; without any legal standing for an advance care directive, what is the doctor's position if it is challenged by a third party? We feel strongly that advance care directives have a role. If it is going to become legally standing, from that point of view it makes a lot of sense, but from the point of view of when an advance care plan is not refreshed on a regular basis and it then is not consistent with good medical practice, can we also have protection? We believe that the Queensland model, which does offer that, is probably the most appropriate model that we have seen so far.

CHAIRMAN—A few years ago in the parliament we had a debate on overturning the euthanasia laws in the Northern Territory. Essentially they were legislating for the whole country because people were travelling to the Northern Territory to access those laws. I am personally opposed to euthanasia. I am not opposed to turning off a life support system and allowing nature to take its course in certain circumstances, and I am not really opposed to maybe increasing medication as long as the prime purpose of that is to alleviate pain as opposed to terminating life.

There were a range of views expressed in the parliament. I think Bill Hayden said that society needed to be disencumbered of these unproductive burdens and then I think Barry Jones, who I think is not a Christian—he might have been an agnostic or an atheist—said that nowhere in the world had anyone been able to devise a system of euthanasia that was not abused.

Dr Heron, who subsequently was a federal minister, told me that once, as a surgeon, he was approached by a woman. He had a patient in her 80s who had a twisted bowel. The daughter said, 'Mum has had a good life. Just allow nature to take its course and don't worry, John.' He operated and the lady had a number of years of very productive life. He found out afterwards that the daughter had not spoken to the mother for 30 years and there was a big estate.

I can understand the ethical dilemma that you have highlighted in your submission and you elaborated on, and it is extraordinarily difficult because, if the doctor is getting advice from the family, you do not necessarily know that the advice is being given in the interests of the patient. It could, in certain circumstances, be given in the interests of the surviving members of the family.

Dr Yates—I would certainly agree that that is a risk, although usually, when there are urgent decisions to be made, they will be made on the basis of best practice—in other words, if someone is at risk of dying within 24 hours because of a lack of intervention, and there are protections already existing around good Samaritan, you need to get on and do something. There is really a need for urgent decisions to be made.

In the specialist geriatric medical setting in hospitals, there is usually ample time and a team, I would have to say; not just you as a doctor and the family. There is usually a social worker and there is a group of nurses, an OT and a physio working together. Those decisions around that are often made by an entire team. They are not made by just a doctor and a family member. In that setting, I think there are real protections but, equally, I think that the ability for the doctor and that treatment team to not adhere to an advance care directive needs to be present in the legislation. If we want to give the advance care directive at the other end the teeth that it needs so that doctors are protected when they do the right thing at one end if there are debates and issues, they need to be protected at the other.

It is difficult as a profession to promulgate this because detractors would say, ‘You’re just protecting your own turf and you’re being paternalistic.’ I do not believe that that is the case at all. I think you can make a very strong argument that this is definitely in the patient’s interest. The one group of people who do not have an interest in the outcome for any other reason than the patient’s best interest is actually their treatment team; whereas families can—although rarely—have other conflicts and other interests.

I hope that, in the legislation that we achieve around advance care planning, patients are given an opportunity to be part of the debate. That is what the advantage of an advance care plan would be, rather than having it as a directive that you must or must not follow something. That has been one of the reasons, in my mind, why it has not been picked up broadly in the community and why it will not be picked up by medical practitioners, because there is no flexibility in that; whereas in life there should always be flexibility.

Mr MURPHY—Do any of the states or territories at the moment recognise advance directives?

Dr Yates—Yes, they do. I think Queensland probably has the best legislation that we could find currently. South Australia also has some legislation, which I would see as somewhat restrictive because, as I am aware, it does not have any protection for doctors who do not follow an advance care plan. Certainly in Victoria there will be debate about advance care plans and in Tasmania there has been recent debate about them. We feel there is an urgency for the Commonwealth to give direction. Jurisdictions are beginning to roll this out because it is a reality. We will have a need, and so I think it will be important for the Commonwealth to take some leadership in the sort of policy that might make a difference.

CHAIRMAN—Maybe it could be placed on the agenda of SCAG—the Standing Committee of Attorneys-General—because it seems amazing that in 2007 we have each state doing something entirely different.

Mr MURPHY—Could there potentially be a conflict between the wishes of a person who made an advance directive and the views of someone holding that person's enduring power of attorney? In such a situation, what does the medical practitioner do?

Dr Yates—There is clearly potential for that conflict, but when the capacity of the patient has lapsed—in other words, they have dementia—all we have is a discussion with the patient, which you would have anyway, because remember capacity is not a unitary event; it depends on the complexity of the decision that needs to be made as to whether someone has capacity. People can choose to eat or not eat without much capacity, but whether you choose to be put on cardiopulmonary bypass is a different level of capacity. There is always opportunity for capacity to be had by the patient, and so that could be asked, but, when the decisions are complex, all we have is what the patient might have told the person with the enduring power of attorney or might have told other family members or the treatment team, and that needs to be brought together.

While there could be conflicts and there may well be, and that will be very stressful for the person with the enduring power of attorney, as a treatment team, we have to help the person with the enduring power of attorney work through what those conflicts are and how to best address them. That is what I think consensus decisions should be about in palliative care management and in the management of older people.

Mr MURPHY—In the AMA's submission, the AMA's position is that a doctor's clinical independence must be protected in either following an advance care plan or deciding not to comply with such a plan if they feel it is inconsistent with good medical practice.

Dr Yates—Yes.

Mr MURPHY—Could you explain this a little further, with some possible examples of where good medical practice might not be in accord with a person's wishes.

Dr Yates—Yes. I have given an example already, and I will give another one where there is a patient in their 70s who says, 'Look, if ever I have a stroke, just let me go, love,' and they write that down in their advance care plan. They then have their stroke. Certainly, in the first two days after a stroke, people are looking pretty ill. For those of us who work in rehabilitation, if you ask a group of stroke survivors what they feel their life is like after a stroke, many of them will say, 'I'm glad I got treated properly and I'm back and active in my home.'

What we have to do is look at the available evidence that we have. Good clinical practice reflects recognised medical standards and ethical standards of the profession, and part of those medical standards relies on the evidence base—in other words, what is the futility or nonfutility of intervention? We need to make that clear and discuss that with our people with enduring powers of attorney and explain why in fact we feel treatment should be pursued or not pursued. We have discussions on a regular basis with people over the age of 90 coming into my specialist geriatric unit about whether cardiopulmonary resuscitation should be introduced if they have a cardiac arrest.

We know on evidence from a Veterans' Affairs study that the survival rates are about 0.2 per cent for cardiopulmonary resuscitation. Even then, with those who do survive, their likelihood of surviving for two months after that is less than one per cent. So we would usually advise in that

setting, if there were a cardiopulmonary arrest, ‘We don’t think it’s worth while going ahead with that. Do you agree?’ We often speak to the patient if they are cognitively able to tell us, but if they are not we speak to the person with the enduring power of attorney.

There is evidence that says futility would dictate that this is not a good way to go. On the other hand, if someone has had a recent stroke, I would argue that we should not be making any decision to withdraw treatment for at least three to four weeks afterwards, because we do not quite know what is going to be the end result. It is only after that period of time that we can make a decision.

My fear is that, if an enduring power of attorney or an advance care directive does not have flexibility, we will have a comment made by Dr Rodney Syme from Voluntary Euthanasia. When we first mooted this in our council in Victoria, it was, ‘AMA Victoria supports voluntary euthanasia because anybody who says they didn’t want to have a stroke should be allowed to die in the first two weeks after stroke.’ That is clearly in complete conflict with good medical practice. We want to provide our patients with good medical practice and we have to be protected to manage both sides of this equation with sensitivity as part of a treatment team.

Mr MURPHY—You have indicated that the Queensland legislation is the best practice in terms of legislation in the areas of advance care planning. Dr Yates, can you outline for the benefit of the committee what makes the Queensland system superior to those of the other states and whether we should be adopting this nationally.

Dr Yates—I am afraid I cannot give the committee the absolute detail of the legislation, but the reason we warm to that legislation is that it does have this clause which says that advance care directives are legally binding, but if the directive is not consistent with good medical practice, as defined, then the doctor is not bound by law to follow that. As I said, that to us is a major positive because it protects patients. I think it will encourage the medical profession to engage much more broadly in the development of advance care directives.

Mr MURPHY—Would the AMA like to see a national registration system for enduring powers of attorney or advance care planning directives?

Dr Yates—We certainly feel that the advance care directives and enduring powers of attorney should be transportable and have similar recognition across jurisdictions, because we are a mobile society now. A nationally consistent approach, if that achieves the portability of those, would be a very positive step. Registration of those is quite important so there is a means by which we can discover if there is an advance directive available. That sometimes is very useful—if it were available, for instance, on some electronic registration system—because, when an older person pitches up in an acute hospital, often it is very difficult to track what has been decided in the past and what has not, particularly after hours.

Mr MURPHY—Mr O’Dea, would you like to say anything?

Mr O’Dea—No. Thank you for the invitation. I was reminded of one additional point there, and I am happy to speak through Dr Yates on this.

Dr Yates—In addition to the issues around our policy, the whole legal protection of older persons really hinges on the ability to identify or diagnose cognitive impairment. While not directly related to the aspects of this committee, a recommendation to the Department of Health and Ageing which encourages a process by which doctors can evaluate cognitive function would be very important. We do not have any process. We have item numbers in the MBS, for instance, that can assess cardiac function, lung function, kidney function and liver function, but we have no MBS item numbers that affect and measure brain or cognitive function.

Identifying cognitive capability is a key component of the broad assessment of capacity, and there are tools which we require. The cornerstone of the geriatrician is licensed cognitive assessment tools like the Mini-Mental State Examination score, the Alzheimer's Disease Assessment Scale and various other licensed items, which need to be purchased in order to use them. There is no recognition that cognitive assessment is time consuming and requires specific tools that need to be funded in the Australian system. So I would encourage the committee to acknowledge that cognitive assessment is a key component of the needs of the healthcare system in this country, if we are going to effect good law and good legal practice and protection for older people.

Mr MURPHY—Thank you, Dr Yates. I have no further questions, and I thank Dr Haikerwal for his submission.

CHAIRMAN—We might subsequently put a question or two to you and, if you could come back to us with an answer, we would appreciate that. Thank you very much for attending.

Dr Yates—I thank the committee for their time and note that, in discussing advanced care directives, clearly AMA does not in any way support euthanasia.

CHAIRMAN—I was not suggesting that you did.

Mr MURPHY—Pleased to hear that.

Dr Yates—Thank you.

[10.24 am]

MAKKAI, Dr Toni, Director, Australian Institute of Criminology

SMITH, Dr Russell, Program Manager, Global, Electronic and Economic Crime Program, Australian Institute of Criminology

CHAIRMAN—Welcome. Do you have any comment to make on the capacity in which you appear?

Dr Smith—I am Principal Criminologist at the Australian Institute of Criminology.

CHAIRMAN—And your doctorates are in what disciplines?

Dr Makkai—Mine is a PhD in sociology.

Dr Smith—Mine is a PhD in law.

Mr MURPHY—They're real doctors!

CHAIRMAN—Not doctors with a courtesy title.

Dr Makkai—It is very kind of you to say so.

CHAIRMAN—Although the committee does not require you to give evidence under oath, we should advise you that these are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself and the giving of false and misleading evidence is a serious matter. We have received your submission. It has been authorised for publication. I would like to invite one of you to make a brief opening statement, up to five minutes in length if you wish, before we proceed to questions. It is possible that we may submit to you further questions after you leave, and if you want to make any further submissions to us, either in relation to the questions we may submit or in relation to other matters, feel free to do so.

Dr Makkai—Thank you very much. First of all, we thank the committee for asking us here today. I will begin by saying a few words about the Australian Institute of Criminology. The AIC is the national crime and criminal justice research agency established by the Australian government under the Criminology Research Act of 1971. The institute is a statutory authority, reporting to the Minister for Justice and Customs, and it has an independent board of management, with representation from all the states and territories. The institute maintains a number of monitoring programs on key crime categories, such as homicide, firearms theft, armed robbery, juveniles in detention, and drugs and crime.

In addition to these monitoring programs, which are largely funded out of our core appropriation, we also undertake contract research on specific topics related to crime and justice. From time to time, we undertake large-scale surveys, subject to external funding. One of these

has been the International Crime Victimization Survey, which has provided some limited information on self-reported victimisation amongst older Australians.

We widely disseminate our material through our trends and issues papers, longer research and public policy monographs and a series of regular fact sheets. We have here today some copies of relevant ones on this topic. We have an extensive website, which averages around 28,000 pages being accessed daily and, in addition to these activities, we run roundtable conferences and sit on a range of advisory boards.

Researchers at the institute are grouped into four research programs. One of these, the Global, Economic and Electronic Crime Program, has been undertaking research on financial crime over the past 10 years. This has included research concerning the fraud risks faced by older Australians. Research on computer crime has also examined victimisation of older people who fall victim to online scams. Dr Russell Smith is chair of the Australasian Consumer Fraud Taskforce Research Subgroup, which is currently examining computer scams, including those which target older Australians. The global consumer fraud awareness month is taking place at this moment.

In addition to the points that we have made in our submission, I would like to make two additional comments. The first is that an unintended consequence of an ageing population will be that the number of victims of crime in the older age groups will likely increase over time. This will result because those with the intent to engage in criminal behaviour will view older Australians as a soft target.

They will be seen to be soft because of four factors: they are potentially more vulnerable through their lack of technological knowledge, thus making them more susceptible to technology-enhanced crime. Their increasing wealth, but potentially less skill to manage the various legal and financial professionals that they will come into contact with, makes them vulnerable to a range of financial crimes. Their greater likelihood of having cognitive deficiency, through ageing, and living longer makes them inherently vulnerable to various health care providers, as well as financial professionals and, unfortunately, some family members. Finally, their social isolation, which paradoxically will protect them from some forms of crime, will increase their risk of being the victim of other forms of criminal activity.

The second point I would like to make is that our data are relatively poor in this area. This is due to a lack of any specific large-scale study of older Australians. The Australian Institute of Family Studies is currently tracking young people through its longitudinal study of Australian children and teenagers through the Australian Temperament Project. There is a large-scale study following a cohort of women, the Australian Longitudinal Study on Women's Health, conducted by a university consortium. There are a number of large-scale studies tracking young people from education into work conducted by the Australian Council for Educational Research and there is a large panel study of the workforce, the Household, Income and Labour Dynamics in Australia study, led by the University of Melbourne.

We have no tracking study of older Australians on a national scale that would provide us with an evidence base on the ageing experience and the associated risks, as well as the positive factors. In particular, when looking at crime, we cannot rely on the administrative collections held by police and others. The reason is that many people do not report being the victim of

crime, particularly fraud, to the police. In our 2004 ICVS survey, for example, we found that only 20 per cent of people said that they had reported the fraud to the police. However, 70 per cent reported the crime to a bank or financial institution.

CHAIRMAN—Would that be because often the crime is committed by a member of the family and they are embarrassed about it?

Dr Makkai—It could well be because of that, and it could also be because they feel that the police may not be able to do anything about it, so they will go to the financial institution. Further, surveys are drawn from across the population and do not provide sufficient numbers in the older age groups to enable detailed studies of victimisation in this group. To do this, we require a specific study with sufficient sample size to facilitate policy related research in this area.

Given that research consistently shows that older Australians' fear of crime is higher than their actual risk, building a credible evidence base is important in ensuring that we do not elevate fear unnecessarily and that we counter stereotypes and panic around older Australians and victimisation. Importantly, we do not want fear to inhibit Australians from seeking help and support as they age, so we need to be able to provide them with credible data on their risks and how these risks may change as they age. The monitoring of these risks will be critical for evaluating any strategies that are targeted at providing older Australians with effective mechanisms to access help, should they need it, particularly where the perpetrator may be a trusted friend or a family member. Thank you very much.

CHAIRMAN—Thank you. Dr Smith, I think there was mention made of an Australasian association that you are associated with. The committee has recently handed down a report in relation to harmonisation of laws within Australia and across the Tasman. Presumably that body is a trans-Tasman body. Is that correct?

Dr Smith—Yes. It is made up of 18 Commonwealth and state and territory agencies and also comparable agencies in New Zealand. It is part of a global campaign to raise awareness about fraud risks, particularly consumer fraud risks.

CHAIRMAN—Are the New Zealanders full members of it?

Dr Smith—Yes.

CHAIRMAN—How many agencies from New Zealand?

Dr Smith—Two. I think it is the Ministry of Justice and the appropriate consumer affairs agency, and New Zealand Police also have an interest in it.

CHAIRMAN—Thank you. What mechanisms do you think could be put in place in banks to alert a bank or a person that untoward use is being made of an account, even by someone who might be authorised? Do you think that there ought to be within banking procedures some sort of trigger that, if there is an unusual transaction—withdrawing a very high amount of money from an account—puts the bank on notice to query it?

Dr Makkai—That has been implemented in Canada, as I understand it, so we certainly have the Canadian experience to draw on; that it is possible to do that.

CHAIRMAN—Is it possible to let the committee have details of what has happened in Canada? We could probably research it ourselves, but we do not want to reinvent the wheel. If there is a good idea working elsewhere, then it would be useful to know about it.

Dr Makkai—We can certainly tell you where that information has come from.

CHAIRMAN—You said there were two reasons that older people did not report crime: firstly, they might be embarrassed because it is a family member, and often a trusted person—sometimes perhaps by a person who might hold an enduring power of attorney—and, secondly, they feel that there is not going to be anything done about it. Do you think that there has been sufficient public education of the seniors community on the assistance that is out there in that circumstance?

Dr Makkai—I certainly think that there have been attempts to do that. I do not know if you are aware that in 2001 the Attorney-General's Department produced this brochure, *Crime Prevention for Seniors, a Guide to Personal and Financial Safety*. As with all these things, you get new cohorts coming in and so you have to maintain the momentum, I think. It is not enough just to have a one-shot go; you have to have a consistent program. We have available to us some things, and it would be a policy decision about whether that needs to be done again.

CHAIRMAN—Do you feel that a lot of the people who are defrauding relatives do so having rationalised to themselves: 'Well, I've looked after mum for all these years and my siblings have taken no interest, and so therefore I'm entitled to a bit more of what mum has. After all, if she had capacity, that's what she would want'? Do you think there is an element of that or do you think a lot of it is simply predatory behaviour?

Dr Makkai—There are different reasons why people engage in crime, and certainly that is one group, but it is not the whole group. I think there is some research to suggest that family members after some time begin to abuse the person that they are responsible for. Again, we do not have a lot of research—good evidence—to base that on. It is often based on what we hear but not a systematic study.

CHAIRMAN—I have two questions. I should probably let my friend ask one in relation to lawyers, because he is a great admirer of the legal profession. Do you think that the law societies and professional bodies of lawyers around the country have adequately recognised a speciality or subspeciality of elder law? That perhaps is something that could be envisaged to happen around the country.

Dr Smith—I think there could be improvements in the education of young lawyers in that area—in particular, the requirements for executing documents that older people might have to deal with. I think there needs to be much greater education, perhaps in the practical pre-admission training courses, in relation to questions about capacity when people are executing documents, so that there is an effective set of warning bells instilled in lawyers about when they need to make further inquiries.

CHAIRMAN—In a prior report, the committee criticised the fact that if you sign an enduring power of attorney at Queanbeyan and you get taken to an aged care facility in Canberra, the enduring power of attorney apparently dies at the railway line as you cross into the Australian Capital Territory. I think that is being looked at nationally, with a view to fixing it up. While there has been a tremendous emphasis on encouraging older Australians to sign enduring powers of attorney, do you think there has been an adequate emphasis on advising those people of the need to appoint suitable people as attorneys? Everyone seems to want an enduring power of attorney but I often wonder whether they focus on what that person could actually do if they went off the rails.

Dr Smith—I think there could be more advice given to people, but by the same token it is a voluntary activity and, unless there is some payment involved, the older person is going to look to close friends or family to take it on.

Mr MURPHY—Dr Makkai, you said that many people do not report fraud to the police—only the relevant financial institution—because they feel that the police cannot do anything. That is a sad indictment of the world we live in. Can you give us evidence or some of your views from any data you might possess that would lead older people to think that it was of no use to go to the police? What are the reasons for that?

Dr Makkai—That is common across the wider population on fraud, not just amongst older people. There is a huge variability in reporting to police consistently. For example, if your car is stolen, the reporting rates are very high—98 per cent—because you cannot get your insurance.

CHAIRMAN—For insurance, yes.

Dr Makkai—That is right. Once you go into other types of crime, like assault or sexual assault, reporting rates go down. One of the reasons—not the only reason—is this perception that police are unable to do very much about it. I think with fraud it is very difficult for the police to get the evidence to mount the case, and there is a general kind of perception or knowledge of that, and therefore the person is seeking to recover their financial loss and so they go to the banks.

Mr MURPHY—Perhaps they might cut their losses because to seek a legal remedy to recover the amount of money that has been defrauded would far outweigh the sum involved.

Dr Makkai—And also, of course, going through a criminal process is time consuming and exhausting, particularly so for older Australians.

Mr MURPHY—Are you aware of any research that would indicate whether financial abuse is more likely to be perpetrated by a family member or by a professional adviser?

Dr Smith—There is no research with that level of detail at the moment, unfortunately. From my own knowledge, there are examples of that situation happening but they are very rare. It is much more likely that fraud is going to be perpetrated by people in the business world or traders rather than family members.

Mr MURPHY—Who is best to carry out the major research you noted in your opening statement?

Dr Makkai—It would depend on what you wanted the research to do. If you wanted it to focus just on crime issues, obviously you would want to go to a place that has that expertise, but if you were looking at a broader kind of transition through the elderly process, so you wanted to also look at other factors, then you might go to the Australian Institute of Health and Welfare or the Australian Institute of Family Studies. It would really depend on how narrow or how wide you wanted the study to be. That would be an issue you would need to consider.

Mr MURPHY—You note in your submission that in the United States most jurisdictions have mandatory reporting provisions. Are you aware of any studies which show that mandatory reporting has an impact on the prevalence of elder abuse? We have been advised by the Western Australian government that they are opposed to mandatory reporting because it has not been shown to have any effect. What is your response?

Dr Smith—Again, I think it is something that needs to be researched. We do not have evidence to support that at the moment.

Mr MURPHY—Do you think that a similar scheme such as the one in Canada would work here? In Canada older persons have begun authorising their banks to monitor their accounts for unusual patterns of transactions. The bank is then authorised to raise its concerns with the account holder and warn of the possibility of fraud. The account holder may elect to disregard any warning. What is your response to that?

Dr Smith—I think that would be very simple to implement, because the banks already do it in respect to overseas transactions. If a person travels and starts making transactions in another country, the bank will telephone them and alert them that those transactions have appeared in the records. Exactly the same procedure could be used for an older person's accounts. Of course, there would be no obligation for the bank to stop payments. It is really just a notification system.

CHAIRMAN—Do you think that happens informally now in some cases?

Dr Makkai—I think it does.

CHAIRMAN—Particularly where there has been a trusted bank manager for many years?

Dr Makkai—That is right. We have no research. I am just saying that based on stories that I have heard.

CHAIRMAN—In fact, I think someone even told me that some banks do it and some banks do not do it.

Dr Makkai—I could not comment on that.

Dr Smith—A possible difficulty in recent times is that the banking system now is changing so that the personal relationship between a bank manager and the client is being reduced with

people using online banking, so you really need technology to facilitate that sort of identification of risks.

Mr MURPHY—There is no doubt about that. I have been dealing with a financial institution myself over a lost keycard. That institution just does not like face-to-face contact; they like it all done electronically or telephonically. That is the age that we live in, sadly, and that has an impact for elderly people. Dr Smith and Dr Makkai, thank you very much. They are all the questions that I have.

CHAIRMAN—If there are any further questions from us, we may contact you, and if you do get any more insights that you would like to share with us, feel free to contact the secretariat. Thank you very much for appearing today.

Dr Smith—Shall we leave copies of these papers? We have enough copies of these recent papers.

CHAIRMAN—Thank you.

Dr Makkai—Thank you very much for having us.

CHAIRMAN—We are required to move—which Mr Murphy now does—that the document just given to us be incorporated into the records of the committee as an exhibit. Thank you very much.

Proceedings suspended from 10.45 am to 11.07 am

BROMLEY, Ms Melinda, Acting Assistant Secretary, Office for an Ageing Australia, Ageing and Aged Care Division, Department of Health and Ageing

GIBSON, Mr Malcolm Douglas, Director, User Rights and Complaints, Department of Health and Ageing

SCHEETZ, Ms Carolyn, Assistant Secretary, Compliance Branch, Office of Aged Care Quality and Compliance, Ageing and Aged Care Division, Department of Health and Ageing

SMITH, Ms Carolyn, First Assistant Secretary, Office of Aged Care Quality and Compliance, Department of Health and Ageing

STUART, Mr Andrew, First Assistant Secretary, Ageing and Aged Care Division, Department of Health and Ageing

CHAIRMAN—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. We have received your submission. Thank you very much for that. Would one of you like to make a brief opening statement of, say, five minutes, and then we will proceed to questions. There may well be further questions that we might want to send to you after the hearing and, if you have any further thoughts after reading evidence from others that you would like to share with us, please feel free to do that after the hearing as well.

Mr Stuart—Thank you for the opportunity to appear before the committee. I am not going to expand on the submission that we have provided to the committee, but I would like to make a few opening points about the Department of Health and Ageing's role in protecting older citizens. Older Australians are among the most vulnerable in the community and, whether they are being cared for in their homes or in residential aged care, they are entitled to the full protection of the law. Residential aged care is financed and regulated by the Australian government but the services are provided primarily by the non-government sector.

Our primary focus is to ensure that older Australians who are in residential aged care receive additional protection under the Aged Care Act. This means that approved aged-care providers under the act have the responsibility to provide a safe and secure environment for all care recipients who reside at aged-care homes and that appropriate action should be taken if and when critical incidents occur. The new package of reforms that passed the Senate last night is aimed at further safeguarding older people in residential aged-care homes, as well as in community care.

We also recognise that much of what constitutes elder abuse takes place in the community rather than in aged-care homes. This is covered under state based legislation, and states and territories have the primary role and power to address elder abuse in the community. There are also opportunities to provide a clearer and more consistent framework of law across states and

territories on substitute decision making, advance directives and guardianship. However, I should advise you that we have a lot less direct influence or expertise in that area. We will be able to comment more authoritatively on our direct aged-care responsibilities.

CHAIRMAN—Does the department worry that enduring powers of attorney do not have a national registration system and also, at this stage, that often a power of attorney signed in Queanbeyan dies when you cross the railway line? It could be that a person, after losing capacity, ends up in a facility in the ACT and the power of attorney signed in New South Wales—10 kilometres down the road—is of no force and effect.

Mr Stuart—It is of concern to us, for a couple of reasons: we have aged care providers and, in other parts of the department, managed relationships with GPs who face this issue with their clients have. We have only a minor role to play in relation to doing something about that, and Ms Bromley might be able to tell you what we have been doing in that regard.

Ms Bromley—Most specifically, the Office for an Ageing Australia is responsible for the Dementia Initiative that was announced in the 2006-07 budget, which provided \$320.6 million over five years. Significant funding goes to Alzheimers Australia, because there are ways in which people who are vulnerable can be protected through advance care planning instruments. The current legislation, being very different in each jurisdiction, was raised at Alzheimers Australia's national consumer summit on dementia, and there was a communique about that.

It was identified as a priority to be addressed within the National Framework for Action on Dementia, of which I have a copy, and the framework was prepared under the auspices of the Australian Health Ministers' Advisory Council. It has an overarching vision for dementia care and support services, specifically in relation to older people and the law. It has a key priority area that proposes that jurisdictions refer the issues of legislative barriers regarding guardianship, advance care planning and advance care directives, wills and powers of attorney to Australian government, state and territory attorneys-general departments and that they have strategies in place to address elder abuse, including in relation to dementia. We are working with our state and territory counterparts under the Australian Health Ministers Advisory Council. New South Wales has the lead on that.

CHAIRMAN—Whatever arrangements you make or we ultimately achieve among the states should also involve New Zealand, I would think.

Mr MURPHY—I have a series of questions and we can run through them quickly. Would the department support a national registry of power of attorney and enduring power of attorney?

Mr Stuart—I think that would be more a matter for the Attorney-General's Department, but we could see advantages in such an arrangement from the point of view of aged care providers.

Mr MURPHY—There is no downside, is there?

Mr Stuart—I hesitate to speak for the Australian government when the Attorney-General's Department has a closer relationship to that issue.

Mr MURPHY—You can have a view but it might not be adopted by your department or the Attorney-General's Department.

Mr Stuart—I am expressing the view that it would be of assistance to aged care providers.

Mr MURPHY—What aged care programs does the department provide to the elderly community?

Mr Stuart—Aged care programs?

Mr MURPHY—Yes.

Mr Stuart—We have about 170,000 older Australians residing in aged care homes on any night. We have about a further 30,000 older people being cared for in the community through direct Australian government community care programs and about another 500,000 older Australians being cared for at home through our cooperative arrangements with the states through HACC. We also provide respite services and support for carers. They are the main areas of investment.

Mr MURPHY—What education programs do you have for the elderly?

Mr Stuart—We are talking about education programs in relation to this issue in particular?

Mr MURPHY—Yes.

Mr Stuart—We primarily fund Alzheimers Australia. Ms Bromley might like to expand on that.

Ms Bromley—Under the dementia initiative, which I mentioned previously, Alzheimers Australia as the national peak body does receive funding to provide a range of services including our Dementia Helpline and referral services; dementia and memory community centres, some early intervention programs including the Living with Memory Loss Program, and advice, counselling and support services through its state based affiliates. It has taken a lead role in the issue of legal planning and advance directions and published a couple of papers.

The Office for an Ageing Australia also has responsibility for two of the major websites that provide information for older Australians, their families and carers. This is agedcareaustralia.gov.au—a quite recent one that has information about community care and residential care options. It is searchable. It has information about legal issues and has referrals and links from that site—again, we do not have responsibility in the Commonwealth for that, but we refer on from our site—and the seniors portal.

Mr MURPHY—How do you evaluate your education programs for the elderly?

Ms Bromley—We look at website statistics. We have groups of older Australians who were involved in developing the sites so that they were user friendly and we also use market research.

Mr Stuart—Senator, just to make sure we have a complete answer, I interpreted your question as being about in the community generally.

Mr MURPHY—Yes.

Mr Stuart—We also have a number of programs that operate in relation to older people that are in care, either in residential care or in community care, and Ms Smith should be able to tell you about those.

Mr MURPHY—By all means, yes.

Ms Smith—As we indicated in our submission, we fund the National Aged Care Advocacy Program, which means that these services are able to offer information and advice to recipients of Australian government funded aged care about their rights and responsibilities and support them to raise concerns, if they have them, with a provider. Underpinning the new legislation, which was passed by the Senate last night, there is also a communications strategy that will get information out there about the new complaints investigation framework and the new compulsory reporting requirements so that people are aware of their options to make complaints and to raise concerns.

Mr MURPHY—Thank you, Ms Smith.

CHAIRMAN—What assistance do you provide, if any, to older Australian citizens who are not in receipt of government assistance in any way?

Mr Stuart—That goes to the response that Ms Bromley gave just a little earlier, which is largely about information support through our website.

CHAIRMAN—Do you think older people are sufficiently aware of technology to access the websites or should you be dealing with them and giving them that information in another way, which I imagine you probably are.

Ms Bromley—We do it both ways, and we have an aged-care information line where people can ring and get hard copies of information. We have also done research for the agedcareaustralia.gov.au website which found that the internet is a quite preferred source of information about residential care—from seven per cent to 29 per cent between 2000 and 2006. So it has increased significantly in that time, as has the number of people seeking information on community care from a website. We do test whether or not the web is a good way of doing it.

Mr MURPHY—The government has implemented new safeguards against abuse in aged-care facilities. Have those safeguards been effective?

Ms Smith—The safeguards have not been fully implemented as yet because the legislation was only passed by the Senate last night. The implementation date will be 1 May for the new complaints investigation arrangements and the new Aged Care Commissioner and 1 July for the compulsory reporting requirements. What has been implemented thus far is that, from 1 July last year, there are increased spot checks of aged-care homes by the Aged Care Standards and Accreditation Agency, so each home will receive at least one spot check per year.

CHAIRMAN—What sort of training would the people who make these spot checks have? More generally, what sort of training would those who undertake inspections of aged-care facilities have?

Ms Scheetz—Assessment of aged-care homes is predominantly done by the Aged Care Standards and Accreditation Agency against a series of standards. There are 44 outcomes in our legislation. The assessors who undertake those assessments are trained by the accreditation agency and they are subject to RABQSA, which is a national quality organisation that registers all of the assessors and provides training in addition to that which they receive within the accreditation agency.

Mr MURPHY—What has been the result of some of these unannounced inspections? When someone arrives to do a spot check, how does the institution respond generally—good and bad?

Ms Scheetz—The spot checks are part of a broader assessment regime. Homes are accredited and they have a formal accreditation assessment, which covers all of the standards, every three years. They receive at least one of these spot checks every year, plus there are other visits that are undertaken. Together, they form part of a broader quality monitoring system. There are also people in the department who undertake visits in relation to complaints.

It is difficult to respond to the impact of the spot checks on their own, but what they do do is increase the presence of accreditation agency assessors in the homes and ensure that there is additional monitoring. Any homes that are found to be noncompliant with any of the standards are dealt with through the accreditation agency. They can issue timetables by which to require improvement and, if that does not resolve the issue, they can make recommendations to the department to take compliance action. All of the noncompliance is available on the agency's website, so it is quite a transparent process.

Mr MURPHY—Your submission notes that the new measures against abuse in residential aged care are specifically directed at sexual assault and serious physical assault and do not extend to financial or other forms of abuse, although these issues have been raised in consultation. Why do the new measures not cover the entire spectrum of abuse?

Ms Smith—I think the new measures do cover the entire spectrum but they cover it in different ways. The things that must be compulsorily reported are those that are seen to be of a serious and potentially criminal nature, which are sexual assault and serious physical assault. It is in respect of those issues that there is a compulsory reporting requirement, so the approved provider would have to report both to the police and to the department.

In relation to all other forms of abuse, if there are any concerns about psychological issues or financial issues or broader quality of care issues, the department has a current complaints resolution scheme that enables those issues to be drawn to our attention. As of 1 May, we are going to have a much more rigorous complaints investigation scheme, where any of those issues that are drawn to the department's attention will be investigated, and we will be making determinations about whether or not the provider has breached their responsibilities under the act.

CHAIRMAN—Why is it, though, that you are not going to treat financial or other forms of abuse as being as serious as sexual assault and serious physical assault? I am not for a moment saying that sexual assault and serious physical assault are not very serious forms of abuse, but why have the two different mechanisms? Why not just treat all forms of abuse the same and have the same reporting requirements with respect to financial and other forms of abuse as you have with respect to sexual assault and serious physical assault?

Ms Smith—One of the things that came up in the Senate debate last night was that, as a general rule, we do not have compulsory or mandatory reporting of abuse or assault. In the general community that is not the standard way that these issues are dealt with. In imposing a compulsory reporting regime we need to be very mindful of that general environment and focus the compulsory reporting requirement on those things which, of their nature, are so serious that they demand compulsory reporting and they demand reporting to the police. Certainly you would not be expecting that issues such as psychological abuse or broader care issues should be reported to the police.

The other thing we have been mindful of is learning from the experience in the child protection area, where there has been a mandatory reporting regime for some time. The concern has been that if you move to a mandatory reporting regime you can end up getting so much reporting that you lose the really serious things in amongst a whole volume of reports. So we have tried to be really focused in the compulsory reporting arena on those things that must be drawn to the attention of the police, to avoid those instances being lost.

Mr MURPHY—Could you clarify the role of the aged care commissioner?

Ms Smith—The aged care commissioner is a new appointment that will replace the existing commissioner for complaints. The aged care commissioner will have a role to review decisions of the department in relation to the investigation of complaints. They will be able to take complaints about the way that the department has investigated complaints—in other words, look at the conduct of the department in investigating complaints—and they will also be able to look at the conduct of the Aged Care Standards and Accreditation Agency in carrying out their accreditation functions.

Mr MURPHY—Does the department play any role in discouraging discrimination against the elderly in the community?

Mr Stuart—Yes, I think we do; not perhaps so much in a direct legal sense as the Attorney-General's Department would do, but we have a responsibility and a program for trying to enhance the standing and level of respect for older people in the community through the Office for an Ageing Australia.

Mr MURPHY—Thank you very much. I do not have any further questions.

CHAIRMAN—We have heard some comment that the police do not always follow up complaints adequately—that is, complaints of abuse. How will your new reporting mechanism respond to these suggestions?

Mr Stuart—Ms Smith was voicing a concern that, if you make a very large array of issues compulsorily or mandatorily reportable, you then start to lose the important things in the kind of welter of large numbers of complaints. We have been trying hard to avoid doing that by focusing on particular forms of abuse and serious abuse.

Ms Smith—Our department, in moving to the new compulsory reporting regime, is also implementing a requirement that all people who work or volunteer in aged care have police checks. We have been putting a lot of effort into our relationship with state and territory police services around the country. Our state offices in each state and territory are arranging discussions with each of their relevant police forces. Many of them already have very good and close working relationships with the police services. They have MOUs that document the respective roles and we will be refreshing those relationships in light of the new arrangements.

CHAIRMAN—Thank you very much. Is there anything else you would like to say?

Mr Stuart—No. Thank you for giving us an opportunity to talk to you.

CHAIRMAN—If there are any further things that you would like to tell us subsequently, feel free to contact the secretariat. Thank you very much.

[11.30 am]

WALSH, Mr David Jonathan, Private capacity

CHAIRMAN—Welcome. Do you have any comment to make on the capacity in which you appear?

Mr Walsh—Yes. I am appearing in the capacity of a private legal practitioner.

CHAIRMAN—Thank you. Although the committee does not require you to give evidence under oath, these are proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and might be regarded as a contempt of the parliament. Would you like to make an opening statement? I understand that you wish to do so.

Mr Walsh—Yes, if I could, please. I will focus my comments on fraud and financial abuse, powers of attorney and issues concerning property and family agreements. It is my submission that these issues and the others in this committee's terms of reference are interrelated and require a holistic approach if anything constructive is to be achieved in advancing the protections afforded to older Australians. I will not repeat here the information in my written submission to the committee, but I will reiterate the view that there are broad demographic and economic trends in play which make addressing the vulnerability of older Australians a matter of national importance.

Fraud against and the financial abuse of older people is usually interrelated, though fraud is much more difficult to establish as it requires a criminal standard of proof. My own experience as a legal practitioner is reflected in that of other practitioners to whom I have spoken—that is, the incidence of financial abuse is increasing and has been for some time. Ancillary to this is another trend commented on by practitioners in the wills and estates area—that is, the increasing incidence of disputes over wills. A common theme here is that individuals, often though not always family members, are becoming more brazen in their attempts to access and control the financial resources of older Australians.

Abuse of older people is often facilitated as a consequence of not having a properly drafted enduring power of attorney. The existence of an improperly considered power of attorney can sometimes be as detrimental to the interests of an individual as having no grant of power in place at all. It is said that something less than 50 per cent of Australians have a valid will. I am not aware of any data, but experience would suggest that even fewer Australians have an enduring power of attorney in place. As more people live to advanced age, it is inevitable that a greater proportion will, through either illness or injury, cease to have legal capacity.

To understand the severity of this problem, one need only consider the statistics for the prevalence of dementia to appreciate the significant numbers of Australians who will no longer be able to manage their affairs or make decisions as to their health. There is an overwhelming need for a national scheme establishing a consistent regime for powers of attorney and, in particular, enduring powers, as these are the only effective mechanism for an individual to plan

for the eventuality of their own legal incapacity. Current state and territory based regimes are, with the possible exception of Queensland, inadequate and contribute to unnecessary confusion and doubt, in particular where individuals move between jurisdictions and/or have assets located other than in their jurisdiction of domicile.

Contributing to the risk exposure of older Australians is the extraordinary situation that has developed in Australian jurisdictions with respect to property rights triggered by the alleged existence of a domestic relationship. It is possible in Australia for a person to initiate an action for adjustment of property rights based on a domestic relationship in circumstances where they have not cohabitated with the other party. The ACT takes this situation to an even more absurd level by recognising employees and the representatives of charitable and benevolent organisations as people who can be in a relevant domestic relationship.

The existence of this state of circumstance directly undermines government policy, I would suggest, which has recently seen increased funding provided to community care as defined in the Aged Care Act. What is being referred to here is the reality that Australia does not have, and will not have, adequate nursing home beds, so care must be provided for as many older people as possible in their own homes. What happens when those providing the care claim they are or were in a domestic relationship with the older person? In the ACT, it has meant that executors have had to pay out claims against the estate rather than engage in expensive and potentially futile litigation.

The need to provide care for older Australians in a family setting is increasing, for the simple reason that such care is not available elsewhere. If one wishes to establish the need for explicit legislation with respect to what are referred to as 'family agreements', I would suggest a visit to the Supreme Court of New South Wales in Sydney on any sitting day. Family agreements, if properly structured, are simply a form of contract. The only jurisdiction that offers the older Australian some hope when things go wrong is New South Wales via the Contract Review Act, though even this is highly qualified.

Here I would refer the committee to an article titled 'Statutory unconscionability: the application of the Contracts Review Act 1980 to the elderly', written by Fiona R. Burns in the *Journal of Contract Law*. The citation is (2005) 21 JCL 51. For the rest of us outside New South Wales, we are dependent on the general law and equity. Whether in New South Wales or elsewhere, older Australians will require the services of a lawyer if they are to have a proper enduring power of attorney, understand the risks associated with domestic relationships, structure a sensible and enforceable family agreement, or deal with the consequences when things go wrong.

It is submitted that the new national scheme governing legal practice, effective 1 July 2007, is impacting on the availability of lawyers at a time when the need for informed advice is increasing, even if most people currently are blissfully unaware of their vulnerability.

The courts, police and lawyers can only work with the available tools. Financial and other abuse of older Australians will continue to increase until and unless specific legislation is introduced that defines such abuse as a crime and/or an actionable cause and puts in place significant, meaningful and readily enforceable remedies.

CHAIRMAN—I notice you are the immediate past chairman of the Law Society Elder Law Committee.

Mr Walsh—That is correct.

CHAIRMAN—Is it your experience that law societies around the country all have elder law committees?

Mr Walsh—To my knowledge they exist in Queensland, New South Wales, ACT, Victoria. I am not sure about the other states but I would assume that they probably do.

CHAIRMAN—The law societies have been pushing some form of specialisation for practitioners to enable them to be advertised as an accredited family law specialist and so on. Has this happened with elder law?

Mr Walsh—No.

CHAIRMAN—And if it has not, should it?

Mr Walsh—I would think yes, but there would be a considerable amount of territory that would have to be covered until that point. There is still a debate in legal circles as to whether such a thing as elder law actually exists. There is also another significant debate where people would suggest that to even define such a thing as elder law is inherently discriminatory. The logic that is applied is that elder people are in exactly the same position as you or I and, as such, should not be distinguished in the way that they receive legal services.

CHAIRMAN—Are you practising principally in that area of the law?

Mr Walsh—My areas of law are in asset protection, financial advice with respect to wills and estate planning and dispute resolution. Almost by necessity, it has tended to involve people who are in that 65-plus category or heading in that direction very quickly.

CHAIRMAN—I notice that you mentioned enduring powers of attorney. In a prior report this committee recommended that there ought to be action to make sure that powers of attorney signed in one jurisdiction are valid elsewhere. Here in Canberra you have the bizarre situation where, if someone goes into an aged care facility in the Australian Capital Territory having lived previously in Queanbeyan and maybe having signed a power of attorney in Queanbeyan, apparently the power of attorney dies at the railway line.

Mr Walsh—The situation again varies as between all the jurisdictions. In the ACT there has been a move to put in a new Powers of Attorney Act, which the committee I chaired was actively involved in trying to get some amendments and changes to, but what frustrated me in that process was the lack of support from the ACT Law Society in that process and the extent to which the Attorney-General's office and the ACT government just did not want to know. There was a lack of communication as between the Attorney-General's, the Law Society and the practitioners who actually have to deal with these situations on a day-to-day basis.

CHAIRMAN—Do you feel that a lot of financial abuse of seniors, particularly by family members, is not reported?

Mr Walsh—Without question, yes.

CHAIRMAN—Why would that be?

Mr Walsh—I would say that it is a mixture of embarrassment and shame on the part of the person who has been abused. It is sometimes because of evidentiary difficulties. For example, a client I had, his wife died. She used to handle all their financial affairs. As soon as she died, the son and daughter-in-law who were looking after him—I use that in a very broad sense—got him to sign an enduring power of attorney which gave them blanket authority to operate his bank accounts, and they stripped large amounts of money out of his accounts. He did not know what was going on because they would not give him the mail or the reports. They did it over the internet, which he was not familiar with. Then, finally, in many cases you have the people who may be aware of it, may want to try and do something about it but they cannot because they either do not have access to the advice or they feel that they cannot afford the implications of instructing a lawyer to represent them.

CHAIRMAN—Do you think that banks have an adequate monitoring system whereby, if there is an untoward transaction on an account, it is brought to someone's attention; and if they do not, should they?

Mr Walsh—First of all, they should. I would think that existing statutory obligations are there already to do such things. The problem arises where someone presents a power of attorney which gives the individual the power to access the bank account. Banks usually are very careful with such powers. One of the difficulties is that they are caught in this almost no-win situation where they are presented with a legal document that gives a power. If they refuse to go along with that, then they are open to claims for damages because transactions could not be completed or whatever.

What I have advised my clients in the past is that, where they are giving financial authorities to the grantee of the power, first of all it is very structured as to what is being given, from what accounts, for what purposes, and that they give a letter to the bank identifying the person to whom they have given the power and saying that they wish that to be exercised in this fashion. There is another debate that is going on in the background as to whether or not these powers of attorney should be registered. It is not required that powers be registered unless they are dealing with real property, so it opens up the possibility—

CHAIRMAN—Do you have a view on that?

Mr Walsh—I think that any power that is dealing with property should be registered.

CHAIRMAN—When you say 'property', you mean real and personal?

Mr Walsh—Real and personal property. I think the need is there because it prevents the real risk of fraudulent documents being presented, which is relatively easy to do. You can print them off the net and just keep the final signing page and such things. It does not require a great deal of

imagination to work out how that could be done. Financial abuse is, as I have suggested in my opening statement, increasing. I cannot point you to any specific evidence of that, but I know whenever I have spoken to people, for example, in the Office of the Public Guardian in New South Wales or the Public Trustee Office in Queensland, they all tell me the same thing: these things are increasing. As I have suggested in my opening statement, if you go into the Supreme Court—I know particularly in Sydney but I would imagine it would be much the same in Melbourne and Queensland—you will see the litigation going on with respect to these matters.

CHAIRMAN—In your opening statement you say, ‘Abuse of older people is often facilitated as a consequence of not having a properly drafted enduring power of attorney.’

Mr Walsh—Yes.

CHAIRMAN—Often, you could have surely a properly drafted power of attorney but giving the power to the wrong person?

Mr Walsh—Yes, certainly.

CHAIRMAN—That is also a problem. I think you pick that up a bit further down where you say ‘the existence of an improperly considered enduring power of attorney’.

Mr Walsh—Yes.

CHAIRMAN—They are two situations, aren’t they?

Mr Walsh—They are. The way I have put it to any client or person with whom I have discussed this issue—and as is reflected in the submission which was the paper I gave in November in Melbourne—is that you have to ask yourself a fundamental question: ‘Can you repose absolute trust and confidence in the individual to whom you wish to grant the power?’ That throws up all sorts of issues for people. It is not unusual, in discussing these sorts of matters, that the couple—often a couple—are reduced to tears in your office because they are having to consider not only issues of their own mortality or incapacity but also whether or not they can trust their children or one child as against others. If they cannot trust their own children, do they have some other relative or friend they can trust? These are absolutely fundamental questions and sometimes people get to the point where they say: ‘I can’t deal with this. I’ll just do the will. Forget about that,’ because I always suggest the two things be done.

There is also an inherent human characteristic here where people just do not want to have to confront their own limitations, mortality and frailty, hence the lack of people making wills in the Australian community which, as I say, is something under 50 per cent. I know of no report where people have looked at enduring powers of attorney and how many people have them.

CHAIRMAN—This might be a stupid question but, where an enduring power of attorney has been given to someone and that attorney is acting in a way that is improper, could there be a mechanism or some oversight body devised which could basically say, ‘This guy is doing the wrong thing’?

Mr Walsh—It exists already. It is usually under the guise of what are called, variously, guardianship tribunals; I think the name is pretty much consistent across the jurisdictions. The problem with what is that these bodies are relatively underresourced. The bulk of their workload is taken up with issues where you have people who are mentally or physically disabled. They are running their financial affairs and making decisions about those sorts of things. I had a client recently who was very concerned about his father, who got involved with a younger woman after the wife's death and was selling the family home in Sydney at under value, very much at the encouragement of the new wife. He and his wife I believe were genuinely concerned—they were based in Melbourne and running to and from Sydney—but I warned him that the first thing that the Guardianship Tribunal in Sydney will suggest is that they are motivated primarily by their desire to have an inheritance come their way.

CHAIRMAN—Probably true!

Mr Walsh—Quite possibly true, and I must admit that was my initial reaction with these people. But as time went by I saw it was an almost obsessive desire to try and assist the father, despite himself. The legislation in these situations always acknowledges that the individual's preferences should be recognised, regardless of age and suchlike. That again puts you into this sort of grey area of where people's capacity is maybe diminishing but it is not yet clear as to, 'It's gone!' So there are a great many grey areas in these issues which are easily and readily exploited by the unscrupulous.

My suggestion is that these grey areas are unnecessarily broad because of the differences as between the jurisdictions, with the various legislative regimes, and powers of attorney and enduring powers of attorney are one of only the most obvious. I, for example, tried to interest the Law Society here in going through the motions of approaching the other law societies to put to the government that there be a national scheme for powers of attorney, particularly enduring powers of attorney, and that went off like a lead balloon. It is, I think, unfortunate that the legal profession is, almost of necessity, focused on their own jurisdictions because that is the way we are taught and that is the way these systems are set up. It does not encourage a cross-jurisdictional perspective.

We are living in a society now where people habitually travel as between their points of birth and maybe where they grew up. Plenty of people go from here and retire in south-east Queensland, even though they may still have assets here. These are the very situations where—

CHAIRMAN—Mainly in my electorate.

Mr Walsh—You should be aware of it!

CHAIRMAN—The committee obviously in its deliberations will take into account what you have said.

Mr KELVIN THOMSON—In your opening statement you said there is a common theme that individuals are becoming more brazen in their attempts to access and control the financial resources of older Australians. Do you have any feel for why and, secondly, what can you do about it?

Mr Walsh—The fundamental reason that I would point to is reflected in my comments about property and property rights being triggered by claims of domestic relationship. That is part of a wider trend that says to me that people are less inhibited about claiming what they say are their rights in circumstances where legislation creates that possibility so to do. The family maintenance provisions in all the various wills acts in the different jurisdictions have permitted disputation on wills forever. That is not new in itself; it is the way these are now run and the extent to which they are run and the consistency with which people will attempt to grab more.

If you look at the trends over the last 30 years, there has been a consistent pattern of diminution of the security of one's property. The reference I make to the Domestic Relationships Act is one of them. There are many lawyers in the ACT, let alone members of the public, who do not understand the meaning of the Domestic Relationships Act in this jurisdiction. I have asked the secretariat to give you a copy of the relevant sections in the act. In the ACT act, section 3(2)(a) states:

a personal relationship may exist between persons although they are not members of the same household ...

More importantly in terms of what I see as the inevitable need to look after older people in their homes is this question as to the relationships that develop where a person is a direct employee or an employee of a charitable or benevolent association. It has occurred in the ACT already that someone in what would be a charitable and benevolent association has used that as a basis on which to establish relationships, has then popped out of the woodwork after death and said: 'We were in a domestic relationship. I want 50 grand, thanks very much.'

Mr KELVIN THOMSON—Do you think that situation is sufficiently serious as to warrant revisiting the family maintenance provisions?

Mr Walsh—Not the family maintenance provisions; I think that is quite a distinct area of law. It is more maybe the judicial activism which could be given a pointer by making more clear the grounds on which people can be legitimately making claims against estates. For example, in the domestic relationship situation, it would be relatively easy to amend all the state legislation and, given that most of these powers have now been referred to the Commonwealth under the Family Law Act, to say that a property claim cannot be made unless a deed or a similar document has been registered in the relevant jurisdiction where both parties recognise that they are in a domestic relationship. It would not undermine any of the other policy issues that are there; it would simply give clarity to a point. If you get married tomorrow, your immediate legal status with respect to your property is altered by the simple fact of being married, under the Marriage Act. There is no reason why the same effect could not be given in a non-married situation, and that would eliminate a great many of these problems.

Mr KELVIN THOMSON—Yes. There are elements of that that may be controversial. You talk about the need for a national scheme to establish a consistent regime for powers of attorney. Do you think there should be a national register of enduring powers of attorney? Do you think something like that could be maintained?

Mr Walsh—I think it would be wonderful if there were, but it is going to immediately throw up questions as to who is going to establish it and who is going to maintain it and who is going to pay for it. In this sort of regime it would seem something that would sensibly come under the

Commonwealth's jurisdiction. The documents could be lodged at the state offices—state births and deaths registries and what have you—and in my mind it would be a situation where a person could not make claims against property, could not deal with real property and could not deal with personal property unless the power of attorney was registered.

Mr KELVIN THOMSON—That is right. You have talked about the current state and territory based regimes being inadequate and Queensland being the best. I was interested in that. Could you tell us what it is that you like about the Queensland legislation or what it is that is inadequate about the other state and territory regimes.

Mr Walsh—The easiest way to answer that question is to say that in the Queensland powers of attorney regime, the form that is required by the legislation is very clear and it is easy to use, both for lawyers and for clients. The warnings that are contained in that form that point the grantor of a power to things they should consider are very clear. It is the most complete system in one package—in other words, it is the easiest one to use for both lawyers and for members of the public. The other jurisdictions are deficient because they are not that way, if I can put it like that.

Frankly, I do not see any justification, speaking as a lawyer, why there should be differences in such a matter between the jurisdictions. I know this throws up the perennial debate as to the states and the Commonwealth in such things, but if, as I also reference in my statement, a national scheme regulating the legal profession can be put in place—which has had, and will continue to have, huge ramifications for the legal profession—it would seem to me to be a very simple exercise to pass a very simple piece of legislation that would address this specific issue. And it would be of immense benefit to every person in the country, as well as to the legal profession, the banks and all the other people—Public Trustee Office, OPG and so on—who have to try and work with the conflict situations that often arise.

Mr KELVIN THOMSON—You can assume that most of us in the national parliament are conceptually sympathetic to the idea of national regimes and can see the shortcomings of different regimes across the states and territories. By the same token, we are not naive about the difficulties which stand in the way of securing uniform arrangements and most of us—certainly I am—are reluctant to seek to impose these things on states and territories. It is a question of trying to get people to work together in a cooperative way towards the standard or uniform outcome.

Mr Walsh—Of course, yes.

Mr KELVIN THOMSON—You have mentioned in your remarks, and we have touched on, the ACT arrangements about domestic relationships and the possibility for abuse. Are there actual cases of this? How prevalent is it? What is the incidence of it?

Mr Walsh—Unfortunately, there is no case law on it, despite this act having been introduced in 1994. That is because of the costs of litigating, I would suggest, and of course people do not want to admit that they are being played for fools. If a client comes to me in this sort of situation, I would be negligent if I did not recommend a settlement. If someone was asking for \$10,000, \$20,000, \$30,000, \$40,000, even \$100,000, by way of a settlement in this type of situation, I would have to think very carefully before I would say, 'Yes, we'll litigate before we do this.' As

you are probably aware, it is very easy to run up costs in excess of \$50,000 in a Supreme Court of any jurisdiction in this country.

Mr KELVIN THOMSON—You mentioned in your opening remarks as well that the new national scheme governing legal practice from 1 July this year is impacting on the availability of lawyers. I did not quite understand that point.

Mr Walsh—Without going into it in unnecessary detail, it imposes and requires a degree of regulatory and administrative compliance from lawyers that has created very significant additional burdens for sole, two- and three-partner practices. I was listening to an interesting program on Radio National, their rural program, on one of my trips up to Queensland, and they were commenting on how legal practices are already closing this financial year in rural and regional Australia because they simply cannot cope or deal with the degree of burden. I would predict that the situation that currently exists in the health sector is going to be very soon replicated in the legal sector—that is, that there will be a complete inadequacy of legal services available in rural and regional Australia now and at an increasing level in the immediate future. That in turn will begin to come into suburban Australia.

A lot of lawyers that are in small practice now in what could be regarded as the typical suburban practice are only still there because they cannot do anything else: that is their working life. I understand all the so-called consumer protection ideas and so on that are behind that legislation, but what I am suggesting is that you have to try and get some sort of realistic balance, and you do not create a situation where it becomes financially silly for someone to continue in a business—which is what a legal practice is—by a legislative regime and its regulation.

Mr KELVIN THOMSON—The other thing in your opening statement that I was interested in was where you said that there was a need for specific legislation that defined abuse of older Australians as a crime.

Mr Walsh—Yes.

Mr KELVIN THOMSON—I am interested in what you think should be criminalised which is not already crime. What do you see as being the change?

Mr Walsh—I assume this committee will be sitting in Melbourne at some point in the reasonably near future. Rather than take up your time with comments on that, I would suggest, if you are not already, having as a witness a lady by the name of Lillian Jeter who runs what is called the Elder Abuse Prevention Association. It is the only independent body that looks specifically at issues of elder abuse; she has a background in this area, going back as a police officer in the States. I mentioned earlier a client that I had whose son and daughter-in-law had fraudulently accessed his accounts. One of the difficulties in dealing with that matter was that, because of the time lag in finding out this had happened, it became very difficult to establish it as a criminal issue.

I actually talked to the police in Sydney about that matter and the evidence that I described—which was just a literal statement of what had occurred—and they said: ‘Yes, this was unquestionably fraud, but we won’t do anything about it because your client is 89 and the son is

65 and the daughter-in-law is 63 or something, and the DPP would take the view that these people haven't had a criminal history in the past. The complainant is too old. It's not worth our while prosecuting. We've got more important things to do.' So even where you have the evidence and even where it is clear, the police and more especially the DPPs will not do anything about it, for those sorts of reasons.

There are other areas of abuse, particularly physical abuse, that are very difficult to establish under the current criminal jurisdictions, which again vary as between the states and territories. I came in at the end of the evidence by the previous witnesses. I assumed they were from the department of health or whatever. I have—it may be in your notes there somewhere—recently published a chapter for *Halsbury's Laws of Australia* titled 'Nursing homes', which looked in particular at the Aged Care Act and the legislation in the other jurisdictions relating to nursing homes. I know that there is a lot of material in the Aged Care Act which appears to set up mechanisms to deal with abuse, but I know that they are ineffective and they do not work.

Mr KELVIN THOMSON—You have mentioned that people do not put in place an enduring power of attorney or a will because they have to consider mortality, state of family relationships, accomplishments in life. I recently did a will, and I can report that it is indeed depressing on all three fronts to have to consider those things. Do you think that there is anything that can be done to address that and to encourage people to make wills or enduring powers of attorney?

Mr Walsh—Short of compulsion—which, of course, will not work—the only way I would think realistically that these issues can be addressed is by continuing education, particularly as people get older. I would suggest maybe one very simple way that came to mind that these sorts of things could be triggered in people's minds would be when Centrelink is sending out income statements to pensioners or people receiving benefits. They could enclose a little leaflet saying: 'Have you got a will? Have you put in an enduring power of attorney?'

As far as I know, Centrelink conduct seminars with respect to superannuation issues and retirement issues. I know that the Centrelink office here in Canberra approached the Law Society to have someone to talk about wills but they did so only in a very, should I say, ad hoc, ineffective and rather sloppy fashion. The person who went ended up going as a fallback, because they had originally caused confusion as to what they wanted, rather than, say, approach a member of our committee.

Mr KELVIN THOMSON—Some of the other submissions that the inquiry has received talked about education campaigns or more elder law specialists, outreach legal services, reduced legal fees. Do you think any of those things might help?

Mr Walsh—Starting with the bottom one, reduced legal fees, that is already one of the problems with powers of attorney generally, and particularly enduring powers of attorney. Too many lawyers do them as a sort of loss leader—'Here, I'll throw in the power of attorney while I do you the will.' I would, in my own practice, spend at least an hour talking with clients about enduring powers of attorney and the issues around them as they relate specifically to their circumstances. I would then give them the draft document, tell them to go away and think about it, come back and go through the issues. Time has to be paid for. So you have on the one hand people doing it for essentially nothing and then on the other hand people who are saying, 'Well, if you're going to do it properly, you have to be prepared to face a legal bill of maybe \$500.'

People are not willing, unfortunately, to pay. How do you get around that? Education maybe, but I think at the end of the day we are going to be faced with a situation in this community where you have a resistance. People do not like lawyers; they do not like dealing with lawyers. Most people deal with a lawyer only for buying a property.

Mr KELVIN THOMSON—Your submission argued for family agreements to be formally drafted, rather than based on informal oral arrangements. What sorts of things would you include in those arrangements? Would you see them being registered?

Mr Walsh—I would think that a family agreement is one of those documents that should be registered. If you had a regime that established registration of powers of attorneys, it would be very easy to have another one saying the same for family agreements. In the property area under the Family Law Act or under the various state and territory jurisdictions, a binding financial agreement, such as one between a couple, has to be given with two lots of independent legal advice and so on to be valid. Family agreements can be structured without that. That is absurd when you consider that you can have a person who is maybe inherently disadvantaged for emotional and/or intellectual or health reasons potentially signing away huge amounts of property to family members in exchange for, ‘We’re going to look after you until you’re dead, Dad’—that sort of thing.

In any court in the land any day of the week there are cases in which people suggest, ‘Yes, come on, Dad, you can live in the granny flat, no problem.’ Then the son and daughter get divorced and all of a sudden the daughter is there with the property and she is saying, ‘You, piss off!’ There is no financial compensation for the older person and suchlike. The family agreement in that environment would have to address these sorts of issues. It would have to be seen to be, to an objective third party, a fair, equitable and balanced document and to be seen that the person entering into the agreement had received proper independent legal advice so that they understood what they were doing.

Mr KELVIN THOMSON—You also mention in your submission that economically disadvantaged people, such as people living in caravan parks or in boarding houses, were at a heightened risk of abuse due to lack of education or finance. Have you had any thoughts about how you might address the legal risks that are faced by economically disadvantaged people?

Mr Walsh—I think we are up against that great existing and ongoing problem of legal aid. What is it? What should it be given for and to whom and under what circumstances? We all know that the bulk of legal aid is given in criminal matters, usually to people, often men, who are charged with property offences or domestic violence type situations. That is so particularly in the Aboriginal populations. When legal aid budgets are completely dominated by those sorts of considerations, any attempt by people to get aid because they would argue that their son, daughter, cousin or whatever has defrauded them of their money or kicked them out of the granny flat or whatever, is doomed to failure. Whether or not governments are willing to give that additional funding, I do not know. It becomes another budget priority. I would suggest that the additional problem is: where are you going to get the people who are sufficiently qualified and who are prepared to work in a legal aid environment to give the advice, even if the people get the aid?

Mr KELVIN THOMSON—You mentioned superannuation as a potential new area for financial abuse of the elderly. Are there any thoughts you would like to give us about the superannuation issue and how we should be thinking about that?

Mr Walsh—The superannuation legislation, as we all know, is highly complex already. I think it comes under that umbrella of the property of an individual that needs to be dealt with under these various regimes. There has to be predictability about it; it has to be clearly identified. I would suggest that with the significantly increasing number of self-managed super funds, particularly in the context of the new pension arrangements and so on, it is not difficult to visualise situations where Mum or Dad is living in the home. They have their tax-free pension from the self-managed super fund and it is going straight into son or daughter's pockets and they are not being looked after properly.

This is where I take you back to the identification of specific offences. There is no provision in any jurisdiction that I am aware of that readily identifies individuals who are being abused in the sense of not being provided with adequate care and comfort in their home in this typical sort of family living type arrangement. Because you require the police to get involved, and that means people have to give evidence and you get all the family dynamics, it is, I suppose, a variant of the domestic violence type situation. It took us some time to get control of that, but that has been dealt with by our community. This is the same sort of issue.

CHAIRMAN—Thank you very much for giving your time for this important inquiry. We, as a committee, have to formally receive as a submission Mr Walsh's submission and the opening statement as an exhibit.

Proceedings suspended from 12.15 pm to 1.41 pm

HANNAN, Ms Jennifer Anne, Vice Chairperson, Family Services Australia; and Executive General Manager, Anglicare Services in Western Australia

PAGE, Ms Samantha Jane, Chief Executive Officer, Family Services Australia

CHAIRMAN—I reopen the public hearing and welcome Ms Hannan and Ms Page. Although the committee does not require you to give evidence under oath, these are legal proceedings of the parliament and warrant the same respect as proceedings of the House of Representatives itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. Would one of you like to give us a brief opening statement and then we will proceed to some questions.

Ms Page—We are going to share the opening statement if that is all right. In terms of background, Family Services Australia is a national network of organisations that deliver family relationship services. That includes family relationship counselling, family dispute resolution, the new family relationship centres—that I am sure you are aware of—as well as a range of services for children, young people and parents, both in intact families and post-separation. We have more than 60 members operating in 250 locations across the country. The services are funded through the family relationship services program that is jointly funded by the Attorney-General's Department and the Department of Family and Community Services and Indigenous Affairs.

CHAIRMAN—Is the funding all from the government?

Ms Page—There is client contribution.

Ms Hannan—And there is fundraising.

Ms Page—And fundraising, yes, that contributes to the overall resources available to the program. The services have a responsibility therefore in the family law system. Under the Family Law Act and family dispute resolution practices, family counsellors are specified personnel with particular responsibilities. Jenny is by far the expert on family law and I am going to leave it to her today to talk about the impact of recent reforms to family law on older people—grandparents particularly. But we have said in our letter that we come here today to make some broad observations. We have not done any particular hard research into the issues of grandparents in the new family law system and we do not pretend to have that, but we certainly can talk about examples and anecdotes of situations.

There is a range of circumstances where the same member organisations work with older people—most commonly grandparents of children whose parents are undergoing separation which may get complicated where it involves relocation and/or repartnering and the creation of step-families. Then there are the older people experiencing relationship difficulties and separation themselves, which is, as we have said, not uncommon when children leave home. The third area—and this is a little outside the family relationship services program but a lot of our members are involved—is where grandparents are providing out of home care for children who may have been removed from their parents by the Family Court or child protection services,

and/or where parents have entered into a voluntary agreement where the children are being cared for by grandparents. I am going to pass now to Jenny to talk about the actual family law area.

Ms Hannan—Just to give you a little bit of context, Anglicare runs the only family relationships centre in Western Australia at the moment, and we are about to set up a second one in Mandurah, so we have directly been involved in implementing some of the service structure that is supporting the changes in the family law sector. One of the things that we have been very aware of is the really quite large numbers, probably 10 per cent, of the clientele accessing the centres are grandparents, and often with inquiries around accessing grandchildren who they may not have seen for some time. They feel that there is now a system by which they can actually broker some arrangements with children so they can actually see their grandchildren.

CHAIRMAN—Do you find that the parents of the children, particularly the parent who is not the child of the grandparents, are often more prepared to allow contact with grandparents than with the actual other parent?

Ms Hannan—I think it varies. We have found we need to be very careful about that. We have had grandparents who have sought to have access to grandchildren not via their son or daughter, and on investigation there have been really good reasons why the son or daughter has not wanted those grandparents to have access because there have been allegations of sexual abuse of that particular child. So you have to be really careful and you have to actually get all parties in and make sure you do a careful assessment before you start proceeding with any sort of reconnection.

CHAIRMAN—I should not have interrupted you.

Ms Hannan—That is fine. Certainly that is a lot of what we have been doing with grandparents. It is not only with the grandparents' child but also with the partner. Often there has been a lot of misunderstanding that actually gets negotiated through and there has then been parenting plans put in place for contact. That has been very exciting for us, because there has really been no avenue until now. I think there is evidence to suggest that the advertising around the new family law changes and the family relationship centres has certainly engaged somewhat with grandparents and they are certainly more aware of their rights in relation to seeing their grandchildren.

Also there has been a broadening of the service sector in moving from what has been pure mediation between parents to more family mediation models, which have then engaged the extended family which has included grandparents as well. That has brought us into a situation where we have been able to engage older people in extended services such as counselling and other support services that have been required.

The other area Sam alluded to is our work with grandparents who may be taking care of grandchildren where parents are unable to do that because of drug or alcohol issues. We are getting a number of those grandparents in and as well trying to source other community resources to make sure they are getting appropriate Centrelink payments, for example, and also to see if there is any way they can actually access other help. One of the big problems for those grandparents is that unless they have a good, solid retirement fund behind them, it is extremely expensive to raise children and they are not eligible for foster care payments if they have

guardianship. It is often quite difficult for them to actually find the funds to do what they would want to do for their grandchildren.

CHAIRMAN—As grandparents they really thought that their child-rearing days were over and suddenly, at a stage in their life when they would want to take it a bit easier and have a few holidays, they are thrust into being parents again. I think there is an organisation called GAGS, isn't there—grandparents and grandchildren or something like that?

Ms Hannan—Yes.

CHAIRMAN—I have met these people. You can only admire them; they do a wonderful job.

Ms Hannan—Yes. I think they are called different things in different states, but there are certainly support groups for grandparents in each state. It is certainly not just the emotional support that is required often for those families. Some people do not want to access financial support but for others it is actually quite essential. I think that is an area that certainly needs to be looked at by the committee.

CHAIRMAN—You are saying that they cannot get foster payments that they could get if they were in fact another carer?

Ms Page—If they were unrelated, in some states.

CHAIRMAN—Why is that, do you think?

Ms Page—I think the view is that it is family and therefore it is their responsibility to look after a child, whereas a foster parent is considered to be doing a service to the community and therefore receives a payment. If you have a look at how expensive it actually is to raise a child and what you are saving the community in the long run, it is actually fairly cheap to give a subsidy to grandparents who are looking after children in need.

CHAIRMAN—How many grandparents do you think are in this situation?

Ms Hannan—I could not give you a figure off the top of my head on that.

Ms Page—Families Australia, that is the peak body in the child protection area, has just completed a report on this and I am sure they would have a figure. I am sorry we did not bring a copy with us today—it is not our work. But certainly it is publicly available and they talk extensively about this problem. My understanding is that if children are placed into the care of a grandparent by a foster care agency then they can be eligible for foster care payments, but if it is an agreement that is made between the parents and the grandparents or between the court and the grandparents without the involvement of a foster care organisation, then there is no eligibility because the payments are managed through those organisations. I am not absolutely 100 per cent sure about that. That is not our area, but I am sure that would be well covered in the report by Families Australia.

Ms Hannan—In terms of recommendations in this area, I think that an increase in the community education campaign—media campaigns, pamphlets and websites for grandparents—

to raise the awareness of the effects of conflict on children and the need to focus on the wellbeing of children in the process of separation has had an effect and will continue to have an effect, I hope.

Ms Page—We do know anecdotally that where grandparents are assisting parents to reduce the conflict, to try to come to an amicable agreement and to keep the communication flowing with the ex-partner, that can be a significant positive influence. Where they are doing the opposite—adding to the conflict and egging on, if you like, the son or daughter and escalating the conflict—that is a substantially negative impact. We do not have hard data on that but we certainly know that every practitioner we talk to can give you examples both ways. We feel it is not so much about specifically targeting information but rather about raising awareness in the community generally and including grandparents in terms of how we can all help separating parents do it in the most amicable way in order to focus on the wellbeing of children.

Ms Hannan—The new services enable that to actually happen for the first time. They include targeted information for grandparents explaining changes in the family law and research and training for practitioners to promote good practice in the area of family dispute resolution. There has been a huge increase in funding in the sector, and the personnel to actually provide those services is thin on the ground, so good training is required for new staff. The other area, as I said, is access to child care and financial assistance; that is about it.

Ms Page—Where grandparents are taking on a caring role, even if it is not a full-time caring role—even if it is just while parents are at work or it is part of a parenting agreement while somebody does rehabilitation, for example—there is the issue of assistance with managing difficult behaviour. Often when children have had a traumatic or unstable life to date, their behaviour is more difficult than anything the grandparent has had to deal with in the past, so there needs to be some particular support that can kick in around that. At the moment most programs in that area are targeted to parents and not grandparents.

CHAIRMAN—With respect to the changes to the Family Law Act, this committee had some role in relation to reviewing the proposed bill to see how it conformed with the government response to the *Every picture tells a story* report. How do you feel those reforms are bedding down? Do you find that they are beneficial in reducing conflict?

Ms Hannan—I would say most definitely. Anecdotally, because we are only eight months into the service provision that is supporting those changes, significant numbers of people are accessing those services who would not have previously accessed other services. They are actually accessing services earlier, which means they are less likely to be in high conflict, or, if they are in high conflict, we are getting to them early in order to resolve that. I am not saying it is a panacea; there is certainly still a group of people coming through that are not going to be suitable for those services and will still be going through to the court, but certainly the services have been highly successful, partly because they are highly visible.

CHAIRMAN—You mentioned that through the family relationship centres about 10 per cent of the people you see would be grandparents.

Ms Hannan—That includes people who are phoning for information.

CHAIRMAN—With respect to the work that your member organisations do more generally, what proportion would be people aged 65 and over?

Ms Hannan—Probably quite small. Probably about two per cent. There are some targeted programs within the Family Relationships Services Program, particularly around retirement and managing loss and grief, that are particularly targeted at that age group. I think there is certainly a great need for us to develop other programs for that age group. Generally, the Family Relationships Services Program population profile is between about 25 and 45. That is probably the time when people are under the major stresses with their jobs, children, relationships and financial pressures. All those things contribute to people having relationship difficulties, so that is the peak time when we actually see clients.

CHAIRMAN—Your submission notes that grandparents are accessing the family relationship centres in higher numbers than you see in other family relationship services. To what degree would the numbers have risen and what are they actually asking you to do?

Ms Hannan—I think there are two broad categories. One is for information around processes that may be affecting their separating children—wanting to get information so that they can assist their kids, who may not be wanting to come into the centre but they are getting information for them. The other is grandparents who have not seen their grandchildren for some time or are concerned that arrangements might exclude them from contact with their grandchildren. Those are the two primary areas.

Ms Page—Other programs tend to target individuals. For family relationship counselling, you go to that service if you want counselling or if you are looking for dispute resolution, whereas the FRCs are seen much more as a community resource and a place to go for information. Anyone can walk in the door. So it is a fundamentally different type of service.

Mr KELVIN THOMSON—You mentioned in your submission that you are sometimes associated with community legal centres. Are there examples of co-location and, if so, how many?

Ms Hannan—There are no co-locations with community legal centres of any FRSP services that I am aware of. There are certainly consortium partners for family relationship centres that are legal centres. We are one of those family relationship centres that does have a consortium partner that is a community legal centre, but they are off-site, in another location, and the purpose of their role in terms of the consortium is to enable us to fast-track people to legal advice.

Mr KELVIN THOMSON—I think it is a good idea; I am just interested in the extent to which things are moving in that direction.

Ms Page—There are two I can think of in New South Wales. I do not have numbers across the country. In both cases the community legal service is also delivering a children's contact service, family relationship counselling or dispute resolution, usually in a separate location, as Jenny has said; they are not together. I do not know of any that are providing family relationship centres.

Ms Hannan—No, there aren't.

Ms Page—They may be consortium partners in an FRC but not actually providing it.

Mr KELVIN THOMSON—Has funding increased since the changes to the Family Law Act? Do you think that the Family Relationships Services Program is getting adequate funding?

Ms Hannan—I think there are two parts to that because there are various parts to the Family Relationships Services Program. There is a concern that, as of 1 July, when it becomes compulsory for people to access dispute resolution, the family relationship centres may be quite flooded.

Mr KELVIN THOMSON—Overloaded.

Ms Hannan—Yes. The other issue is around the early intervention services that support those centres. Those services probably are not being as well funded. They are really the back-up end of the system. The family relationship centres are the gateway and they are certainly getting reasonable funding, but I think the back-up end of the system is probably missing out.

Mr KELVIN THOMSON—There is a prospect that some of this new mandatory business from 1 July will comprise a component of reluctant or unhappy customers, and that might bring its own complexities in terms of how you go about providing the service.

Ms Hannan—It certainly will. In actual fact, what is happening over time is we are finding that clients in the family relationship centres are getting far more complex, and I suspect after 1 July we are going to see an increase in that as well.

Ms Page—That is happening across the other services as well—the family relationship counselling, dispute resolution and stand-alone services are also all experiencing an increase in complexity in the client group. So while growth has been exponential, per client it has not been growing, so it can be getting harder for individual services with a fixed funding base to continue to service the same number of people. Of course, the whole family law framework has changed, so that the size of the clientele has increased.

Ms Hannan—The FRSP is now accessing clients we did not access before; there is no doubt about that.

Mr KELVIN THOMSON—In your submission you talk about a nationally coordinated approach focused on the needs of grandparents who care for children. I guess these are questions of detail: who would coordinate the program, what would it entail, do your member organisations have a capacity to deliver these sorts of things? How would you see that operating?

Ms Hannan—Our member organisations probably do, depending on the member organisation. In Anglicare, we have some services for older people that we could actually bolt on. There are other FRSP service providers who have no experience in that area at all. Certainly, there is room within the sector for more funding that could be given to existing organisations with experience in the area. I think it is important to have experience in and connections to the area.

Ms Page—We have not been terribly specific in that recommendation. I am very happy to go away and have a bit of a think about it and come back with a bit more detail.

CHAIRMAN—If you could do that, we would appreciate it.

Ms Page—There could be a national strategy within the Family Relationships Services Program on assisting grandparents, particularly around family law matters and family separation. But we are conscious that at the same time there has also been a big push for better support for grandparents who are caring for children through the care and protection system, so maybe it makes sense to combine those two and look at an overarching strategy for grandparents. Really, that would depend on whether different sections of FaCSIA want to come together with the Attorney-General's Department or whether one of those wants to take a lead on it. Certainly, we could think about what we think would be best and talk to other peak bodies such as Families Australia that have looked at this issue in some detail in the child protection system and come back to you with some suggestions.

CHAIRMAN—We do have a few more questions but we will give those to you in writing and if you could come back to us with responses we would very much appreciate it. On behalf of the committee, I would like to thank you very much for coming along today.

[2.05 pm]

McCRA Y, Mr Peter, General Manager, Financial Literacy Foundation, Department of the Treasury

ROSSER, Ms Linda, Manager, Strategic Planning Unit, Financial Literacy Foundation, Department of the Treasury

CHAIRMAN—I welcome representatives of the Financial Literacy Foundation, on behalf of the Department of the Treasury, to the hearing. Although the committee does not require you to give evidence under oath, these are proceedings of the parliament and it is important to tell the truth. The giving of false or misleading evidence is a serious matter, as you would be aware, and may be regarded as a contempt of the parliament. Would one of you like to give us a brief opening statement of, say, five minutes or thereabouts. If both of you want to contribute to it, that is fine, but in that statement could you give us some indication of the connection of the foundation with the Treasury.

Mr McCray—The origins of the Financial Literacy Foundation go back to the 2004 election. The government announced a commitment to a financial literacy initiative in the run-up to the 2004 election as part of its ‘super for all and understanding money’ election policy.

CHAIRMAN—This is a delivered election promise?

Mr McCray—Yes, indeed. The Financial Literacy Foundation was established in 2005 in line with the election commitment. I guess at the highest level the objective of the foundation is to assist all Australians and provide them with the opportunity to increase their financial knowledge and better manage their money. That is the objective in a nutshell.

CHAIRMAN—The whole issue of superannuation is a maze to most people.

Mr McCray—Indeed, and superannuation is certainly a key element of literacy. The foundation was established in the Department of the Treasury. The foundation is a division of Treasury. The election commitment which the foundation was established to deliver on had four elements: to develop, devise and deliver a media campaign to promote the issue of financial literacy; to establish a website for financial literacy information and education resources; to act as a coordinating body to push for financial literacy education to be taught in schools, perhaps in workplaces and adult education environments more generally; and to undertake relevant research in the field.

Since the establishment of the Financial Literacy Foundation in 2005, we have delivered on most of those commitments, if not all of those. We have worked in close cooperation with the state and territory education departments and the Catholic and independent systems to reach an agreement for financial literacy to be embedded in school curriculums from the beginning of next year. The Commonwealth worked closely—both the Literacy Foundation and the education department—with states and territories and other relevant bodies to agree on a national

curriculum framework for consumer and financial literacy which will see literacy modules taught at different points through years 3, 5, 7 and 9 across a range of subjects from next year.

The foundation has also delivered the media campaign that was part of its mandate when established. That campaign ran from July until December last year. It included television and radio ads, including ones targeted specifically at older Australians. It included the launch of a major website on financial literacy resources and some other supporting platforms, including a 40-odd page handbook designed for consumers on financial literacy and also a seminar program conducted by campaign partners that was promoted via the website.

We have also progressed what will be the largest-ever survey of Australians' attitudes and behaviours in regard to money and financial literacy and how they like to learn about money issues, to give us insights into the attitudes and behaviours of people with regard to money so that the foundation and all those active in the field in developing and delivering materials on financial literacy can perhaps better design and better target materials. We are also currently working closely with the education department at the Commonwealth level and with the states and territories to put in place a national professional development strategy for teachers. This is on the basis that, with financial literacy in school curriculums from next year, it is important that teachers have the confidence to teach the subject and to have access to the right sorts of resources to give them the confidence to do justice to the material.

Just on the campaign itself, I would like to mention that there are several elements of the campaign platforms—the website, the handbook and the seminar program, which have specific elements targeted at older Australians. For example, the television campaign had four different advertisements; one of the four was targeted specifically at older Australians, with prompts on nest eggs, retirement issues, superannuation and so on. We produced a handbook with material on rights and responsibilities, scams and how to avoid them and who to contact if you are concerned about scams, and retirement insurance. The website covered those sorts of issues, as well as who to report to if you have a complaint, losing a partner, making wills and dealing with windfalls. The seminar topics—

CHAIRMAN—Did you do much on enduring powers of attorney?

Mr McCray—I believe it would have been covered in a minor way but more in the sense of 'If you want to know more about these sorts of issues, here is the right place to go.'

CHAIRMAN—That might be an area where you could undertake a bit of an education program. The evidence seems to be that a lot of people are signing them unwisely, signing poorly drafted ones or maybe giving them to the wrong people.

Mr McCray—Yes, it is certainly an issue. Finally, I mentioned seminars before. They were not a focal point of the campaign. They were delivered not by government officials, in the main, but by industry stakeholders. They were promoted on our website providing they met guidelines. They covered a wide range of money issues of interest to older Australians as well—everything from estate planning to nursing homes, fees and charges, transition to aged care, understanding retirement income streams and the like. We certainly have a whole-of-community focus. The media campaign has been very much directed at a whole-of-population, but we have recognised

the specific issues, interests and needs of particular segments in the community, including older people, in some of the substreams of the campaign.

CHAIRMAN—What proportion of your effort would be directed at senior Australians?

Mr McCray—For example, the television campaign featured four 30-second advertisements and one of those four was targeted at older Australians. With respect to the handbook material, probably at least a quarter of it would have been of direct relevance to older Australians, and of more relevance to older Australians than perhaps to other members of the community.

CHAIRMAN—And do you feel you have got the balance right?

Mr McCray—I think so. Our research has consistently shown that attitudes and behaviours in terms of money are reasonably similar across age groups. There are some obvious differences in terms of young people's interest in superannuation or issues like that, which is quite understandable, but in terms of devising campaigns that are going to resonate with people and have some impact on their behaviour, the triggers are reasonably similar.

CHAIRMAN—The website of the foundation notes that it undertakes forward research projects which reflect your national focus. Is the foundation considering future demographic pressures in Australia and their impact on financial literacy of certain segments of the population? Will the financial literacy tool provided to young Australians today still apply as they grow older? Has the foundation done any research into the financial issues which affect the elderly?

Mr McCray—The survey work we have done which will underpin a report which will be released later this year did survey a wide spectrum of the population, from 12-year-olds through to 75-year-olds, so we covered a fair demographic there. I think it is fair to say that because it is the largest survey of its kind—7,500 people in total—it is fairly comprehensive. We certainly feel that any information we can pull out of that survey by relevant age bracket is going to be quite reliable, and certainly statistically significant. So that demographic from 65 to 75 is well represented in that survey. Financial literacy advances are not an overnight affair, of course. It is a project that will take a number of years to see real progress in. Undoubtedly, with respect to those who will benefit from learning at school about financial literacy, it is very much to their advantage, I suppose.

CHAIRMAN—How many people do you have working for the foundation?

Mr McCray—Currently we have a staff of 25.

CHAIRMAN—Is that enough?

Mr McCray—It is enough at the moment for the role that we have been set up to do. It is probably worth reflecting on that a little bit. We see ourselves as a centre of expertise on financial literacy and a government agency is very well placed to match-make if necessary between those with an interest in learning and those who are delivering programs. But we have not been established to deliver large-scale financial literacy resources and programs, on the basis that there are many out there in the marketplace, either in the financial sector or in the

community sector and financial counselling sector, who are very effectively delivering programs already. We are not there to outflank them or to replace them. We are not established to develop major new resources and roll them out to the community. We are essentially there to promote the issue, to raise community awareness and I guess encourage people to connect with resources that are already out there. For that sort of role, I think we are adequately resourced.

Mr KELVIN THOMSON—One of the big financial literacy issues is credit or debt. Those of us who are a bit older worry about household debt levels being on the rise. What research have you done about that issue? In particular, what I am looking at is young people's attitude to borrowing and to debt and older people's attitude to borrowing and to debt. Is that something that you have done work on or want to comment on?

Mr McCray—Yes. Again, this survey work, the fruits of which will be released later in the year, has looked at people's attitudes to borrowing and to credit cards, and there are some differences. By and large, it is fair to say that younger people tend to be more comfortable about the use of credit cards and taking on debt than older people. So that is a fairly clear result from the survey that we have done to date. Another interesting issue that is coming out of the survey work is that, by and large, those who are using credit cards, for example, or who have gone into debt for some particular purpose, tend to be reasonably confident about their capacity to handle that debt.

A high proportion of people across the age groups using credit cards—about three-quarters, from memory—tend to argue that they have a capacity to repay the cards and are quite comfortable with their handling of it. That raises an interesting issue, in a self-assessment report, of confidence or perhaps overconfidence in this area.

Mr KELVIN THOMSON—I am sure some of them are correct, but I am equally certain they are not all correct. In terms of getting your message out, it certainly occurs to me—and no doubt will to others—that, while it is important to get the message through to young people, in terms of financial literacy issues it is often older retired people who are most interested or prepared to be engaged in that. The over-50s type organisations—the Association of Independent Retirees and Combined Pensioners and Superannuants Association, and those sorts of groups—are potentially highly receptive to this sort of information. Do you work with them? What sort of relationship do you have?

Mr McCray—We have tended to work more with some of the peak bodies in the field rather than those individual organisations. We are certainly actively engaged with the financial counselling community, for example, that has interests that extend across all those sorts of agencies. We have had very positive feedback, particularly about the handbook resource that we have produced and also to an extent the website. It is probably fair to say that older Australians are perhaps less likely to use a website than, say, a physical resource.

Mr KELVIN THOMSON—Yes, that is right. If you got the handbook to the various branches of the Association of Independent Retirees, there is a fair chance that there would be people looking at it as a consequence. Some of the other things are less certain.

Mr McCray—We have distributed, I think, about 700,000 handbooks and a number of them have been taken up by—I have a bit of a list here—entities or agencies that are clearly directly

relevant to that demographic: retirement villages, Department of Veterans' Affairs, aged-care services and the war widows guilds. They are certainly getting out there. It is a free handbook and it is available on demand. We would be more than happy to provide additional copies to those organisations you mentioned.

CHAIRMAN—Could you maybe send 50 copies to Mr Thompson and 50 copies to me as well?

Mr McCray—I would be delighted to.

Mr KELVIN THOMSON—That is probably it from me.

CHAIRMAN—I did have one more question. With respect to financial abuse of seniors, often by members of the family, have you done—and I may have misheard what you said earlier—any pamphlets, brochures or advertising campaigns about that, encouraging people to come forward?

Mr McCray—Not explicitly; not in the sense of having a standalone brochure or whatever addressing that issue. However, there is certainly highly relevant material both in the handbook and on the website that deals with rights and responsibilities and where to go. It goes as far as website links or, in the back of the handbook, phone numbers of the relevant organisations to go to.

CHAIRMAN—If you have not let the secretariat have a copy of the handbook, if you would be kind enough to send one that would be appreciated.

Mr McCray—Indeed. I would be pleased to.

CHAIRMAN—We have no further questions. If, on reflection, you want to come back with some other thoughts or extra ideas, please feel free to do so. We would appreciate that. We will send you a draft of your evidence to check. If you can get that back to the secretariat as soon as possible, that would be great.

Mr McCray—Thank you, Mr Chairman.

CHAIRMAN—Thank you very much for your courtesy in coming along.

[2.24 pm]

ARNAUDO, Mr Peter John, Assistant Secretary, Family Law Branch, Attorney-General's Department

DAVIES, Ms Amanda, Assistant Secretary, Classification Policy Branch, Attorney-General's Department

JONES, Ms Katherine Ellen, Acting First Assistant Secretary, Indigenous Justice and Legal Assistance Division, Attorney-General's Department

LYNCH, Ms Philippa, First Assistant Secretary, Informational Law and Human Rights Division, Attorney-General's Department

MACKEY, Ms Gabrielle Mary, Acting Assistant Secretary, Human Rights Branch, Information Law and Human Rights Division, Attorney-General's Department

CHAIRMAN—I welcome the witnesses from the Attorney-General's Department. We do not require people to give evidence under oath, but these are proceedings of the parliament and you would be aware of that. Would one of you like to give a brief opening statement and maybe elaborate on some aspects of the submission from the department? We will then proceed to questions.

Mr Arnaudo—I do not think we have much in the way of an opening statement. As you can probably tell from our submission, the Attorney-General's Department has policy responsibility for a number of areas: age discrimination, fraud, access to legal assistance and legal aid, family law and classification policy as well—Ms Davies's branch. We are happy to answer your questions.

CHAIRMAN—You are from the Family Law Branch, Mr Arnaudo, and you, Ms Davies, are—

Ms Davies—My branch is the Classification Policy Branch, but we are the co-ordinating area for the Standing Committee of Attorneys-General responsibilities within the department.

CHAIRMAN—Well, my first question is for you then.

Ms Davies—Good!

CHAIRMAN—In a previous report of this committee, the harmonisation of laws report, we highlighted the ludicrous situation where powers of attorney end once you cross state or territory borders. I understand that SCAG has done some work on that. Can you give us an update on where we are? For example, if someone lives in Queanbeyan and ends up in a facility in the ACT, the enduring power of attorney that has been very carefully signed might not have any force and effect.

Ms Davies—Certainly. Powers of attorney are obviously state and territory responsibilities, but the question of recognition of powers of attorney across jurisdictional borders has been considered by SCAG over a period of time. SCAG did agree on mutual recognition provisions for each jurisdiction to implement, and at this point only three jurisdictions do not have those in place.

CHAIRMAN—And they are?

Ms Davies—The ACT and New South Wales would be fine. The three that do not have them in place at the moment are WA, South Australia and the Northern Territory. Even for those jurisdictions, the mutual recognition provisions work so that they recognise powers of attorney from any other jurisdiction, whether or not they have implemented the provisions. So, going into those three jurisdictions, yes, there remains an issue, but even powers of attorney executed within those would be recognised in the other jurisdictions through their amendments.

CHAIRMAN—What about New Zealand; is it part of this process?

Ms Davies—It is not part of this exercise, no. I would have to take on notice precisely what the recognition with New Zealand would be.

CHAIRMAN—Thank you. Mr Thomson?

Mr KELVIN THOMSON—We had an earlier witness suggest to us that the Queensland power of attorney arrangements were significantly superior to others. Is this something that you or the standing committee have turned your mind to?

Ms Davies—I do not think it would be accurate to say that the committee has turned its mind to the superiority or otherwise of any individual jurisdiction's legislation. Certainly, in the time that the issue has been considered by the standing committee, it did at one point consider looking at a uniform set of rules but decided that mutual recognition provisions were much more likely to be able to be implemented.

Mr KELVIN THOMSON—So the idea of a uniform system has been contemplated but not pursued?

Ms Davies—But not pursued, yes.

Mr KELVIN THOMSON—As part of that, could there be a national registration system? If you are looking at mutual recognition, is that not then possible?

Ms Davies—Well, if you are looking at mutual recognition you do not need it—as long as it is registered in the jurisdiction and complies with the requirements of the jurisdiction in which it was made, you do not need to have it registered anywhere else.

Mr KELVIN THOMSON—Obviously we need to have something so people know what power of attorney arrangements are in place in other jurisdictions. It appears to be a present weakness.

Ms Davies—As I understand it, the way that at least some of the provisions work—and I believe they are all fundamentally the same—is that effectively what you would require is simply a certificate from a legal practitioner from the jurisdiction in which the power of attorney was made, certifying that it was made in accordance with the requirements of that jurisdiction.

Mr KELVIN THOMSON—Has the department considered whether the systems by which the powers of attorney are granted are sufficiently rigorous and protect the rights of the individuals concerned?

Ms Davies—That is not something we have had under consideration.

Mr KELVIN THOMSON—The other thing which we have heard and to which I am interested in getting your response is that Centrelink, for example, do not recognise powers of attorney drafted under state legislation but that they could choose to recognise arrangements that have been put in place directly with them. Is that right?

Ms Davies—I am not aware of that.

Mr KELVIN THOMSON—I might ask you to take that on notice—

Ms Davies—Certainly.

Mr KELVIN THOMSON—because it is a matter of some interest to us. Chairman, I have finished with the powers of attorney.

CHAIRMAN—Ms Jones, are you aware of any community legal services that run services specifically targeted at older members of the community? I understand that in Victoria there might be a couple of elder-specific legal centres. Maybe Mr Thomson knows about that. Is any of the Commonwealth's funding specifically focused on groups of senior Australians? If not, have you thought of identifying seniors as a particular client group and allocating specific funding for that group?

Ms Jones—In relation to community legal centres, we are aware of recent initiatives in Victoria established particularly to service older people, and there are some initiatives in other states. Queensland, through the Caxton Legal Centre, has established some services specifically for senior Australians. In terms of specific services, essentially the Commonwealth funds 128 different community legal centres across the country. All those community legal centres are open to providing services for older people as long as they meet the requirements in terms of level of disadvantage—the general requirements for obtaining services from community legal centres. However, the Commonwealth has not specified a particular funding program for older Australians in community legal centres.

CHAIRMAN—The committee understands that the federal government may have provided funding to a program called Legal Outreach for Older Persons. Apparently the idea of this was to pair a lawyer and a social worker in an outreach program through the Caxton Legal Centre in Brisbane, but that funding was not continued. Can you tell us about that program—whether it was a success and why it did not receive continued funding?

Ms Jones—I am not aware of specific funds allocated for that program. Caxton Legal Centre receive an overall funding allocation on an annual basis under the Community Legal Services Program. They may have allocated the funds that they received from the Commonwealth, but they also receive funds from the Queensland state government.

CHAIRMAN—Can you take that on notice and come back to us?

Ms Jones—Certainly.

CHAIRMAN—There is an associated question: apparently the SAILS program run by Caxton Legal Centre provides assistance specifically to elder clients who are the victims of financial abuse and often have some level of diminished capacity. Does the Australian government give any funding to that program? Or, again, is it part of the global funding for Caxton?

Ms Jones—That is my understanding.

CHAIRMAN—Perhaps you could check that and come back to us. That would be good.

Ms Jones—Yes.

Mr KELVIN THOMSON—We have talked with other witnesses about the recent family law reforms, the opening of family relationship centres and the prospect of grandparents taking advantage of these or becoming involved in the resolution of disputes. Do you have any information or statistics yet on how many grandparents are actually making use of those services?

Mr Arnaudo—The first 15 family relationship centres have been operational for about eight months. We have a framework in place for collecting that sort of statistical data. At this stage we have basic numbers in terms of people who walk through the centre or contact the centre. I think you heard earlier today in evidence from Ms Jenny Hannan, who is behind one of the organisations in Joondalup, that they see a number of grandparents accessing the centres to get information and advice.

CHAIRMAN—She also thought the legislation was working.

Mr Arnaudo—We are always happy to hear that as well. It is only eight months into the legislation, into the reforms, and of course there are further reforms to come out and further family relationship centres and other services as well. Anecdotally, we are getting information that grandparents are using this service and in some cases are finding it to be very effective.

There was one case that recently came to my attention of grandparents who had lost contact with their daughter. They had tried to contact the daughter and also the grandchildren with gifts and letters, but they were being returned. Through the family relationship centre they were able to create a bridge through the dispute resolution service and also some other information services that assisted that family to get back together again.

So the short answer is that at this stage we do not have that statistical information, but the framework is there to collect it. As part of the ongoing evaluation of the services provided by the new family relationship centres and the reforms, that is clearly going to be critical information to have.

Mr KELVIN THOMSON—Another element of this, of course, is the extent to which grandparents are aware of the amendments to the Family Law Act and the prospect of their being involved. Are there public education programs associated with those changes that might assist grandparents to be aware of their potential involvement in dispute resolution?

Mr Arnaudo—Yes, there are. When the announcement was made about the reforms, funding was provided for a community education campaign on the changes to the legislation. That involved enhancing our websites, having fact sheets in community languages and also developing a series of fact sheets, such as this one I am holding up, on the new family law system. There are 11 fact sheets here, one of which is specifically directed at grandparents, the reforms to the family law legislation and how they improve the situation and impact on grandparents as well.

CHAIRMAN—If you have not provided the secretariat with a copy, could you please do so and also send a copy to Mr Thomson and to me.

Mr KELVIN THOMSON—I have one.

CHAIRMAN—I do not.

Mr Arnaudo—I can provide it to the secretariat. The family relationship centres themselves are also tasked with the job of going out into their local communities and making sure that the communities are aware of the information they have and the services that they can provide.

CHAIRMAN—The Standing Committee of Attorneys-General may be looking at some national legislation for advanced care planning. Is that a fact, or is it not currently on the radar?

Ms Davies—Advanced care planning is being considered by the Health Ministers' Conference, not by the Standing Committee of Attorneys-General.

CHAIRMAN—Do you know where they are with it?

Ms Davies—I understand that they are considering it as part of a broader package they are looking at in the context of plans in relation to dementia. I am not sure precisely where they are up to.

CHAIRMAN—It has been put to the committee by the Caxton Legal Centre—and you may have seen its submission—that the Family Law Act might need to be amended to provide for court-registered granny flat type investment loan agreements between older people and an adult child and his or her spouse so that they can be relied on, in any matrimonial property proceedings, to protect the interests of the aged parent. Do you have a view on how workable that would be; and are you aware whether the Family Court already takes into account such informal family agreements when deciding on appropriate arrangements between spouses?

Mr Arnaudo—I am aware of that recommendation in one of the submissions that the Caxton Legal Centre put forward. It is using the marriage power under the Commonwealth Constitution, and anything that we are doing under the Family Law Act really has to have its basis there. So those are really the sorts of limitations that we would operate under. I would not be able to quote you the section, but I am happy to take it on notice to provide further, more specific information about how the Family Court would take into account those informal arrangements. The Family Court has quite wide discretionary powers in terms of how to distribute property and adjust the property holdings of a couple following a separation, and in some cases it does affect third parties as well.

Mr KELVIN THOMSON—Regarding age discrimination legislation, the ACT government has suggested an amendment to the Age Discrimination Act concerning the dominant reason test. They have argued that that provision is not in other federal antidiscrimination laws, which therefore makes it problematic to try to establish that age was the dominant reason for someone being the subject of discrimination. As you may be aware, the provision means that an action will only be deemed to be discriminatory under the act if the person's age was the dominant reason for the action. Can you tell us something about why that test is included in the legislation, and is it right that it is not part of other federal antidiscrimination legislation?

Ms Mackey—It was the government's view that, in the area of age discrimination, action should be unlawful only where age is the dominant consideration. It was the government's view when the act was amended that that test would be the most effective way to promote the attitudinal change that the act seeks to achieve. That is why a different test was applied in relation to the Age Discrimination Act compared to other antidiscrimination legislation.

Mr KELVIN THOMSON—Has there been any discussion with the ACT or, for that matter, with other jurisdictions about that provision?

Ms Mackey—I am aware that certainly the Human Rights and Equal Opportunity Commission expressed some views in relation to that test, but there certainly has been no discussion with the ACT government on that issue.

Mr KELVIN THOMSON—On the topic of the Human Rights and Equal Opportunity Commission, am I right in thinking that they have suggested an addition to the Age Discrimination Act with regard to the extension of age discrimination to include relatives and associates? Has that been considered or is it under consideration; is there a reason that that is not part of the Age Discrimination Act?

Ms Mackey—When the act was being formulated, the government considered that, on balance, provisions covering discrimination on the grounds of age related to a person's associate or relative were not required in the context of this legislation.

Mr KELVIN THOMSON—We have been told there has been a substantial decline in applications for legal aid from people in the 50 and over age group. Do you have any data on the types of matters most usually dealt with in legal aid applications by the older age group—65 and over?

Ms Jones—In terms of the specific breakdown of the types of matters, I think by far the most significant ones for people in the 65 and over age bracket are veterans' matters. It is one of the civil law areas that is funded from Commonwealth funds. For a more detailed breakdown, I would have to take that on notice to provide to the committee.

Mr KELVIN THOMSON—Do you have any indication of the level of unsuccessful applications for legal aid assistance by age group? It would be of interest to us in trying to determine if unsuccessful applications were similar for older age groups compared with other age groups, or whether there is more significant unmet demand for legal assistance from this group.

Ms Jones—In relation to unsuccessful applications, I think the number is in fact slightly lower for people 65 and over. For applications received from that age group there is about an 82 per cent approval rate, whereas the average for other age groups is about 73 per cent.

Mr KELVIN THOMSON—Is there somewhere we could access that particular statistic?

Ms Jones—We could provide a table showing the breakdown for the different age groups.

Mr KELVIN THOMSON—That would be handy. Is it possible that the current eligibility guidelines for legal aid make it difficult for people who are asset rich but have fixed incomes or low incomes?

Ms Jones—There is no single means test for legal aid. Each legal aid commission applies a means test. Although there was a starting base for a national means test back in 1995-96, there have been changes in different states and territories as they have adjusted the thresholds. The means test is made up of both an income and an assets test. There is the issue that if someone has significant assets they may not come within the means test and be eligible for a grant of aid.

Mr KELVIN THOMSON—Does the assets test include their own home?

Ms Jones—Yes.

CHAIRMAN—Some of the legal aid commissions—I think Victoria was one—were keen for maybe 10 per cent of Australian government funding for legal aid to be untied so that they could use it at their discretion, possibly to do things for older Australians. I realise this is probably a matter of government policy, but do you have any thoughts on the proposal being put forward by the legal aid commissions? At the moment, I think Australian government funding goes to federal matters and state funding to state matters, but the legal aid commissions were saying that they are a little bit strapped. I know they will always say that, but they were hoping that it might be possible to untie, say, 10 per cent or a proportion of Commonwealth government funding for them to be able to use innovatively.

Ms Jones—There is certainly no proposal along those lines under consideration at the moment. That Commonwealth money be used to fund Commonwealth law matters is the current policy.

CHAIRMAN—I understand that.

Mr KELVIN THOMSON—I can reinforce what the chairman said. I have had the same thing said to me. Legal aid commissions would of course always like more money—so would we all—but the nature of the present allocation of the bucket of money that they receive from federal and state sources strikes them as being inflexible.

CHAIRMAN—I also got the impression in some cases that they are actually unable to use all of the Commonwealth money for Commonwealth law matters, and so there is some of the budget unspent that they believe they could use to assist older Australians. Maybe you could reflect on that, and if there is anything you could tell us please get in touch with the secretariat. But I realise that it is a matter of government policy so there is probably a limit to what you can do there.

We started this particular part of the hearing in a segmented way as people progressively arrived. We did give the first people here the opportunity to make an opening statement and, although time is reasonably short, I wonder whether any of you others would like to make any comment in relation to our inquiry or give us any thoughts that could assist the committee in our deliberations.

Mr KELVIN THOMSON—You do not have to. We just do not want you to go away feeling like you have missed out on your big chance!

Ms Lynch—We had not intended to make any opening statement other than to say we would of course be happy to assist you in whatever way we can and indeed with anything else that comes up in the course of the inquiry.

Ms Jones—I would like to take the opportunity to mention two things. I have just noticed a question you asked earlier in relation to the SAILS program run by the Caxton Legal Centre. The Queensland Department of Communities provides the funding for that specific program, although the Commonwealth provides funding generally for the Caxton centre—and they are also in receipt of state money. Also, I need to make a correction to a figure that was included in our submission to the committee in relation to the number of clients seen by community legal centres during the period 2001 to 2005-06. I can read the figures here or provide them directly to the secretariat.

CHAIRMAN—Maybe you could provide them to the secretariat.

Mr Arnaudo—I also have something further to add about the role of legal aid commissions and grandparents as well. As part of the package of reforms of the family law system, some funding was made available to the legal aid commissions to enable them to also develop more effective models of conferencing that effectively include grandparents in their primary dispute resolution processes. They have quite an effective primary dispute resolution process in family law systems. So we have some additional funding. It is not the figure of 10 per cent—they are broader budgets—but that is available there, and we are working closely with the legal aid commissions to develop better models and to then put that into the new system as well.

CHAIRMAN—Thank you very much. Is there nothing else that anyone would like to say? A draft of your evidence will be sent to you. Please check it carefully and get it back to the secretariat. Thank you very much. We understand you are going to come back and visit us again

before we conclude our inquiry. Thank you for your attendance and thank you for coming from Sydney in particular.

As there are no members of the public here for the public forum, thank you all.

Committee adjourned at 3.02 pm