

*Select Committee into Elder Abuse — Final Report —  
“‘I never thought it would happen to me’: When trust is broken” — Motion*

Resumed from 7 November on the following motion moved by Hon Nick Goiran —

That the report be noted.

**The CHAIR:** The government response to this report was tabled yesterday.

**Hon NICK GOIRAN:** We last considered this report on Wednesday, 7 November 2018, which is a date prior to the government tabling its report. Members will be aware that the government tabled its response to the report yesterday. As an aside, it is interesting and I have not had the chance to have a discussion with the Clerk to find out what the provision is for such matters, but I note that the government was due to respond by 13 November, yet the government’s response was tabled on 20 November. I also have not had the chance to have a discussion with the Clerk about this issue, but I note that the government response is dated 13 November 2018. Perhaps it was given to Parliament and to the Clerk on 13 November and it was tabled in the Legislative Council on the first available sitting date. Be that as it may, we are all the richer for having the government’s response, which was provided yesterday.

When this matter was last before the house on 7 November 2018, I indicated to members that I had proposed to embark upon a series of speeches to work our way through this important report. The last occasion was my first occasion to do that. I looked at a couple of the terms of reference that were before the committee. In particular, I was looking at the issue of the definition of elder abuse, the forms of elder abuse and the prevalence rate of elder abuse. I did not have sufficient time to deal with the forms of elder abuse; I ended up dealing only with the first two elements, which were the definition and the prevalence. It is timely to recap that the committee was asked to determine a definition of “elder abuse” and, indeed, it did so in finding 4, which is found on page 9 of the report and reads —

Elder abuse is a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person.

The recommendation that has flowed from that is recommendation 1, which states —

The Government’s response to elder abuse in Western Australia be informed by a human rights based approach that focuses on the inherent dignity and autonomy of older people.

The government responded yesterday, 20 November 2018 and I note its response states —

Accept. The Government agrees that if human rights principles are kept at the forefront of any responses to elder abuse, this will ensure that the inherent dignity and autonomy of older people are supported and strengthened.

I hasten to add that on the other term of reference about prevalence, as I indicated last time, there is no accurate assessment of the prevalence of elder abuse—that was made very clear to the committee—partly because it is under-reported and also because there is general agreement that more research on prevalence needs to be done. Indeed, the federal government has funded a prevalence study and that is underway. I recall, and I mentioned to members on the last occasion, that one of the stakeholders was at pains to effectively say that she is done with prevalence studies and has had enough of them and that we should just get on with it, because we know there is a problem, and do something about elder abuse in our community rather than talking about it and agonising over the precise prevalence rate. Indeed, those comments by that stakeholder struck a chord with me and the committee. I note recommendation 2 on page 13 of the committee’s report.

**The CHAIR:** Hon Nick Goiran.

**Hon NICK GOIRAN:** Just to clarify, Mr Chairman, what is happening with the timer?

**The CHAIR:** Under our temporary order, there were six minutes of time available for further consideration of this item. The six minutes having elapsed, the bell went off. Thanks to temporary order 4, we have these idiosyncrasies to consider. However, none of that should distract us from our primary consideration, which is the question that the report be noted. I am pleased to announce that Hon Nick Goiran now has a fresh 10 minutes to contemplate that.

**Hon NICK GOIRAN:** That is wonderful. Thank you for that clarification, Mr Chairman.

As I was saying, recommendation 2 is on page 13 of the committee’s report and states —

For the purposes of defining elder abuse, the starting age for status as an ‘older person’ in Western Australia be set at 55 years of age for Aboriginal and Torres Strait Islander people and 65 years of age for non-Aboriginal and Torres Strait Islander people.

The government response, which was tabled yesterday, 20 November 2018, states —

Accept. In Australia, 65 years is the statistical starting age for ‘older person’ and the minimum age for access to the aged pension. The life expectancy for Aboriginal and Torres Strait Islander ... people is significantly lower than for non-Indigenous Australians, hence 55 years is an appropriate defining age for an ATSI older person.

So far in terms of dealing with the first couple of terms of reference of the Select Committee into Elder Abuse, which was asked to provide a definition of “elder abuse” and to deal with its prevalence, a couple of recommendations made by the committee have been accepted by government. Of course, in this particular inquiry there were 35 recommendations, and we will get to them in due course, but for the time being I want to move on to the third term of reference. There were 10 terms of reference and I would like to deal with the third one, which asked the committee to identify the forms of elder abuse, including, but not limited to, neglect. The most convenient place for members to find the answer to this question that was put to the committee is in finding 9, which can be found on page 20 of the report. It states —

The most common forms of elder abuse that occur are: financial abuse, emotional or psychological abuse, social abuse, physical abuse, neglect and sexual abuse.

Indeed, if members take a close look at the report, they will see that the Alliance for the Prevention of Elder Abuse: Western Australia provided some statistics for these most common forms. Financial elder abuse competes with psychological and emotional elder abuse for the top position. According to APEA, some 67 per cent of elder abuse falls within those two forms of abuse. It says that financial elder abuse is at 34.2 per cent and psychological and emotional elder abuse is at 32.8 per cent. Even though those statistics from APEA indicate that financial elder abuse is slightly ahead of psychological and emotional elder abuse, in my view it is highly likely that psychological and emotional elder abuse is higher in practice than financial elder abuse. The reason that I make that assertion is that financial elder abuse is easier to identify, report and complain of. Psychological and emotional elder abuse is highly likely to be under-reported and is more difficult to identify and complain of. I very much anticipate that, in the fullness of time when the prevalence studies are done, we will find that psychological and emotional elder abuse will top the list. But that is just a mere assertion by me. The point is that financial elder abuse and psychological and emotional elder abuse compete for the top form of elder abuse that occurs in our community. Both are deeply troubling, and different strategies are needed to address these forms of elder abuse. The committee was asked to identify the forms of elder abuse—plural—and the committee has done that. As I have indicated, it has identified financial elder abuse and psychological and emotional elder abuse. It also identified physical elder abuse, neglect, sexual abuse and social elder abuse. The statistics for those things are obviously less than for financial and psychological elder abuse. We will start with the third highest level of elder abuse and that is social elder abuse. That receives a rating from the Alliance for the Prevention of Elder Abuse of 13.1 per cent. APEA says that physical elder abuse is at 9.7 per cent, very, very closely followed by neglect, which is at 9.6 per cent. The lowest is sexual elder abuse at 0.6 per cent. Perhaps none of those things are that surprising, but it is important to note that all those forms of elder abuse are happening. I would not want members to think that sexual elder abuse happens in only 0.6 per cent of cases and therefore they should not worry too much about it and devote all their energy and attention to financial elder abuse, which is happening at the rate of 34.2 per cent, no, because the trauma of that elderly person who is in the 0.6 per cent of people subjected to sexual elder abuse needs to be addressed. We have a responsibility to address that and to minimise any possibility of a repeat occurrence or, indeed, for most elderly people in Western Australia, it even happening in the first place. We have a responsibility in respect of all six forms of elder abuse, whether it is financial, emotional, psychological, social, physical, by neglect or sexual.

At finding 10 on page 21 of the report, the committee made the remark —

Older people may experience more than one form of abuse at the same time.

It is not uncommon for an older person in Western Australia to, for example, suffer psychological and emotional elder abuse and financial elder abuse. That is not uncommon at all. The scenario that was put to the committee on many occasions was when a family member puts pressure on the older person and by way of that emotional pressure, that psychological pressure, that duress, that undue influence, they extract funds from the older person, which they are not entitled to and have no right to. Therefore, we see the intersection between psychological and emotional elder abuse with the financial elder abuse. I might divert momentarily here to say to members who are interested that this is one of the many reasons that I do not support a legalised regime for assisted suicide in our state. It is because of this very issue of psychological and emotional elder abuse and its prevalence—the 32 per cent of occasions when it occurs. They are under duress and undue influence. The massive underreporting that is so hard to detect and prove makes it an automatic case of ruling out an assisted suicide regime because the consequences are final in that regime, whereas, ordinarily, if we were talking about financial elder abuse, there is some capacity for redress. There is an opportunity to come back to try to remedy the situation, whereas, of course, in the other scenario there is no possibility whatsoever.

**The CHAIR:** The question is that the report be noted. Hon Nick Goiran.

**Hon NICK GOIRAN:** I am just trying to conclude here on the third term of reference for the committee, which was to identify the forms of elder abuse, including, but not limited to, neglect and the six different forms I have discussed already.

I want to conclude my remarks by drawing to the attention of members the fact that most elder abuse is perpetrated by family members, sadly enough. Indeed, Senior Rights Victoria found that over two-thirds of elder abuse in that state was perpetrated by children and over 92 per cent by a relative. Whatever the percentage is in Western Australia—we do not know—let us assume that it is roughly comparable with what is happening in Victoria, which is a staggering percentage of elder abuse being perpetrated by so-called loved ones. That 92 per cent of elder abuse could be perpetrated by a relative is a truly staggering statistic. The real concern is that if the elderly person does not have a big network outside of those relatives and they are highly susceptible to being lonely or otherwise will be abandoned, who will be the whistleblower about the elder abuse taking place? That is the real concern. Of course, elder abuse is also perpetrated by non-relatives—for example, so-called friends of the victim and also by individuals in a position of trust. Members will be aware that at page 17 of the report, the committee has made finding 8, which reads —

The majority of people who perpetrate elder abuse are likely to be close family members, including children, grandchildren or spouses of the older person who is experiencing abuse.

That is a finding of a committee of four members of this place who have done this work on behalf of this chamber. They found that the majority of people who perpetrate elder abuse are likely to be close family members. Close family members are likely to perpetrate elder abuse and we know that elder abuse is happening significantly in our community, so significantly that we also know that it is underreported and there needs to be more prevalent studies done to determine the final amount. In this same time, in this same breath, in this same fortieth Parliament, there is a proposition before us that, whilst we know there is this elder abuse happening, whilst we know that 32 per cent of the time there is psychological and emotional elder abuse and whilst we know it has been perpetrated by family members who use duress and undue influence on family members, we are going to have a legalised assisted suicide regime, according to some. I find that staggering. We have identified it as a problem in our society and it is yet to be addressed. It is underreported. There are the fears of the elderly who experience this and their inability to do much about it because it happens behind closed doors, because trust has been broken. For a lot of people, as per the title of the committee report, it is: “I never thought it would happen to me.” While all of that is going on, we are looking at some other regimes of so-called options for people at end of life when we know who the majority of people perpetrating elder abuse are. To those members who are such enthusiasts for that regime that they want to bring on a debate next year and have set up a special panel for it, I say that they will have a responsibility to craft a regime, which incidentally no other place on the planet has been able to do so far, that ensures that family members, who are the majority perpetrators of elder abuse, will not be able to use duress and undue influence to get that final outcome that they want as part of their inheritance impatience syndrome. There are traits of the different forms of abuse, as I mentioned earlier. Psychological and emotional elder abuse inflict mental anguish, fear, shame or powerlessness. It is often repeated over time with the intention of controlling the person through fear—for example, threats, shouting, withholding affection or removal of decision-making power. Psychological abuse is the second most common and often co-occurs with financial abuse. The concern has also been raised that treating the older person like a child could amount to psychological abuse.

I turn from psychological and emotional elder abuse to look at the issue of neglect, which again was found specifically in the terms of reference for the committee. Neglect can occur when there is failure of a caregiver to provide the necessities of life, including emotional support. That is the case whether it is intentional or unintentional—for example, not providing appropriate care when in a caretaker relationship or receiving the care allowance but not providing the care.

Physical elder abuse is the deliberate causing of physical pain or injury, including physical coercion and restraint. Some examples put to us were slapping, pushing, physical restraint and over or under medicating. That is an interesting one in itself and no doubt that debate will need to be had also. The whole issue of over and under medicating elderly people needs to be properly understood by members when they are considering so-called end-of-life choices. As one of two co-chairs of the Parliamentary Friends of Palliative Care, let me be clear that both over and under medicating are unacceptable and should not be taking place. If it is happening in our society, and when it is happening, we need to take measures to address it so that it does not therefore lead to the conclusion that we should have assisted suicide in our state. We need to address over and under medicating, and not simply say that it is too hard so we will provide people with a cup of poison.

The next form of elder abuse is sexual abuse. This is unwanted sexual behaviour, including rape, indecent assault, sexual harassment and sexual interference. This could include the use of sexually offensive language or media or inappropriate touching. I hasten to add to what I said earlier: although that is said to occur in 0.6 per cent of elder abuse cases, if one is stuck as one of the 0.6 per cent, the trauma they are experiencing is terrible and must be addressed. We must not diminish it by simply saying that only 0.6 per cent of cases are sexual elder abuse.

Social elder abuse is when there is intentional prevention from having social contact with family and friends or accessing social activities of their choice. This can mean hiding abuse from others—for example, denying phone or internet use, withholding mail, cutting off activities without explanation, preventing contact with family and friends or living in and taking control of the older person's home without their consent.

The final form of elder abuse is financial abuse. Financial elder abuse is the illegal or improper use of an older person's finances or assets—for example, forcing changes to legal documents or pressuring them to accept lower quality services to preserve financial resources for inheritance. This is said to be the most common form of elder abuse, even though I remain of the view that it is more likely than not that psychological and emotional elder abuse are at the top of the list; nevertheless, these two often intersect. I will give members a couple of examples that have been provided to my office since the tabling of the report. Unfortunately, some of the Western Australian community are understandably not au fait with all of our parliamentary procedures and practices and think they can make submissions to different people at different times. The fact is that the Select Committee into Elder Abuse no longer exists—it is a past committee of the Legislative Council—and there is no opportunity for the community to provide submissions. Nevertheless, a couple of people have written to me with examples. I have identified those examples for the purposes of today's debate.

I will start with family A. This family detailed their story of a sibling who had an enduring power of attorney over their father after a series of physical and mental health ailments and began to run his affairs. Sometime later, the father raised complaints about the enduring power of attorney to his other children, about which they struggled to get information. After the father died it was eventually revealed that the child who had the enduring power of attorney took large loans from the father, unexplained cash withdrawals and eventually had the account closed and all funds remaining transferred to their own account, along with other various forms of financial misconduct.

Family B wrote to me and informed me about their recent case involving an elder exploited by a family member with an enduring power of attorney who withdrew copious sums of money from bank accounts, sold their property while they were completely unaware and put the elder into a facility against their will. This is one of the most common types of stories I hear about elder abuse—namely, a family member committing financial abuse against an elder.

The other findings and recommendations that are relevant to the third term of reference for the committee to identify the forms of elder abuse, including but not limited to neglect, are findings 12 and 15 and recommendations 4 and 6. Finding 12 at page 30 states —

There is a lack of formal research on the prevalence and forms of elder abuse that affect Aboriginal and Torres Strait Islander communities in Western Australia.

Finding 15 at page 32 states —

Humbugging in Aboriginal communities in Western Australia is a form of elder abuse that requires a culturally safe response from the relevant agencies and services.

Related to those two findings are recommendations 4 and 6. I will briefly touch on recommendation 4 and the government's response to it. Recommendation 4 states —

The Department of Communities commission research into the prevalence and forms of elder abuse and the unique challenges that Aboriginal and Torres Strait Islander older people face in Western Australia.

The government's response tabled yesterday, but dated 13 November 2018, states —

In principle.

Presumably it agreed to the recommendation in principle —

The Government agrees that there is a need to build the evidence base on the prevalence and forms of elder abuse, including in ATSI communities in Western Australia.

ATSI is the government's shorthand for Aboriginal and Torres Strait Islander. It continues —

Aboriginal older people living in Western Australia may be particularly at risk, as supports may not be as readily accessible for a variety of reasons such as distance and cultural considerations. The Government recognises that family obligation and strong ties to kin are important in Aboriginal cultures and older Aboriginal people live in a diverse range of settings across the state.

The Commonwealth sought advice from Communities on high-need areas and potential providers for elder abuse service trials. In nominating potential sites, Communities strongly advised the Commonwealth Attorney-General's Department that there is a need to consider a specific pilot for older Aboriginal people experiencing, or at risk of experiencing, elder abuse in regional WA. It is expected that the Commonwealth will request nominated providers to apply for restricted-competitive grants in November 2018.

Of course, we are in November 2018—indeed, it is 21 November 2018—so it would be useful that if a government member were to rise to contribute to the consideration of this committee report that they indicate what the situation is on that particular issue, which it said would occur in November 2018.

The final point related to the third term of reference is recommendation 6, which is found at page 32 of the committee's report. It reads —

The Government ensures that, when the National Plan to combat Elder Abuse is released, it addresses humbugging as a form of elder abuse that affects Aboriginal and Torres Strait Islander older people and includes culturally safe strategies and responses.

The government's response tabled yesterday, which is dated 13 November, is as follows —

In principle. Communities has recommended that, in addition to any State response, the abuse of older ATSI people —

As I said, that is the government's shorthand for Aboriginal and Torres Strait Islander people —

needs to be addressed in the National Plan. Communities' response to address elder abuse will deal with issues for ATSI older people in WA, recognising that humbugging—applying pressure to obtain a benefit, whether money, medicine, food or other possessions—is an aspect of elder abuse that needs to be considered. Communities will work with Aboriginal people and Aboriginal controlled community corporations to understand and co-design a response in areas where the community recognises humbugging as an issue.

I would be interested to know what other members think about this particular response from the government. I have only had the opportunity to briefly consider this since yesterday when the government tabled its response—or the government's response was tabled on 20 November, dated 13 November—but I am troubled partly because the government says this should be addressed “where the community recognises humbugging as an issue”. What happens if the community does not recognise it as an issue but it is occurring? Is there an obligation on the part of government still to co-design a response in those circumstances? I would have thought so. It also goes on to state that it “is an aspect of elder abuse that needs to be considered”. I think it needs more than just “needs to be considered”; it needs some action. That goes back to the comments of one stakeholder who has become a bit fed up with all the prevalence studies and so on and so forth. What we do not want as a result of this is more talk; we want action. We do not want more consideration, designing, and this, that and the other; we want action. That seems to be essential, so I look forward to a government member—the relevant representative minister in this place—to explain that further when they contribute to this motion.

With that I conclude my remarks on the third term of reference. However, I would like the opportunity on another occasion to go through terms of reference 4 to 10.

**Hon TJORN SIBMA:** I rise to make a contribution to consideration of the report of the Select Committee into Elder Abuse. To recap on this issue, I believe that this matter has not received sufficient policy focus, media attention or legislative and regulatory care. It was explained to me when I began this journey that elder abuse is effectively the third wave of Australian social dysfunction. Our maturity in appreciating the issue commences with recognising that it is an issue and then beginning to contemplate this scourge in all its manifest dimensions, and then thinking seriously about how we might go about addressing those problems. It is a wicked problem, but I think it is within the capacity of the body politic and the Australian community to address it in the same way that the Australian community has shown maturity and resolve to address other forms of sordid abuse that have bedevilled our society, in particular domestic violence and child abuse, particularly child abuse within institutional settings, which has been the focus of our deliberations over the last few days.

I refer to my experience as a member of the committee and I underscore that fact by saying that it was an exceptional committee. It was a bipartisan committee that looked with a clear-eyed focus on some very troubling issues that affect seniors in Western Australia. Committee members were mature enough to reflect upon the experiences of other Australian jurisdictions as well as make some comparisons with how this matter is dealt with in a number of overseas settings. It became very clear that there is consistency in the way that this problem manifests itself across Australian jurisdictions. There is nothing particularly atypical about the Western Australian experience of elder abuse as, say, compared with the Queensland, Victorian or New South Wales experience of elder abuse, suffice to say that I think those three jurisdictions have demonstrated a level of maturity and jurisdictional responsibility in attempting to address this scourge in a far more proactive way than has been the experience in Western Australia. I am not saying that to make a cheap political point; I just want to make a dispassionate observation that the maturity of discourse in Queensland, New South Wales and Victoria in particular is probably a generation ahead of the debate in Western Australia. Each of those three jurisdictions has taken responsibility for at least attempting to tackle some of the more intractable dimensions of this problem. That is not to say that there is any gold standard, but I think we are in a position—certainly the committee was put in

the position by virtue of its inquiries and the support provided by staff—to reflect perhaps not on best practice in Australia, but certainly on better practices in Australia. That certainly informed the recommendations presented in the final report. I can attest to the fact that those recommendations were unanimous recommendations. They were not made flippantly. There was no attempt to set too high a bar for any government to address. They are practicable, tangible and realisable as a set of recommendations. It was always my fear that this report would not be treated with the seriousness that the situation demands or that a commitment to actually undertake remedial immediate action would be deferred until the outcomes of a national plan to deal with elder abuse are better known. I had more faith—perhaps it was a little displaced—that this Western Australian government would have taken the opportunity to reflect on these recommendations and, notwithstanding action at the commonwealth level, address certain issues within the power of the Western Australian government to tackle. I have not had as extensive an opportunity to reflect on the government's response to the committee's report as I would have liked, but even the most cursory assessment or analysis of the response is cause, at least in my mind, for great disappointment. It is effectively an excuse note; a commitment to "Perhaps we might", "This will be under consideration" and "In principle—maybe". There is no tangible commitment to action, which has been my greatest fear, as I have mentioned when I have spoken previously on this subject. Opportunities for redress, improvement and communicating to the public what a problem this is, opportunities to communicate to victims where they might seek help, opportunities to prevent further abuses and opportunities to arrive at some redress, compensation or relief from the terrible burden of elder abuse could be achieved. That is what the recommendations as they were phrased in the committee report gave the government very clear guidance to achieve.

Before I get into some of my individual areas of concern with the government's response to the committee report—I preface this by saying that I am not reflecting here on ministers but on organisational disposition to defensiveness—I am greatly concerned about the Department of Communities' capacity to deal with these issues as I am deeply concerned with its capacity to address a raft of human services issues, particularly in very sensitive areas such as child welfare and protection. That is a subject that this chamber has returned to again and again and, unfortunately, is likely to return to again and again so long as the mechanics of that department remain the way they are and the lack of systems alignment provides opportunities for very serious problems to be missed. This I say by virtue as a preamble to the staffing for elder abuse issues within the Department of Communities. I was struck by the admission of the director general of that department that, in a department with more than 5 500 people, approximately two individuals in the department—they are not full-time equivalent positions, that is not the extent of their role—from time to time within the daily discharge of their responsibilities look at matters concerning elder abuse. This came from the self-declared lead agency within the Western Australian government. If there was ever an indication that this issue is not being treated seriously, it was that very clear admission that the department is just not geared to undertake these responsibilities. That is not a reflection on the capacity, the will or good commonsense of those individuals; it is just that they are left in a position in which they cannot possibly provide lead agency policy support to coordinate Western Australian government action to address elder abuse.

**The CHAIR:** The question is that the motion be agreed to. Hon Tjorn Sibma.

**Hon TJORN SIBMA:** Mr Chairman, thank you. I seek this opportunity to continue my remarks.

Within that context of two individuals, not 100 per cent of the time but some of the time, within the Department of Communities being seized of the challenge and with the opportunities to contribute to improvements in the way that Western Australian legislation is drafted, in the way that regulations are enacted and in the way that not-for-profit service providers are funded to address the problem, it is of absolutely no surprise that we have been presented with a response of the calibre that has been my very recent misfortune to read through. It begins with the introduction, from which I quote —

Many of the report's findings and recommendations —

This refers to the committee's report —

already align with work that is being undertaken by the Government to address elder abuse e.g. collaborating with the Commonwealth and other state and territory governments to develop a National Plan; and addressing issues arising from the Elder Abuse Summit held by the Minister for Seniors and Ageing, Hon Mick Murray MLA in June 2018, which brought together more than 40 people from organisations that respond to elder abuse in Western Australia.

This select committee stood up in September or October last year but it was not until June this year that the Minister for Seniors and Ageing decided to host a summit. The work that this committee undertook was at least eight months in advance of the minister's activity, yet we have been treated with this condescending dismissal—"Thank you very much for your report. It's all very interesting. Don't you worry about it; we're getting on with the task and we're talking to people in the commonwealth and other state governments who know about this, so we will just make some very glib observations of your recommendations and then we'll just get on with the rest of our lives". I am sorry—I do not accept that. I do not accept that dismissive rubbish. I do not accept a response that diminishes

the seriousness of the issue. I do not accept the claim that the government, first, knows what it is doing and, second, is resourcing its department in an appropriate way to address these recommendations in any substantial sense. Of the 35 recommendations made by the committee, I note that 13 have been accepted, that the response for 16 of them has been an in-principle agreement, not full agreement or acceptance, and that five have been listed for further consideration. One was not accepted at all. I want to use this opportunity, so long as I have it, to reflect on those recommendations for which the government could not muster in-principle agreement but thought were maybe a little hard—“We need to undertake further analysis”—and the one recommendation of the 35 that was not accepted.

The recommendations that the government has taken the can to kick down the road are recommendations 16, 21, 22, 23, and 28. For the benefit of members, I will briefly canvass the themes addressed by those recommendations. Recommendation 16 of the committee states —

Circumstances of aggravation for property offences in the Criminal Code should be broadened to include where a victim is aged 60 years or more.

That was an important recommendation made after taking evidence or some views that perhaps we needed to create a whole new class of criminal charge. We did not take that advice, but we sought to broaden the circumstances of aggravation. I will move on and get back to these in more detail, but I want to give members the flavour of the seriousness of the recommendations made and the way in which the government has chosen to respond or, effectively, not respond. Recommendation 21 of the committee states —

The Government review the *Guardianship and Administration Act 1990* with a view to giving the State Administrative Tribunal jurisdiction to order compensation for the misuse or abuse of a power of attorney.

To provide members with some context, obviously delegated instruments of decision-making such as powers of attorney or powers of guardianship are designed as instruments of protection. They are articles of law but they are also articles of trust to act in the best interests of another individual in their place. I often hear discussed in common conversation someone mention that they have a power of attorney over somebody, whether it is over their mother or uncle. It underscores a complete and utter misapprehension of what that instrument is designed for. It is not the conferral of power. I will put it to anyone that misapprehensions around power can lead only to very deleterious and dismal outcomes, as they were proven to do in the course of evidence provided to this committee. Powers of attorney and powers of guardianship, in my view after my experience on this committee, have been and continue to be significantly abused by donees. This is the nub of the problem, particularly when it is the case that these instruments, particularly enduring powers of attorney, are used to achieve material advantage to confer entitlement to assets, which effectively strip people of their assets, or provide opportunity for defrauding somebody's bank account. These are serious matters. Until we start cleaning up the regime around enduring powers of attorney and the like —

**The CHAIR:** Order! Hon Michael Mischin knows not to walk between the member speaking and the Chair.

**Hon Michael Mischin:** My apologies to the member.

**The CHAIR:** Thank you, member.

**Hon TJORN SIBMA:** I think it was but a glancing blow, in the member's defence, but I will certainly not use this opportunity to dispute your ruling.

**The CHAIR:** I am absolutely sure you will not.

**Hon TJORN SIBMA:** Thank you, Mr Chair.

That is to say that 80 per cent of all elder abuse offending—there are significant comorbidities in the way that elder abuse manifests—can be categorised as financial abuse. The instrument that enables that kind of offending is the misuse of enduring powers of attorney. The committee made a very sensible recommendation, and it is not the extent of the committee's recommendation, that when an instrument such as this is abused, the State Administrative Tribunal could order compensation to be paid for that misuse. Effectively, it is a penalty clause. At the moment there is no such penalty. It is an obvious and easy area for remediation, yet the government has chosen neither to accept it nor to accept it in principle but, rather, to give itself the opportunity to give the matter some further consideration.

**Consideration of report adjourned, pursuant to standing orders.**

**Progress reported and leave granted to sit again, pursuant to standing orders.**