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LIMITATION AMENDMENT (CHILD ABUSE) BILL 2014

Second Reading

Mr DAVID SHOEBRIDGE [4.39 p.m.]: I move:

> That this bill be now read a second time.

Over the past four years especially, indeed, for the complete term of the fifty-fourth Parliament, we have seen a growing national call for justice for victims of historical child abuse. That call for justice initially was answered, after decades of campaigning, by victims and survivors of abuse around the country. It was answered initially by one of the finest moments of former Prime Minister Julia Gillard when she moved to establish the Royal Commission into Institutional Responses to Child Sexual Abuse. The inquiry had a particular focus on the failings of institutions that have allowed so many of our fellow Australians not only to suffer the appalling insult, crime and indignity of child sexual abuse but to carry that torment, pain and damage throughout their lives without having access to justice, recompense or even a national understanding about the kind of trauma and sufferings they had experienced and the lifelong impact on them from that criminal abuse of them as a child.

I believe that over the better part of the past four years the national debate has moved on. Now there is an understanding—I would hope it is multi-partisan—that victims and survivors of child abuse in all its forms deserve not only our sympathies and concerns but also our actions as parliaments to remedy that injustice. We must do all we can to remove artificial barriers the law places in the way of such victims and survivors to ensure that they have access to justice and compensation and are not beaten down in the pursuit of justice by institutions with the money, resources and legal avenues to ensure they do not get fair access to justice. One of those utterly unnecessary, deeply unfortunate and grossly discriminatory avenues to justice that exist on the statute books, not just in New South Wales but in States and Territories across the country, are the provisions in statute of limitation bills. As a general rule, they limit the time within which victims of child sexual abuse can bring their claim to a maximum period of three years. That period of three years is from the time of the abuse or three years from the child obtaining majority, being 18 years of age.

Why is that an impediment to justice? Why does it work in a particularly unfair, harsh and discriminatory fashion against victims of historical child sexual abuse? The very simple reason is that all of the study and all of the understanding we are now hearing of the impact of child sexual abuse makes it very clear that there is a delay of women and men alike—although a closer look at the figures shows the delay is greater for men—of more than 20 years on average before the survivors of child abuse are able to come forward and tell their stories. The figures obtained through the course of the current royal commission are from part of an interim report of the commission. It states:

> Some survivors disclose years later as adults and some never disclose. Disclosure is often delayed by over 20 years. These patterns are mirrored by our analysis of the people who attended our private sessions between 17 January 2013 and 30 April 2014. Survivors took an average of 22 years to disclose their abuse after it began.

A report delivered by Professor Patrick Parkinson looking at a study of reported child sexual abuse in the Anglican Church, and completed by him in May 2009, found the following:

> That the length of time—

the length of time for the disclosure of the abuse—

> ranged from nought to 63 years with an average of 23.7 years and a median of 23 years, and males had a significantly longer average time delay of 25 years compared to 18 years amongst females.

When one puts that now well-established known delay that victims of historical child sexual abuse experience alongside the three-year statute of limitation period under the limitation laws in this State and other States and Territories across the country, one immediately can see the glaring need to reform our limitation laws. In 2011 I had the privilege to co-host a forum in Newcastle together with the *Newcastle Herald* and the extraordinarily

brave principal journalist Joanne McCarthy. The question we posed to the public forum was: Do we need a royal commission into child sexual abuse in institutions? We were not quite sure what the response would be to our call for a public meeting and discussion, but we put the call out.

A large hall at the Newcastle Workers Club was engaged and half an hour before the club opened there was a crowd at the entrance. We opened the doors and started setting up chairs in the auditorium where the talk would be held. We set up a few hundred chairs and more people came. The more chairs we put out, the more that were filled. The auditorium was filled predominantly with people in their later middle ages and older people, though not exclusively because young people were present. We had a number of speakers, among them Peter FitzSimons, Peter Fox, Ms McCarthy and a number of family members of survivors. I chaired the meeting and after we had all spoken we opened proceedings to anyone in the audience who wanted to speak. Individual after individual told harrowing stories not only of abuse but the shame they had felt and the delay and difficulty they experienced in explaining to their families, loved ones and others. It had taken years for them to speak out. I still remember the raw pain and emotion in that room.

I recall also on the way home from that forum—my contact details had been distributed—I received a call from an older gentleman in his seventies who had attended the forum. He told me that on his way home he disclosed for the first time to his wife of 40-plus years that he had been subjected to child sexual abuse. He said that it took that forum for him to have the courage to speak out and eventually confront what had happened. It had taken a delay of 60-odd years before he could speak out about it. Are we saying that those survivors and victims, who finally had the courage to speak in the face of that trauma and abuse, before they can bring civil claims for damages against the institutions that failed them, have to face the additional hurdle of overcoming the statute of limitations and seek the leave of the court in a bare discretion before they can even commence proceedings? Of course we should not be saying that. But that is the state of the present law.

The Limitations Act states that those victims and survivors of abuse have three years from the age of majority in which to bring their claim. If they do not bring it within three years, they are statute barred. Before they can even darken the doorstep of the court they need to seek the leave of the court to extend time in which to have their application brought. Our laws should not contain those provisions. Indeed, the Victorian parliamentary inquiry into historical child sexual abuse clearly recommended in its findings that the Victorian Government consider amending the Limitations of Actions Act 1958 in Victoria to exclude criminal child abuse from the operations of the limitations period under that Act and to consider amending the Victims of Crimes Assistance Act to specify that no time limits apply to applications of assistance for criminal child abuse in organisational settings.

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We recall that an appalling set of laws were brought in by the current Government to savage entitlements for victims of crime in this State. The one small saving grace that we managed to impose upon that bill was to remove a proposed two-year limitation period within which victims of historical child sexual abuse could bring their claims under the victims of crime compensation. We should extend that thinking to all civil claims in this State.

This bill is the result of extensive campaigning not only by staff in my office but also by many survivor and victims groups who seek redress and justice for victims of historical child sexual abuse. In the course of drafting the bill, it was sent to a number of organisations. I am pleased to say that we have endorsement for this bill from a wide range of organisations, including the Women's Legal Services NSW; the Indigenous Social Justice Association; Bravehearts; SAMSN, the Survivors and Mates Support Network; and ASCA, Adults Surviving Child Abuse. Those important organisations have been outstanding advocates speaking up for the needs and rights of victims and survivors of child sexual abuse. The bill also has the endorsement of the Hon. Harold Sperling, a former Supreme Court judge and one of the finest legal minds on law reform. His Honour stated:

> I write in my personal capacity.
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> I appreciate the arguments for and against this proposal. My view is that the balance of interest, public and private, is firmly in favour of the proposed amendment.
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> I have not considered the provisions of the bill in detail. However, they appear in substance to implement the objectives of the proposal satisfactorily.
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> The proposed amendment may require fine-tuning in consultation with and by Parliamentary Counsel.

We have had the benefit of Parliamentary Counsel responding to our instructions on the bill. I am grateful for the assistance of Parliamentary Counsel in drafting it. I turn briefly to the provisions and the substance of the bill. The bill proposes an amendment to the Limitation Act 1969 to exclude from its operation actions for the recovery of damages for child abuse. The main definition of this section, which is also the nub of the bill, is proposed section 6A, which states:

> (1) This Act, other than this section, does not apply to an action ... to recover damages for child abuse.
>
> (2) In this section:
>
> ***child abuse*** means conduct relating to sexual abuse or physical abuse (or both) of a minor.

That section effectively removes the operation of the statute of limitations from all claims for child abuse, being sexual abuse or physical abuse of a minor. Proposed section 9 details the application of section 6A. It states:

> Section 6A applies:
>
> (a) whether or not any limitation period previously applying to the cause of action to recover damages for child abuse has expired.

In other words, this applies to all claims even if they are statute barred at the time that the bill comes into effect. It continues:

> (b) whether or not an action has been commenced previously on the cause of action.

That is, whether or not a claim is subsisting or had been previously broadened, withdrawn or dismissed by reason of the statute of limitations, this bill will still apply to that cause of action. Further it states:

> (c) whether or not a judgment on the cause of action has, on the ground that a limitation period applying to the cause of action had expired, being given previously.

This means those who have unjustly lost their rights by reason of a prior judgement on the statute of limitations will be given a second chance. It continues:

> (d) whether or not a judgment in respect of legal professional negligence has, on the ground that a limitation period applying to the cause of action had expired, been given previously.

That applies in circumstances where a lawyer may have been negligent in providing the appropriate advice to a victim of child sexual abuse, and in those circumstances that is not a bar to the ability to commence proceedings. Proposed section 10 has a detailed set of provisions that deals with pre-existing judgements and settlements. It is clear that if there has been a previous judgement or settlement, a court can set aside that settlement, taking into account the factors and the matters that are set out in subsections (1), (2), (3), (4), (5) and (6). I will not detail those provisions but they are designed to ensure that we have a balance of justice so that any previous settlements that have been awarded are taken into account, and that only a court of equal or greater status can set aside a judgement that had previously been obtained in relation to a limitations bill.

Too often we hear politicians speak in sympathy about the victims and survivors of child sexual abuse but they do not translate that sympathy into action on the floor of our parliaments to provide the necessary relief. This bill has widespread support from those who are aware of the injustices that limitation actions bring. I hope that either in the dying days of this Parliament or in the new Parliament following the election that we can pass this bill, or legal reform that mirrors this bill, in a spirit of multi-partisan goodwill so that we can stand together and deliver a greater degree of justice for victims of historical child sexual abuse and physical abuse.

I speak from the perspective of someone who has acted for many plaintiffs before coming to this place and I can clearly set out the practical impact that a limitations argument raised by a defendant has on a plaintiff. In order for victims of child sexual abuse to overcome a plea by the defendant that the claim is statute barred, they need to prove that there is no prejudice to the defendant by allowing the proceedings to occur at a later date. In the past few weeks we have seen how that argument can be abused by an immoral defendant. In that case the New South Wales Government sought to use the limitations plea to deny access to justice for a number of wards of the State who sought to bring claims for historical child sexual abuse decades after the abuse had occurred in a State institution.

The New South Wales Government used a private investigator to find witnesses of the abuse who were still alive. They found 25 witnesses, five of whom had died. The private investigator issued a statement that declared that the State of New South Wales was terribly prejudiced and an extension of time should not be granted because five witnesses had died. The circumstances in which those witnesses had died were detailed and also how their evidence might have been used by the State to meet the claim. There was a moral obligation on the State but no legal obligation to put the statements from 20 other witnesses before the court, even though they firmly verified the circumstances of the abuse. Their evidence made it clear that what the plaintiffs said was right. However, only the evidence that five witnesses were deceased was used in order to mount the argument that the State was prejudiced and the extension of time should not be granted.

One can imagine the settlement negotiations that the State was engaged in with the plaintiffs at that time. Their claims might have amounted to hundreds of thousands of dollars if they could be proved. Even though they had suffered substantial damage, they could not win their statute of limitations case and would not have their time extended. The State would have claimed it was prejudiced because it had lost five witnesses and it would have asked the plaintiffs to settle for half, a third or even a quarter.

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It is not only that case. It is case, after case, after case, where victims of child sexual abuse are being beaten down in negotiations, forced to settle for derisory or discounted settlements because of this grossly unnecessary impediment to justice. Enough is enough. It is time that the Parliament of New South Wales leads the way in our Commonwealth and removes this statute of limitations. Other States in the United States of America and provinces in Canada have done it. I hope next year we can move together to not only make the statements of sympathy and support but also act as legislators to provide it in reality. I commend the bill to the House.