

LIMITATION AMENDMENT (CHILD ABUSE CIVIL ACTIONS) BILL 2015**Bill introduced on motion by Mr Paul Lynch, read a first time and printed.****Second Reading****Mr PAUL LYNCH** (Liverpool) [11.34 a.m.]: I move:

That this bill be now read a second time.

I have pleasure in introducing the Limitation Amendment (Child Abuse Civil Actions) Bill 2015 on behalf of the Labor Opposition. The object of the bill is to amend the Limitation Act 1969. The proposed amendment will remove any limitation period applying under the legislation to an action or a cause of action for damages that relates to death or personal injury resulting from child abuse. This bill flows directly from the work of the Royal Commission into Institutional Responses to Child Sexual Abuse. The commission recently released a redress and civil litigation report. Recommendations 85, 86 and 87 flowing from that report are as follows:

85. State and territory governments should introduce legislation to remove any limitation period that applies to a claim for damages brought by a person where that claim is founded on the personal injury of the person resulting from sexual abuse of the person in an institutional context when the person is or was a child.

86. State and territory governments should ensure that the limitation period is removed with retrospective effect and regardless of whether or not a claim was subject to a limitation period in the past.

87. State and territory governments should expressly preserve the relevant courts' existing jurisdictions and powers so that any jurisdiction or power to stay proceedings is not affected by the removal of the limitation period.

Those recommendations relate to the substantive provisions contained in this bill. As to the timing of the bill, I draw the House's attention to recommendation 88, which states:

State and territory governments should implement these recommendations to remove limitation periods as soon as possible, even if that requires that they be implemented before our recommendations in relation to the duty of institutions and identifying a proper defendant are implemented.

Victoria has already legislated in relation to these issues. The Victorian legislation has removed completely the limitation period for actions for personal injury resulting from physical or sexual abuse of a minor. The judicial discretion to stay or dismiss proceedings because of unfairness due to delay is retained. That model is retained in this bill. The royal commission report recommends a consistent national approach. By adopting that proposal and being consistent with Victoria, this bill assists national consistency. In this jurisdiction such expeditious action has not been matched by government. The current Government released a discussion paper on limitation period changes earlier this year. Submissions were due by 10 March. The submissions have not been published and nothing further has been heard of the proposal. There is, of course, no need to await further reports or further consideration by the royal commission. That is made clear by recommendation 88 of the report, which I have quoted. The royal commission recommends action without delay.

Moreover, while the royal commission very sensibly recommends a national redress scheme, the proposed scheme is not intended to compensate survivors on a common law basis. The royal commission does not recommend the abolition of the common law system, although it does propose a deed of release arrangement that would preclude a common law claim upon acceptance of an

amount under the redress scheme. In turn, it seems that is conditional upon there being a national redress scheme of the quantum recommended by the commission. However, all this still leaves in place the potential for common law claims for damages. That being the case, there is no need and no benefit in delaying the adoption of proposals such as those in this bill. Limitation periods are a characteristic feature of common law systems that allow actions for damages. There are a plethora of limitation periods in our legal system, together with a plethora of exceptions.

The October 2014 Lawcover Schedule of Limitation Periods in Civil Matters in New South Wales, for example, runs to 27 pages and to seven pages for personal injury. Common law claims for personal injuries are divided into different categories depending upon the date that the cause of action arose. There are various extensions available, including where the claimant is a minor. The public policy behind limitation periods is obvious. There is merit in having matters dealt with expeditiously, not just for defendants but also for the legal system as a whole. There is clearly an advantage for the defendant to know what its potential liabilities are reasonably soon, rather than waiting many years. And of course, at a very practical level, the effluxion of time may impose significant difficulties on defendants through problems in locating a witness or in their recollection, and in the natural disappearance of documentary evidence.

There is a number of reasons to justify limitation periods. There are benefits to resolving civil proceedings as near as possible to the time of the alleged injuries. It avoids what might otherwise be problems with evidence and avoids the difficulties of deciding cases well after the events concerned occurred. Limitation periods provide certainty to defendants and insurers.

<3>

On the other hand, there is the reality that many survivors of institutional childhood abuse simply are unable to disclose until many years later. The royal commission report refers specifically to cases in New South Wales where claims could not be pursued because of limitation periods, or could be pursued but only after lengthy, time-consuming and expensive litigation. The report referred to cases arising out of the Parramatta Training School for Girls, the Institute for Girls at Hay and Bethcar Children's House. The report also referred to the case of John Ellis. The royal commission report also cites significant stakeholder support for the recommendations it eventually made, which are included in this bill.

There is a number of very real problems with limitation periods for the survivors of child sexual abuse. Often a large amount of time and effort is expended arguing about the limitation period and whether it should be extended. That happens, in particular, because the victims of child sexual assault not unusually take very long periods to disclose what has occurred. That is now so widely known and so widely accepted as to not need detailed elaboration. It also suggests that the system of limitation periods and extensions that currently exists has developed without much thought about these types of circumstances. They would more typically have developed in the context of a whole range of other types of claims. As one survivor told to the royal commission, "the current limitations regime is designed for someone tripping over in Kmart, not for victims of child sexual abuse."

As the royal commission report noted, limitation periods are "a significant, sometimes insurmountable barrier to survivors pursuing civil litigation." As a practical matter, there now seems to be a far lesser reliance by defendants in this jurisdiction on pleading limitation periods than previously. The Government has made some announcements about its attitude on this, and practitioners to whom I have spoken confirm that some non-government bodies are highly unlikely now to rely upon these types of rules. So, while in practical terms this bill will not necessarily affect an avalanche of cases, it nonetheless is important, not just as a matter of principle but because of its impact upon those cases where the statute of limitations may indeed be pleaded. In the past, there have clearly been cases where the limitation period has been vigorously pleaded by defendants, whether appropriate or not.

That includes by the State, as the case of Bethcar Children's House, which was studied by the royal commission, makes clear.

Whether the provisions are relied upon should not of course simply depend upon the policy of a defendant; they should be settled as a matter of law. This bill will retain the jurisdiction of the court to stay or dismiss proceedings where the delay to meet a fair trial is just not possible. The provisions of the bill are themselves quite straightforward. Item [1] of schedule 1 proposes a new section 6A to the Limitation Act that excludes from the statute of limitation regimes actions for common law damages for personal injury or death resulting from physical or sexual abuse of a person while a minor. Consistent with the Victorian legislation, this is not limited to an institutional setting. In practical terms, it is hard to see common law claims not limited to that setting. New section 6A (3), in accordance with the royal commission recommendations, expressly preserves the jurisdictions of courts to summarily dismiss or permanently stay proceedings where the lapse of time would prevent a fair trial.

The new part 3 makes clear that the provisions apply even if there have been judgements previously given on the limitation period issue. The provisions are of course retrospective. The commission report noted that the evidence available does not indicate that that is likely to have a significant impact on insurance or reinsurance. In any event, the provision is a response to the very great injustice done to survivors and, as the report notes, defendants' interests can be protected by utilising proper redress approaches. This bill is a matter of justice. I commend it to the House.

Debate adjourned on motion by Mr Paul Toole and set down as an order of the day for a future day.