Limitation Amendment (Child Abuse) Bill 2015 (Proof)

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LIMITATION AMENDMENT (CHILD ABUSE) BILL 2015

Bill introduced, and read a first time and ordered to be printed on motion by Mr David Shoebridge.

Second Reading

Mr DAVID SHOEBRIDGE [11.05 a.m.]: I move:

That this bill be now read a second time.

Victims and survivors of child sexual abuse look to their elected representatives for justice. The Limitation Amendment (Child Abuse) Bill 2015 endeavours to deliver an important and much-delayed reform, to respond to victims' requests to deliver substantial reform to justice. The object of this bill is to amend the Limitation Act 1969 to remove any limitation period applying under that Act on a cause of action for damages that relates to the death or personal injury of anyone, resulting from child abuse. This Parliament has an obligation to deliver practical assistance and real legal remedies so that victims and survivors of child sexual abuse, whenever that occurred, have it within their power to gain access to justice.

While the Royal Commission into Institutional Responses to Child Sexual Abuse is ongoing—and I commend its work—there are simple changes that can now be made that will immediately help those victims and survivors of past child sexual abuse. In a context where the average time for disclosure of child sexual abuse is approximately 23 years—it differs slightly for men and women—the three-year time limit for civil claims for compensation is a serious and inevitable obstacle to justice. Victims and survivors of abuse have enough challenges in their way coping with the effects of the abuse so, wherever possible, the law and especially our limitations laws should not add to the burdens they already have.

Currently to make a civil claim out of time—that is, beyond the three years after which a child victim of abuse has turned 18—a survivor must seek the leave of the court to allow their claim to be brought out of time. As anyone who has looked at this knows, and as anyone who has spoken to the lawyers who act in this jurisdiction or the victims and survivors who have sought compensation know, defendants use the existence of the statute of limitations to beat down victims and survivors in order to reduce the amount of compensation they have to pay.

In the very first settlement conference, when a survivor of abuse is sitting across the desk from the lawyers and the representatives of the institution that they say abused them, often the first thing that is raised in the negotiations is, "Well, I am terribly sorry, but you are out of time and you are going to have a great deal of difficulty convincing the court to extend time in which to bring this claim. Therefore, we will offer you 50 per cent or 20 per cent of the value of your claim."

Time after time, victims and survivors are beaten down in negotiations and the law should not give the institution that abused them that power. While access to the leave of the court to bring a claim out of time has allowed many victims to seek justice, an extension of time should be as a matter of principle not at the discretion of judges. Survivors of abuse ought to have a substantive right to their day in court with their claim. We cannot and must not allow technicalities to stand between victims and access to justice.

This bill relates to civil claims for the simple fact that compensation is recognised by everybody as an important part of the healing process for many victims. The report from the Victorian parliamentary inquiry into the handling of child abuse by religious and other organisations was presented to that Parliament on 13 November 2013. That report identified the operation of the statute of limitations in Victoria as a substantive obstacle for victims seeking redress, and the Victorian Parliament acted. The Victorian Limitation of Actions Amendment (Child Abuse) Act 2015 came into operation on 1 July 2015. That State has removed the operation of the statute of limitations for

all civil claims relating to child sexual abuse, and it has expressly made that change retrospective.

On Monday this week the Royal Commission into Institutional Responses to Child Sexual Abuse handed down its final report into redress and civil litigation. It is an extraordinarily important 600-page report that required deep research and contained carefully considered recommendations. In the political maelstrom that was Monday—with the removal of former Prime Minister Abbott and the installation of new Prime Minister Malcolm Turnbull—that extraordinary piece of work from the royal commission did not receive the attention it deserved.

Quite rightly, I think victims and survivors have been greatly disappointed that that important piece of work that proposes a national redress framework and essential reforms to our civil litigation systems, so that victims and survivors can stand on a near equal footing with the institutions that abused them, has not been given the attention that it deserves in our State and national media. I urge all members to at least read the executive summary of the report and to digest the work that has been done by that royal commission, founded on the best expert advice, but also the hundreds and thousands of case studies from victims of abuse. It is essential reading for anyone who professes to have a genuine interest in delivering justice for victims of abuse.

The royal commission found that the statute of limitations, not just in New South Wales but also in each State and Territory across the country—and indeed at a Federal level—is an inappropriate and unfair obstacle to victims of child sexual abuse seeking civil redress. The royal commission made many recommendations, two of which are:

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> 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.
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> 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.

Those recommendations are clear and compelling but without action from parliaments and law reform they will ring hollow for victims. This bill seeks to make the exact change that was implemented in Victoria and deliver on the recommendations of the royal commission. In New South Wales we often hear recommendations, such as those that came from the royal commission, and then proceed to undertake a further inquiry into possible changes. Parliament or the Government then receives another report, more meetings are held, further delay happens and, at best, years later a change to the law is introduced to give effect.

This time we do not need to do that. This time we have seen what has happened in Victoria and we have the Victorian model to follow. This time we have the clear and compelling policy support that has been delivered by the recommendations from the royal commission. The royal commission recommends this change. Victoria has already done it. We can do it here too and we can do it now. With cross-party support we can deliver this long-awaited reform the very next day this Parliament meets. The Limitations Act currently puts in place a time limit of three years from the date that the survivor of abuse reaches maturity, which is 18 years of age, in which to make a claim.

In general, such limitations are designed to facilitate the resolution of matters within a reasonable period of time. As a general principle in the general law there is a strong policy reason to have in place a statute of limitations that ensured that wherever possible claims are brought where the events that are relevant to the claim are fresh in the minds of the witnesses. There are good public policy reasons to support a statute of limitations in the broad. However, in the case of child sexual abuse, the research, study and history proves that the limitations period of three years—indeed any limitations period—is highly inappropriate.

> We know that the average time for disclosure for victims of child sexual abuse is in the order of 23 years—for male victims it can be slightly longer; for female victims some studies have suggested it is marginally shorter. However, the average time is in the order of 23 years. Of course the time in which any individual will be able to talk about, disclose or seek action for redress for the injury that happened to them will depend enormously on the personal situation of the victim. In that context, no-one who has looked at the issue supports the retention of a statute of limitations for child sexual abuse claims—apart from a handful of institutions that want to defend their wealth and the status quo. They want a law that allows them to beat down victims when they bring forward a claim for compensation. As I speak, that number is getting smaller and smaller as the case for reform is building.

Some organisations do not seek to rely upon the statute of limitations. I note that after being grossly embarrassed by the appalling manner in which the State of New South Wales exercised the defence of a statute of limitations against a number of children who had been abused in the care of the State decades ago, that it has now made a policy position—not a legal position—not to use the limitations of defence in relation to child sexual abuse claims. Other institutions have chosen voluntarily to restrain themselves and not rely upon the limitations defence, but to this day many institutions continue to rely upon the defence to defend the claim.

> I want to be clear: no survivor of abuse should ever be reliant on the goodwill of the institution that abused them in order to bring their claim for just compensation. Tragically, that is the situation the law currently places them in. Some research that has been gathered by Bravehearts shows that the figures in relation to delay are reasonably consistent across Australia. In Queensland the Project Axis survey, according to Bravehearts, found of the 212 adult survivors of child sexual abuse that 25 took five to nine years to disclose it; 33 took 10 to 19 years; and 51 took over 20 years. The time taken to disclose can be substantially longer where the perpetrator is a relative. The Queensland Crime and Corruption Commission found of 3,721 reported offences committed by relatives, 25.5 per cent of survivors took one to five years to report the acts; 9.7 per cent took five to 10 years; 18.2 per cent took 10 to 20 years; and 14.2 per cent took more than 20 years.

That data shows that even a 20-year statute of limitations would exclude many victims who, through no fault of their own and often by reason of the damage occasioned to them as a result of the abuse, would not be able to bring a claim for compensation in that time frame. Indeed, sometimes the most damaged individuals are the ones least able to bring a civil claim in a timely fashion against an organisation that failed to protect them. They should never have to pay an additional penalty as a result of that.

I will give just one example of an individual who demonstrates this. Some three years ago I was contacted by a man after my office and the *Newcastle Herald* held a public event in the Workers Club at Newcastle to ask whether there should be a royal commission into child sexual abuse. Although we had promoted the event we were not sure how many people would turn up. We set out 100 seats. When I arrived 10 minutes before the club opened there was already a crowd out the front. Once we opened the doors more people streamed in .The more seats we put out the more they were needed. The auditorium was full to bursting and people ended up having to stand in the aisles.

At event we heard from Peter FitzSimons, extremely brave former New South Wales police officer Peter Fox and survivors and families of victims of abuse. One person spoke about the tragic case of an abuse survivor who had only recently taken his life in the Hunter. One after the other individuals spoke very emotionally about the abuse they had suffered and their need to get some justice. At the time we were calling for a royal commission. After I came back to Sydney I received a call from an elderly gentleman who had been at the event with his wife of some 40 or 50 years. He commented on how emotional it was and then said that it was only on the way home from the event that he had ever found it within himself to disclose the abuse that he suffered. At the time of that conversation I realised that the limitation legislation must go; we must act to ensure that people like him have access to justice. Of course we should, and that is what this bill does.

Schedule 1 [1] excludes an action on a cause of action for damages that relates to death or personal injury resulting from child abuse from the operation of the Limitation Act. It removes the Limitation Act provisions and accordingly makes the bringing of proceedings on such causes of action not subject to any limitation period provided for in the Act. The common law provides no limitation period, so removing the statutory prohibition would remove the limitation period at law. The proposed provision is expressed not to limit—nor should it—any existing powers or jurisdiction of the courts. An example is the power or jurisdiction to stay or dismiss proceedings where a court determines that the lapse of time has a burdensome effect on the defendant is so serious—meaning it is vexatious—that a fair trial is not possible.

Schedule 1 [3] makes it clear that the exclusion of such actions from the limitation periods applying under the Act extends to existing causes of action, including cases where the relevant limitation period has already expired. It also ensures that the bill applies to past causes of action. In that regard I will note how new sections 9 and 10 in the Act will read. Section 6A, which is the substantive provision that removes the limitations provisions for actions for the recovery of damages for child abuse, provides:

> Section 6A applies:
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> (a) whether or not any limitation period previously applying to the cause of action to which section 6A applies has expired, and
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> (b) whether or not an action has been commenced previously on the cause of action, and
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> (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, been given previously, and
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> (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.

New section 10 relates to pre-existing judgements and settlements. It provides in part:

> (1) An action on a previously barred cause of action may be brought even though:

> (a) a judgment on the cause of action has, on the ground that a limitation period applying to the cause of action had expired, been given previously, or
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> (b) 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, or both.
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> (2) An action referred to in subclause (1) may be brought as if the action in which such a judgment was given had not itself been commenced.

In other words, for those individuals who have suffered an unjust outcome—and inevitably historical child sexual abuse claims that are dismissed on a limitations offence are an unjust outcome—that unjust outcome will not bar them from bringing a claim if this bill becomes law. The Greens have consulted widely on the bill and have received endorsement for it from the following organisations and individuals: the Indigenous Social Justice Association; the Hon. Hal Sperling in his personal capacity; Bravehearts; the Survivors Network of those Abused by Priests [SNAP]; Women's Legal Services NSW; the Survivors and Mates Support Network [SAMSN]; and Adults Surviving Child Abuse [ASCA].

Each of those organisations does essential and important work and I think they all have the full respect of members in this Chamber. Each of those organisations supports the law reform we are putting forward. In consultation Bravehearts Chief Executive Officer Hetty Johnston—an indefatigable campaigner in this area—noted that the bill not only has the support of Bravehearts but it also represents the position they have held for more than 15 years. Their position is that the statute of limitations applying to child sexual abuse matters is "draconian and must disappear". Hetty Johnston went on to say:

> Victoria has already done this and we predict that the Royal Commission is going to recommend all States and Territories do the same. I actually think this legislation has a shelf life of about 3 nano-seconds ...

Let us hope that is the case. With cross-party support we can make this bill law the very next day that this Parliament meets. We thank all of the survivors, victims and organisations that have contacted my office to offer their support. We also thank them for their ongoing courage in insisting that the law is changed not just so their claims, which are often fully resolved, can be given a fair hearing but so that all future claims can be given a fair hearing. They deserve justice according to law, not justice at the discretion of the institution that abused them. Reform is needed now. This widely supported and essential reform can ease at least one burden for victims immediately. I call on members of all parties to support this bill. There is a simple political fact: doing nothing in the face of injustice places those in power on the side of the abusers. It is time we stood firmly on the side of victims and survivors. I commend the bill to the House.