CRIMINAL PROCEDURE AMENDMENT (CHILD SEXUAL OFFENCE EVIDENCE PILOT) BILL 2015

Bill introduced on motion by Ms Gabrielle Upton, read a first time and printed.

Second Reading

Ms GABRIELLE UPTON (Vaucluse—Attorney General) [4.26 p.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Criminal Procedure Amendment (Child Sexual Offence Evidence Pilot) Bill 2015. For most people, the court process is a daunting one. Understandably so, when you consider it is often taking place in imposing buildings and rooms, presided over by a judge sitting high on the bench, with barristers duelling over the detail of the case. It is by its very nature an adversarial environment. But for children—children who have suffered the trauma of sexual abuse, which is one of the worst crimes imaginable—appearing in court and recounting what happened to them can be extremely stressful.

These are children who often are not yet in high school—sometimes not even in primary school. These children undeniably are some of the most vulnerable members of our community, who have already suffered more than any person should. Our criminal justice system should not compound that pain; it should not inflict more trauma on these young victims. Although legislative reforms over the past decade have gone a considerable way to helping children through the court process, including allowing them to give their evidence from remote witness rooms, more needs to be done.

In 2013 only around 20 per cent of child sexual assault offences reported to police proceeded to court. The high rate of attrition in reported cases of child sexual assault can be partially attributed to the negative impact—or the perception of negative impact—of the criminal justice process on the wellbeing of child victims. It ultimately means that perpetrators of some of the worst crimes experienced in our community are never held to account. As Attorney General, I have pledged to better protect, support and deliver justice for children and young people. They deserve our unwavering support, care and compassion, particularly during the court process.

This bill will ensure children will be better supported. It delivers on a key election promise to pilot specialist measures to support child victims of sexual assault in giving evidence in criminal proceedings. The bill amends the New South Wales Criminal Procedure Act to allow those children, first, to have all their evidence prerecorded early and in the absence of a jury; and, secondly, to be supported by specially trained and accredited specialists, known as children's champions, to help them communicate with the court.

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The bill implements recommendations of the 2015 Joint Select Committee on Sentencing of Child Sexual Assault Offenders contained in its report, "Every Sentence Tells a Story". That report recommended procedural reforms to reduce the stress and duration of court proceedings for child witnesses in child sexual assault cases.

The reforms in the bill respond also to recommendations of the NSW Ombudsman's 2012 report responding to child sexual assault in Aboriginal communities. This legislation is another important step towards honouring the strong commitment made by this Government to deliver justice and protection for vulnerable children and young people. This is not the first time I have spoken in Parliament about the Government's response to the work of the Joint Select Committee on

Sentencing of Child Sexual Assault Offenders. This Parliament has already enacted tougher sentences introduced by the Government for those convicted of serious child sexual assault offences, increasing the maximum sentence for sexual intercourse with a child under 10 from 25 years to life imprisonment, and including an additional 13 child sexual assault offences in the standard non-parole period scheme.

In addition, the Government has appointed two specialist judges to the District Court to hear child sexual assault cases throughout the State. Her Honour Judge Jennie Girdham, SC, and her Honour Judge Catherine Traill have undergone extensive training for these new roles, which they have already taken up.

Pursuant to sessional order business interrupted and set down as an order of the day for a later hour.

Debate resumed from an earlier hour.

Ms GABRIELLE UPTON (Vaucluse—Attorney General) [4.51 p.m.]: This is not the first time I have spoken in this Parliament about the Government's response to the work of the Joint Select Committee on Sentencing of Child Sexual Assault Offenders. This Parliament has already enacted tougher sentences, introduced by the Government, for those convicted of serious child sexual assault offences, increasing the maximum sentence for sexual intercourse with a child under 10 from 25 years to life imprisonment and including an additional 13 child sexual assault offences in the standard non-parole period scheme. In addition, the Government has appointed two specialist judges to the District Court to hear child sexual assault cases throughout the State. Her Honour Judge Jennie Girdham, SC, and Her Honour Judge Katherine Traill have undergone intensive training and begun their new roles.

The pilot scheme introduced by this bill has been informed by the Child Sexual Assault Task Force, which was convened earlier this year by the Department of Justice. The task force brought together experts from those agencies that investigate, prosecute, defend and hear child sexual assault matters. It included representatives of the District Court, where the majority of child sexual assault matters are heard, the Office of the Director of Public Prosecutions, the Law Society of New South Wales, the NSW Bar Association, the Child Abuse Squad attached to the NSW Police Force, the Aboriginal Legal Service and Legal Aid NSW.

The work of the task force was assisted by feedback from victims groups, health professionals, legal academics and experts working in child sexual assault matters in the United Kingdom and New Zealand. It also built on the efforts of the former chair of the Government's Sexual Assault Review Committee, Ms Amy Watts, and the former manager of the Witness Assistance Service, Ms Lee Purches, both of whom have been longstanding advocates for procedural law reforms to benefit vulnerable children and young people. I thank all individuals whose work for and on behalf of child victims and whose insights have contributed to these important reforms. This Government is committed to continuing that work towards supporting victims of child sexual abuse, including through its ongoing participation in the Federal Royal Commission into Institutional Responses to Child Sexual Abuse.

The procedural supports for children and young people provided in the bill are twofold. Firstly, eligible child victims will be able to have all of their evidence prerecorded as early as practicable once a criminal charge has been referred to the District Court and before a jury is empanelled. This expands existing provisions in the Criminal Procedure Act 1986 which allow only a child's investigatory interview to be used as their evidence in chief. Secondly, children will be supported by the

appointment of a children's champion when they appear in court. This is based on a scheme that has operated successfully for the last decade in the United Kingdom. The role of such individuals will be that of a witness intermediary, as they are called in the United Kingdom. They will be trained and accredited communication specialists who will facilitate the communication of and with the child and provide a written assessment report of the child's communication needs.

The bill contains important safeguards for the rights of an accused to a fair trial, the key to which is the requirement of full disclosure of the prosecution case before any prerecorded hearing takes place. The role of a children's champion is expressly defined as a witness intermediary: a neutral and impartial communication specialist who will not have any prior association with the witness and who cannot be appointed unless they have fulfilled minimum prescribed qualifications. The term "children's champion" appropriately reflects the role of these intermediaries in supporting child witnesses. To be clear, this term does not denote any element of competition, as that would not reflect the fundamental rules of procedural fairness in our justice system or the proper role of a court-appointed facilitator. Such a role is intended to promote clear and accurate testimony, for the benefit of all parties in the proceedings.

I turn to the main detail of the bill. Schedule 1 of the bill inserts a new part 29 into the Criminal Procedure Act 1986 to introduce provisions relating to the child sexual offence evidence pilot scheme. Under clause 83, the new part will apply to proceedings in the District Court in relation to prescribed sexual offences, as defined in section 3 of the Criminal Procedure Act 1986. This includes appeals in relation to or re-hearings of such proceedings. Clauses 81 and 82 provide that the pilot scheme is to operate for three years from 31 March 2016 in the District Court sitting at Newcastle and the Downing Centre. Part 29 applies to children who are under 18. This is different from the threshold for the existing vulnerable witness provisions in part 4 of the Criminal Procedure Act 1986, which apply to children aged 16 and under. The new provisions apply to all children who are under 18, as the Government recognises that sometimes even older children who are traumatised by sexual assault are inherently vulnerable because of the evidence they have to give.

There are two main aspects to new part 29: provisions for prerecorded evidence hearings in clauses 84 to 87; and provisions dealing with children's champions in clauses 88 to 90. Clauses 84 and 85 set out the eligibility and other requirements for prerecorded evidence hearings. There is a presumption in favour of prerecorded evidence hearings for complainants who are under 16 at the time at which the evidence is given. No application for an order is required. The court must consider the wishes and circumstances of the witness and the availability of court and other necessary facilities in considering whether the presumption should be dislodged. It may also consider a number of non-exhaustive factors under clause 84 (6). For children aged between 16 and 18 the court may order a prerecorded hearing, either on its own motion or following application by either party. Under clause 84 (4), orders for a prerecorded evidence hearing for any child cannot be made unless it is appropriate to do so in the interests of justice.

The provisions in clauses 84 and 85 supplement existing provisions in the Criminal Procedure Act 1986 which enable a child's prerecorded investigatory interview to be given and admitted as evidence in chief. Importantly, the exceptions to the New South Wales Evidence Act 1995 which allow for the admission of out-of-court statements made by children during their initial interview with investigating police will continue to operate, as will other provisions in the Evidence Act 1995 that provide support for children who testify in sexual offence proceedings. However, that recorded interview, along with any additional oral evidence in chief, re-examination and cross-examination, will be played or taken during a prerecorded evidence hearing rather than during the usual trial before a jury.

Under clause 85 (2) (b) the child witness is entitled to give their evidence during the prerecording hearing remotely, that is, through the use of closed circuit television facilities linked to the court. This

reflects the existing entitlements of all vulnerable witnesses under the Criminal Procedure Act 1986. Where there is a jury, it will later view the recording of the prerecorded evidence hearing, subject to the usual rules of evidence.

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Recognising the benefits to a child in having their evidence taken earlier than usually occurs in criminal proceedings, clause 85 (1) stipulates that the prerecorded evidence hearing must take place as soon as practicable after the date listed for the accused person's first appearance in the District Court.

The bill safeguards the rights of an accused to procedural fairness in a number of ways. Firstly, clause 85 (1) provides that the hearing cannot occur until the prosecution has complied with the mandatory pre-trial disclosure requirements prescribed in section 141 of the Criminal Procedure Act. Second, clause 86 ensures that the accused person is given reasonable access to a recording of evidence made at a prerecorded evidence hearing. To protect the sensitive nature of the evidence, neither the accused nor their lawyer will be entitled to possession of the recording of the prerecorded evidence hearing. Regulations under clause 86 (4) may prescribe how access to the recording by the accused or their lawyer is to take place.

The bill does not alter the usual procedures under which the accused and other parties are provided with transcripts of evidence in District Court proceedings. Clause 87 is an important aspect of the bill that is intended to limit the prospect of children being unnecessarily recalled to give further evidence following the prerecorded evidence hearing. Bringing the child back to court to give evidence after the prerecorded hearing can only take place with leave of the court and only where evidence has emerged since the prerecording that the party seeking leave could not reasonably have been aware of at the time of the prerecording.

The second main aspect of the bill is contained in provisions for Children's Champions in clauses 88 to 90. Clause 88 provides that the role of a Children's Champion is that of a witness intermediary, whose role as an impartial officer of the court will be to facilitate the communication of and with the child witness. This role is based on the United Kingdom [UK] witness intermediary model. However, the New South Wales pilot model goes further than that legislated in the UK, as it expressly provides for an advisory function, which is reflected in clause 89 (6). Under this proposed provision, the Children's Champion will provide an assessment report concerning the communication needs of the child before he or she gives their evidence. This assessment report will assist parties and the court itself in understanding the communication needs and challenges of the particular child witness and will identify whether particular supports are needed for the child when they give their evidence. Where parties adopt the advice of the assessment report, the need for intervention of the witness intermediary during the child's evidence will be mitigated.

Clause 89 sets out how Children's Champions are to be appointed and prescribes minimum qualification requirements, being a degree in psychology, social work, speech pathology or occupational therapy. Those qualification requirements may subsequently be expanded by regulation. Victims Services in the Department of Justice will establish a panel of suitable persons from which an appointment by the court in a particular matter can be made. Clauses 89 (3) and 90 (1) provide that a Children's Champion must be appointed and evidence given in their presence for children under 16 years of age. The court is not required to make an appointment, for the reasons set out in clause 89 (4). This may be, for example, where a Children's Champion is not available or where the particular needs of a child cannot be met by a suitably qualified witness intermediary. This provision recognises that different children have different needs depending on their age, cognitive development and physical and psychological capacities.

Clause 89 (3) (b) provides that for a child aged between 16 and 18 the court may appoint a Children's Champion where such child has difficulty communicating. As with the prerecording provisions, the provisions as to Children's Champions supplement existing supports in the Criminal Procedure Act for vulnerable and other witnesses, including, for example, entitlements of eligible witnesses to communication aids, as set out in in division 6, part 2 of the Act. The independence of the role of a Children's Champion will be reflected in the oath they will undertake, which is in similar terms to that required of interpreters under the New South Wales Evidence Act. A warning under clause 91 must also be given to the jury where evidence is given by way of a prerecording or where a Children's Champion is used.

Clause 90 provides that where a Children's Champion has been appointed, evidence of the witness must be given in their presence. The court and lawyers in the proceedings must be able to see, hear and communicate with the Children's Champion. This can occur even when the Children's Champion is sitting with the child in a remote witness facility. Clause 92 makes it clear that the provisions of the proposed part are additional to existing provisions with respect to the giving of evidence, rights of the accused and powers of the court, and do not affect these except as provided by the part, regulations or rules of court. The bill will commence on assent. The legislative amendments concerning the use of Children's Champions in court proceedings under this bill will be complemented by procedures developed by the NSW Police Force and its Joint Investigatory Response Team partners as to the engagement of accredited Children's Champions during the initial investigatory interview. The pilot will be administered by Victims Services in the Department of Justice.

These are important reforms. They build on the work of this Government to make sure that young people who are victims of child sexual assault will have the best possible supports when they are brave enough to go before the courts. The bill is purposeful in being focused on intending to reduce the re-traumatisation of child victims in courts, clearly without compromising the fundamental elements of a fair trial. There will be an evaluation during and at the end of the pilot prior to any expansion of both of these measures. I commend the important initiative to the House.

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