

CIVIL LIABILITY LEGISLATION AMENDMENT (CHILD SEXUAL ABUSE ACTIONS) BILL 2017

Third Reading

MR J.R. QUIGLEY (Butler — Attorney General) [12.19 pm]: I move —

That the bill be now read a third time.

MRS L.M. HARVEY (Scarborough — Deputy Leader of the Opposition) [12.19 pm]: I rise to add some concluding comments to the debate on the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017. I would like to commend the Attorney General for bringing forward the legislation. I was very pleased to participate in its passage through this place. I would also like to place on the record at this stage my appreciation of the work of Dr Graham Jacobs, the former member for Eyre, who spent a lot of time and effort highlighting the plight of a number of victims of child sexual abuse and their fight to receive justice in some form of compensation route through the lifting of this statute for civil litigation. In particular, I would like to place on the record my appreciation and admiration for the victims of child sexual abuse who have been such wonderful, tireless advocates for the cause. Kirsty Pratt and Jodie Greasley in particular were two very courageous women whom I had a lot to do with as part of my role on the cabinet subcommittee in the twilight of the Barnett Liberal government. I saw their passion and their willingness to tell their stories again and again to highlight the importance of this issue, which took tremendous courage and personal strength. In the telling of these stories, there is often a re-traumatisation and a memory of the events. I really appreciate what it has taken from victims, Kirsty in particular. I would like to acknowledge her courage on behalf of so many victims. Once this legislation goes through the other place, her relentless pursuit of this issue will ensure that victims of child sexual abuse will have an ability to seek compensation and sue the perpetrators of their abuse, as they should rightly be able to.

I reiterate that one of the issues I raised with the Attorney General and implored him to consider in the consideration in detail stage was placing an amendment to the legislation to include serious physical abuse as one of the categories and definitions for the remit of this legislation. Victims of serious physical abuse also have ongoing psychological and often physical scarring as a result of beatings, malnourishment, deprivation of medical care and a range of other things at the hands of perpetrators in many institutions across the state. Many of them suffer on an ongoing basis as a result of serious physical abuse. The royal commission recommended that serious physical abuse be included in the remit for lifting the statute. Victims of serious physical abuse are included in the legislation in Victoria and New South Wales. I would expect that at some point in the future, the pressure will be on this government to include victims of serious physical abuse in the legislation. It would seem expeditious of the government to consider putting in that amendment, perhaps when the bill goes through the other place, and it would potentially avoid what might be somewhat of a legal circus for those victims of serious physical abuse who try to seek some kind of remedy by way of this legislation lifting the statute of limitations.

I have nothing further to add. I am pleased that this legislation has gone through. As I said in my contribution to the second reading debate last year, one of my big regrets as a minister and as the Deputy Premier of the Barnett government was that we did not attend to this in a more timely fashion. I am pleased to see it pass through this place. I hope that it will be seen through the other place on its merit in an expeditious fashion as well so that victims of child sexual abuse at the hands of perpetrators in institutions across our state can start to find justice.

MR P.J. RUNDLE (Roe) [12.24 pm]: I rise to make a brief final contribution to debate on the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017. Firstly, I also acknowledge Kirsty Pratt for her fantastic advocacy on behalf of the victims of child sexual abuse. Can I also say that it was good to see Graham Jacobs, the former member for Eyre, and Kathryn Jacobs here yesterday. He has been a great advocate. I also speak on behalf of the likes of Todd Jefferis, Roy Addis, Mick Hilder, Joan Jolly and many others from Katanning in my electorate. I would like to applaud the courage of all those advocates, especially Kirsty. Her perseverance and the way she has represented all the victims throughout the state is fantastic. I really congratulate Kirsty for the way in which she has come in here every day and made her presence felt. I think that has been a real eye-opener for many of us.

As I said in my contribution to the second reading debate, being the member for Roe, my electorate has probably almost been more affected than any other member's within the state, with the likes of Condingup Primary School and St Andrew's Hostel in Katanning. The Blaxell inquiry, which went in depth into the hostel, took place there. I went to Katanning High School and in later years I saw the effect that it had on many of my good friends, so I am very pleased that the legislation has come to this stage. In October 2016 when the legislation Dr Jacobs introduced was first debated, it was probably not a pleasant time in here and that was certainly reflected to me when I was a candidate. I certainly got the feeling from many of my constituents that they were not happy with the way things were going. I am pleased the legislation progressed to the next stage in which the member for Scarborough and our leader, the member for Central Wheatbelt, went to the committee stage to work through the issues.

I congratulate the Attorney General. Last year, I asked questions in here about why the legislation was not progressing, given members opposite said that it would be the first legislation that they would pass, but

I understand some of the delicacy that the Attorney General has had with the drafting and some of the issues that are very difficult to deal with. We heard about some of them yesterday, including the likes of the forms of abuse and the clawback provisions. If victims have already been compensated, how do we deal with that? One thing the Attorney General mentioned was that the last thing any of us want to do is put up a roadblock; I fully agree with that. I think we need to recognise the moral obligation when dealing with these claims. The Attorney General mentioned that he hopes the institutions will do the right thing and I certainly agree. I hope they do the right thing.

I want to mention a couple of other things. The Royal Commission into Institutional Responses to Child Sexual Abuse has helped to lead us down the right path. I also think that the national redress scheme will be complementary to this legislation. The cap on legal fees is also a very good part of this legislation. Finally, I think the quotation from Todd Jefferis summed it up. He said that enabling a wronged and powerless person access to a process for redress is a small thing that the government can do for survivors. I think that sums it up. I certainly commend the legislation, which has bipartisan support. For me as the member for Roe, this has been without doubt the most important piece of legislation in my short time in Parliament. I strongly support it.

MR J.R. QUIGLEY (Butler — Attorney General) [12.29 pm] — in reply: During my reply to the second reading debate on the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017, I personally acknowledged each member of the chamber who made a contribution to the debate on this important piece of legislation. I noted during that response that the Leader of the Opposition indicated his and his party's in-principle support for this legislation and what it seeks to achieve. I will now turn to matters of more recent debate—that is, the consideration in detail debate and the third reading debate. In that regard, I would particularly like to thank the members for Hillarys, Churchlands, Scarborough and Central Wheatbelt for their contributions.

This legislation has been a while in the making, as we have discussed. It was intended to be the first piece of legislation that our government dealt with. However, we then worked out that a successful plaintiff who tried to recover damages from an organisation that was not the state of Western Australia would be confronted with a very serious problem. The Royal Commission into Institutional Responses to Child Sexual Abuse, in its “Redress and Civil Litigation Report”, invoked the Parliaments of Australia to address this issue. The report states at page 509 —

We are satisfied that survivors should be able to sue a readily identifiable church or other entity that has the financial capacity to meet claims of institutional child sexual abuse. We are satisfied that the difficulties for survivors in identifying a correct defendant when they are commencing litigation against unincorporated religious bodies, or other bodies where the assets are held in a trust, should be addressed.

The government has hearkened to that call by providing, in part 2 of the bill, an avenue by which plaintiffs will be able to readily identify the correct defendant. As we discussed during consideration in detail, the current office holder of an institution will be the nominal defendant and will, therefore, be readily identifiable. If an institution has changed its name or nature over time but is substantially the same institution today as it was when the abuse occurred, that institution will be the responsible institution. As I said earlier, the bill provides that the current office holder will not be personally liable for payment of damages. The current office holder will be the nominal or identified defendant, but have no personal liability. However, for the purposes of the Civil Liability Act, in cases in which there is shared responsibility, the current office holder will be the tortfeasor—or the person who will be held to be responsible—when the court is trying to apportion liability.

I have mentioned in debate in this chamber, and I cannot stress too often, that proposed new sections 15C and 15E in clause 5 will permit the office holder to have recourse to the assets of the institution to pay out a judgement. However, it does not give a successful plaintiff the right to execute against any asset of that institution. The voluntary cooperation of the office holder will be required in order to access the assets. That is based on an important public policy consideration. The assets of many churches and other religious organisations are held in trusts. That is not in order to hide the assets; it is to ensure that the assets are available for use by the parishioners and their families, and the people these institutions serve. In small regional towns and elsewhere, these institutions are a very important part of the social infrastructure and a very important source of support for families in the community. We did not want to open a pathway whereby a plaintiff could instruct a sheriff to auction off the local Catholic primary school and deny an educational facility to the children who attend that school. We wanted to enable the bishops in the case of a church, or the directors in the case of other religious organisations, to pierce the corporate veil and walk through the wall of the trust behind which the assets are held, and to do so with impunity. We have the concurrence of all the Attorneys General around Australia, and the commonwealth Attorney-General, for this displacement provision under the Corporations Act.

Before I come to the member for Scarborough's comments about the need to include in this legislation physical and emotional abuse, I will say this about the royal commission. The royal commission made many recommendations, not all of which have been picked up in all jurisdictions. I am proud to say that Western Australia is the only jurisdiction in Australia so far that has picked up on the recommendation of the royal commission for the identification of the proper defendant and for the displacement provisions that allow that defendant to access the

assets of the trust to pay out a judgement. Recently, I met in Sydney with an Attorney General from another political persuasion, Mr Mark Speakman, QC. Mr Speakman was very interested to see our provisions in this regard, because he acknowledged that this is groundbreaking legislation. He is a very learned gentleman. I think he was a University of Sydney Law School medallist in his year. He was very interested to see this legislation.

I turn now to the comments of the member for Scarborough. I want to make the government's position very clear. In 2016, we chose to go forward on lifting the statute of limitations insofar as it relates to victims of child sexual abuse. That was done after a great deal of thought, because it set aside the public policy consideration that matters need to reach finality in a timely manner. The reason every common law country has a statute of limitations is so that people who go to the courts to seek relief and people who go to the courts to defend themselves are not prejudiced by the fact that many decades have elapsed since the time of the wrongdoing and they are unable to properly defend themselves because their witnesses are either no longer in the jurisdiction or are deceased and have passed from this world. If we leave a matter for 50 years, obviously our capacity to defend ourselves is diminished or may even be totally wiped out because all the witnesses who could swear that John was not a teacher at that school at that time have gone. Therefore, there is a public policy consideration in having these matters determined in a timely manner.

That is met, however, with the stark fact that due to the shame that can attach to sexual offences, most victims of child sexual abuse take years and years to make the disclosure. For many years, victims tend to blame themselves. This is a feature of not only victims of child sexual abuse, but also, as I know from my legal practice, adults. Women who are victims of sexual assault do not want to say anything about it; they do not want to let the world know that they have been defiled and assaulted. But as they try to resolve this issue in their own mind, it can cause a delay of some time—sometimes a couple of years—before they can bring themselves to out the conduct and out themselves as victims. The child, however, is sometimes exposed before he has even much of an understanding of sexuality. What is happening at the time to the child might not be appreciated by the child at that point as an assault of a sexual nature. Or, in those delicate years that we have all sailed during puberty and pre-puberty when sexuality and our sexual awakening brings with it self-consciousness and a degree of awkwardness and uncertainty, even if a child appreciates that they have been sexually assaulted, they want to bury it out of embarrassment and not bring it forward in any way. They struggle to move on with their life and have this nagging thing within their psyche that they cannot resolve because they are a victim of an assault that went to the very core of their nature. For this reason, we decided that it was imperative that we lift the statute of limitations for child sexual abuse because of the delay in reporting. This is somewhat different, I submit to this Parliament, and it has been appreciated in some other jurisdictions, from a serious physical assault when a child's arm might be broken, for example, and there is a mandatory requirement on caregivers to report the assault. It manifests itself. Emotional abuse is another very difficult area and could involve half the young population. We just do not know; it is very difficult. We wanted to deliver good, groundbreaking legislation that will offer a pathway to relief for victims of sexual assault who have joined the Parliament today in the Speaker's gallery, Madam Acting Speaker. That is why we have stuck with lifting the sexual abuse statute of limitations.

The member for Scarborough said that perhaps the government will change the legislation when it goes to the upper house. We will not move any amendments to the legislation in the upper house to include those matters forecast by the member for Scarborough. Although the member for Scarborough and the Leader of the Opposition hold in their hearts a hope—I accept they have a sincere hope—that Kirsty Pratt and other victims she represents, other victims who are not here and others who are watching these proceedings online, see the passage of this legislation pass swiftly through this Parliament, I must put the government's position clearly. If people in the upper house—it will not be the government—seek to amend the legislation by extending it to cover other areas, the government will not accept those amendments in the other place. If, by numbers going against the government in the upper house, the bill is returned to this chamber, the amendments would not be ultimately accepted in this place. Such amendments would have the ultimate result of stymieing this bill.

Mrs L.M. Harvey: That is not our intention. I put it to you that if the government wanted to put those amendments forward, that would be the only option. I am not interested in seeing this legislation bounce between the two houses and have any further delay to it. I certainly would not encourage that from any of our members in the upper house.

Mr J.R. QUIGLEY: I am very grateful for the member for Scarborough's interjection. There is a lot of nodding up there in the Speaker's gallery from some victims, who are relieved about that. The point can be argued but we do not want to see the bill delayed.

Mrs L.M. Harvey: That's correct.

Mr J.R. QUIGLEY: The point can be argued, but I am simply putting the government's position for why we have settled on lifting the statute of limitations for child sexual abuse.

The member for Hillarys asked me: has the government done any work on trying to scope the measure of damages? Leaving aside the matters the member for Scarborough raised, as I said, it was scoped out at the low end at \$70 million and at the high end at \$640 million. I would not have a clue about the addition of other matters because

it goes too far. I accept the member for Scarborough's word and I am very pleased and heartened by it. I have to say that there is a safeguard—I mentioned it in my speech a little earlier—that defendants who fervently deny that they committed abuse could, in some rare cases, find themselves defending their position so many years after the event that they do not have a chance of defending themselves because all their witnesses are dead. This bill preserves the Supreme Court's inherent jurisdiction to stay proceedings when allowing the proceeding to go ahead would occasion a grave injustice.

I have already named each member of the chamber who has contributed to the debate. I thank those members again collectively now as I am on my feet. I think that together we have done this Parliament proud in seeing this legislation through so shortly after the government introduced it. As I mentioned earlier, the slight delay over Christmas was because of the member for Hillarys' unavoidable health challenge, which we immediately accommodated and would do so again on another bill if such a challenge presented itself.

Dr M.D. Nahan: I want to thank you for that.

Mr J.R. QUIGLEY: We will always be collegiate in this chamber when it comes to health and those sorts of things. Might I say, Leader of the Opposition, when I had cancer back in 2005, the then opposition always paired me to go off to get the good juice!

Dr M.D. Nahan: Did it help?

Mr J.R. QUIGLEY: It did. Here I stand. You probably want me to stand as a different bloke! But I recovered and so has the member for Hillarys, we are pleased to see. Long may it last, member. I think that on this occasion the Parliament has listened to what the Chief Justice said when he came into this chamber and swore us all in and said, "If you all put your minds to work together, you can provide good outcomes for the people of Western Australia." I am sure that all Western Australians want to see justice for children who were sexually abused all those years ago. Once again, I thank all members for their contributions. With that I will close and thank you very much, Madam Acting Speaker. I commend the bill to the house.

Question put and passed.

Bill read a third time and transmitted to the Council.