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

Second Reading

Resumed from 28 November 2017.

MR P.A. KATSAMBANIS (Hillarys) [3.12 pm]: I rise to speak on the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017. At the outset I thank all my colleagues in this place who showed forbearance late last year during my illness and took this legislation out until I, as lead speaker for the opposition, had the opportunity to speak.

The opposition supports this bill and wishes it speedy passage. It deals with the very complex and difficult area of the redress limitation periods that apply for victims of child sexual abuse actions. It is a difficult area for two reasons. The legalities around limitation periods for civil actions of redress have been pretty well established over a long period. The strict time frames imposed by legislation over the years have made it difficult for victims of child sexual abuse to seek appropriate redress. When they have sought appropriate redress outside the limitation period, their actions have been rebuffed by the court process. This area is also difficult because child sexual abuse is the worst of all possible criminal offences. As the Attorney General described in his second reading speech, it is abhorrent and should never, ever be tolerated. It destroys lives and families, and research has shown us that it creates intergenerational problems whereby the cycle of abuse means people who are abused might also become perpetrators. In an ideal world, we would wipe out all sexual abuse, but in particular child sexual abuse. I am on the record as saying that the safest way of dealing with abusers is to put them in jail and leave them there. I do not resile from that. Doing some research into this bill has reinforced my view that very large numbers, and possibly all, sexual offenders do not want to be and cannot be rehabilitated. To leave them on our streets makes our society more and more dangerous, but that is an issue for another day. We are dealing with this bill that removes the liability period for civil actions so that victims of child sexual abuse can bring an action for redress against the perpetrator or against an institution that had a relationship with a perpetrator, usually an employer or the like. I think every Western Australian would support this bill both in principle and in action.

We know that in the previous Parliament my former colleague, the then member for Eyre, Graham Jacobs, brought in a private member's bill that was considered by this chamber. I was in the other chamber, so I did not get to consider it. From having spoken to the honourable Graham Jacobs, whom I acknowledge in the gallery today, I know that this his bill was motivated by the best of intentions. It was something that touched him deeply having spoken to victims who had suffered greatly and continue to suffer day upon day, year after year. Graham was motivated to give these people an opportunity for redress. He and I had some quite robust conversations about the operation of that bill at the time. From going back and reading the debates, I note that the government of the day proposed that although well motivated and well intentioned, the bill was lacking in significant protections. During that debate, the current Attorney General said that it was important to pass that bill in its then form. I note that this bill is a significant enhancement on that private member's bill. In many respects, it is stronger and it deals with some of the questionable legal issues in a very comprehensive way. We will find out how comprehensive only in the annals of time as these matters are litigated through the courts. The former member for Eyre, the honourable Graham Jacobs, really deserves significant credit for putting this issue on the agenda and pursuing it doggedly and determinedly, and he should take enormous pride in seeing this legislation today. When we finish in this place, as we all will one day, we will not be able to make claims of that many wonderful achievements as members of Parliament, but Dr Jacobs can certainly claim this, and rightly so.

The individual provisions of the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017 have been discussed by other members, so I will not go through them all. The bill's primary aim is to remove liability periods for an action to be taken to redress historical child sexual abuse. The victim will have an opportunity to bring an action when they are able to bring it, rather than having to comply with the strict statutory limitation periods, which are currently three years or, in the case of a child, by their twenty-first birthday. I do not have any issue with that. I think it is a good thing. It is noted and other speakers have noted it that the type of abuse is very narrowly limited to child sexual abuse. It does not include physical or mental abuse. It raises a question that I trust the Attorney General will address in his summing up, but if not, we will have a chat about it at the consideration in detail stage. It raises the question of different types of abuse occurring either simultaneously, contemporaneously, or as a total package of the abuse that a victim has suffered.

We know that these perpetrators are vile human beings. Often, they will not stop at just sexual abuse, but they will go on to physical or long-term mental abuse. I ask the Attorney General how these matters will be dealt with in this legislation. If a claimant had a claim against a perpetrator for abuse and it incorporated child sexual abuse, physical abuse and mental abuse, would the claimant be able to seek damages only in relation to the child sexual abuse? If so, why would it be restricted to that limitation? A similar question to the Attorney General is: was consideration given to extending this legislation to all abuse against children, including physical and mental abuse?

If so, why was it chosen to restrict the legislation only to child sexual abuse? In the main, I am concerned about mixed claims of a series of behaviour that included child sexual abuse and other forms of abuse that did not take a sexual form.

I notice that the legislation includes what I would term clawback provisions. If a victim has received some form of redress, be it an ex gratia payment from a government or a non-government institution, compensation from any national redress scheme that may be introduced, or through the criminal injuries compensation regime, it would be clawed back. I think that is fair enough because we want to give victims an opportunity to make a claim and we want them to be properly compensated. But it is a fundamental axiom of our justice system that people cannot be compensated twice; they should not get a double whack. Although that might seem a little mean-spirited, I think it will work quite well.

Today I want to concentrate on the important issues that will arise once the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017 becomes law. When this bill becomes law, claims will be made by victims. Most of us in this chamber have received representations from victims seeking that this legislation be introduced so that they can make a claim; so we know that they will make claims. They will make claims against various institutions and state government instrumentalities. The member for Roe has spoken about the infamous St Andrew's Hostel in Katanning and the goings-on there. It will also lead to actions against institutions such as churches and religious bodies. Matters will be litigated and the courts will eventually settle on precedents about what is acceptable and what is unacceptable. The question that that brings is: what is the liability of the state? I know the Attorney General will tell me that asking him that is similar to asking him how long a piece of string is; we just do not know. But all of us in this place know that there are people, particularly in Treasury, who spend a lot of time calculating the potential liability of the state in this regard. I ask the Attorney General, in either his summing up or during consideration in detail, to provide the estimate of total compensation that will be payable to victims by the state. The other institutions can work it out for themselves; indeed, I am sure that they already have some of the finest legal minds working with them. I do not make any apology for saying that if the state is liable, it should compensate victims. It would be worthwhile to have some sort of estimate or at least an estimate of the number of potential claims. We may not know the quantum because that will be up to the courts, but we can at least know the number of potential claims that can be brought against the state, and not just in the one example that I gave earlier but across all institutions of the state. We will see what the Attorney General can provide us with today.

We do know that other institutions, including religious institutions, have often been structured in a way that the operational arm and the arm that holds assets are separated. That separation is usually through a trust structure. However, nowadays that has been merged into the various corporations that sit alongside the trust and the many complicated financial instruments that these very wealthy religious bodies have set up. That goes beyond just one church or institution; it covers a lot of churches and institutions about which allegations of historic child sexual abuse have been proven over the years.

All those institutions will be worried about how much compensation they will be liable for, and they will rightly be worried about the depletion of their assets. That is an important consideration for those institutions. However, I do not think it should be the primary consideration—not at all. The primary consideration in all this rightly ought to be providing appropriate compensation to the victims who suffered, and continue to suffer, horrific abuse under the watch of those institutions. It is not good enough to blame one rogue employee of whatever type they were. It happened under their watch; therefore, to use an employment term, those institutions have a strong vicarious liability, as does the state.

I know that through this legislation there is only so much we can do to unpick—that is probably the right word—the complex legal structures that these institutions have created over generations to ensure that their assets are protected. A term that I have heard used by one of those organisations is to ensure that their assets are bulletproof to legal challenge. I note that the Attorney General and the government have tried to do that in proposed new division 2, which will insert proposed new sections 15B through to 15J. It is interesting that proposed new sections 15C and 15E would probably best be termed enabling provisions. Correct me if I am wrong, Attorney General, because I do not want to get it wrong, but those provisions effectively say that if a judgement is made against an institution and the assets of that institution that can be used to pay compensation to the victim are held not by that institution but by a legal framework for and on behalf of that institution, the officers of that institution will be protected at law if they realise those trust assets to pay the compensation. There is no power to compel institutions that have separated their assets in that way, and I would say that even if we did try to introduce such a power, we would not be successful in breaching the indefeasibility of trusts and the like. Therefore, there is a real and important risk that needs to be highlighted. There is a risk that victims who have been traumatised over many years and who are seeking redress will win an amount in compensation and will be successful in bringing action under this legislation, but may not be able to enforce a judgement against the body that has money

to pay them. Over many years, cases such as Ellis from New South Wales and the like highlight just how some institutions, particularly religious institutions, protect themselves and the lengths they go to in protecting themselves by setting up parallel structures. It is not a criticism. I think there are plenty of good legal reasons why they would operate in that way but I highlight it as a possible impediment.

The solution proffered in this legislation is to give them powers such as those in proposed sections 15C and 15E to enable them to dip into those funds without breaching any trust or corporate law rules. But they will not be compelled to do so, so they will still have the ability to simply thumb their nose at the court with little or no repercussions. The Attorney General will say that at the end of the day they will be judged in the court of public opinion, and they will. They will be judged harshly. I argue that they have already been judged harshly by the vast majority of the public of Western Australia and across Australia, generally. However, that will not be appropriate compensation for the victims. They have suffered at the hands of their tormenters. They have suffered because they were left to deal with the consequences of what their tormenters did to them without the ability in many cases to seek compensation. They will finally get their chance in court. The last thing any of us wants is for those people to feel let down by the process because although they get judgement they cannot enforce it. I would say to these institutions, including the religious institutions, "Yes, you have legal structures and yes, you have legal obligations and protections, but you also have a moral obligation and you should put that as the primary consideration in dealing with these issues and in dealing with the payment of any compensation once a court case has been run and an award for compensation has been made by a judicial officer." I hope these institutions do the moral thing—the right thing—and do not make the victims suffer even more by hiding within executive trust structures to avoid the payment of compensation.

I note that the legislation provides an ability for the minister to prescribe by regulation that a particular body is a successor body of an institution. Historically, we know it happens. The easiest example to refer to is when the Presbyterian and the Methodist Churches merged to create the Uniting Church.

Mr I.C. Blayney: And the Congregationalists.

Mr P.A. KATSAMBANIS: Yes, thank you. I am a Greek Orthodox Christian, so I do not profess to have an encyclopaedic knowledge of some of the other Christian churches.

The responsible minister, who currently is the Attorney General, would be able to prescribe by regulations that a particular body that exists today is the successor body in law of a previous body that may have liability under this bill. I hope that all Attorneys General—this is not a comment on the current Attorney General, because I know he has a very, very strong commitment to doing the right thing in this case, as all members in this place do—do not use that regulation in the future, and I doubt that they would, to cherrypick an organisation that, at best, has a tangential relationship to the previous organisation. We know that sometimes these things can end up becoming fishing expeditions for a body that has money to pay. As I said, I think everyone here works from best intentions, but I can understand why there would be a little disquiet from some institutions. I do not excuse them, but I can understand why they would have some unease about the future but, at the end of the day, as I said earlier, those institutions have a moral obligation to finally accept not just responsibility, but also legal liability for the awful things that happened on their watch. That applies equally to the state government institutions and the other institutions, including religious institutions. It also applies to individuals. I am not sure how many individuals—perpetrators, if you like—will be defendants in such actions and liable under this bill. I am not sure how many perpetrators have gone on to amass enough wealth to be able to pay compensation. Some of them may have and some of them may have inherited money. If that is the case, it would be only right and proper that their victims seek compensation from them. I do not think it is an unfair generalisation to suggest that often individual perpetrators, not affiliated to any government or non-government institution, are relatively impecunious, particularly if they have been punished under criminal law and spent significant time in jail, as they ought to for their vile actions. Perhaps the Attorney General can enlighten us in his summing-up as to how many such actions against individual perpetrators he thinks would be brought under this legislation. I am sure there are a few. I am sure that the lawyers for the victims will make sure that they do their homework and find out what assets they have.

One other thing I want to pick up on is the limitation of legal costs in this jurisdiction. We talk about the cost of justice and how legal fees can mount up very quickly. Under compensation regimes in other areas, such as motor vehicle accidents and workers' compensation, legal fees are capped, so I do not think it is very controversial that we are doing it in this case. Again, a lot of the legal practitioners who act for victims in these matters will have a very strong, personal moral commitment to doing the right thing. I hope that is the case.

I could spend a lot of time talking about the proposed national redress scheme, and I am sure the Attorney General could as well. I think the best way we can see it is that there is strong goodwill at a national level to establish the redress scheme that was recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse. But, as we know, when the governments of the commonwealth—six states and two territories—sit down,

the specifics are much harder to work out than the good intent that is evident from all. I hope there is agreement. I know that the Attorney General has put forward a strong position on some issues and I have noticed in the press in the last few days that the federal government seems to be moving a little bit, which may or may not lead to an outcome on a national level or at least on a bilateral level between the federal government and the Western Australian government. Even if the national redress scheme comes in, it will be complementary to this legislation. This legislation spells out that any compensation received from other sources, including any from a potential national redress scheme, will be deducted from the compensation amount awarded under this regime.

As I said at the outset, this legislation had been a long time coming; it is complex and difficult. It is difficult because it will reverse an axiom of our law that some sort of finality on claims is needed. Limitation periods are usually three to six years or that amount of time after someone turns 18 years of age. In the main, that works, but in cases of child sexual abuse and child abuse generally, it does not. Lots of evidence was heard by the royal commission. When the royal commission reported, it suggested that the average time for a victim to disclose child sexual abuse was around 20 or 22 years. The statute of limitations provisions made any claim for compensation pointless in those circumstances, and we are now addressing that.

The other issue is the complex issue, as I have tried to highlight, of the legal and financial structures of institutions. Those structures may not have been put in place to protect those institutions from claims under this legislation—I know that historically some of them certainly were not put in place for that reason because this legislation did not exist—but the effect of those structures is to take the asset base and put it outside the purview of our courts and victims. We are not breaking that down but we are creating a strong moral imperative for those institutions to do the right thing.

I commend this legislation to the house. As I pointed out at the outset, it is a significant improvement on the bill that was introduced here, with the best of intent, as a private member's bill in the last Parliament. It will go only some way towards healing the hurt of victims. In some cases, it will not heal any hurt at all. That is because of the vile actions of these perpetrators. As a society, we decided quite some time ago to stop protecting them, and now this is one more step along the way to providing justice for victims of child sexual abuse.

MR D.T. PUNCH (Bunbury) [3.50 pm]: I rise to speak in support of the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017, which seeks to amend the Civil Liability Act 2002 and the Limitation Act 2005. This bill makes me proud to be a member of WA Labor and to be a part of this government. It is a bill that will have significant meaning for many people, not only by opening a door to seek compensation for past wrongs and a lifetime of pain, but also, importantly, as a statement that validates people and their experiences and removes a legal impediment for people seeking justice so they can do so when they feel ready to confront their past. So often in this place we discuss everyday things that impact on people but this bill goes right to the heart of the lives of survivors. In speaking to this bill, I acknowledge all survivors and their supporters in the gallery and those watching online and the many, many people who have contributed to this bill being presented to Parliament. Reading the draft bill and the explanatory memorandum, I would like to acknowledge all those who have been involved in the drafting of the bill. It deals with complex questions of law and liability, and in many respects is an Australian first, but it tends to do so while being absolutely sensitive to the needs of victims who may bring an action. I thank them for their work and diligence, and particularly acknowledge Kirsty Pratt and Dr Graham Jacobs, together with the many others who have been advocates for this legislation. The fact that previous legislation has been brought before this house and not proceeded really is a testament to the fact that there may not have been the same willingness in the past to really confront the complexity of this legislation and bring it forward. I am very pleased that today in this place we are actually able to do that.

It is also a bill that, interestingly, makes it easier for office holders within institutions to respond if they are proactive and open-minded and willing to do so because it removes the legal barriers that they may have experienced, including: time limitations; identification of the appropriate defendant; the definition of sexual abuse; shielding of assets; allowances for prior compensation, particularly settlements that may have been out of court; and a cap on legal fees, notwithstanding that courts may vary that if the case is of sufficient complexity and requires a depth of research that may ordinarily not be accounted for. In saying that it might be easier for institutions to respond, I absolutely agree with the member for Hillarys that there is a moral impediment for them to do so. This legislation will set out a framework under which they can do that in a responsible and accountable manner. This government will be looking closely to make sure that they do that. This is a bill that should unite us all with a common view about institutional sexual abuse and the importance of institutions accepting accountability and responsibility, opening up the pathways for both victims of sexual abuse and present office holders as the representatives of their institutions to bring some form of closure. I was pleased to hear the member for Hillarys say that members opposite will be approaching the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017 in that light. This is a time when we should be seeking a clear outcome that benefits those

people who have experienced so much pain and so much trauma over a lifetime, and for whom it will be very difficult to find closure, although justice will go a long way towards helping with that.

I want to talk a little about my own experiences as a social worker with the then Department for Community Welfare, when I first started out in Moora. I subsequently worked in many locations throughout regional Western Australia. I started back in the 1980s when there was a new wave of awareness in child protection practice and a growing recognition of child sexual abuse. In the 1980s, little was spoken about sexual abuse and there was a considerable focus on issues of child neglect and physical abuse. There were few resources in regional WA to provide effective services, so it was a climate that could effectively contribute to secrecy, and it was secrecy through which it was possible for so many of these actions to take place.

I believe that police and social workers never cease to be surprised at the depths to which human behaviour can go and the extent to which one person can control another through the abuse of power. This is even more compelling when confronted with abusive relationships between adults in power and the children over whom they wield power, and abusive relationships that occur within the framework of institutions that are there to provide care. For so long we trusted that those institutional frameworks were acting in accordance with a strong value base that placed care at its heart. The breaches of trust that were unearthed by the royal commission have been a long-lasting sore for us all.

As a young social worker faced with the particular dilemma of removing a child from home and placing that child in a non-familial environment, there developed a reliance upon and trust in the care provided within residential institutions. Through my early years as a social worker, residential child care was a frequent response to the placement of vulnerable children in need of care and protection. The Royal Commission into Institutional Responses to Child Sexual Abuse unearthed the depth and extent to which this trust has been breached.

This bill is deeply personal to me, even though the scope of it goes far wider than the residential care of my own experiences. The bill fundamentally achieves a number of things. Firstly, it removes the time limitations within which claims for damages must be commenced, and it does so both retrospectively and prospectively. The Royal Commission into Institutional Responses to Child Sexual Abuse found that the average time for a victim to disclose child sexual abuse was 22 years, and this is a reflection of the profound impact child sexual abuse has on victims, particularly when they are in the care of significant others and institutions. The current limitations, in the case of a child, are that a claim must be brought by their twenty-first birthday and, for others, it must be brought within three years of the cause of action arising. Victims of sexual abuse, in telling their stories, revisit the pain and confront the details of abuse perpetrated by the people who were controlling and supervising the institutions providing care—individuals who had responsibility for providing care to vulnerable children. There is no greater breach of trust.

I am also very pleased that included amongst the key outcomes of this bill is the provision of a legal mechanism for commencing an action against institutions, especially in situations in which there is a lack of perpetual succession in incorporated institutions, which makes it difficult for victims to properly identify a defendant. This was an issue identified by the royal commission as creating significant barriers to justice, and it is a first in Australia; it makes a significant distinction between this legislation and legislation in other jurisdictions. In my mind, it makes it easier for institutions to accept responsibility and not hide behind issues of incorporation or un-incorporation and office succession.

The bill also allows trustees, institutions and officeholders to use assets held by or for liability of institutions of officeholders to discharge liabilities arising from actions brought under the provisions of this bill, notwithstanding the complexities of the asset-holding structure. I have had it represented to me from members of institutions and members of the community that this significantly creates an exposure well beyond the core of the institution itself—that this is a permissive clause. It enables access to those assets, so it enables institutions to be proactive in determining how and in what manner they will identify the resources to meet compensation claims, and it gives them latitude rather than restriction. If I was a CEO, a person in charge or an officeholder, I would be actively having the conversation within the institution about how to effectively meet compensation claimed and not simply wait for it to roll through the courts. That means being proactive in determining what parts of the asset base may well need to be relinquished to meet compensation claims, but, more importantly, discharging their obligations to accept accountability and responsibility and to contribute to a just outcome.

The member for Hillarys talked about the moral imperative on those institutions to act and to act responsibly. I believe it goes beyond a moral imperative, and it is actually about a social licence to operate. If we find institutions that hide behind complex trust structures and avoid discharging their accountability and their responsibility to meet a judgement, I do not think they will be able to say that this bill forces them to sell assets. What it does allow them to do is to be proactive in how they manage that, and if they do not do that, I think the community will be very harsh in its judgement of those institutions. Those institutions have the opportunity,

through this legislation, to be proactive and to take on a leadership role in responding and easing the pathway for those victims who bring an action.

I am pleased also that the bill does not provide a definition of "sexual abuse" and it is left to the latitude of the court to determine the application of the term "sexual abuse" in accordance of the ordinary meaning and common understanding of that term. I think that is a particularly important provision as victims recount their stories as they bring actions. It helps to define, in a sense, a broad view of how the courts may come to a determination in regard to sexual abuse. Courts will not be confined to acts of omissions of criminal offences, and, to that extent, it puts the focus firmly on the nature of the abuse itself. The bill provides for those instances when settlements may have already taken place in the context of the existing limitations period, and that may have been disadvantageous to victims who have settled. The bill makes allowance for prior compensation payments received by a person for child sexual abuse actions to be taken into account in awarding damages. Yes, claims may well be made against state government institutions, church groups or not-for-profit entities—a range of institutional structures. It may well be uncertain what the extent of the liability is, but the important thing is that the bill creates the mechanism for a just outcome to be achieved through the courts, and for the courts to arrive at a determination that reflects the extent of the injustice, the pain and the trauma.

I would like to finalise by saying that, in speaking to this bill, and going back to the time when I was a social worker, I am reminded of not only the children I worked with, but also their parents. Many of the parents I met were themselves victims of institutional sexual abuse. I met a proud young Noongar woman in Collie some 40 years ago, and I formed a lifelong friendship with her and her family. Sadly, she has now passed away, but I spent many hours assisting her under the Redress WA scheme of the previous government for the stolen generation. During the course of that friendship, towards the end of her life, she told me of the horrific sexual abuse she had experienced and not disclosed and of the horrific sexual abuse of her brothers and sisters she witnessed in institutional care. She talked about the difficulty she had in telling her story to family and others. This woman made an enormous contribution to her people and the community of the south west. She rose out of her experiences and was able to work in a way that brought relief to others. She was an advocate for reconciliation and a person who found it in her heart to forgive. I wish she was with us today to see this legislation tabled in Parliament. Out of respect, I will not disclose her name, but she was one of many who have worked so hard, and I acknowledge her unspoken story.

This bill is a major election commitment. It provides an avenue for survivors to find justice and achieve some measure of compensation, but I am not sure how much compensation can pay for a life of trauma, pain, heartache and family disruption. The Attorney General, the government and the department have taken a great deal of care in crafting this bill. It provides a vehicle to address the sexual abuse of children in institutional care and removes time limitations. It provides opportunities for institutions to address their responsibilities to support a just outcome in an open and transparent manner; and, if they do so, they will set a foundation for healing for not only the victims, but also the institutions. I commend this legislation to the house.

MS A. SANDERSON (Morley — Parliamentary Secretary) [4.07 pm]: I thank my colleagues for their contributions to this very important debate on the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill. We deal with many pieces of legislation and issues in this place, as we did in my time in the other place. There really is only a handful of legislation that we can say makes a huge difference to people's lives, and I think this is one of those pieces of legislation that I hope will make a big difference to people's lives and right many of the wrongs of the past, but not all of them. It certainly will go some way to providing some restitution for survivors of child sex abuse.

I want to start the debate by addressing some of the terminology. I always feel uncomfortable referring to "victims" of child sex abuse. The people who are with us today are very much survivors. They have survived some of the biggest horrors and some of the most appalling circumstances and sadistic behaviours, and they are still here today. They are fighting for this legislation and for their friends who also experienced such appalling treatment. They are, in my mind, very much survivors and have made really positive contributions to our community. I also find the term "historical" abuse a little uncomfortable. It is as if, because it was 30 years ago, it does not matter quite as much as it would if it happened 30 days or 30 months ago. Quite frankly, it is almost a get-out clause for those institutions or individuals who perpetrated it: "It's historical. We don't do that anymore; we're not like that anymore." Actually, the legacy of that abuse is with survivors every day of their lives. There is nothing historical about the abuse for the survivors of child sex abuse, or any form of abuse. It is important that we use language that honours the work and commitment of people who have experienced this kind of abuse. There was a bit of discussion from previous speakers about moral obligation, and that these organisations certainly have a moral obligation. That is indisputable. I do not dispute that these organisations have a moral obligation. The issue is that most of them have largely abjectly failed in that moral obligation, which is why we had a Royal Commission into Institutional Responses to Child Sexual Abuse and why we are here today legislating a legal obligation to provide

compensation for survivors of sexual abuse. The moral obligation is all well and good, but it has not done much good for today's vast majority of survivors, so it is up to government to provide the legal obligation.

This legislation implements recommendations 85 and 86 of the Royal Commission into Institutional Responses to Child Sexual Abuse. One of the best things that the Gillard government did was to establish that royal commission. The former Prime Minister Julia Gillard recently said that she had been lobbied, but not convinced of the need for a royal commission until she went to Ballarat and met with a range of survivors and families of people who unfortunately had not survived. Suicide rates and self-harm amongst abuse victims and survivors is enormously high. That visit instigated the royal commission. It was incredibly important for our community and to begin that healing process. This legislation is a first in Australia in that it gives very clear and strong guidelines for providing compensation and lifting the limitation. The limitation on bringing sexual abuse claims is pretty appalling. It takes many years, sometimes up to 30, 40 or 50 years for people to talk about what happened to them as children and they should still have the ability to do that. It is no less painful then than when it occurred. Obviously, the abuse itself is incredibly destructive to people's lives, but the conduct of the institutions that sponsored the abuse—let us be honest, most of them were church based—has been incredibly appalling and painful. That includes the shifting of offenders, knowledge of ongoing abuse, moving them from one place to another where they still had access to children, and the resources and money that has gone into providing legal defence for these perpetrators. These institutions have poured enormous amounts of resources into legal fees but will not pour it into compensation. This legislation will provide some redress, some avenue, for those victims and survivors.

The royal commission has not really been referred to much in this debate. I will go through some of the case studies of the royal commission, because it really highlights the importance of this legislation. In particular, I will refer to the "Report of Case Study No. 11" from the Royal Commission into Institutional Responses to Child Sexual Abuse, which focuses on Western Australia and the Christian Brothers. It makes for very difficult reading. I will not read it all, because it is pages and pages of experiences and abuse, quite frankly. The report outlines the experiences of 11 men who lived in four institutions run by the Congregation of Christian Brothers at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School in Tardun and the Bindoon Farm School. The four homes operated from the late 1920s and closed down between the 1960s and the 1980s. The report states —

> The conditions at each home were basic. The food was often of a poor quality. The boys were given clothing but no shoes or underwear. The boys were involved in building work … and they also did landscaping …

I turn to a number of the findings. They read —

- **Finding 1:** In taking children into care, the Christian Brothers were obligated to provide for them and educate them. This was not done properly in all cases. Many of the children did not have any real education and instead were put to physical labour.
- **Finding 2:** The visitation reports focused on the community of the Brothers and the finances and religious observance of each Brother, not on the welfare of the children …

The boys living at the institutions had little contact with the outside world, bearing in mind many, many of them were immigrants who had been taken from their families and homes and promised, in the case of one individual from Malta, a better life in Australia. What a horror he must have thought he had landed in.

The findings continue —

- **Finding 5:** The physical conditions at the institutions permitted no privacy and required the boys to be naked in front of the Brothers and each other …
- **Finding 6:** The Christian Brothers failed to provide all boys at the institutions with an opportunity to obtain an education.

> Eleven men gave evidence and made allegations of sexual abuse against 16 named Brothers.
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> The sexual abuse involved being observed naked in the showers by some of the Brothers; and being abused in the dormitories, in Brothers' rooms, during movie screenings and in the grounds.
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> They spoke of sexual abuse by other boys.
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> They also told of emotional, physical and psychological abuse by some of the Brothers.
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> Most of the boys did not report the abuse; one of those who did received a belting.

- **Finding 7:** The evidence at the hearing included many allegations of boys being sexually, physically and emotionally abused.

- **Finding 8:** In each of the decades from 1919 to the 1960s, the relevant Christian Brothers Provincial Council knew of allegations of sexual abuse against some Brothers in Christian Brothers institutions around Australia:
    - In each decade from the 1930s to the 1950s, allegations of child sexual abuse were raised against Brothers who had also been the subject of earlier allegations.
    - By the 1950s, communication between one or more of the then Superior General and the then Provincial reveals:
        i. an understanding that sexual abuse can have ongoing impacts on children
        ii. that sexual abuse of children was viewed as and referred to as a 'moral lapse' or 'weakness'
        …
        v. an understanding that the administration of an institution may be at fault when a Brother was an abuser
        vi. that at least one Brother was transferred to another Christian Brothers institution where he had contact with children after being the subject of an allegation that concerned children; however, in some cases, some Brothers were transferred to institutions where they would not have contact with children.
- **Finding 9:** The leadership of the Christian Brothers during the period 1947 to 1968 failed to manage each of the institutions so as to prevent the sexual abuse of children living in those institutions.

Some accounts tell of the incredibly predatory and sadistic behaviour inflicted upon the boys. The report continues —

> In the 1970s, 1980s and 1990s, the Christian Brothers made changes to the way that members of the Order are recruited and trained.

The organisation acknowledged it had a significant problem and clearly made some changes in its views. I agree that the response to the accounts of many of those survivors did not go far enough, and I will give a bit more detail about the compensation paid to some of those survivors.

Based on two Senate reports, a number of years ago the Redress WA scheme was set up in Western Australia. It was originally set up to pay compensation of between $10 000 and $80 000; sadly, in 2010 the previous government reduced the maximum amount payable to $45 000. That still causes enormous frustration, and this government will continue to work with the commonwealth government to explore what a national redress scheme should look like.

As to the compensation paid by the Christian Brothers, finding 16 of the Royal Commission into Institutional Responses to Child Sexual Abuse states, in part —

> The total amount paid in compensation in response to those allegations was about $3,341,000, giving an average payment of about $36,700 per complainant who received a monetary settlement.

That is a very small amount given the lasting impacts of that kind of abuse. It can impact mental health, which knocks on to physical health, and the ability of someone to work, hold down jobs, relationships, marriages and raise their children. It impacts people's entire lives, which is why I find it a little offensive that this could be seen as a fishing expedition by survivors. Quite frankly, why would any survivor willingly go through the trauma of having to relive a lot of that abuse for what would be a paltry amount of money? The report continues to detail some of the conditions at some of the institutions, including Castledare, which was a residential school for boys with learning difficulties. Let us reflect on the immense vulnerability of those students being not only children, but children with learning difficulties taken from their own homes. Castledare housed boys aged from around five to 10 years, including wards of the state, child migrants and private admissions. They were little boys. The report states —

> … there were five Christian Brothers on staff at Castledare in October 1952 and 115 students.

There were five staff to 115 students. The report continues —

> There was very little privacy for boys. The showers held between 10 and 20 boys at a time.
>
> …

> The food at Castledare was scarce.
>
> Mr John Wells, a resident at Castledare, recalls always being hungry, while the Brothers ate well. He states that the Brothers sat at a beautifully laid table up the front of the dining hall, while the boys worked as kitchen hands so that they could chew the Brothers' leftover bones.
>
> 'VI' recalls that the food was of an atrocious quality, but, if the boys did not eat it, the Brothers would beat them.
>
> …
>
> The boys' clothing included ex-army shorts, which were tied with a piece of rope. They wore no shoes or underwear.

This was 50 years ago. It was not Victorian times; this was modern times in Western Australia. The report refers to Bindoon Farm School, about which we heard some of the most horrific accounts during the commission. It was a residential institution. The report states —

> The conditions at Bindoon were basic. About 30 boys slept in three small dormitories and other boys slept on exposed verandahs.
>
> 'VV' recalls that, when he arrived at Bindoon, boys slept on old army mattresses that were stuffed with horse hair or coconut fibres and they did not have sheets.
>
> A visitation report on Bindoon … noted that there was overcrowding, so the boys were sleeping on the verandah, giving them 'very little privacy'.
>
> There were no doors to the showers. There were no separate toilet cubicles; children would sit beside each other in a row.
>
> …
>
> The food at Bindoon was of poor quality.
>
> Mr Edward Delaney recalls being fed porridge with weevils in it, fried bread and kangaroo tail soup. The food that the boys were given also included stale bread dipped in dripping.
>
> Mr Gordon Grant recalls that the meals at Bindoon were frugal and that it was common for the boys to go and search in the pig bins for food scraps.

The report states —

> When boys arrived at Bindoon their clothes were taken from them and they were issued with a rough shirt and loose baggy shorts. They were given no shoes or underwear

In the Western Australian hearings, 11 men gave evidence of sexual abuse against 16 named brothers. Three of those brothers were named as perpetrators of sexual abuse at Castledare; two were named as perpetrators of sexual abuse at Clontarf; one was named as a perpetrator at Tardun; and 13 were named as perpetrators at Bindoon. The report states —

> The witnesses' experiences in the different institutions had much in common: the circumstances of the emotional, physical and/or sexual abuse were similar and so were their descriptions of the way that Brothers perpetrated it. Similar evidence was also given about why they did not report the abuse and the difficulties that some had when they tried to report the abuse at or around the time it occurred.

Now I will go to some of the most difficult reading of the report—there are pages and pages of this—where it reflects on the sexual abuse that occurred in those institutions in Western Australia. The report states —

> VG and Mr Ellul both recalled Brothers watching the boys as they showered …
>
> At Bindoon, Mr Hennessey said that the Brothers inspected the boys closely when they were showering. He recalled that the Brothers would 'help' the boys, including him, to wash properly, commenting on their genitals …

The Brothers would lift and touch their genitals, and rape them. It goes on and on, and there are literally pages and pages of these accounts. The report continues —

> Evidence was given that at Castledare during the evenings, before bed, Brother Dick used to sit VI on his knee …

It goes on about the details of these boys' accounts in these institutions. I do not read this lightly. It is incredibly difficult, but I think for many in this chamber the debate has lacked a real, individual account of what it was like to live under those conditions and what it is like now to be a grown adult who lived through and survived those conditions.

[Member's time extended.]

Ms A. SANDERSON: These are real people who are still alive today. They are still living with the appalling abuse and it is incredibly disappointing that the legislation has taken so long. These institutions are by far not the limit of the abuse that has occurred in Western Australia, and abuse is still occurring. We recently saw an account in the paper of a foster carer who has been charged. We have to do everything we can to keep children safe. I hope we have better checks and balances in place. Some organisations, particularly religious organisations, which have arms in Third World and developing countries send perpetrators there to work in missionaries and schools. They do not have the same reporting regimes and frameworks as developed countries. Some really unsavoury practices still go on amongst a lot of institutions.

At the end of last year, the Minister for Community Services, Minister McGurk, responded on behalf of the government to the imminent report outlining a number of things that the state government is doing and will do to implement some of the report's recommendations. Obviously, the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill is central to a lot of that and it will hopefully enable some survivors to gain some redress for what has occurred to them under the state government and private institutions. We need to work to address the abuse that has occurred to prevent it from happening in the future, and to identify and respond swiftly should it ever happen again. We will work closely with the commonwealth government to implement the redress scheme in a fair and equitable way with a reasonable sum of money. We are now looking at how working with children applications can be expedited. They can take two or three weeks or sometimes longer. We all want our children to be safe in those institutions. My children go to institutions. It is very hard to manage, particularly for parent-run and community-based organisations and sporting clubs that require volunteers. All organisations in which adults have access to children need to be provided with as much protection as we can afford. Expediting working with children checks is not a failsafe by any means, but it will certainly go some way towards that.

The government recently tabled a report into the review of the Children and Community Services Act that looked at improving the consistency in foster care standards; improving outcomes for Aboriginal children, families and communities; supporting families exposed to family and domestic violence; improving secure care for high-risk children; and addressing issues related to the Family Court of Western Australia. The government is also committed to working with other jurisdictions and organisations to introduce a child safe standard for organisations. As I said, and many speakers certainly on the government side have said, we are incredibly proud to introduce this legislation. It has been very complex. The previous government got bogged down in that complexity. I pay tribute to the Attorney General who has driven a truck through that complexity and really championed this legislation, pushing through the legalese, objections and complexities. Sometimes we just need to do that to get through the bureaucratic and government layers. The previous government did not manage to do it and I give credit to the Attorney General. I hope that we can pass this bill speedily and I commend it to the house.

MR J.R. QUIGLEY (Butler — Attorney General) [4.29 pm] — in reply: I rise to thank each of the members who contributed to debate on the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017. It is some while since the second reading debate commenced on this bill. As I recall, it was debated a second time back in November last year. The debate was adjourned to accommodate the circumstances of my friend the member for Hillarys who met some health challenges. We wish him well with those challenges and should they ever present again, of course we will accommodate him on any future occasions. We regret, however, a recent cheap jibe by a member of the opposition—certainly not the member for Hillarys—about the delayed passage of the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017, quite overlooking the fact that it was delayed because we were accommodating the member for Hillarys, otherwise it could have been passed last year. Those little things get lost in the telling sometimes; I just wanted to put that on the record.

I turn to the members who spoke on this bill, each of whom supported it and wished for its speedy passage through the chamber. I will leave my comments on the lead speaker's speech until last because he made more detailed comments on the bill, which is not surprising, so I will not speak in exactly strict order.

The first speaker was the member for Armadale, Dr Tony Buti, who correctly noted that Western Australia did have the most draconian limitation period, but after several amendments to the Limitation Act 2005, it is now three years. He spoke of many cases in other jurisdictions that were both successful and unsuccessful and noted particularly that, in given circumstances, legislation in South Australia and the Northern Territory provides the courts with discretion to allow a cause of action to be instituted after the expiration of a limitation period, so there is discretion in the courts. There were previous amendments to the bill. The member for Armadale also referred to the royal commission's findings 89 to 95, which include recommendations that are not included in this bill but

which this Parliament may choose to look at in the future. They are prospective matters; that is, legislating a non-delegable duty of care, and the presumption against an institution when a member of the institution has transgressed. Once it can be shown that a member of an institution—a teacher or a caregiver within the institution—sexually abused a child, it would be for the institution to prove on the balance of probabilities that it had taken all reasonable steps to stop or prevent that abuse. We have not got to that point in this bill—it is not appropriate in this bill—but we have to look at that in the future.

The member for Armadale also noted that the royal commission expressed its concerns about a matter that was touched on by the member for Hillarys; namely, the ownership of institutional assets by bodies corporate or charitable trusts. The royal commission recommended that that question be looked at, and we deal with that concern in proposed division 2 of the legislation.

The next speaker during the second reading debate was the member for Riverton, Hon Dr Mike Nahan. He rose to give his in-principle support for the legislation, and we acknowledge and thank the Liberal Party for that. He spoke of the intent of the previous government to do something in this area but noted that it had failed to do so in its two terms. The member for Riverton also made reference to the tragedy of St Andrew's Hostel in Katanning and offender Dennis McKenna. That brought this, if not already in our sharp focus, into our face, because the then government commissioned the Blaxell inquiry into what had happened at Katanning. The member for Riverton also made mention of the very emotional and telling revelations by the late Eoin Cameron, the radio presenter, and his passionate telling of his story, and the need for a pathway to compensation for these victims. I note that the honourable member for Riverton did not take particular issue with any element of the bill as presented to this chamber.

The next speaker on the bill was the member for Mount Lawley, Mr Simon Millman. The member for Mount Lawley is a lawyer and has spent a lot of his time acting for plaintiffs in personal injury cases. He brings to this chamber his experience in pursuing the cases of victims of child sexual abuse in several Catholic institutions, notably Castledare, Bindoon and Clontarf. He spoke of his ambition to come to this Parliament and help change the law to make it better for victims. He also made reference to the decision in Ellis v Trustees of the Roman Catholic Church for the Archdiocese of Sydney. The difficulty that Mr Ellis, the plaintiff, had in suing the Catholic Archdiocese of Sydney was that at the time he brought his action, the defendant, a priest called Duggan, was deceased. It was held by the Court of Appeal that the current head of the Catholic Archdiocese of Sydney, Cardinal Pell, could not be properly joined as a defendant to the proceedings because he was not the head of the archdiocese at the time of Duggan's transgressions, and the action was struck out. I will touch on this matter again when I deal with the comments of the member for Hillarys. However, it is worth noting that the Court of Appeal said in that case that even if the correct defendant had been identified—which proposed division 2 of the bill seeks to do—it would not have determined that there had been vicarious liability on the part of the church. It said that if there had been a defendant to sue, that would still have been a live and arguable issue to pursue.

The member for Mount Lawley kindly referred to the comments by Ms Prue Gregory, principal solicitor at knowmore, which is the firm that assisted the Royal Commission into Institutional Responses to Child Sexual Abuse. Ms Gregory was so gracious and, dare I say, generous as to congratulate me as the Attorney General of this government for introducing this particular bill.

The next speaker on the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill was the member for Belmont, Ms Rowe. She also referenced many findings by the Royal Commission into Institutional Responses to Child Sexual Abuse, which are on record and I need not read them out here. However, she noted, as did another member, that the average time of disclosure of child sexual abuse was some 22 years. She noted also the work undertaken by Slater and Gordon on behalf of victims. The member for Roe, Mr Rundle, has seen the aftermath of child sexual abuse up close because his electorate covers both Katanning, which I have already referred to, and Esperance, which was another hotspot. He said that he had met many survivors of the institutions involved and has seen up close their devastation. The member for Kingsley, Mrs Stojkovski, also stressed the importance of this bill, as did the member for Bicton, Mrs Lisa O'Malley, who spoke at length also on the findings of the royal commission.

The member for Scarborough, Hon Liza Harvey, was the next person to speak. That member made a number of comments that I think deserve mentioning in detail because they are of concern. Firstly, the member was a member of the former Liberal–National government's cabinet subcommittee that looked at the matter and she expressed the view that this legislation should cover physical abuse as well as sexual abuse. I want to deal with that briefly. Most of the reforms around Australia, albeit they vary, deal with sexual abuse as opposed to physical or emotional abuse without a sexual element to it. The term "sexual abuse" has been defined in this bill in an amendment to, I think, section 6 of the Civil Liability Act. It has deliberately left open the definition of sexual abuse for the courts to determine in any particular instance whether acts constitute sexual abuse. People who are into sadomasochistic practices might derive sexual stimulation from the application of pain to another. The way would be open for the court to find that to be sexual abuse because we have not confined the enlivening aspect of abuse that would involve some sexual stimulation of another.

During year 9 at a Christian Brothers college, I remember laughing inappropriately in the class and I was called to the front and given six strikes of a strap. I returned to my seat and defiantly kept on laughing, so I was invited out for another six. This kept on going until up to 24 strikes had been delivered to me in under 15 minutes. As a year 9 child, members can imagine how my hands were red and swelling. Although I was crying, I kept laughing. It was not a Christian Brother who applied this corporal punishment; it was a married teacher, and he was laughing. It never occurred to me at the time that there was an element of sexual stimulation. By today's laws, the application of 24 heavy straps to the hands of a year 9 child would be child abuse. Back then, corporal punishment of children was accepted in the community. We have not included physical abuse when it does not involve an element of sexual stimulation. Similarly, there are many children out there in the community today who we could say are suffering from some form of emotional abuse. This legislation takes the extraordinary step of lifting the statute of limitations for one particular tort—that is, child sexual abuse—that has to have this element of sexual stimulation by the abuser and is not just abuse per se. That is a policy issue. We took to the election that it would be for sexual abuse, and that is very much what a number of states have directed their remedies at. Of course, the national redress scheme deals with sexual abuse as well, so we make no apology for that.

The member for Scarborough raised another very important point, and I will try to turn up the record in *Hansard* because I will do the honourable member's comments more justice than if I simply go to my notes. The member raised the issue of criminal injuries compensation. I read from page 6175 of *Hansard* of 28 November 2017. The member referred to the fact that there is criminal injuries compensation and that people might like to go there because it is an easier and less traumatic way to be compensated than going through the whole litigation procedure. That is quite right, member, but the problem is, for so many people, that there is no convicted offender. For an offender to be convicted, evidence has to be proven beyond reasonable doubt et cetera, and many of these offenders have not been convicted.

Mr P.A. Katsambanis: Many of them are dead.

Mr J.R. QUIGLEY: As the member for Hillarys says, a lot of the offenders are dead and a lot have not been convicted in any event, and that makes it difficult. Criminal injuries compensation when appropriate is, perhaps, a less traumatic course, although it is capped at $75 000. The member for Scarborough went on to say —

> There is an ability in this legislation for any compensation payment received from other sources to be considered and potentially deducted from a damages judgement …

It is actually mandatory, member. If the court makes the judgement, it must deduct a previous compensation payment. This raises the question—it is a policy question—as to when an institution other than the state is responsible for a criminal act. When a person, at least, other than a state employee, has been responsible for a criminal act and there has been compensation and then that person or the state—the institution—is sued, it could be argued at one level that the institution is getting off a bit lightly, because the amount of compensation is deducted from the judgement. This is a vexed question, because to deduct the compensation other than when the institution is the state would mean that a person who had been to, say, a private school and who had been abused and who then received an award of criminal injuries compensation for $40 000 and then a judgement for $200 000, would have that $200 000 reduced by $40 000, giving them a net judgement of $160 000. That is what would happen. If an exception were to be made for institutions that are not state institutions, that would not be deducted, and the church or the school would have to pay the full $200 000. The person would get the $200 000 plus the compensation and end up with $240 000, which would put them at a considerable advantage to someone who had gone to a state school or state institution, who would receive $200 000 less $40 000, which is a difference of $80 000. This is about compensating plaintiffs, not about trying to get equity amongst abusers. A policy decision was made that the best way to go about this—as the member for Scarborough averred to in her address—was to have a way of clawing back the criminal injuries compensation when another person has been found responsible. That is true when a living abuser has been convicted. It is a requirement of the Criminal Injuries Compensation Act for that to happen. Of course, as the member for Hillarys said, in some of these cases the offender will have deceased, so the award will be against the institution. I have already had the department look at amendments to the Criminal Injuries Compensation Act to take care of this, so that when someone bears the full liability of the compensation, the state can claw back the compensation it has previously paid.

Mrs L.M. Harvey: The premise of my argument was that I would not like to see a victim, as part of a compensation award from a court, have their award reduced as a result of a prior criminal injuries compensation judgement. I think it is important that the perpetrator, not the victim who receives assistance, has to repay the criminal injuries compensation fund.

Mr J.R. QUIGLEY: Quite correct.

Mrs L.M. Harvey: I thought that there was an element of fairness in that.

Mr J.R. QUIGLEY: I agree wholeheartedly. That is not how the Criminal Injuries Compensation Act would work, member.

Mrs L.M. Harvey: No.

Mr J.R. QUIGLEY: The abuser might now be deceased, so the action would be brought against the church or the institution. If $200 000 were awarded, $40 000 would be deducted because of the previous compensation. The victim would not have to repay that. They would get $160 000 from the court plus the $40 000 from the criminal injuries compensation, making the award $200 000, which the court awarded. My concern is that in the future there be some capacity for the court to recover from the institution that which the state has already paid out so that the institution does not get a free ride.

Mrs L.M. Harvey: We are absolutely on the same page.

Mr J.R. QUIGLEY: Thank you, member.

That will require amendments, not to the Civil Liability Act, but to the Criminal Injuries Compensation Act. That is not before the chamber now, but I wish to reassure members that that is on the radar screen for future legislative amendment. The member for Scarborough raised a very good point in her speech. That is why I wanted to go back to *Hansard* to correctly quote from her speech.

After the member for Scarborough, the Leader of the National Party spoke on the legislation. She noted her support for the bill and spoke in recognition of the efforts of the former member for Eyre, Dr Jacobs, who brought a private member's bill before the house. She also raised the question of the definition of sexual abuse, which had been raised by the previous speaker, the member for Scarborough. As previously explained, as a policy issue we left the definition of sexual abuse somewhat open-ended so that the courts could determine in particular cases whether there was any element of sexual stimulation by the abuser. It does not have to be penetration or anything like that, but if the abuse was carried out for the purpose of sexually exciting or satisfying the abuser in any way, it comes under the legislation. That might include spanking, for example. Spanking a young child might sexually excite a paedophile, and that would be included. There is a range of different types of sexual abuse that we cannot imagine. When we go to law school, we start with the Crown v Dabelstein and others, right through to today. We faced a horrific menu of sexual abuse. If it contains an element of sexual excitement or satisfaction, the courts will find it to be sexual abuse. I offer that in explanation to the member for Central Wheatbelt.

The member for Bunbury spoke of the identification of the proper defendant and the protection of assets. He also mentioned his experience as a social worker and the growing appreciation he had in that occupation of the devastation that child sexual abuse was not recognised in the early days, the extent of the devastation and how it is today, and what a breach of trust it is. The member also spoke of the need to have proactive discussions in institutions. I want to come to the institutions themselves in a moment and the recovery. The member also spoke of the lifelong friendship he made with victims of child sexual abuse, especially Indigenous women in Collie, and said that he assisted with the redress for the stolen generations.

The member for Morley was the last of the speakers before the conclusion of members' second reading contributions. She spoke very eloquently of the devastation of child sexual abuse and the need for this legislation. She spoke at some length about the findings of the royal commission. I hope that the member will excuse me for not going into her speech in further detail. It was given only recently. I am sure that all members who were listening attentively do not need me to go over the learned member's speech in finite detail. She believed that the responses of institutions in the past has been somewhat appalling. She looked at case study 11 of the Western Australian Christian Brothers and the poor treatment of boys, including neglect, saying that the payments made by the Christian Brothers came to a mere $36 000. There was a previous redress system of $80 000, which was reduced to $45 000 by the previous government, which was a bit sad. That will be picked up in this legislation.

I now want to turn to some of the issues raised by the member for Hillarys, who was the lead speaker for the opposition on this matter. I have already spoken on the first issue he raised—that is, the area of child sexual abuse as opposed to other physical abuse being included in the bill. Without going over the same ground again—I have already covered that adequately in my speech so far; it was a policy issue—if there is any element of sexual gratification, it will be captured by this bill when it passes into law. The member also talked about the principle of clawing back previous awards made under the Criminal Injuries Compensation Act or other redress schemes, because there was Redress WA and there was also a redress scheme for people in country hostels. Those were two redress schemes that Western Australia ran for the victims of child sexual abuse, and all those payments would be deducted from a final award made on the bringing of a civil suit.

The member asked me to give an estimation of the total liability of the state of Western Australia. He said that it was somewhat like a piece of string but that surely someone must have done some modelling. We have tried. There is no list, member. There were two previous redress schemes, as I mentioned, and the first one was in 2007 for adults who were abused or neglected in state care in Western Australia when they were children. There were

5 212 claimants for a total payout of $117 055 000. The second redress scheme was for people who were abused in country high school hostels. There were 90 claimants under that scheme and the total payout was $3 270 000, so the total payments so far paid out under Redress WA is about $120 million. The figures are rubbery because the royal commission estimates some figures for Western Australia. We go by the number of claimants for the previous Redress scheme at about five and a half thousand. At the low end it is $120 million, and at the high end it is about $650 million. It is hard to say where that lands.

Another complicating factor is the national redress scheme, which I will touch on briefly. The member mentioned that I made some comments recently in the media that were critical of some aspects of the national redress scheme. I have made more comments than that that are critical of the national redress scheme, but I will briefly touch upon those comments. As the member said, the national redress scheme as first framed was to exclude any claim by any person who had suffered five years' imprisonment or had committed any sexual offences. We know that victims of sexual abuse end up in a cycle in which they go on to commit sexual offences themselves—hopefully not too serious; it might be indecent touching or something like that—and that then excludes them. It also applies to people who have served five years' imprisonment. Many people could easily have accumulated five years' imprisonment for driving offences, for example. Should a person who was abused at the age of 12 and who at the age of 30 cops a five-year term of imprisonment for being involved in dangerous driving causing grievous bodily harm be disentitled to claim for something that happened to him when he was 12? We do not think so. I think the churches have said that two classes of victim are being proposed—deserving victims and undeserving victims. As the member for Hillarys noted, it sounds as though the federal government has moved a little bit in reconsidering this. I can tell the member that the last time I attended a national redress conference and I raised this, I was dismissed in a few words—"We don't want to talk about that"—and just brushed away, but now the federal Minister for Social Services is reconsidering that.

Other aspects of the federal redress scheme really disturb us. One was raised by the former member for Cottesloe, who took me aside and gave me a little chat about this. The commonwealth government is not putting a dollar into it. It gets to decide who gets what, but it does not actually give us a dollar; it gives us an invoice to bring home to Western Australia. There is an appeal mechanism, but the appeals are only for applicants, not for respondents, so an applicant who thinks he has not got enough can go to a higher bureaucrat and ask for more, but if the state of Western Australia or an institution thinks they were not liable or the applicant is being paid too much, there is no avenue for review. We are not very happy about that.

Mrs L.M. Harvey: You should not cave in.

Mr J.R. QUIGLEY: No; thank you for your encouragement, member for Scarborough.

The point that the member for Cottesloe raised is that after World War II, Australia actively recruited child migrants. Australia was not put upon; to populate this country, Australia actively recruited child migrants. They were brought to Western Australia, and Western Australia got the majority of them, and they were placed in institutions, some state and some church. When things went wrong, the commonwealth washed its hands of it and said it was all the state's problem—"We dumped them on you, but don't look to us for one dollar of contribution." Western Australia has been dealt with harshly again. We received all these child migrants recruited by the Commonwealth of Australia and the commonwealth says that once they were brought to Western Australia, it had no further responsibility for these children. That has to be wrong. It simply has to be wrong that one day we get an invoice from a bureaucrat asking how much we will pay for the migrants that the commonwealth brought here. Those discussions are ongoing. I will lament that I wrote to the federal Minister for Social Services pointing out six areas of concern we had with the proposal. I wrote that letter and signed it off on 21 December 2017, after the last Redress conference, asking whether his grace would favour us with an answer by 31 January, which I thought was reasonable. To date, we have not got an answer. I was listening to the radio the other morning when they were talking about national Redress and the federal minister said he had just been talking to the Attorneys General of Victoria and New South Wales and that they were making a lot of progress. That is typical, is it not? Western Australia does not exist for Canberra. He is talking to the Attorneys General of New South Wales and Victoria—one Liberal and one Labor—to get this up, but does not even have the courtesy to respond to Western Australia. We find that regrettable in the extreme.

I want to deal with the question of assets, because this was raised in detail by the member for Hillarys, whose speech I am responding to at the moment. This relates to assets that are held in a corporation or trust. I think the member misspoke. He said we could not change the law to access those assets. Maybe we can, member.

Mr P.A. Katsambanis: I think I said there would be significant legal difficulty.

Mr J.R. QUIGLEY: There would be.

Mr P.A. Katsambanis: And it is uncharted waters.

Mr J.R. QUIGLEY: That is right. It is uncharted because the Bell finalisation bill got decided on another point. Within the Bell finalisation bill, there was a provision to displace the Corporations Act insofar as it related to a liquidation, and that point was never decided because the High Court case was decided on section 109 of the Constitution on inconsistent laws. However, the provisions in this bill, in proposed sections 15C and 15E, are displacement provisions; that is, the bill provides that the office holder or institution may access assets to pay out a judgement or settlement brought on for historical child sexual abuse. I wish to stress this, because we have been lobbied heavily by bishops of the church: the legislation is permissive. Once the judgement or the settlement is entered upon, the office holder may access the assets of the church or other organisation that are held in trust, be it a charitable trust or other trust, or in a corporation without breaking the Corporations Act, because we have displaced those provisions for that purpose. This required us to write to the Attorneys General of each state and territory and to the commonwealth Attorney-General, seeking their concurrence for this displacement provision under the intergovernmental agreement relating to the Corporations Act whereby the commonwealth law finds its constitutional basis in a referral made by all states. They have looked at our legislation—I know this is groundbreaking—and they have all agreed that the office holder of the church or institution may access those assets. I wish to stress for those who read this reply to the second reading debate that it does not open a pathway for a successful plaintiff to seize the assets of that trust or corporation. There is a very good policy reason for this: these organisations do charitable work and we would not want a plaintiff to grab hold of an asset of a church that is very important in that community when other assets of the church are available to satisfy the judgement. It will be up to the prelates of those organisations to decide from whence they want to source the money.

As I said in my second reading speech, we will watch this closely. I hope the fear held by the member for Hillarys is unfounded—that is, that plaintiffs might, at the end of the day, find themselves unsatisfied—because I have said that this government will watch what happens and, if further legislation is required and we have to sail into those uncharted waters, we will not hesitate to do so, but we will be relying upon the goodwill and grace of those people who control these churches and other institutions to do the right thing, as the state of Western Australia is doing. They ought not think that they can just thumb their nose at the system, because we will go the extra step further if forced to do so. The people who have been abused deserve their compensation.

The last issue that the member raised was the power to declare by regulation an institution to be the successor of an institution that was itself responsible for the abuse. This is found in proposed section 15G(6). There are two circumstances under which the minister could by regulation declare an institution to be the successor. Under proposed subsection (6)(a), the minister could be satisfied that there is some relevant connection to the earlier institution, but the minister will have to do that having regard to the statutory criteria set out in proposed section 15G(2) and (3) that it is part of a merged institution. It is set out there and I am sure we will come to that in the consideration in detail stage. It is not an unfettered power of the minister; there are statutory criteria that the minister must follow. Obviously, in any event, the minister's decision is subject to judicial review.

Finally, there is a provision that preserves the inherent power of the Supreme Court to stay a proceeding permanently when the court is of the view that the effluxion of time would make it unfair.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1: Short title —

Mr P.A. KATSAMBANIS: Just very briefly, I raised a number of issues in my contribution to the second reading debate as the lead speaker for the opposition. The Attorney General has covered them as well as we could cover them, given that this legislation is new and we are treading interesting legal waters, so I will not drag out the consideration. I know a few members have some issues in relation to clause 5. I am happy to proceed there, unless anyone else has any other issues.

Clause put and passed.

Clauses 2 to 4 put and passed.

Clause 5: Part 2A inserted —

Mr J.R. QUIGLEY: I move —

Page 5, line 20 — To delete "a child sexual abuse action" and substitute —

an action on a child sexual abuse cause of action

It is just a little misprint.

Mr P.A. KATSAMBANIS: I do not have any issue with the amendment proposed by the Attorney General, but I think it is fair to seek an explanation on the record of why the originally drafted proposed new section 15C(1) was deficient and why this amendment is preferable to the original clause.

Mr J.R. QUIGLEY: This amendment to proposed new section 15C(1) will make the language consistent with proposed new section 15B(1) on page 4 of the bill. Under the heading "Liability of current office holder in unincorporated institution", proposed new section 15B(1)(b) reads —

> the person has or had a child sexual abuse cause of action against the holder …

The amendment will make the language in proposed new section 15C—"cause of action"—consistent with the language in proposed new section 15B(1)(b). That is the only purpose of the amendment.

Mr P.A. KATSAMBANIS: I have had a look at it, and clearly the amendment is for clarification. Yes, it is consistent with proposed new section 15B and makes very clear that the cause of action arises out of child sexual abuse, but that it is the action that judgement or settlement will be delivered on. We are comfortable with that, and the opposition is happy to support it.

Amendment put and passed.

Mrs L.M. HARVEY: I return to the Attorney General's second reading response on the definition and inclusion of serious physical abuse falling under the remit of the lifting of the statute of limitations for civil liability. I was a bit confused by the Attorney General's explanation. The definitions in proposed new section 6A of the Limitation Act are quite specific and read —

> ***child sexual abuse***, of a person, means an act or omission in relation to the person, when the person is a child, that is sexual abuse;
>
> ***child sexual abuse action*** means an action on a child sexual abuse cause of action;
>
> ***child sexual abuse cause of action*** means a cause of action that relates, directly or indirectly, to a personal injury of the person to whom the cause of action accrues, where the injury results from child sexual abuse of the person.

In his second reading reply the Attorney General said that serious physical abuse could, by interpretation of the court of these definitions, fall under the remit of the legislation. I fail to see how serious physical abuse could fall under the remit, because those definitions are quite specifically related to an injury resulting from child sexual abuse or a child sexual abuse action as distinct from serious physical abuse.

Mr J.R. QUIGLEY: The member will notice from the definitions on page 15 of the bill and the insertion of proposed section 6A, "child sexual abuse" means —

> … an act or omission in relation to the person, when the person is a child, that is sexual abuse;

It is a bit circular there because sexual abuse is not further defined as the touching of genitalia or other body parts, but as sexual abuse. Then we go to the next definition and we see that "child sexual abuse action" means sexual abuse cause of action, and that is the writ itself. Sexual abuse is not defined in its terms; it is open-ended. It is not only touching the genitalia or other defined body parts of the person, but it is also abuse that involves sexual stimulation. Not from experience, but from reading and the titles of films and whatnot, I know that some people get sexual stimulation by the infliction of pain. If the purpose of the infliction of pain is seen to be sexually stimulating the person who was applying the pain, it is sexual abuse; and if the victim is under 18, it is child sexual abuse.

As I tried to point out in my response to the member for Scarborough's legitimate inquiry that she made during the second reading debate, the application of 24 strikes of a leather strap, which was the favourite instrument used on children at Aquinas College by, I hasten to add, a lay teacher—for what that is worth, they can also sexually abuse—did not appear at the time to be for sexual satisfaction, but dealing with a child who was wilfully taking it up to the teacher and challenging him. In retrospect, I now regard it as physical abuse and I think that any person in this chamber who saw a child receive 24 strikes of the cane in 15 minutes would regard that as physical abuse. If it could be further established in some way that the person was doing it for sexual gratification or stimulation, that would then fall within sexual abuse. We are saying that physical abuse with an element of sexual stimulation attached to it is captured by the legislation.

Mrs L.M. HARVEY: Further to that point, to summarise: is the Attorney General saying that if a perpetrator physically abuses a victim in care by a severe beating, for example, somehow there is a way to link that to the perpetrator deriving some sexual gratification from that, and the victim of that beating would be able to sue that perpetrator under this legislation?

Mr J.R. QUIGLEY: The short answer is yes, but not without difficulty because it would require fact-finding. I do not want to hypothecate some weird scenarios of how we would evidence that it was sexually stimulating the abuser. I can think of a number now, but I do not think it helps the chamber. However, if there is an element of sexual excitement and the person is doing it for sexual gratification, yes. We recognise that it would have to involve a finding by a judge that that was the purpose. There may be ways of proving it because he may have done it to other children with sexuality attached to it; that tendency evidence could be brought in. That is possible, but it would be brought under the umbrella of this legislation only in cases in which there is sexual stimulation or sexuality involved.

Mr S.K. L'ESTRANGE: Further to the Attorney General's answer, I am starting to get a bit concerned that we are digressing from the bill's core purpose, which is to remediate the victims of child sexual abuse. There are very clear examples of child sexual abuse having taken place historically. The bill will give people who were damaged or were victims of that time the opportunity to have their day in court. I think that is incredibly important. I am concerned that I do not see anywhere in this bill that states that receiving the strap could be interpreted to be sexual abuse. I do not think it is. I am offering my support to try to get this back on track, which is that we need to focus on the intent and purpose of the bill. This is a digression to try to interpret the possibility of corporal punishment in the past, which had no sexual deviancy attached to it, being read as though it could have and with the possibility of people then pursuing that as an avenue in the future. I do not think that is the bill's intent and I urge the Attorney General to get back on track.

Mr J.R. QUIGLEY: With respect, I did not think that I had left the track. I was answering a matter raised by the member for Scarborough about why physical abuse is not included in the legislation. All that we are including is sexual abuse but sexual abuse can be taken as a wide range of matters. Is giving the strap to an errant child sexual abuse? No, and I have never received it as such. I went to the same school as you, my friend. In the case of some physical abuse administered by a sexually excited man to a boy in the boarding room dormitory at two o'clock in the morning, we are starting to enter a grey area. We are saying that the legislation is for sexual abuse. It would require the finding of a court or an admission by an abuser that the application of physical force was done for a sexual motive—for sexual gratification. We do not want to take it past that. That is what we are dealing with in the legislation. Sexual abuse is defined as abuse done for the purpose of sexual gratification. It is not abuse for the infliction of discipline—however inappropriate that may be or have been—but for the purpose of sexual gratification. We are seeking to open the doorway for full compensation to children exploited by people for their own sexual gratification.

Mrs L.M. HARVEY: One of the royal commission's recommendations was that lifting the statute of limitations for civil litigation, which is what we are doing, should include serious physical abuse as distinct from sexual abuse to make it easier for victims in institutions who have been the recipients of serious physical abuse during their time at the hands of various different institutions around the state. Some of these victims have had lifelong health issues as a result of the abuse they have suffered. It is not only the physical abuse from beatings, malnourishment and a range of other abusive actions towards these children that has been the problem. There has also been significant neglect in the denial of an opportunity for medical treatment, in the denial of visits from medical professionals and in the denial of any kind of treatment at all. It seems to me that what will happen with the exclusion of serious physical abuse from this legislation is that those victims who have suffered enormously at the hands of aggressive perpetrators will now have a more difficult task trying to sue the perpetrators of abuse by trying to prove that there was sexual deviancy on the part of the perpetrator. It seems to me that those victims who have been so seriously offended against—some beatings were severe and resulted in broken bones, concussion and a whole range of injuries, and some children who were deprived of nutritional sustenance during their incarceration in some institutions now have such severe osteoporosis that they are incapable of walking—will be denied the opportunity because in suffering that serious physical abuse, they will be required to prove some kind of sexual deviancy on the part of the perpetrator. I ask the Attorney General to present a case history that shows that a victim who has been physically assaulted has proven that that was an act of sexual abuse because the perpetrator experienced sexual gratification. I do not know whether such case law exists, but if the Attorney General's argument is that serious physical abuse fits in this remit, he may have found case law that supports his argument.

Mr J.R. QUIGLEY: No, I am not relying on case law. There are two things. Firstly, I think the Australian Capital Territory and one other place include physical abuse. The Australian Capital Territory, Queensland and the commonwealth include sexual abuse, and, of course, the commonwealth redress scheme includes sexual abuse. We announced a year in advance of the election campaign that we would lift the statute of limitations for sexual abuse. I am not relying on any other cases. That was our election commitment. That is what the commonwealth has done. The Northern Territory and South Australia have not introduced legislation yet, but, as I said, there is a discretion under their limitation acts. I harken to the invitation of the member for Churchlands, who said to get back on track because we are dealing with child sexual abuse, not physical abuse for other reasons. I am back on track and staying on track. That was our election commitment. As I said, it does vary around Australia a little, but that is where we are at. We promised to include sexual abuse. We are not saying that when there is physical abuse

linked to sexual gratification that the person, if they could establish that, could claim. Another thing is that we are hoping that these matters will not go to court. We are hoping that institutions in the state of Western Australia presented with cogent evidence of sexual abuse will sit down with plaintiffs' lawyers and work out settlements. That is our fervent hope, but we do not know how that will go.

Mrs L.M. HARVEY: **I** will not labour the point, because I am conscious that the many victims want this legislation to be passed through the Parliament and become law. However, I flag with the Attorney General that he is setting himself and the government up. I believe the Attorney General will need to bring to this Parliament an amendment to this legislation. Two other states—Victoria and New South Wales—have included serious physical abuse as part of their remit for the removal of the statute of limitations in civil litigation in child sexual abuse cases. The Royal Commission into Institutional Responses to Child Sexual Abuse made the recommendation, because of the stories it heard and the evidence it was given to support those cases, that victims of serious physical abuse should be included in this sort of legislation. I fear that if the Attorney General does not amend this legislation to include victims of serious physical abuse, they will be involved in a legal circus to find a remedy, because in order to succeed in a claim for liability, they will need to prove that there was sexual deviancy on the part of the perpetrators of that serious physical abuse. That will be a shame for those victims. The Attorney General has failed to explain why the government of Western Australian has decided to differ from the governments of Victoria and New South Wales and exclude from this legislation victims of serious physical abuse.

It would bring me no joy to see the Attorney General bring amending legislation to this place. I therefore implore the Attorney General to consider including "serious physical abuse" in the definitions clause of the bill before this legislation goes through both houses of this Parliament and becomes law. If the Attorney General decides not to do that, that will be a grave omission and a serious denial of justice for the victims of serious physical abuse. As I said, I will not labour the point. I would like this legislation to pass. However, I hope that upon reconsideration of the arguments that have been put in this place, the government will move an amendment in the Legislative Council for the inclusion of serious physical abuse. We would certainly be supportive if that were the case.

Mr J.R. QUIGLEY: **I** do not see how it would be a simple amendment. I listened to what the member for Scarborough said, and it was not without some sympathy, because I have explained to the member a personal situation in my own life when my hands were hit with a strap when I was at school. Upon reflection of something that happened many years ago, I do not know whether that was serious physical abuse. However, the issues that surround serious physical and/or emotional abuse are quite complex. It is important that this legislation is passed relatively quickly—hopefully—through this Parliament. If we need to come back further down the track, so be it. I would hate to see this legislation bogged down in this or the other place interminably and leave the survivors of child sexual abuse waiting and waiting. I believe that we as a Parliament can deal with this aspect. There are a lot of complex issues in that other aspect, and if that needs to be debated on another day, so be it. I would hate to see this legislation go to a committee of the other place and be held up for another 12 months. Some of the survivors are getting on in years and some are in poor health, as the member for Scarborough well knows, because she spoke with some of the survivors in the Speaker's gallery earlier today. I think that is another cause of action that could be considered at a later date. I do not have a problem with that. However, all sorts of things will need to be examined before we can deal with that. The alternative is for the member for Scarborough's party to send this bill to a committee in the upper house and have it examined for 12 months. That would leave the survivors of child sexual abuse still without any certainty and redress. We believe it is important that this legislation is passed on its merits, and we can look at the other issues at a later stage. We believe this legislation is very important for the people who were in the Speaker's gallery today, and other people. I draw a parallel with the no body, no parole legislation. That legislation passed through this place swiftly. However, it has been held up in the other place. We are accepting the amendments. I am not addressing that bill. I am talking about the length of time for which legislation can be held up in the other place. The inclusion of manslaughter will add another two years, because a person is out on parole for only two years. However, we will come to that later. Now that the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill is before the Parliament, I think it is important that the victims of child sexual abuse see us deal with it expeditiously.

Mrs L.M. HARVEY: Further to the point the Attorney General made, I guess what baffles me is why these very complex areas appear to have been addressed by the Victorian and New South Wales legislation but we have been unable to include that definition in this bill. The Attorney General needs to explain why this complex matter included in legislation before the other two Parliaments could not be included in this legislation. It is up to him to explain.

I am glad he brought up the no body, no parole laws. Towards the end of last year, the manager of government business in the other place made an agreement with the manager of opposition business, Hon Peter Collier, about the government's priority legislation to go through the Legislative Council before Parliament rose for the calendar year recess. At no time did Hon Sue Ellery, the manager of government business in the other place, bring forward the no body, no parole legislation as one of those priorities. That legislation was not held up in the Council's

legislation committee; it came out of the committee and was sitting on the notice paper waiting to be prioritised by the manager of government business in the other place. It was not listed as one of the 11 or so pieces of legislation that Hon Peter Collier agreed to get through the Parliament. It was not on that list. Every single piece of legislation on the priority list that Hon Sue Ellery put forward was passed through the Parliament. It is inaccurate to say that the Liberal Party in the Legislative Council held up that legislation. That legislation was not prioritised by Hon Sue Ellery, and that is why it was not debated. We would like to see that legislation debated when the Legislative Council resumes. The fact remains that that will not occur until the middle of March. It is up to the government to explain why that is so. The Legislative Council could have been debating that legislation and passing it today, given it failed to give it priority at the end of last year. However, the Legislative Council is not sitting and the government dictates when the other house sits. I implore the Attorney General to be accurate in his assessment of what actually happened with that legislation. It was not given priority. Had it been prioritised, it would have been passed.

Back to serious physical abuse being included in the remit of this legislation. I say once again: if two other states have managed to untangle those very complex matters, I do not understand why we could not do it here in Western Australia. That is his response. I am not suggesting this should go to a parliamentary committee of the other house. I am suggesting the Attorney General look at the definition of serious physical abuse in the legislation in Victoria and New South Wales and consider including that as part of this legislation as an amendment for when the legislation is debated in the other place. I put to the Attorney General that rather than have it sent to a committee, I will work with Hon Peter Collier, Hon Michael Mischin and other members of the Liberal Party in that chamber and garnish support for such an amendment to be passed without being sent to a committee. That is a commitment I make to the Attorney General. However, it is up to the Attorney General to consider it. There is an opportunity while the legislation is going through now for us to cover all the victims of abuse such as is the case in Victoria and New South Wales. It is the Attorney General's decision whether to choose to include those victims.

Mr J.R. QUIGLEY: I will respond to the several points made by the honourable member. Firstly, on the priorities of the Sentence Administration Amendment Bill, it came out of a committee with recommendations for amendment and they have been sent to the parliamentary draftsperson for amendment. It did not come out of the committee until well towards the end of last year and the amendments had to be drafted. Leaving that aside for the moment, which jurisdictions do we follow? The same debate was held in Queensland, and the Queensland bill is reflective of our bill. The same debate was held in the commonwealth, and it related to child sexual abuse. We have a policy of following the commonwealth, which has the national redress scheme going, I hasten to add, for child sexual abuse in institutions, not for other torts that may have been committed. That is the policy we took to the election. That is the policy we worked on and that is what we have delivered for the people of Western Australia as promised. It is before Parliament and the opposition can either support it or vote against it, but this legislation delivers on exactly what we took to the Western Australian public during the course of the election.

Mr P.A. KATSAMBANIS: Clause 5 is long and pages 9 to 11 deal with the insertion of new section 15G and the regulation-making power. The Attorney General covered some aspects of this power in his summing-up of the second reading debate, and, yes, the Attorney General has some limitations on the regulations that he can make. I have two queries on this proposed section, and we will deal with the first one first. The Attorney General said that any decision that he, or a future minister, makes under this regulation-making power will be subject to judicial review. As I read it, there is no judicial review written into this legislation. Is the Attorney General relying on a general power of judicial review?

Mr J.R. QUIGLEY: Under the Supreme Court Act, the Supreme Court has that power within its inherent jurisdiction and it requires specific legislation to displace the inherent jurisdiction of the court. The court has an inherent jurisdiction to review the power of the executive unless it is displaced by the legislation. There is no such displacement provision in this legislation. There is statutory guidance for an Attorney General or a minister as to the circumstances upon which an Attorney General or a minister should be guided in making a regulation. If I could briefly turn to those, the requirement to be guided by those criteria is set out in proposed section 15G(6). Proposed subsection (6) sets out the criteria upon which the minister can make his determination. Proposed section 15G(6)(b) provides that the institution itself may agree with the minister making the regulation for the purpose of making the institution a relevant institution. So it is not unfettered and it is subject to judicial review.

Mr P.A. KATSAMBANIS: The second issue that I want to raise refers to proposed section 15G(7)(b), which permits a regulation to be made retrospectively. It states —

> may have effect from a day that is before the day on which they are published in the *Gazette*, but not before the day on which the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2017* section 5 came into operation.

I understand the reason for that provision, because often one does not really know there is an issue until someone lodges an action and a defence is lodged, or in the pleadings the nominal defendant says, "Aha, but it's not me!"

and we want to catch that up, but I want to point out to the Attorney General that this may potentially raise the ire of the Joint Standing Committee on Delegated Legislation, because it is best practice that any retrospectivity is introduced by legislation rather than by regulations. I know some members of that committee have issues with this sort of stuff. I point it out to the Attorney General and seek his clarification on whether he thinks it is appropriate for a regulation to apply retrospectively.

Mr J.R. QUIGLEY: I expect that this power will be rarely used. Proposed section 15G(2) states —

> A current institution is the relevant successor of an earlier institution if —

It sets out there and in proposed subsections (3) and (4) the criteria by which a current institution is to be regarded as the successor to a prior institution. It might be that through some deviant juggling of assets and clauses, name changing and avoidance that sought to escape those particular criteria —

Mr P.A. Katsambanis: That's the evil you are trying to address with this.

Mr J.R. QUIGLEY: That is right.

The minister will have the power to make a regulation. To pass a special act of Parliament—to do it by legislation—would be difficult because that would take so much time that the cause of action would be lost. The safeguards are the disallowance of a regulation so made and judicial review. Who knows whether those two safeguards are enough to satisfy the Joint Standing Committee on Delegated Legislation, but having regard to proposed sections 15G(2), (3) and (4), which are the normal ways to work out whether the current institution is the successor of the previous institution, it is hard to imagine those three or four criteria not covering the field. If someone gets tricky and tries avoidance, there is this catch-all section, which is subject to judicial review and disallowance in the upper house.

Mr P.A. KATSAMBANIS: I understand that and we are obviously attempting to address people who attempt to run away from their moral and legal responsibilities.

Mr J.R. Quigley: There's been a lot of that.

Mr P.A. KATSAMBANIS: There has been. There has been too much of it.

I accept the explanation of the Attorney General. I am always uncomfortable with any form of retrospectivity, particularly in regulations, but in this case it is being done for a positive reason—to help those victims we have spoken about at length in this debate, who suffered and continue to suffer. Let us see how it is applied in practice. Hopefully, it will be used extremely rarely.

Clause, as amended, put and passed.

Clauses 6 to 10 put and passed.

Title put and passed.

Sitting suspended from 6.00 to 7.00 pm