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

Committee

Resumed from 27 March. The Deputy Chair of Committees (Hon Robin Chapple) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 6: Act amended —

Progress was reported after the clause had been partly considered.

Hon SUE ELLERY: When we were last debating this Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill on Tuesday, we left the debate at a point at which Hon Nick Goiran had raised a couple of issues around limitation periods and I want to provide a response. The honourable member questioned the explanation of the limitation periods given in the second reading speech, in particular those bits of the second reading speech that went to —

> At present, under the Limitation Act 2005 … a claim must be brought within three years of the cause of action arising or, in the case of a child, by their twenty-first birthday.
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> … under the previous Limitation Act 1935 … when sexual abuse was suffered before 15 November 2005, a person had six years to commence a claim for personal injuries damages.

I have an explanation that is a bit long, so please bear with me. That was a very general description of how limitation law applies to child sexual abuse, expressing the operation of the relevant limitations in their simplest terms. The application of limitation legislation is a complex and technical area of the law. There are many more variations and permutations to how limitation law can apply other than those described in the second reading speech.

Of course, the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017 will remove those limitation periods in respect of child sexual abuse claims, so the precise scope for those provisions will no longer be of relevance to survivors of child sexual abuse after this bill commences. Two time periods are relevant to this question. If the abuse occurred after 7 January 1936 and prior to 15 November 2005, the Western Australian Limitation Act 1935 applies. For actions against the state, the Western Australian Crown Suits Act 1947 applies. If the abuse occurred on or after 15 November 2005, the Western Australian Limitation Act 2005 applies.

In addition to considering the time at which the abuse took place, the relevant limitation period for people bringing civil claims in respect of child sexual abuse under the legislation will depend upon the particular cause of action brought by the plaintiff. Causes of action arising from child sexual abuse are generally brought in trespass or negligence. In addition to the time at which the abuse took place and the cause of action claimed, it will also be relevant in determining the correct limitation period for civil claims in respect of abuse occurring prior to 15 November 2005 whether the state or a public authority is being sued.

Under section 38(1)(c) of the Limitation Act 1935, actions in negligence must be brought within six years of a cause of action accruing; that is, within six years of not insignificant damage occurring as a result of the negligence. Under section 38(1)(b), actions for trespass—for example, assault—must be brought within four years of the cause of action accruing. In the case of a child, under section 40 the limitation period runs from when he or she turns 18; however, by virtue of the effect of section 47A of the Limitation Act 1935 and section 6 of the Crown Suits Act 1947, in claims against a public authority or the state the limitation period runs while the plaintiff is a child. By virtue of section 47A of the Limitation Act 1935, in the case of actions against public authorities for conduct in the execution of an act or of a public duty or authority, there is a one-year limitation period from the accrual of the cause of action that is readily extendible by consent or with the leave of the court to six years. Under section 47A, the six-year period is not extended or extendible when the claimant is a minor. By virtue of section 6 of the Crown Suits Act 1947, in the case of actions against the state of Western Australia there is a one-year limitation period from accrual of the cause of action that is readily extendible, by consent or with the leave of the court, up to a maximum of up to six years. The six-year period is not extended or extendible when the claimant is a minor. Under section 6 of that act, this provision cannot be waived by the state.

Under section 14 of the Limitation Act 2005, a three-year primary period runs from the date of accrual of the cause of action in an action for damages related to personal injury such as negligence. Under section 16, a three-year period also applies to an action for trespass to the person. A number of exceptions to this period are relevant to children who have suffered sexual abuse. Under section 30 of the Limitation Act 2005, if the child is in the care of a parent or guardian and the plaintiff is under 15, the limitation period is six years from the date of accrual. Under section 31 of the Limitation Act 2005, if the plaintiff is between 15 and 17 years old the limitation period is until the age of 21.

Hon Nick Goiran: That's not right.

Hon SUE ELLERY: Well, let me go through it and you can then take issue with it.

However, under section 41 all these limitation periods are subject to extension to age 21 with the leave of the court if the court is satisfied that the child's parent or guardian acted unreasonably in not commencing an action on the child's behalf. Under section 32 of the Limitation Act 2005, if a child is without a parent or guardian, the limitation period is suspended during the time at which the child is without a parent or guardian. In addition, under section 33, where the plaintiff is a child and is in a "close relationship" with the defendant, the child has until the age of 25 to commence proceedings. A "close relationship" exists when, in the case of a child, the proposed defendant has responsibility for the day-to-day or the long-term care, welfare and development of the claimant.

To use the example that was put before the chamber when we last discussed this matter, namely the sexual abuse of a two-year-old child, I am advised that the result of these provisions would be as follows. First, if the date of the abuse means that the provisions of the Limitation Act 1935 would apply, and if the claim was being brought against the state or a public authority, the child's civil claim would expire at age eight, assuming that the claim was brought in negligence. Second, if the date of the abuse means that the provisions of the Limitation Act 1935 would apply and the defendant was an individual or non-government organisation, the child's civil claim in negligence would expire at age 22 if the claim was brought against an individual in trespass, or at 24 years if the claim was brought against an individual or non-government organisation in negligence. Third, if the date of abuse means that the provisions of the Limitation Act 2005 would apply, and assuming that the child had a guardian or parent at the relevant time, and that the defendant was not in a close relationship with the child, the child's civil claim in negligence would expire at age eight. However, the child would be able to seek leave of the court to commence an action up to age 21 on the basis that their parents or guardian acted unreasonably in not commencing an action on the child's behalf.

Hon NICK GOIRAN: I agree with each aspect of what the minister has just read to the chamber, with the exception of three things. First, the minister indicated that the reason the government provided those explanations in the second reading speech is that it was a general description. If the government is using the words "general description" to mean a wrong description, that is fine. However, I do not think that is what the government means by those words. The information in the second reading speech cannot reasonably be described as a general description, given the inaccuracies. Second, the minister said that this has been done in the simplest terms. If it has been done in the simplest wrong terms, then, yes, I agree. However, it is not satisfactory to the members who will be voting on this legislation and to the victims of child sexual abuse, who have a keen interest in this legislation, for the minister to wrongly state in the second reading speech, and I quote —

> Limitation periods under the previous Limitation Act 1935 of Western Australia will apply to many historical child sexual abuse cases—when sexual abuse was suffered before 15 November 2005, a person had six years to commence a claim for personal injuries damages.

No, they did not. The advice the minister has just given to the chamber confirms that is not the case. A person who is bringing a claim for historical child sexual abuse was, by definition, a child at the time. Therefore, it is pointless to talk about adult claims, because the person was a child at the time. If the person was a child at the time, obviously they were under the age of 18. The minister indicated that if a claim is brought in negligence, a child would have until the age of 24 to make a claim. Therefore, it is not an intentionally misleading statement, but it is, no doubt, an unintentionally misleading statement, to indicate that the person has six years in which to commence their claim for personal injuries damages.

The third thing that has just been indicated to the chamber that I do not agree with is the current operation of the Limitation Act 2005. Correct me if I am wrong, but I heard the minister say that if the claimant is aged between 15 and 17 years, they have until their twenty-first birthday to bring a claim. I do not think I misheard that. That is not right.

Hon Sue Ellery: By way of interjection, I will go to that bit.

Hon NICK GOIRAN: Between the ages of 15 and 17?

Hon SUE ELLERY: Yes. I said that there are a number of exceptions to this period—I was talking about the Limitation Act 2005—that are relevant to children who suffered sexual abuse. Namely, if the child is in the care of a parent or guardian and the plaintiff is under 15 years of age, the limitation period is six years from the date of accrual, but if the plaintiff is aged between 15 and 17 years, the limitation period is until age 21, according to section 31.

Hon NICK GOIRAN: I thank the minister. To the extent that that is wrong, it is wrong because it fails to deal with those people who are aged over 17 years but are under 18 years of age. So, what the minister has said about those aged between 15 and 17 years is right, but she has not told the chamber what the situation is for the person aged between 17 and 18 years. People who are over the age of 15 but under the age of 18 need to put in their claim by their twenty-first birthday. That is the law of the land as it is today. That law was brought in by the previous Labor administration under the Attorney General in those days. Therefore, it is not really appropriate for the second reading speech, which sets the policy of the bill, to indicate to the house that under the Limitation Act 2005 a claim must be brought within three years of the cause of action arising or, in the case of a child, by their twenty-first

birthday. That is wrong. What troubles me about that is that people listening to this debate will think that under the current laws of the land, "It is not yet my twenty-first birthday; quick, I will issue my writ." No, they cannot. As the minister indicated to the chamber, if the person is two years of age, under the current laws of the land, they have to issue the writ by the age of eight.

The good news about all this is that if we pass this legislation, it will remove all these limitation periods for these people. The minister knows that I am supportive of the government's intentions there. My concern is that people have been unintentionally misled—members of this place and others. The second reading speech is an important speech. There is no more important speech for the future interpretation of this legislation than the minister's second reading speech, but it has statements that are unintentionally misleading. I would like to know what we intend to do about that.

Hon SUE ELLERY: There are two things. It is important to recognise the effect of the bill before the chamber—that is, to lift all limitations. That is important.

Hon Nick Goiran: For children involved in sexual abuse.

Hon SUE ELLERY: Correct. That is what the bill is about.

Hon Nick Goiran: It is not all limitation periods, then, is it?

The DEPUTY CHAIR (Hon Robin Chapple): The minister is on her feet.

Hon SUE ELLERY: In the context of the bill, we are talking about a limited range of limitations, but we are talking about a very specific piece of legislation.

I am advised that the point the member made about the second reading speech—that is, at present under the Limitation Act a claim must be brought within three years of the cause of action arising or, in the case of a child, by their twenty-first birthday—is not the full explanation of the range of matters covered within the bill. The member is correct when he says that the full description of the provisions the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017 deals with were not canvassed explicitly and in detail in the second reading speech. He is correct about that. The endgame of this, though, of course, is that limitations will be lifted. I think that is the important point to make, but to the extent that he draws it to the attention of the house and the government, he is correct in that that component of the second reading speech did not canvass the full range of matters that are captured in the bill.

Hon NICK GOIRAN: Thanks, minister. I appreciate the acknowledgement. Can we just deal with that particular part first? I know the minister says that it is not a full description, but that is not really it. The statement in the second reading speech is —

> … or, in the case of a child, by their twenty-first birthday.

Had the government said, "or, in the case of a child who is at least 15 years of age", there would be no issue. That statement would be correct. Not that we are in the business of amending second reading speeches, but that would have been helpful. For everyone under the age of 15—of course, there are many more children under the age of 15 than over 15—that is wrong. It is not really a case of not being a full description. A child under the age of 15 does not have until their twenty-first birthday. Yes, as the minister pointed out, there are some other special exceptional circumstances, such as if they did not have a guardian or had certain disabilities and so on. There are some exceptional circumstances, but as a general principle, and as the government indicated early this afternoon, this was supposed to be a general description in the simplest terms. A general description in the simplest terms is not that a child under the current laws has until their twenty-first birthday. If we can deal with that one first, I want to know if the government is in a position to do anything about that to correct the record. It troubles me that the most important speech in this debate contains a key statement that is, at the very least, incomplete and, I think, unintentionally misleading. What are we going to do to fix that problem?

Hon SUE ELLERY: I think the point to remember is that the bill lifts the limitations. With regard to needing to rely on the second reading speech to interpret the provisions that are included in the bill when it becomes an act, the limitations will be lifted. There is no damage done to the people who will be seeking to use the provisions of the bill because the limitations will be lifted. If the member wants me to say the second reading speech was wrong in respect of what the member describes as its inadequacies, I will say that: it was wrong. There; I have said it. However, with regard to what we are going to do to fix it, I put it to the member that we do not need to do anything to fix it because I have already said on the record that it was wrong and I have given an explanation that has now been recorded in *Hansard*. In any event, the effect of this piece of legislation is to lift the limitations I described when I gave the second reading speech. There is no downstream negative impact on the people who are desperately waiting for us to pass this piece of legislation because the limitations that were described inaccurately will be lifted.

Hon NICK GOIRAN: Yes, I understand that, minister, but remember that in this debate across the nation there are people who hold the view—I am one of them—that serious physical abuse should be captured and the limitation period lifted. We are not doing that, and the minister has previously explained why that is the government's position. Those people do not have the benefit of this legislation; they will be still maintaining the current law as it stands today, and those people do not have until the age of 21, if they are a child. They were beaten to within an inch of their life and suffered serious physical abuse, and they do not have until the age of 21 and will not have the limitation lifted. It is important for us to recognise that under the current laws of Western Australia—this is not being changed by this legislation—if they were two years of age at the time the abuse occurred, they have until the age of eight to bring an application, unless they can somehow access one of the few exceptional circumstances. I hope every member agrees that that is unjust. There needs to be further reform in this space. I would be keen to know whether the government has any intention to review the Limitation Act in general. We know that the government has committed to a review of the Criminal Injuries Compensation Act. Is the government committed to reviewing the Limitation Act in general?

Hon SUE ELLERY: Not to the knowledge of the advisers at the table. As a member of the government, I am not aware of any discussion about that either.

Hon NICK GOIRAN: I hope that the minister will take that up with the Attorney General because clearly something needs to be done about this. We will have even more limitation regimes for children than we have at the moment. It is already pretty complicated, as the minister set out earlier; it is actually quite a complex area of law just by itself. We are adding another layer of complexity. A child in a particular circumstance does not have a limitation period at the moment. For children of different ages in a range of other circumstances, a range of different limitation periods apply. I do not want anyone to be misled into thinking that children under the current regime have until the age of 21 to bring an application. That is not true.

We have dealt with that first aspect. The second aspect was that the limitation periods under the previous Limitation Act 1935 will apply to many historical child sexual abuse cases. When sexual abuse was suffered before 15 November 2005, a person had six years to commence a claim for personal injuries damages. That is not right either. They had at that time, and someone could still do it now, until the age of 24. It is ironic because the two statements in the second reading speech are almost in reverse. The first one, which is the current law, suggests that people have until a particular birthday to make a claim. That is not right, unless they are over the age of 15. Under the old scheme, the suggestion was that a person has only six years to claim. That is not true; they have until their twenty-fourth birthday. I thank the minister for acknowledging that the first statement was incorrect but are we able to do the same thing with the second statement, and then we can move on?

Hon SUE ELLERY: When I stood at the beginning of today's consideration of this bill and gave the lengthy explanation, I added what should have been said about that provision in the second reading speech; that is, in the case of a child, the limitation period runs from when he or she turns 18. To avoid repeating the discussion we have just had, if the member wants acknowledgement that that second reading speech was wrong, it was wrong. I have corrected the record, which is what I am required to do at the earliest opportunity. That is what I have done. I have provided an explanation. I make the point again that, in any event, the purpose of the bill is to lift those limitations. Although an incorrect, inadequate or incomplete description of the limitation that is to be lifted should not have happened, the outcome is that the limitation will be lifted.

Hon NICK GOIRAN: That is helpful. I have one last question on this point. What limitation applies if the incident occurred before 1935?

Hon SUE ELLERY: We will check that. I am conscious of the time, so we have an opportunity to check that.

Sitting suspended from 1.00 to 2.00 pm

Hon SUE ELLERY: Before the break, a question had been asked by Hon Nick Goiran about what provisions were in place before 1935. Limitation periods in Western Australia before 1935 were governed by a number of different statutory provisions that had been inherited from English law. The most relevant statutory provisions were contained in the imperial Civil Procedure Act 1833 and the Limitation Act 1623. To the best of our understanding, the limitation period set by those acts were four years for trespass and six years for actions on the case. Those acts provided for an extension of time when the plaintiff was under the age of 21. The source for that information is a report of the Law Reform Commission of WA published in January 1997, "Project No 36 Part II: Limitation And Notice Of Actions".

Hon NICK GOIRAN: If this legislation passes, will those people captured by that regime before 1935 have an unlimited period in which to claim?

Hon SUE ELLERY: Correct.

Hon MICHAEL MISCHIN: On the subject of limitation periods, it certainly seems that the regime for limitation periods has become more complex over time. It seemed rather simple under the imperial act days; it became more

complicated under the Limitation Act 1935 and has become more complicated ever since. My concern is the broader potential problems being opened up by changing limitation periods in this case and the inequities that might appear, which in future might need to be addressed. Those inequities might appear sooner than we think. If I might illustrate the problem, perhaps the minister could tell me whether, after the passage of the legislation, there will be no limitation period for a child aged 12, for example, to sue for abuse by a teacher in an institution and there will be no limitation period for a child aged 17 abused in similar circumstances by a teacher in an institution.

What will be the limitation period for someone who has just turned 18 years of age and was abused under similar circumstances in an institution, and what will be the limitation period for a person of 18 years who, because of some mental impairment, has the cognisance, acuity, intelligence, and comprehension of a child of 12 years of age, and was similarly abused?

Hon SUE ELLERY: In respect of the first part of the member's question about a person aged 18 years, the usual law applies—that is, three years under the Limitation Act 2005. For a person who has a mental impairment—to use the member's description—but the abuse happened as a child, there is no limitation. Otherwise, the limitation period is 12 years, as per section 35(2) under the Limitation Act 2005.

Hon MICHAEL MISCHIN: That assumes that it is child sexual abuse within the meaning of proposed section 6A of the Limitation Act, not child abuse, and that in the cases of simply child abuse that is not sexual abuse, even a person of the age of 12 or a person under the age of 18 would still have to resolve whether it became child sexual abuse and get a court to decide that, and they would be subject to the limitation periods of any other adult.

Hon Sue Ellery: We have already canvassed child sexual abuse versus other abuse.

Hon MICHAEL MISCHIN: Does that not, in the government's view, give rise to some patent inequities in the manner in which people are being dealt with and which ought to be corrected or at least considered?

Hon Sue Ellery: Does the member mean to capture other forms of abuse in this bill?

Hon MICHAEL MISCHIN: To capture other forms of plaintiff or claimant.

Hon Sue Ellery: We have already canvassed that.

Hon MICHAEL MISCHIN: Has the government considered, for example, people with a —

The DEPUTY CHAIR (Hon Matthew Swinbourn): Member, I think you are straying to the policy of the bill here because you are asking the government whether there are any gaps. This is about the policy of the bill rather than a debate about the clauses of the bill. It is fairly evident that there is no capacity to go into these other areas of policy while we are in committee. You are asking the minister for an opinion on this, and I think the minister's position is—not that I am here to put forward the minister's argument for her—that this is a matter that goes to the policy of the bill.

Hon MICHAEL MISCHIN: Thank you, Mr Deputy Chair. I was asking whether the government had given any consideration to people who might be excluded by this proposal because of the narrow definition proposed in section 6A but who have been similarly abused and who have the mental age, if you like, of a child but who are in adult bodies. Has their position been considered with respect to the manner in which the limitation periods have been drawn up and proposed?

Hon SUE ELLERY: Is the member asking whether the government considered whether the class of people he is describing as being mentally impaired ought to be captured under this bill, which specifically deals with sexual abuse, and whether other forms of abuse should be captured as a consequence of that person being impaired? Is that the member's question?

Hon MICHAEL MISCHIN: No, it is a little bit more basic than that. I am talking about an adult, over the age of 18—so not a child—but who has been sexually abused —

Hon Sue Ellery: While chronologically an adult—I get it.

Hon MICHAEL MISCHIN: — and with the mental age of a child.

Hon SUE ELLERY: No, we did not consider that.

Hon MICHAEL MISCHIN: Are there any plans to consider that, to the minister's knowledge?

Hon Sue Ellery: Not that I am aware of.

Clause put and passed.

Clause 7: Section 5 amended —

Hon Alannah MacTiernan: Progress!

Hon NICK GOIRAN: I had not proposed to comment on clause 7, but because the Minister for Regional Development has decided to engage in this matter all of a sudden, I might indicate to you, Mr Deputy Chair, that clause 7 deals with an amendment to the Limitation Act 2005. Some members who have not been here and who have been away on urgent parliamentary business might be unaware that in amending the Limitation Act, a number of errors in the second reading speech needed to be corrected. The minister at the table has helpfully facilitated that and we have been making "progress". What is unhelpful is for the Minister for Regional Development to interject to try to cast aspersions on any other member who might be asking questions on this matter.

Hon Alannah MacTiernan interjected.

The DEPUTY CHAIR: Order, member!

Hon NICK GOIRAN: You just need to stay out of it. We are making progress without you sticking your beak into it!

The DEPUTY CHAIR: Order! Can we just stay focused on making progress?

Hon NICK GOIRAN: I remain, as I have been throughout the progress of this bill, interested in it being passed and passed in the best form possible. That has not changed. It was my position last week; it is still my position this week and it will be for the remainder of today. If there is a need to ask questions, the opposition will not hesitate to do so.

Clause put and passed.

Clause 8: Section 6A inserted —

Hon SUE ELLERY: There is an amendment in my name to clause 8 on supplementary notice paper 53, issue 4. I do not know whether I will need to do this formally or as a Clerk's amendment, but I will explain. Members will be aware that there have been lengthy conversations about whether to include a review clause in the bill. Hon Michael Mischin proposed a particular form of words for a review clause. The government took the view that the amendment crafted by Hon Michael Mischin would not necessarily achieve what he wanted to achieve. It referred, effectively, to reviewing the bill. I asked the Attorney General to consider drafting review provisions. I will give a general explanation first. Members will see that there are now two amendments on the supplementary notice paper in my name on reviewing. The one we are dealing with at clause 8 seeks to insert —

> (7) The Minister must carry out a review of the operation and effectiveness of this section and Part 7 as soon as is practicable after the 5th anniversary of the day on which the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2017* section 5 comes into operation.

The amendment states "section 5" but it should state "section 8". I will seek advice on how to amend that. The amendment continues —

> (8) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

This would have the effect of causing a review of the limitation provisions. Just by way of explanation to the committee—we will deal with it in due course—on the second page of the supplementary notice paper is a further amendment in my name, which seeks to add a new provision headed "Review of Part 2A". That would effectively review the liability provisions. That is in similar terms to the first amendment, but it reviews the second part. Where there is a point of difference between the government and Hon Michael Mischin—I am not trying to speak on his behalf; I am sure he will put his case—is that his preferred position would be a review after three years and the government's preferred position would be a review after five years. We have already indicated that the government intends to watch how this legislation plays out, but to watch that properly, we will be watching the development and outcomes of cases. We think that three years is too short a period within which to do that. I suspect there might be a point of difference between us on that, but I am not able to shift on that position.

I seek your advice, Mr Deputy Chair, on how to deal with the amendment to the amendment.

The DEPUTY CHAIR (Hon Matthew Swinbourn): You can simply put to us in writing a copy of this amendment with "5" crossed out and "8" inserted, and signed by you. That will be the amendment that you will move.

Hon SUE ELLERY: I so do. I move —

> Page 16, after line 30 — To insert —
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> (7) The Minister must carry out a review of the operation and effectiveness of this section and Part 7 as soon as is practicable after the 5th anniversary of the day on which the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2017* section 8 comes into operation.
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> (8) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

Hon MICHAEL MISCHIN: I am gratified that the government is prepared to consider a review clause and appreciate that there has been some discussion behind the Chair with the minister's advisers, who represent the Attorney General's office. A few things need to be said about this. If I could jump forward for a moment to my proposed review clause, it was intended to be inserted as part of this bill, which, if passed, will be called "the act". It was geared to an anniversary date on which part 3 of the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act, as it would then be, came into operation. Because the operative part of this bill—this "act"—which is part 3, will initiate the changes to the limitation period and is the key part of the legislation, it was thought that the review provisions would start ticking over once it came into operation. It would be a holistic assessment of the consequences of the passage of this bill when it becomes an act. It is considered that once it gives effect to its amendments, this bill, on becoming an act, will become exhausted and will have done its job, so it would be better that any review provisions be included in the discrete acts that it will amend—to wit, the Limitation Act 2005 and the Civil Liability Act. I do not have difficulty with that as long as it is appropriately geared to the operative provisions of that legislation. Plainly, the key to all this is the changes to the Limitation Act—the definitions in particular—and other operative provisions in proposed section 6A. As the minister has pointed out, there is a typographical error in the amendment. Once again, given that we are trying to get away from a reference to the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act, I do not understand why we are talking about section 8 of that act, which is currently this bill, rather than simply referring to the anniversary of the day on which section 6A of the Limitation Act comes into operation, which I would have thought would be far easier to ascertain and more certain for those who are looking at when the anniversary ought to take place. I posed that question to the ministerial advisers and they were going to give some consideration to that. I would appreciate it if the minister could indicate whether that would not be a better way of going about it rather than referring to an act that will be exhausted once the amendments are effected.

Hon SUE ELLERY: It is a standard approach that is taken now. Everybody in this chamber, with the possible exception of one person who is here to assist the chamber, may take the view that the drafting of legislation is a mysterious art practised by Parliamentary Counsel, but I am advised that, although it is acknowledged that it is probably a fine distinction, the standard practice of drafters is to reference the commencement to the amending clause rather than to the total thing that it will amend. This is standard practice. There is nothing new about how this has been drafted or where it has been placed. This is the standard operating procedure that is adopted by the drafting office.

Hon MICHAEL MISCHIN: To understand: the practice is to refer to the commencement of the amending clause rather than the section that is amended?

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: I do not have difficulty with that, if that is the way the government wants to do it. I refer to the proposed amendment, which states, "a review of the operation and effectiveness of this section". This is proposed section 6A(7), and part 7 will be referrable to the proposed part 7 of the Limitation Act, which currently appears as clause 10 of this bill. Part 7 has the transitional provisions that will come into operation, presumably at the same time.

Hon Sue Ellery: That is correct.

Hon MICHAEL MISCHIN: Thank you.

I do not have a problem with what the government proposes here, with one exception, and that is the anniversary date on which the review will be undertaken. I can understand that it is desirable that any review of legislation takes place at a reasonable time after its passage, if a review was thought proper, in order to allow the effects of the legislation to settle in, to gather worthwhile information about the operations of that amendment, and to perhaps even start to formulate recommendations for improvement and the like. What a reasonable time might be is pretty arbitrary, I will grant that. For some legislation it might be 12 months, three years or five years. Many pieces of legislation do not have a review provision at all. I do not think the Limitation Act does and, in the circumstances, it seems to me that it cries out for it. Likewise, the Criminal Injuries Compensation Act, which has been the subject of some discussion, does not have a review provision in it, and that might be a worthwhile exercise too. But my reason for suggesting three years in this case is several-fold.

Firstly, there has been limited consultation in drafting this legislation by the government. It has been said that the consultation consisted of the Solicitor-General, the State Solicitor's Office, the Chief Assessor of Criminal Injuries Compensation and the Department of Communities—I think there was one other—and subsequent to the bill's introduction, some sort of consultation with the Catholic Church. We have had no specifics. The minister has been unable to assist us with the nature of that consultation, the outcome, what issues were discussed, whether any changes of policy were affected by it and what those might be, whether any concerns were raised that were debated, policy decisions made and things falling over one line or another; we have had none of that. A number of matters

have also been raised in the course of the last several days during the debate of this bill, to which we have been given answers but not much information. Some of those involve the anticipation of issues such as adults, who may labour under a mental disability of some sort, and their ability to have the equal opportunity as children to sue into the future for abuse that is inflicted on them—people in the bodies of adults but with the minds of children. In the case of sexual abuse, they will apparently still be subject to the complex limitation periods that are already provided.

We also have the potential problems arising from the lack of clarity between what is "child sexual abuse" and "child abuse". As a flow-on effect, different limitation periods will apply and different considerations will be involved.

We have the potential difficulties of trying to apply three sets of terms: offences as defined in section 36A of the Evidence Act 1906; conduct of a sexual nature—I think that is the phraseology—with the effect of being sexual conduct that is otherwise unlawful; and, now, child sexual abuse. There are implications for that in the operation of section 3A of the Civil Liability Act and as a consequence of item 1(b) of the table in section 3A. Which provisions of the Civil Liability Act will be excluded from operation? As we explored, there are consequences to the amounts of damages of certain types that might be recovered. There may also be consequences to what happens to institutions when some have issued apologies under the assumption that the law is what the law is, but then have found that they can be sued anyway. There are problems of that nature. There are ambiguities in terminologies and the consequences of that in the operation of changes to the law not only into the future, but also retrospectively.

Issues about the costs cap have also been raised and I will come to that again later. On Tuesday, I raised the question of whether the costs cap that has been introduced and is a major plank of the policy that is said to underpin this bill can be circumvented by lawyers who are keen to exploit these sorts of cases, whether for claimant–plaintiffs or for defendants and the ability of this costs cap to be effective. We have questions about that and my understanding is that those sorts of problems are manifest at the moment in motor vehicle–type claims in which there are caps, as the minister said, but firms from interstate have found ways around them. I understand that matter has been exercising the skills of the Legal Practice Board.

We also have questions about how the Chief Assessor of Criminal Injuries Compensation exercises her discretion in section 21 cases under the Criminal Injuries Compensation Act. I asked questions about that to try to understand how the criminal injuries compensation assessor exercises her discretion and what factors she takes into account. All I managed to get was that more often than not, or generally, she exercises her discretion in favour of children. I have rung the assessor and found out an awful lot more; I am just sorry that the government could not assist us with this. There are issues about that. There are all sorts of possibilities.

There is also the question of whether this legislation addresses the Ellis defence, which was one of its main selling points. To a degree, it appears that it does, but it still leaves at large a lot of questions about liability and responsibility, and access to assets in order to satisfy judgements. I will raise a few other questions when we get to the relevant clauses, but all these things call out for some extra examination and an early one, particularly when we have been told on one occasion that a particular thing—I think it was to do with the extended definition—will be looked at in the future but we could not be told when. Many of the problems that will emerge could have been solved by consultation more broadly before this bill was introduced, but will emerge once the gates are opened to litigation and re-litigating cases that have been settled in the past. One of the sources for that information will be the State Solicitor's Office. The sorts of problems that may arise will pretty quickly dribble through to the Attorney General, the Law Society of Western Australia and to members of Parliament, but they will be piecemeal. They will become apparent within three years. Even though no cases may be decided in a court within three years, cases will be decided elsewhere and in courts in our state we will take heed of what happens in other states. We will also be able to obtain and collate information on how this is operating—whether it meets the objectives and expectations that have been raised among child abuse survivors; whether further work needs to be done on the act to extend definitions, to fine-tune definitions, to eliminate anomalies, to correct problems, to extend, for example, operation of the cost cap provisions; or whether work needs to be done on the Criminal Injuries Compensation Act. They will all emerge relatively quickly, not perhaps within six or 12 months, but we are not looking at this Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill coming into operation within probably six months anyway, given the work that needs to be done with cost determinations and the like, but they will emerge. Rather than be a member that receives piecemeal complaints, saying, "Attorney General, will you look at this?" And being met with the answer, "Hey, there's a review in five years, we will look at it then", I would like to say to them, "Yes, I'll raise this with the government that crafted and passed this legislation, which is responsible for this legislation; we raised certain problems with it and we thought the bill should go to a parliamentary committee to consider, but the government wasn't keen on that; it wanted to get it passed. We will raise these problems again, but, at worst, a review will be held in three years when these things will be addressed and Parliament will be told what the shortcomings of the legislation are."

I think it proper that rather than this problem being put off because, effectively, even if this legislation comes into operation on 1 July and a review is held in, say, five years, which will be 20 July 2023, by the time it is practicable for the responsible minister to table the report—let us say he does it with reasonable expedition—within, say, six

months, by the end of 2023, and there is sufficient input to correct any of these things holistically, we will be looking at more like six to seven years. I would rather that any problems with this legislation and lessons learnt in other jurisdictions be addressed far more expeditiously than that and, indeed, that the government responsible for the passage of this bill be heedful of the issues raised and problems identified and be the government that is responsible for fixing them. It may be that this government will be a one-term government, in which case the problems will be fixed by the next Liberal government. But it will be within living memory of the members in this place that this government chose not to think about the problems, chose not to have them addressed, and assured us that everything was all right: "There's nothing to see here, members; everything's fine. This is what's going to happen; we can't help you there." It is appropriate that this government bear the responsibility of owning the problems and being part of the solution because this government certainly will not be here for more than two terms.

After five years of the operation of this bill, when all the problems identified that this government wanted to wash its hands of, to avoid and allow to accumulate, I do not want to have to pick up a report and have the responsibility of trying to fix them. I want those problems dealt with far more expeditiously. I would prefer a two-year review but I can see that that might present problems. Certainly, within three years, there will be enough evidence to indicate whether this bill is operating as it should, whether the expectations are being met and whether any remedial action is necessary.

Rather than it be dealt with in piecemeal fashion, I would like this Parliament to be informed of those problems by a proper report. Before it is said that cases may not be decided with any certainty within three years, the State Solicitor's Office will be able to tell the government how its management of cases in which the state is a defendant is encountering problems, or it should be able to. I am sure it will; whether it will be listened to is another matter. But certainly the state will bear the bulk of the responding obligations to the litigation, and there will be avenues such as the Law Society of Western Australia, the Western Australian Bar Association and various other groups—victim support groups, insurance groups, defendants' organisations—that will be able to provide feedback. A focus of three years, with respect, is not unreasonable, particularly as a report will be delivered only at some stage shortly after that. From the point of view of the opposition, we want a review period on the third anniversary, otherwise we are prepared to accept the government's proposed amendment at serial 4/8.

Hon MICHAEL MISCHIN: I move —

To delete "5th" and substitute —

3rd

The DEPUTY CHAIR (Hon Matthew Swinbourn): Are you putting that in writing?

Hon MICHAEL MISCHIN: Yes.

The DEPUTY CHAIR: Have you signed it?

Hon MICHAEL MISCHIN: Yes.

Hon SUE ELLERY: I appreciate we do not have a copy of the amendment, but I think everybody understands that Hon Michael Mischin wants to substitute "3rd" for "5th". That is the proposal. The government cannot agree to that amendment. I appreciate the arguments put by the honourable member, but the government's position, as alluded to briefly in speaking to my amendment, is that it favours a review after five years to ensure that there is sufficient data to support meaningful findings. The review will need to include consideration of the progress of matters through the court, and a five-year period allows time for that. Although some matters might have been concluded and some data may be available, it is the government's view that the five-year period is reasonable to allow a complete rather than piecemeal, to use the honourable member's word, approach. Also, the advisers at the table have advised me with respect to cases in other jurisdictions and how long they have taken. Since the Victorian provisions that lifted that state's limitation periods came into effect in 2015, two cases have been determined by the court. Since the New South Wales legislation to lift limitation periods took effect in 2016, only one case has been determined by the court and one case has been subject to an interlocutory judgement.

Hon NICK GOIRAN: I rise briefly to support the amendment moved by the shadow Attorney General, Hon Michael Mischin. Over the past fortnight the passage of the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017 has on the whole been a good, collaborative exercise by members of this chamber. As a result there have been, at the very least, some improvements to the legislation. However, it must be acknowledged that a number of concerns remain unaddressed. The government acknowledges that there is a theoretical problem with section 3A of the Civil Liability Act 2002. The government acknowledges that there is an issue with respect to issue section 21 of the Criminal Injuries Compensation Act, and that is why it has had the matter referred to its review. It may benefit members to be informed that yesterday, during question time, I asked the Leader of the House representing the Attorney General about what I have now referred to as the infamous review of the Criminal Injuries Compensation Act. The disturbing aspect of the answer from the Leader of the House representing the Attorney General is that there still are no terms of reference for that review. There is talk

that a discussion paper is being prepared. But get this: I asked, "Will members of the public be invited to contribute to the review?" The answer I received was, and I quote —

> The department has proposed that the Chief Assessor of Criminal Injuries Compensation, heads of jurisdiction, the Commissioner for Victims of Crime and victim support services be consulted.

To top it off, the final question I asked was —

> Will one outcome of the review include a report tabled in Parliament?

The simple answer to that question was, "No". I have no confidence that the matters that have been raised during this debate will be properly ventilated during this review process. The review process will involve the internal stakeholders, plus victim support services. However, the general public will not be asked to contribute to this process. In any event, the review will be secret and will not be tabled in Parliament.

This goes to the point made by the shadow Attorney General, Hon Michael Mischin, that we need a review sooner rather than later. It is unacceptable for the government to kick this issue into the long grass and say it will have a review in five years. That is not in the interests of the victims of child sexual abuse. During the debate on this bill over the last fortnight, I have pleaded with the government that it reconsider section 21 of the Criminal Injuries Compensation Act. I am absolutely confident that as a result of this legislation, many victims of child sexual abuse will be worse off, because they will be forced to seek proceedings independently of the Criminal Injuries Compensation Act. I do not believe this matter was properly considered prior to the government bringing this legislation into this chamber. I do not want to have to wait five years—not for any necessary amendments to be made, but for the review to start. Members should note that the amendment proposed by the Leader of the House states —

> The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

In other words, that might never be done, or it might be done in an indefinite time. The government has not made any attempt to ensure that the report will be tabled within six months, as has been proposed by the shadow Attorney General, or within 12 months, as is customary in legislation. Therefore, who knows when we will see the outcome of that review. As a result, many victims of child sexual abuse will be worse off. The shadow Attorney General has been very generous in proposing that the review be conducted within three years. I will be supporting his amendment on the amendment, and I would encourage all members to do so. We simply cannot wait for the fifth anniversary of the day on which section 5 comes into operation.

Hon ALISON XAMON: I rise to make some comments on the amendment on the amendment. I first thank the government for being prepared to put a review clause into this legislation. That is a very important and good addition. I have been thinking about the merits of a three-year or five-year review. I can see merit on both sides. However, I want to put on the record some of my concerns. I can see the merit of a three-year review, because early in the operation of legislation, issues may arise that we want to have addressed sooner rather than later. I note the important matter that was spotted by Hon Nick Goiran and subsequently included. That goes to the fact that sometimes we do know the full implications of a piece of legislation and how it will unfold. On the other hand, I can see merit in a five-year review, because there may be unforeseen complexities as a result of appeal decisions. Appeal decisions may take several years to come to the fore, and it is often only at that time that people become aware of problems that have emerged in the operation of legislation. I can see an argument for both three and five years. With three years, we would be able to pick up immediate obvious problems that were just unforeseen, and with five years, we would pick up the more complex matters that would come out at a later date.

The minister has said during the debate in committee, and I was also advised during the briefings that I received on this legislation, that the Attorney General will be keeping a very close eye on the implementation of this legislation and not just after three years. I understand that it is intended to be an ongoing process to see how it is rolled out to ensure that we do not have unforeseen consequences. Before making a decision on either of the amendments, I suppose I am asking for a little more detail on how those informal review processes will be undertaken. If there is an obvious problem that needs to be addressed as a matter of urgency along the lines of the concerns that have been raised by Hon Nick Goiran, I want some sort of indication of how swiftly the government intends to address those sorts of issues. I agree that if we were to wait for five years, we would effectively be talking about holding over justice for people who are waiting to finally get justice.

Hon SUE ELLERY: I appreciate the honourable member's question. I am not able to give her any detail about how that might be executed. I understand that the Attorney General has given her his commitment. That is what has been explained to me by the Attorney General—that he will keep a very close eye on what is happening. If changes need to be made because something happens that was not anticipated, he has given an undertaking that he will act swiftly. I cannot give the member any more detail about how he will do that or what mechanisms he might put in place to do that because I do not have it. But he has said that he wants to keep a close eye on that. The

honourable member will make her decision as she sees fit. The government's position is that, in all the circumstances, a five-year review period is appropriate.

Hon NICK GOIRAN: Briefly, for the benefit of Hon Alison Xamon and the chamber, I will raise one matter. To get any sense of the swiftness with which the government will operate, we need look only at its review of the Criminal Injuries Compensation Act. The government made a decision in September. It was communicated to the department in October. Last week I asked who is undertaking the review and I was told that it does not know. We found out this week that it is the Department of Justice, and since then there has been nothing else. Since September, the only thing that has been done has been the identification of the Department of Justice. Yesterday I had to ask a detailed question and I was told that the department is currently preparing a discussion paper. Unless this government is pushed to the extreme, there will be no haste. This is precisely why we need it to be a three-year period, not a five-year period.

Division

Amendment on the amendment (deletion of words) put and a division taken, the Deputy Chair (Hon Matthew Swinbourn) casting his vote with the noes, with the following result —

Ayes (17)

Hon Martin Aldridge	Hon Colin de Grussa	Hon Michael Mischin	Hon Alison Xamon
Hon Jacqui Boydell	Hon Diane Evers	Hon Simon O'Brien	Hon Ken Baston *(Teller)*
Hon Robin Chapple	Hon Donna Faragher	Hon Tjorn Sibma	
Hon Tim Clifford	Hon Nick Goiran	Hon Aaron Stonehouse	
Hon Peter Collier	Hon Colin Holt	Hon Dr Steve Thomas	

Noes (15)

Hon Alanna Clohesy	Hon Laurie Graham	Hon Samantha Rowe	Hon Darren West
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Robin Scott	Hon Pierre Yang
Hon Sue Ellery	Hon Rick Mazza	Hon Matthew Swinbourn	Hon Martin Pritchard *(Teller)*
Hon Adele Farina	Hon Kyle McGinn	Hon Colin Tincknell	

Pair

Hon Jim Chown	Hon Dr Sally Talbot

Amendment on the amendment (deletion of words) thus passed.

Division

Amendment on the amendment (insertion of words) put and a division taken, the Deputy Chair (Hon Matthew Swinbourn) casting his vote with the noes, with the following result —

Ayes (17)

Hon Martin Aldridge	Hon Colin de Grussa	Hon Michael Mischin	Hon Alison Xamon
Hon Jacqui Boydell	Hon Diane Evers	Hon Simon O'Brien	Hon Ken Baston *(Teller)*
Hon Robin Chapple	Hon Donna Faragher	Hon Tjorn Sibma	
Hon Tim Clifford	Hon Nick Goiran	Hon Aaron Stonehouse	
Hon Peter Collier	Hon Colin Holt	Hon Dr Steve Thomas	

Noes (15)

Hon Alanna Clohesy	Hon Laurie Graham	Hon Samantha Rowe	Hon Darren West
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Robin Scott	Hon Pierre Yang
Hon Sue Ellery	Hon Rick Mazza	Hon Matthew Swinbourn	Hon Martin Pritchard *(Teller)*
Hon Adele Farina	Hon Kyle McGinn	Hon Colin Tincknell	

Pair

Hon Jim Chown	Hon Dr Sally Talbot

Amendment on the amendment (insertion of words) thus passed.

The DEPUTY CHAIR: We are now dealing with the amendment as amended. For the sake of clarity, I shall read out the words to be inserted —

> Page 16, after line 30 — To insert —
>
> (7) The Minister must carry out a review of the operation and effectiveness of this section and Part 7 as soon as is practicable after the 3rd anniversary of the day on which the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2017* section 8 comes into operation.

(8) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

Amendment, as amended, put and passed.

Hon NICK GOIRAN: One issue that we canvassed under clause 1, which we agreed we would leave to clause 8, related to proposed section 6A(2) and whether it is sufficient to ensure that claims can be made against the state.

Hon SUE ELLERY: We canvassed this, but the answer is yes. In the general sense it is proposed section 6A(2) and in the specific sense it is 6A(3)(a) and (b).

Hon NICK GOIRAN: If proposed section 6A(2) is sufficient, why do we need 6A(3)?

Hon SUE ELLERY: This is a non-lawyer trying to explain a very technical legal provision. To put the question beyond doubt, proposed subsection (3)(a) is required to cover off the previous bits of legislation referred to, in that case the Crown Suits Act and section 47A of the previous limitation legislation, to make the point that it is not a limitation period. I am sorry if that was a convoluted non-legal person's explanation.

Hon Nick Goiran: It is like extra insurance.

Hon SUE ELLERY: It is. It is for completeness. It is to ensure that the field is completely covered.

Clause, as amended, put and passed.

Clause 9: Section 9 amended —

Hon MICHAEL MISCHIN: What is clause 9 meant to achieve?

Hon SUE ELLERY: It is to ensure that wherever limitations are referred to in this act, proposed section 6A is referenced.

Clause put and passed.

Clause 10: Part 7 inserted —

Hon MICHAEL MISCHIN: I just have a question about proposed section 92, which provides for the setting aside of previously settled causes of action and to the agreements affecting the settlements that are termed as settlement agreements.

My understanding is that many of these settlement agreements that have been entered into in the past, whether before or after the expiration of relevant limitation periods, have confidentiality and other provisions—quite apart from eliminating any causes of action and the like—about what can be disclosed about the nature of that settlement and agreement. It is a bit like the chicken and the egg scenario. If it allows for the setting aside of the agreement to a certain extent, either in part or in whole, does a claimant who has entered into a settlement agreement in the past that bound themselves to certain confidentiality, expose themselves by breaching that confidentiality and then instructing others or approaching, again, the institution with which it has entered into that settlement? Perhaps the minister can assist. It may be that she does not have any information about it, but again, that is something we hope will be elucidated in any review of the act within three years.

Hon SUE ELLERY: A couple of protections are built in. One is in proposed section 92(3)(b), which states —

to the extent necessary for that, ….

The other protection is found at the beginning of proposed section 92(3), which states —

The court may, if satisfied that it is just and reasonable to do so —

Those are the two levels of protection. Even when it is just and reasonable to do so, it is only to the extent necessary for that or the extent to which it relates to the child sexual abuse that is the subject of the cause of action.

Hon MICHAEL MISCHIN: In short, the government has considered the matter and sees no potential problem for claimants who reopen matters that have been settled in the past.

Hon SUE ELLERY: That is correct, and those protections have been put in place to build into the court's considerations the extent to which it is just and reasonable and the extent to which it applies in only a narrow set of circumstances.

Hon NICK GOIRAN: What happens if the court does not set aside the settlement agreement? For example, a victim of child sexual abuse has entered into an agreement, prior to our legislation passing, that includes a confidentiality clause, as identified by the shadow Attorney General. They bring their action to the court to have the settlement agreement set aside and the court says no. Have they then breached the confidentiality agreement and become subject to an action for that breach?

Hon SUE ELLERY: They have a statutory right to bring this matter before the court.

Clause put and passed.

Title —

The DEPUTY CHAIR (Hon Matthew Swinbourn): Hon Michael Mischin, you have an amendment on the notice paper. Do you wish to move it?

Hon MICHAEL MISCHIN: Ordinarily, I would not proceed with this. Perhaps I can take some guidance from the Deputy Chair on it. It is my intended review clause, which was meant to form a part of the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017 that is now before the house, requiring a review—in similar terms to what has currently been passed—after the third anniversary of the day on which a major operative part of this bill related to limitation periods comes into operation. I see on the notice paper that the Leader of the House has a motion in her name at serial 5/5 for a review of the parts of the Civil Liability Act that are introduced by this bill. In anticipation of that, I would not ordinarily proceed with this particular motion. However, I note that the government opposed not only a reduction in the anniversary review from five to three years, but also, when the words "5th anniversary" were deleted, opposed inserting a "3rd anniversary", and when that insertion was successful, it voted against its own review clause. Judging from that attitude, I have no confidence that the government will seek to recommit for the purposes of considering an amendment to clause 5 that is in the Leader of the House's name. If she is able to give an assurance that that amendment will be proceeded with, I see no reason to proceed with mine. But what I do not want to happen is that there be no follow-up on the review provisions, which I understood was going to be done.

Hon SUE ELLERY: I am happy to give the member an assurance that I will move that the bill be recommitted for the purpose of dealing with the review of clause 5. The chamber will do with that what the chamber will do with that, but for the purposes of the debate, that is the assurance I am prepared to give the honourable member.

Hon MICHAEL MISCHIN: So that I understand, and correct me if I am wrong, but if I do not proceed with my proposed amendment at 3/NP4 on the supplementary notice paper, then the Leader of the House will, nevertheless, move to recommit the bill for the purposes of reconsidering clause 5 and move the proposed amendment at 5/5 on the supplementary notice paper.

Hon Sue Ellery: That is what I just said.

Hon MICHAEL MISCHIN: In those circumstances I do not propose to move the amendment in my name.

Hon SUE ELLERY: I move —

> Page 1, after the first bullet point insert —
>
> - **The *Criminal Injuries Compensation Act 2003*; and**

This is consequential to an amendment that the committee passed earlier, which had the effect of amending the Criminal Injuries Compensation Act 2003. That act needs to be included in the list of acts that this bill amends.

Amendment put and passed.

Title, as amended, put and passed.

Bill reported, with amendments.

Recommittal

HON SUE ELLERY (South Metropolitan — Leader of the House) [3.20 pm]: I move —

> That the Civil Liability Amendment (Child Sexual Abuse Actions) Bill 2017 be recommitted for the purpose of reconsidering clause 5.

This is as a consequence of discussions behind the Chair about adding review provisions to the bill. The recommittal would give us the opportunity to go back and insert the review clause in the place that the government would prefer it to appear.

Question put and passed.

Committee

The Deputy Chair of Committees (Hon Laurie Graham) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 5: Part 2A inserted —

Hon MICHAEL MISCHIN: To reflect the opposition's previous views on the review clause, we thank the government for having taken on the responsibility of crafting what is, in its view, an appropriate review clause to address the concerns that were expressed and which motivated my proposing a review, with the one rider—that the opposition considers a third anniversary review is more appropriate than a fifth anniversary review, and would be consistent with what was dealt with earlier. I move to delete "5th" and substitute "3rd".

The DEPUTY CHAIR: The Leader of the House has to move her amendment first.

Hon Sue Ellery: You haven't even let me move the amendment.

Hon MICHAEL MISCHIN: Sorry; I jumped the gun!

Hon SUE ELLERY: I move —

Page 14, after line 15 — to insert —

Division 5 — Review of Part 2A

15M. Review of Part

(1) The Minister must carry out a review of the operation and effectiveness of this Part as soon as is practicable after the 5th anniversary of the day on which the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2017* section 5 comes into operation.

(2) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

Hon MICHAEL MISCHIN: As I have just explained, here is a copy of my proposed amendment. I move —

To delete "5th" and substitute —

3rd

Hon SUE ELLERY: The government's position is consistent. Our preference is that it stay at "5th". The house will do what the house will do, but for the purposes of executing the government's policy, the government will not accept the amendment. I will divide once for members' benefit and then move forward.

Division

Amendment on the amendment (deletion of words) put and a division taken, the Deputy Chair (Hon Laurie Graham) casting his vote with the noes, with the following result —

Ayes (17)

Hon Martin Aldridge	Hon Peter Collier	Hon Colin Holt	Hon Alison Xamon
Hon Jacqui Boydell	Hon Colin de Grussa	Hon Michael Mischin	Hon Ken Baston *(Teller)*
Hon Robin Chapple	Hon Diane Evers	Hon Simon O'Brien	
Hon Jim Chown	Hon Donna Faragher	Hon Aaron Stonehouse	
Hon Tim Clifford	Hon Nick Goiran	Hon Dr Steve Thomas	

Noes (15)

Hon Alanna Clohesy	Hon Laurie Graham	Hon Samantha Rowe	Hon Darren West
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Robin Scott	Hon Pierre Yang
Hon Sue Ellery	Hon Rick Mazza	Hon Matthew Swinbourn	Hon Martin Pritchard *(Teller)*
Hon Adele Farina	Hon Kyle McGinn	Hon Colin Tincknell	

Pair

Hon Tjorn Sibma	Hon Dr Sally Talbot

Amendment on the amendment (deletion of words) thus passed.

Amendment on the amendment (insertion of words) put and passed.

Amendment, as amended, put and passed.

Clause, as amended, put and passed.

Bill again reported, with an amendment.

Report

By leave, reports of the committee adopted.

As to Third Reading — Standing Orders Suspension — Motion

On motion without notice by **Hon Sue Ellery (Leader of the House)**, resolved with an absolute majority —

That so much of standing orders be suspended so as to enable the bill to be read a third time forthwith.

Third Reading

Bill read a third time, on motion by **Hon Sue Ellery (Leader of the House)**, and returned to the Assembly with amendments.