

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

Committee

Resumed from 20 March. The Deputy Chair of Committees (Hon Laurie Graham) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

Hon MICHAEL MISCHIN: I return to a question that I asked yesterday about the level of consultation that has taken place on this bill. The minister was going to explore that for us in order that we can be satisfied that there has been sufficiently extensive and detailed consultation, other than with the government's legal advisers, hopefully with those who will be affected by this legislation. Can the minister expand on what consultation has taken place between the government and the community generally?

Hon SUE ELLERY: I am not able to add anything further than what I advised the chamber yesterday. Last night, I went through those agencies that had been consulted and there is nothing further to add to that.

Hon MICHAEL MISCHIN: Why is the minister not able to advise anything further than what she advised yesterday?

Hon Sue Ellery: Because there is nothing further to add.

Hon MICHAEL MISCHIN: The government is telling us that the most consultation that has taken place is with the Department of the Premier and Cabinet, the Solicitor-General, the State Solicitor's Office, the Chief Assessor of Criminal Injuries Compensation, the Department of Communities and the Catholic Church. Is that all the minister is able to tell us about the consultation that has taken place?

Hon SUE ELLERY: Yes, it is. That is what I said last night. I checked today and I advised that nothing has changed from the information I gave the member last night.

Hon MICHAEL MISCHIN: Can the minister tell us anything about who consulted with those particular entities?

Hon SUE ELLERY: I am not sure how much further this gets us when considering the provisions of the bill. The consultation was mainly carried out by Dominic Fernandes, the policy officer, but other officers were also involved in those discussions. I do not have a list and I am not sure how far it actually gets us.

Hon MICHAEL MISCHIN: I will tell the minister how far it gets us. As I have mentioned on several occasions, in case it has escaped the minister's notice, she is changing legal rights and liabilities not only for the future, but also retrospectively. As I recall—my recollection here may be imperfect—when we were in government, we were constantly lectured by the minister and her colleagues about the importance of consultation on any legislation. The most she can tell us about this is that there was "consultation" with the government's legal advisers, in some unspecified capacity with a department and with one of the organisations that may be affected by it. But she cannot tell us anything more. She cannot tell us what matters were discussed, at what level they were discussed or whether any of the issues in the bill were teased out and debated. She cannot tell us anything. That is the level of consultation, accountability and transparency that she is saying her government is able to give us on what she says is one of the most important bills that will be passed by this Parliament. Indeed, it is a bill that has been described by everyone who wants to speak on it as historic, yet the minister cannot tell us anything about how it got to this position. Is the minister saying that she cannot even tell us what the Department of Communities had to say?

Hon SUE ELLERY: The honourable member got himself very excited then, but, of course, he ignores the context in which this bill comes before the chamber, which is the Royal Commission into Institutional Responses to Child Sexual Abuse, which, for a period of some five years, examined these issues, consulted very broadly on these issues and made recommendations to the state to act in accordance with its findings. To somehow suggest that the consideration given by this government to how this bill ought to be put together occurred in a vacuum is a false suggestion. It occurred in the context of the royal commission, which consulted broadly across the breadth and depth of the country, examined these issues and made a recommendation to state jurisdictions that they should act in the manner that we are acting in the bill that is before the chamber today.

Hon MICHAEL MISCHIN: I am not sure if the minister is being deliberately obtuse or trying to insult our intelligence. The royal commission made certain recommendations. The minister is telling us, however, that this bill goes much further than any other legislation in any other jurisdiction and that it is modelled on the royal commission's recommendations. Is the minister saying that it provided some model provisions that have been picked up and that we can examine, or is this all the work of the Western Australian government, in which case does the minister not think that there ought to be some consultation about the manner in which the drafting has been done to see whether it meets all those recommendations and is workable?

Hon SUE ELLERY: I am going to say this one more time: there is no other way for me to say this. We examined this question last night. I provided the answer that I undertook to check today. I can sense that the member is not satisfied with the answer that I am giving him, but I have no further information to give him on this matter.

Hon MICHAEL MISCHIN: Perhaps the minister can help us with this: had this bill been referred to the Standing Committee on Legislation or a select committee of this place, is that the answer that the minister would come up with if she were called as a witness to that hearing: “Sorry, can’t tell you anything”? Is that the sort of answer the minister would give a select or standing committee?

Hon Sue Ellery: I have nothing to add.

Hon MICHAEL MISCHIN: I know you have nothing to add, minister, but it is absolutely astonishing, after all the lectures that we have heard over the last eight years and the self-righteous nonsense that has come from the minister and her colleagues about the necessity to consult, to do proper work and to answer questions to assist the chamber, when the best she can do is list five or six entities without going into any specifics and say, “Those were consulted with but I can’t tell you actually what they said.” I will give the minister another chance. Can the government give no further information or is it simply that the minister does not have that information available to her? Did the government keep any records?

Hon SUE ELLERY: I have nothing further to add.

Point of Order

Hon ADELE FARINA: The question has been asked and answered on multiple occasions during not only today’s sitting, but also the previous day’s sitting. I do not think it is germane to the question before the chamber. We dealt with the policy of the bill during the second reading stage and we are now dealing with the mechanics of how that actually works in committee.

Hon Michael Mischin: I suppose it is a point of order, but I do not see it—there we go.

The DEPUTY CHAIR (Hon Laurie Graham): There is no point of order. However, I would ask Hon Michael Mischin to move along with his questioning.

Committee Resumed

Hon MICHAEL MISCHIN: I am happy to do so, Mr Deputy Chair. We are plainly not getting anywhere because of this government—this open, transparent government, this government of accountability and this government that, when in opposition, lectured us on the standards that ought to be expected. I note that Hon Adele Farina never jumped to her feet over the last eight years to say that her side had been pursuing matters ad nauseam, but this government cannot help us other than to say that after the bill had been introduced into Parliament, there was consultation about the drafting of the bill with its legal advisers, with someone or some people from one of the departments and, intriguingly, with the Catholic Church. This minister cannot even tell us the level of consultation with one of those interest groups. Plainly, we are not going to get any further with that and, plainly, the minister is not willing to assist this chamber to understand this legislation, so we will have to do it the hard way.

Much had been said about the Jacobs bill and about the importance of passing this legislation. I take it that this bill is meant to be an improvement over that bill, minister?

Hon SUE ELLERY: I am not sure how that gets us where we need to be when we are in committee. The policy of the bill was set when we had the second reading debate. We canvassed a range of issues that were identified by the relevant members. Whether it was meant to be better than some other bill that went before the other place, I am not sure that that really takes us to where we need to be. I am not sure that my opinion on whether it is better has any relevance in any event.

Hon MICHAEL MISCHIN: I am sure that the minister’s opinion does not have much relevance because she is not able to help us with any of the detail of the bill, or is unprepared to.

Hon Sue Ellery: When you get to the detail of the bill, I would be happy to assist.

Hon MICHAEL MISCHIN: We are dealing with clause 1. Some of the specifics in the clauses—correct me if I am wrong—will expose unincorporated and incorporated associations to extended forms of liability; is that right?

Hon Sue Ellery: I am sorry, I was distracted. Could you ask that question again?

Hon MICHAEL MISCHIN: No.

Hon Sue Ellery: I cannot give you an answer then.

Hon MICHAEL MISCHIN: You should pay attention.

Hon Sue Ellery: I cannot give you an answer.

Hon MICHAEL MISCHIN: Okay. Like I say, we will do this the long way—the hard way.

Hon Stephen Dawson: For goodness sake, she was trying to get a bit of paper so that she could write your questions down.

Hon SUE ELLERY: I asked for a sticky note; I am sorry. If the member asks me a question, I will give him the answer. But if I do not hear the question, I am going to ask him to tell me again. I am trying to be as helpful as I possibly can. I find myself in a very strange position.

Hon MICHAEL MISCHIN: Some of the provisions of the bill extend responsibility—would you like me to start again? Are you through?

Hon Sue Ellery: Just ask the question, my friend.

Hon MICHAEL MISCHIN: I seem to ask the questions and the minister does not seem to be able to hear them.

Hon Sue Ellery: Oh dear!

Hon MICHAEL MISCHIN: Oh dear—have you finished? Are you ready now?

Hon SUE ELLERY: Mr Deputy Chair, I am going to ask for your assistance here. I am genuinely trying to help the honourable member. I think perhaps if we bring the temperature down a little, we will be able to make some progress. I would seek your assistance. If you need to seek assistance from your advisers, perhaps you could do that, but I would seek your assistance in how we bring the temperature right down.

Hon MICHAEL MISCHIN: I am not sure what temperature the minister is talking about —

The DEPUTY CHAIR (Hon Laurie Graham): Sorry; I will make a ruling, if the member would not mind sitting down. This is dragging on and we are really getting nowhere. It is time that we moved on and put this clause. It will either be passed or not, and then we can deal with it. I realise this is the start of the debate and that this is the short title and we normally spend some time going over it. I think it would be best, in the interests of making some progress with this legislation, to actually move on. The question is that clause 1 stand as printed.

Hon Michael Mischin: Sorry, are you directing me to discontinue any questioning on clause 1, Mr Deputy Chair?

The DEPUTY CHAIR: No, I did not; I just re-called the clause. Unless you are going to progress a different line of questioning, we are not going to make much progress. That was all I was suggesting.

Hon MICHAEL MISCHIN: I am sorry; I was trying to assist the minister because she had been distracted earlier. I was waiting for her to get herself sorted out.

Hon Sue Ellery: I am good.

Hon MICHAEL MISCHIN: Okay; thank you. See, I am just trying to be helpful, minister, so I do not have to repeat the question again.

Is it true to say that some of the provisions of this bill alter the rights and obligations of office holders in organisations and extend their legal liability in the cases involving child sexual abuse?

Hon SUE ELLERY: Yes, it does. That is the policy of the bill.

Hon MICHAEL MISCHIN: Is it fair to say that the government has not consulted with any organisation that may be affected by that extension of legal liability, just so we have that on the record?

Hon SUE ELLERY: Member, I have already said the extent of consultation that occurred. I cannot add anything to that. If the member wants to place on the record the conclusion he draws from that, that is his privilege, but I cannot add anything more to what I have already said last night and for the last 20 minutes about the issue of consultation.

Hon MICHAEL MISCHIN: Can I ask then: Why has there been no consultation about the drafting of the bill to ensure that it actually achieves the ends, without creating unexpected and undesirable consequences for the organisations that are going to be affected? Why has that not taken place?

Hon Sue Ellery: I cannot add any more to what I have already said.

Hon NICK GOIRAN: When we were looking at this issue yesterday, I drew the minister's attention to some concerns with respect to whether part 2 of the Civil Liability Act might apply to some subcategory of victims of child sexual abuse. The minister indicated that it was a matter that had been contemplated during the drafting

process and that there might be some further contemplation overnight. Could the minister advise the house on the current status of that?

Hon SUE ELLERY: Yes, we did. The advisers advise me it was reconsidered and the conclusion that they reached really was against any further changes. They, I guess, were satisfied that the cases in which capping would apply would be very few, and even when the capping did apply, it is quite high in any event. For those reasons, and I just say again for the record, the proposition that the honourable member put last night for reconsideration had been examined and had been considered in the original drafting process. They did undertake to review it—they did, but they reached the same conclusion.

Hon NICK GOIRAN: I am concerned because the issue here is not about just capping, so give me a few minutes to explain this. This is going to apply, as the minister acknowledged last night, to a victim of child sexual abuse post-2003 if that victim of child sexual abuse does not fall into the exclusion category in item 1(b).

Hon Sue Ellery: I understand what you are talking about.

Hon NICK GOIRAN: When we say there will be very few cases, understand that it will include all cases from today onwards, so I cannot agree with the advice that we are talking about very few cases because for however long the earth continues to spin, this law will be in place unless another Parliament changes it. In actual fact, the prospective part of this legislation is much larger than the retrospective part of it, so I cannot agree that it is a small number of cases. Let us just park that to one side.

The bigger issue is that this is not about just caps. When a victim of child sexual abuse puts in their claim, they will go to the court and ask for damages for the injury they have suffered. One of the key components they will ask for a judgement on is a head of damage called general damages. This is given to people for pain and suffering, loss of enjoyment of life and the like. Part 2 of the Civil Liability Act creates what is called a threshold or a deductible. The advisers might know the exact amount of the threshold or deductible, but I think it is in the realm of \$25 000 at the moment. Perhaps the advisers can get that. The precise figure is not really crucial, but let us say it is around \$25 000. That is a lot of money. It means that if a person's pain and suffering and loss of enjoyment of life is considered by the judge to be \$30 000, they will get \$5 000. That is unjust. Thankfully, that will not apply to a significant number of these people because they will have access to the item 1(b) exemption in the table. However, the other victims of child sexual abuse, who will feel very relieved and overjoyed by this legislation, will not realise that they will fall into this gap.

I am troubled that, first, the advice is that we are looking at only a small number of people. I do not share that view. I am more troubled by the fact that the advice being sought is about only the cap and the cap is a separate issue. I am talking about the threshold or deductible. If the minister is not in a position to get any immediate advice on this, I wonder whether there will be an opportunity to get further advice on that specific point.

Hon SUE ELLERY: I will try again. It might be that I was not explaining it very well before. There will be very few cases for which the court will find that the child sexual abuse is not unlawful. It is confusing to me because there is a double negative. That is what we were talking about when I answered the question earlier by saying that there will be very few cases. There will be very few cases in which the court will find that it was not unlawful. I do not know whether that takes us further.

Hon NICK GOIRAN: I agree. I hope we are all right on that. Last night, we were all of the one view that the exemptions in the table do not exactly match the definition of a victim of child sexual abuse, so we both agreed—I think we are still agreeing—that there are individuals of whatever number who will be affected; let us imagine it is one. For the sake of that one person, can we not amend item 1(b) to add the words I spoke of last night? I know there was some discussion that it is not as simple as that. I have had an opportunity to further reflect on it, but I cannot see why it is not as simple as that. If I show the minister the table, which she had access to last night, she will see that the exemption is described in the following way —

an intentional act the doing of which is a sexual offence as defined in the *Evidence Act 1906* section 36A —

That is one of the categories of exemption and there is a second —

or sexual conduct that is otherwise unlawful.

I want to take the minister to the first of those exemptions. She will see from the way it has been drafted that it refers to a sexual offence as defined in a specific act with a specific section. Why can we not do the same thing now and specify a “child sexual abuse action”, four words, “as defined”, six words, “in the”—that is eight words—Limitation Act 2005? If the minister is keeping count, we are up to 11 words, and then we can add “section 6A(1)”. I have lost count but there are not many words. Why can we not add those few extra words into the table? I believe there will then be no gaps.

Hon SUE ELLERY: I thank the honourable member for the suggestion, but I am not able to accept it. The advice I am given is that the policy setting for these purposes was around that cohort of historical cases and that a decision has been made to come back and revisit this in the future. But for the purposes of responding to the royal commission, giving effect to the commitment we made before the election, the policy setting is as it is and we are not of a mood to change that. I understand the proposition that the member has put to me; I get it. But that is the position I am in. That is the answer I can give the member. I know he will suggest that we should move an amendment, but I am not able to agree to amend that section.

Hon NICK GOIRAN: I will do my best to persuade the minister that the matter is worthy of further consideration, fully respecting that at the present moment—5.50 pm, on Wednesday, 21 March—the minister is not in a position to agree to an amendment. I suggest that it is worthy of consideration by the government for this reason: earlier this afternoon, the minister mentioned to Hon Michael Mischin that the context of this bill is a royal commission. I am sure that the minister would agree with me that the royal commission recommended that the limitation period for victims of child sexual abuse be lifted, which is the very reason that we are dealing with the bill before us. I have not found any suggestion anywhere in the royal commission’s report that there should be any inequity between victims of child sexual abuse, not in specific words or in spirit or in anything whatsoever. To the contrary, I very much get the impression from the royal commission report and everyone’s contributions here and the attitudes of law reformers around the nation that we want to see all victims of child sexual abuse have access to justice. For them to have access to justice, they need to be treated equally.

If we, as the 35 voting members in the chamber, know that some unspecified number of victims of child sexual abuse will not be treated equally because of this very small loophole in the legislation, I think it is incumbent on us to fix that, because we have the time to do so. It troubles me that there is a difference in the definitions. The government, as is its right, has decided that it does not want to be specific in defining “child sexual abuse”. Therefore, it intends to insert into the Limitation Act a new section 6A, which will, to the extent that it defines “child sexual abuse”, state —

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;

The government wants to leave it at that and leave it to the courts. We could debate until the cows come home whether that should be the approach or whether we should be more specific and so on. That is pointless because we all know that that definition is not going to change. If the government wants to take that broad approach to the definition of “child sexual abuse”, which it is entitled to do, surely to goodness we need to make sure that we do not have an inconsistent definition elsewhere. If we know that the item 1(b) exemption will, thankfully, protect the majority of these victims of child sexual abuse, do we not have a responsibility to make sure that they are all covered by it? That is my effort to try to persuade the minister. I know that the minister is not in the position to agree to any amendment right at this moment. Would it be possible for the minister to indicate whether the matter could be further considered by the government?

Hon SUE ELLERY: As ever, it is a very cogent argument from the honourable member. The government has reconsidered the position and, as I said earlier, we are not in a position to consider an amendment in the terms that the member is suggesting.

Hon NICK GOIRAN: If we up the stakes a little here, given what is at stake for the one or more victims of sexual abuse who are going to be left stranded—my words—if we do not fix this, if one of the 35 members of this chamber was inclined to move an amendment to ensure that the exemption in item 1(b) mirrored the government’s definition of “child sexual abuse”, would the government oppose that amendment?

Hon SUE ELLERY: If the member were to move it now, I would have to say that yes, we would oppose it. Do not take that as if the member moves it tomorrow, I am going to support it.

Hon NICK GOIRAN: Without trying to be cute about it, obviously, I am not in a position to move that now because we are on clause 1. I am not even saying that it will be me, but at some point one of the members who are all following this debate with interest might share my concern that the last thing we want to do at the end of this exercise is guarantee—because that is what we would be doing—that some victims of child sexual abuse would be left stranded because of the inconsistent definition. It requires the insertion of about a dozen words, which could be very quickly drafted at the relevant time. I know that the minister is saying that she cannot accept it right now, but I am not moving it right now. I am trying to get an indication of whether it is worthwhile. The government’s position is that it is opposing any suggestion of any amendment on this issue.

Hon Sue Ellery: On this issue, yes, that is the position. The member knows that we have shifted in respect of another one that is on the supplementary notice paper.

Hon NICK GOIRAN: Yes, I do. I suppose that is what I find so curious. As I said last night and I say it again, I thank the government for the good grace that it has shown in indicating that it will move an amendment on that other troublesome issue, which is the intersection with section 68 of the Criminal Injuries Compensation Act.

I commend the government, as I did last night, for listening and facilitating an amendment to ensure that victims of child sexual abuse who have already accessed criminal injuries compensation in either the past or who may do in the future, will not suddenly find themselves with a debt due to the state. I think that was good work by the government and I give it credit for that. Noting that the government has done that, and that the matter will need to go to the Assembly anyway, and noting that we are in agreement that a loophole in the definition will leave an unspecified number of people stranded, I cannot understand why we would not contemplate an amendment on that as well. I note that we have only 20-odd minutes before the house rises tonight and, for what it is worth, looking into my crystal ball, I cannot see us finishing the passage of the remaining clauses in the next 20 minutes.

Hon Sue Ellery: You think!

Hon NICK GOIRAN: Knowing that we are going to have time before we visit this again at whatever time it starts tomorrow—one o'clock—can we not work together to fix this minor problem knowing that the government quite rightly and graciously is accepting fixing another problem? Why do we not—to use a phrase—kill two birds with one stone?

Hon SUE ELLERY: There is movement at the station. I will speak to the Attorney General and we will see what happens. I cannot give the member any guarantees because the situation has been revisited. I am advised that it was explored for more than an hour with very senior people contributing to the discussion. I personally will have a conversation with the Attorney General. I might even get a copy of the pink as soon as I can, and have a conversation with the Attorney General.

Hon NICK GOIRAN: Let me express my gratitude that the minister will do that. I do not know whether it is helpful, but I am happy to make myself available to speak to these very senior people to persuade them. Maybe my presence will be unhelpful, so I will leave to the minister's discretion whether it will be beneficial or otherwise, and we will come back to this tomorrow.

The other matter that the minister was going to re-raise overnight was the issue of the intersection with section 21 of the Criminal Injuries Compensation Act. I ask that the minister update the chamber on that.

Hon SUE ELLERY: On that, it is the government's position that we will not consider an amendment to the discretion exercised by the assessor. It will be subject to a broader review and we want to do that in a methodical fashion, not piecemeal a little bit of it in advance of the review.

Hon NICK GOIRAN: I thank the minister for the update. Obviously, I am not enthusiastic about that update but I respect the fact that the minister indicated she would check in, and she has. She has reported back and the position is the same for the government, which is that it will be subject to a review. Who will conduct this review? When will it be done? Will it be in the form of a report that is tabled in Parliament? Can the minister indicate to us the time frame and the mechanisms of this review?

Hon SUE ELLERY: It is not a statutory review; it will be conducted by the Department of Justice. I understand that the matters the member ranged through regarding time lines and the broader areas the review will look at are still to be determined by the Attorney General, so I cannot give the member any more detail about them. The Attorney General has requested that the review be conducted, so that decision has already been made. Whether he publicly releases final documents or any of that is still to be determined by him.

Hon MICHAEL MISCHIN: On that point, when did the Attorney General decide upon that review and give instructions that it be carried out?

Hon SUE ELLERY: It was late last year—around September or October. It goes to the department's forward planning for its work for this year. That is when the decision was made.

Hon MICHAEL MISCHIN: So is it fair to say that the review is in its very early stages and it has not commenced yet?

Hon SUE ELLERY: That is correct. I have said already that a decision has been made to conduct the review, which will be conducted by the Department of Justice. All the decisions about how long it will take and the broader parameters have not yet been determined.

Hon MICHAEL MISCHIN: The minister has also mentioned the intention to revisit other elements of the bill and the policy behind it with a view to, presumably, address any things that have not been dealt with so far, in particular, the proposed amendment that Hon Nick Goiran has been discussing. What steps are being taken? What is the plan to revisit the legislation and to consider these other matters that have been raised, which the government is not prepared to entertain at this stage?

Hon SUE ELLERY: I have already advised the chamber that the decision has been made that, at a point in the future, we will look at those other elements, some of which we were canvassing in an earlier discussion. There is no finite plan. There are no terms of reference for the review, or anything like that. All that has happened is a decision has been made to do this chunk of work now. In other areas, decisions have been made that will need

to be looked into, and they will be in the future. I cannot give the honourable member any more detail on that now. This bill is before us and I am happy to answer any questions about its content.

Hon MICHAEL MISCHIN: That is what I am trying to clarify for the purpose of our ability to understand whether this is considered by the government to be an end in itself, or a stage in a process to further develop policy and legislation. The impression that I had been given was that issues such as that raised by Hon Nick Goiran could not be addressed now but would be addressed in the future. But from what the minister is telling me, unless I have misunderstood her, there is no ongoing process. It is a matter of whether the government takes a particular interest at some stage in the future, or is persuaded to, and then it will look at some further amendments. No plan is in progress to address the sorts of things that the member has been talking about.

Hon SUE ELLERY: The member's first description was right. He did hear me say to Hon Nick Goiran that when we were debating the table in section 3A of the Civil Liability Act earlier, an exchange went on about a particular set of provisions and that the government had decided that it would not contemplate an amendment to them now, but that it would look at that area as part of broader considerations in the future. To the extent that the member is seeking more concrete detail on what the examination of those matters might look like in the future, I am not in a position to give that. The advice I have is that no decisions have been made, other than that it is an area of work we will visit in the future. I cannot give the member any time lines or tell him who will do that work. I am not able to give the member any more information about that future work. I can and I will, and I am happy to, canvass the things that are in the bill before us today.

Hon MICHAEL MISCHIN: That is fair enough. That is the sort of understanding that I had that this is considered to be the answer to the problem, but I am concerned that the impression that had been given is further work would be done in order to address matters that might be considered anomalies, inconsistencies or unfairnesses. The minister is telling me that nothing concrete is in place to deal with that. No working group monitors the performance of the legislation as such, or anything of that nature.

Hon Sue Ellery: I've answered the question.

Hon NICK GOIRAN: I refer to the issue of section 21 of the Criminal Injuries Compensation Act, which the minister re-raised overnight and has stated the government is not entertaining any amendment on it. It will be left to the review, which is yet to be commenced, which does not have terms of reference and we do not know when it will finish. Be that as it may, can the minister inform the chamber whether there is any capacity for the Attorney General to direct the Chief Assessor of Criminal Injuries Compensation on the use of the discretion in section 21? Is there some kind of statutory capacity for the Attorney General to do that? Could it be in the form of guidelines? Could he effectively say to her that he does not want her to exercise her discretion under provisions in section 21 regarding these victims of child sexual abuse? Is that possible?

Hon SUE ELLERY: The advice I have is, no, there is no capacity to direct, other than by going through the bill, clause by clause, to see whether there is something in there that has not previously been brought to the attention of these two fairly senior advisers. I will check that overnight to make sure there is nothing, but the best advice available to me is no, there is no recollection of an Attorney General making that direction. Nobody has any recollection of whether it happened.

Hon NICK GOIRAN: I do not have any recollection of it either. I would think it was quite unusual. We would want to avoid that. In fact, I want to avoid it by making an amendment to deal with this problem, but since that is not going to happen, I am wondering whether there is another way around it by which Hon John Quigley might be able to direct the Chief Assessor of Criminal Injuries Compensation that he does not want this to happen. Of course, as the minister advised us last night, the chief assessor has said that it is generally the practice that she exercises discretion in favour of victims who, at the time, were children. That is great if that is actually the general practice, but in these instances, I would like it to be always the practice, with no room for any victim of child sexual abuse to be left exasperated by our justice system in Western Australia. I ask whether the minister could check overnight whether there is any capacity for the Attorney General to direct.

In the interim, let us assume that there is no such capacity. What does the government propose to do to ensure we will not have a group of victims of child sexual abuse being forced by the chief assessor to take action under the adversarial civil scheme because they are blocked from proceeding with the criminal injuries compensation scheme?

Hon SUE ELLERY: I thank the honourable member for the question. No, there is no proposal by the government to interfere or intervene in the exercise of that discretion. I make the point I made earlier and last night: there is, of course, the review of the criminal injuries compensation system itself. That review is going to happen, and I would envisage all these matters being examined during that review process.

Hon NICK GOIRAN: Yesterday the minister indicated that that was the general practice; I think we were told that there had been some consultation with the chief assessor. That consultation was verbal and there is nothing in writing, but in accordance with that consultation, the advice to the house was that it is generally the practice that

the chief assessor will exercise her discretion in favour of victims who, at the time, were children. Has there been any discussion with the chief assessor to find out under what circumstances she would exercise that discretion not in favour of the child?

Hon SUE ELLERY: I think I answered that question last night, and the answer is no.

Hon NICK GOIRAN: Right. If I asked that last night and I have forgotten, I apologise. I am troubled because at the moment we are left with a situation in which the Chief Assessor of Criminal Injuries Compensation in Western Australia has discretion to block victims of child sexual abuse from proceeding with their application for criminal injuries compensation. It could be unfair for me to use the word “block”; the actual terminology in the legislation is to “defer” the application. Imagine a victim of child sexual abuse, for whatever reason, years later finding themselves in the position of wanting to disclose the abuse that has taken place. Under our laws in Western Australia, a person cannot proceed with an application for criminal injuries compensation if they have not first reported the matter to police. There are certain exceptional circumstances in which they do not need to do that, but generally speaking—since we are talking about general practice—a person needs to disclose it to the police and run through the criminal justice system, which is very traumatic. They then go ahead with the criminal injuries compensation claim, lodge it with the assessor and the assessor exercises her discretion not in favour of the victim and says, “No, I want to defer your application, pending the determination of the proceedings that I, the assessor, say you reasonably have grounds to take, independently of this act.” Imagine being the victim of child sexual abuse in that situation; it would be utterly, utterly exasperating. This is why, from time to time, as solicitors in Western Australia, we get told by our clients, “There is no justice.” I have lost count of how many times people have said that—“There is no justice”, and often it is stronger language than that, and understandably so. Sometimes, the person who makes this application has been unsuccessful in the criminal courts. As I mentioned last night, it is actually really hard to get a successful prosecution for child sexual abuse claims. Unfortunately, one of the problems with our criminal injuries compensation scheme is that if there is a verdict of not guilty, it is virtually impossible, subject to some very limited exceptional circumstances, to then proceed with an application.

But that is not the category of people we are talking about here. We are talking about the—I hesitate to use the word—“fortunate” ones who were successful with their criminal prosecution and got a guilty verdict, after a very, very traumatic experience. They would have had to give evidence. There would be no prospect of them being able to get a guilty verdict without, at the very least, having been proofed and given a statement to police. That would be the bare minimum, but in all probability, they would have had to go on the stand and be cross-examined at length by defence counsel, and after all that, manage to get a guilty verdict. They would feel some sense of relief, but would also have experienced great trauma throughout the experience.

We then say to them that, under the laws in Western Australia, they can lodge a criminal injuries compensation claim, and that is some modest form of compensation for everything they have been through. In my experience—to use the words of the chief assessor—generally the practice is that there is a sense of anticipation on the part of the victims that they will get some access to compensation and some form of justice. Of course, if there is a guilty verdict, the state can go after the offender and seek to recover that money from them. I am not sure how successful that is, but that is a question for another day.

Progress reported and leave granted to sit again, pursuant to standing orders.