COMMUNITY DEVELOPMENT AND JUSTICE STANDING COMMITTEE

Fifth Report — Seeking justice: Improving options for survivors of institutional child abuse: Volume 1: Legislative and high-level administrative matters — Tabling

DR D.J. HONEY (Cottesloe) [10.25 am]: I present for tabling the fifth report of the Community Development and Justice Standing Committee titled *Seeking justice: Improving options for survivors of institutional child abuse: Volume 1: Legislative and high-level administrative matters*.

[See paper 2569.]

Mr P. Papalia interjected.

The ACTING SPEAKER (Ms M.M. Quirk): Minister for Police, if you are having a conversation, I would go outside.

Dr D.J. HONEY: Before I start, I recognise the many survivors and also advocates from Tuart Place and the organisation Survivors of Child Abuse in the gallery today. Thank you very much for coming and being present for this report tabling.

After exploring several potential inquiry topics, in June this year the Community Development and Justice Standing Committee resolved to commence an inquiry into the options available to survivors of institutional child sexual abuse in Western Australia who are seeking justice. The Royal Commission into Institutional Responses to Child Sexual Abuse was a five-year inquiry and it submitted its final report on 15 December 2017. Across the reports from the royal commission, 409 recommendations were made that required action by commonwealth, state and territory governments as well as non-government institutions. Of those recommendations, 310 were relevant to the Western Australian government and ranged across a number of areas, looking back to help right past wrongs as well as looking forward to prevent future harm. One of the royal commission's key measures was the removal of the statute of limitations for claims relating to child sexual abuse that had prevented many survivors from undertaking civil legal actions, seeking compensation from offenders and/or their institutions.

Five years has passed since the initial response by the Western Australian government. The committee decided that it was timely to review the outcomes of that response and to determine whether improvements could be made to better serve justice for abuse survivors. Whilst there is further work to do, it is already very clear that reasonable changes can be made that will further improve the outcomes for survivors. Many abuse survivors are elderly and many have significant health issues that resulted from their abuse. Any unnecessary delay in implementing the identified changes could deny survivors and their families the justice they deserve.

To allow the government sufficient time to develop a response to our recommendations during this Parliament and to avoid unnecessary delay, the committee will present two reports. This is the first report, which focuses on the critical legislative forms that will improve the timely resolution of claims for compensation due to alleged historic child abuse. Other changes to improve the delivery of justice have also been identified.

Western Australia was one of the first states to enact legislative changes to deliver justice to historic sexual abuse survivors in response to the royal commission. Other states made similar changes but have also gone further than WA. In particular, other states have acknowledged that extreme physical abuse, so often entwined with sexual abuse, must also be considered when providing justice to victims. Although many of the reforms recommended in this report are already in effect in other Australian jurisdictions, some of the recommended reforms go beyond what exists elsewhere. We hope that the Western Australian government will build on the work of those other states and further improve the approach to delivering justice to abuse survivors as recommended in this report.

The committee received 50 submissions from, among others, abuse survivors; advocacy groups; state departments, including the State Solicitor's Office; lawyers; and respondent organisations. The committee also engaged an eminent lawyer in this field, Mr Tim Hammond, SC, to assist in developing and testing recommendations. The committee is very grateful that Mr Hammond made himself available at short notice to assist us in this important task.

The current volume includes six chapters. Chapter 1 covers reforms to limitation periods in WA. It traces how statutes of limitation have been removed for certain types of abuse in WA and how that experience differs from other Australian jurisdictions. It makes two recommendations: for legislative change to bring WA into line with the rest of the country by removing limitations on a broader range of abuse and to monitor the impact of that recommendation.

The committee recognised that limiting the scope for historic redress to sexual abuse did not take cognisance of the complexity of many abuse cases. In many cases, sexual abuse is often inextricably intertwined with psychological and physical abuse. The WA legislation removed the limitation period only for sexual abuse and not these other forms of abuse. The committee heard that, in some cases, respondents argued that the extent of compensation for admitted sexual abuse should exclude compensation for any harm caused by physical and psychological abuse. This is manifestly unjust for abuse survivors. It is very clear that the limitations period should also be removed for

these other forms of abuse suffered by children in institutional care. Evidence received by the committee indicated that making this change would not place an unmanageable burden on the justice system.

Chapter 2 deals with some ongoing challenges in the setting aside of previously agreed deeds of settlement. Most abuse cases do not go to trial. They are most often settled before any trial, and the agreed outcomes are formalised in a deed of settlement. The deed of settlement can include an undertaking on the part of the abuse victim not to pursue any further legal action once the respondent has paid agreed compensation. Unless it is set aside by agreement or by a court, an abuse victim cannot pursue further legal action to obtain redress. The committee heard that, in some cases, settlement deeds were affected by factors outside the facts of the case and sometimes extended to cover issues well outside the scope of the sexual abuse that occurred. An abuse victim may have settled for less compensation than they could obtain now because the statute of limitations that existed at the time of the agreement has been removed. The report looks at the process of setting deeds aside and recommends that this should happen concurrently with any new civil claim. It also looks at the breadth of what might be included in any new deed and recommends that some limitations be imposed.

Chapter 3 recommends that changes be made to legislation to reverse the onus of proof for civil claims of child abuse when organisations cannot establish that they took reasonable precautions to prevent the abuse. This recommendation recognises that there is often a significant asymmetry of power in civil cases between an abuse survivor and a respondent organisation. It reflects the approach taken in workers compensation claims in which a respondent organisation needs to demonstrate that appropriate steps were taken to prevent injuries in a workplace to defend a claim for compensation.

Chapter 4 examines what happens in civil claims of child abuse when plaintiffs die before their case has concluded. It looks at the difference between the National Redress Scheme and civil litigation in WA and recommends that legislation be amended so that existing civil claims can be continued by the estate of the plaintiff should they die. It also recommends that WA adopt a system similar to that in Victoria where family members can also make claims in civil courts. It is often the case that the families of an abuse victim are also victims of the trauma experienced by the victims themselves. It seems very unjust that families should be denied compensation when a case ceases due to the death of an abuse victim during the trial. More broadly, in Western Australia, only the original victim of abuse can make a civil claim. Even if family members have suffered in their own right and families have become estranged as a result of the impact of abuse, family members cannot make a claim. The committee believes that there should be some way for people who have been affected by such abuse to seek compensation. The report notes a recent court judgement that means that Victorian family members now have the right to attempt such a claim and the committee recommends that the government make legislative changes to allow these people the opportunity to have their claims heard by the courts.

Chapter 5 looks at the issue of permanent stays whereby defendants can apply to have a case ended if they cannot reasonably receive a fair trial. It notes the recent High Court of Australia majority decision that found that this process must be handled differently for child abuse cases. Typically, an abuse case cannot be heard by a court until the question of whether to allow a permanent stay is resolved. Dealing with the issue of the permanent stay before the trial commences can significantly extend the time taken to resolve a case. Many of the facts needed to determine if a permanent stay is justified are the same facts required to determine the extent of any compensation due to an abuse victim. Recognising that many abuse survivors are elderly and often unwell, it is unfair to unnecessarily extend the time taken to resolve their cases. Hearing the matters in parallel avoids unnecessary duplication of presenting facts and will reduce the time it takes for victims to receive appropriate compensation. The chapter recommends amending legislation so that stay applications can only be made at the conclusion of the trial of the matter. It also recommends that people who have made a claim in good faith should not be liable for costs for successful permanent stay applications and that legislation should be introduced to allow any existing stays to be reviewed in light of the recent High Court majority decision.

Chapter 6 looks at the high-level operation of the District Court in child abuse cases. Based on broad agreement from witnesses, it recommends that a specialised court list be put in place for child abuse claims. It also recommends that trial dates be set as quickly as possible in child abuse cases in line with Victorian practice. These recommendations recognise that, similar to mesothelioma victims, reducing the time taken to resolve civil claims for compensation for child abuse by an institution is critical. These improvements do not require any legislative change.

I thank my fellow committee members for sharing their extensive collective experience related to the topic of the inquiry. This has greatly facilitated our ability to focus on key issues and identify appropriate witnesses. I note that the member for Nedlands, Dr Katrina Stratton, gained extensive experience prior to entering Parliament from her involvement with Tuart Place. The member for Burns Beach, Mr Mark Folkard, was formerly a police officer who in many cases had to deal with situations involving survivors of child abuse, and also has extensive knowledge of court processes. The member for Churchlands, Ms Christine Tonkin, has extensive experience in public advocacy and was a major contributor to our inquiry. I am particularly grateful for the input of the member for Bassendean,

Hon Dave Kelly, who has considerable knowledge on the inquiry topic through a long period of advocacy for survivors of institutional child abuse.

I also wish to thank the many witnesses who presented to the inquiry, especially survivors and advocacy groups. The trauma that survivors have experienced leaves lifelong physical and mental scars that severely impact them and their families. It is only by survivors and advocacy groups having the courage and tenacity to continue to speak out that we can understand these impacts and seek further improvements in outcomes.

On behalf of the committee, I especially thank our hardworking staff, Dr Alan Charlton and Dr Sam Hutchinson, for their excellent guidance, research and facilitation of the inquiry. They have been exemplary in their handling of a very complex inquiry topic against a very tight deadline for the first report. I commend the report to the house.

MR M.J. FOLKARD (Burns Beach) [10.39 am]: I, too, rise to speak to the tabling of this report. My speech will not be particularly long. Before I begin, I would like to thank the chair for his work, the member for Bassendean for his input, and the members for Nedlands and Churchlands. Before I go any further, I would like to recognise the survivors and the courage it took for them to come forward and tell their stories. Some of their stories were horrific, to say the least, but their experience within our judicial system shocked me even more. Basically, the system that has been produced effectively re-traumatises survivors. That is wrong. The 12 recommendations in the report are simple and straightforward, and I hope all of them will be empowered as soon as possible. We saw institutions ducking and diving trying to avoid answering questions, but what stood out for me was the courage of our survivors. Telling their stories and coming forward is, to me, why it is so important that we have to get this right. I will say no more and leave it at that, thank you.

The ACTING SPEAKER (Ms M.M. Quirk): It was brief, member for Burns Beach; I got a surprise.

DR K. STRATTON (Nedlands) [10.41 am]: I rise to add my voice to recognise not only the recommendations contained in this report, but also the survivors and advocates who have got us to this point today. I, too, acknowledge in the public gallery the staff and participants of Tuart Place. I had the honour of serving on the board of Tuart Place for many years. They know that for me it was not only a professional, but also a deeply personal honour. My partner had a lived experience of out-of-home care; therefore, I, too, have lived the impact that a care experience, even one that was ostensibly free from abuse, has on all aspects of a person's life. I acknowledge and welcome today Dr Pip White, the director of Tuart Place; board chair John Ryall; and deputy chair Dale Lynch; as well as the many other board members and survivors who are present. I also welcome and acknowledge Kirsty Pratt, OAM, a long-term advocate for survivors of childhood sexual abuse and whose efforts have created much clearer justice pathways for survivors.

I sat in the public gallery with you all in 2018 as then Premier Mark McGowan delivered his apology on behalf of the Western Australian state government to those who had been sexually abused while in institutional care. At that time, WA also joined the National Redress Scheme. That experience was meaningful and powerful. This inquiry and the first volume of the report and its recommendations build on the work that began not only after that apology, but also as a result of the Royal Commission into Institutional Responses to Child Sexual Abuse that preceded it. I highlight one particular recommendation. It is an issue that was often discussed around the board table at Tuart Place. I am really delighted that you are all here to see this recommendation come to light. Recommendation 1 is to remove limitation periods for personal injury claims relating to physical or serious physical abuse and associated psychological or emotional abuse. The limitation periods for sexual abuse were lifted in 2018. The expansion in this recommendation reflects people's lived experience, that different types of abuse happen but to one body, to one heart, to one mind, to one soul. Any separation is academic only. The recommendation also acknowledges the experiences we have heard from survivors, whereby siblings in the same family had different types of abuse perpetrated against them. Although one sibling might not have experienced sexual abuse, they may have been physically abused, with the shared experience with their siblings therefore of the trauma and harm of childhood abuse. This recommendation would see all those siblings able to seek justice in the same way as well as acknowledging the often sad coexistence of sexual, physical and emotional abuse.

The other recommendations aim to make the justice pathway clearer and more timely, changes I would argue are of benefit to both claimants and defendants, but particularly for survivors to have greater certainty and expediency in the resolution of their claims. This is a much more trauma-informed response—acknowledgement, recognition, certainty and timeliness. I would therefore anticipate that the many defendant institutions that told us they too work to be trauma-informed and survivor centric will also welcome these recommendations.

I would like to finish my brief contribution with some acknowledgements. Like the chair, I acknowledge the committee staff who brought this report together under tight time frames, and with a key eye to ensuring our recommendations are actionable and achievable. I thank Tim Hammond, SC, whose expert review also ensured our recommendations were both just and actionable. I thank again all the survivors who shared with us their stories of survival and their experiences seeking justice—experiences made very challenging by not just the justice system, but also some of the institutions that were supposed to provide children with care and protection, and who perpetuated

their trauma with their so-called justice responses. I therefore thank the institutions that had the courage to appear before the committee. Not all engaged in the opportunity. I also thank the many legal firms and advocates who made submissions representing both defendants and complainants and for giving us an understanding of the complex and sensitive legal processes. As I did at the tabling of my annual report, I acknowledge the chair, the member for Cottesloe, Dr David Honey, for his robust and sensitive leadership on a complex issue, with a clear outcome to deliver greater justice for survivors. I also acknowledge my colleague the member for Bassendean, Hon Dave Kelly, who has also been a long-term advocate for survivors, and to our other committee members, Mark Folkard, member for Burns Beach, and the member for Churchlands, Christine Tonkin, who brought her expertise, lived experience and forensic analysis to our proceedings.

I finish by saying that I am very proud to have been part of this committee inquiry. The report tabled here today is not only survivor-centric, but also informed by the best evidence presented to us. That makes both my social work and my research heart very happy. I proudly stand in this place in full support of both the process and outcomes in the recommendations of this report. It is of course our great hope that this first volume of our findings and recommendations, if implemented, will indeed see a clearer path to justice for survivors. It will recognise their resilience, their right to seek justice and their ongoing courage and advocacy in the face of ongoing injustices. I look forward to continuing to work alongside them to right the wrongs of the past as we move to the second phase of this important inquiry.

MR D.J. KELLY (Bassendean) [10.47 am]: I rise to speak on this very important report tabled today, which contains some important recommendations to assist survivors of child abuse to achieve justice. I begin by acknowledging the staff from Tuart Place and Survivors of Child Abuse represented in the gallery today, who have come along to see this report being tabled. I also give a shout-out to SAMSN, the Survivors and Mates Support Network, a New South Wales organisation that made a submission; CLAN, the Care Leavers Australasia Network based largely on the east coast that made a submission; and Beyond Abuse: Advocacy Support Justice, which is a group of survivors in Tasmania. I want to recognise all those groups as well.

The Royal Commission into Institutional Responses to Child Sexual Abuse was a major bit of work by the federal government. It produced its final report five years ago. Many members of the community were shocked at the stories that were told. The community wants survivors to have options to seek justice. In 2018, the state government passed legislation to implement one of the key recommendations of that royal commission. As a member of this chamber, I was proud to be here at the time. That reform removed the statute of limitations that had prevented victims of child sexual abuse from seeking common-law compensation. Many people hoped that would open a simple and speedy pathway for victims. In fact, hundreds of victims have come forward and have navigated the legal process and received significant amounts in compensation. I thank the Attorney General for the work he did in passing that legislation in 2018 and for the interest he has shown in this area.

Five years down the track, the committee has identified some further important reforms that can be made to make the pathway for justice clearer and, importantly, less time consuming. The first recommendation of this report is that victims of physical abuse and not just sexual abuse be able to seek compensation. We heard about the quite—I will not say bizarre—disturbing circumstance in Western Australia in which an institution can recognise that a person has been a victim of abuse but then tries to minimise the compensation it will have to pay by saying that the trauma was caused not just by the sexual abuse the victim had suffered but at least in part by the physical abuse inflicted upon them in that institution, possibly by someone else. An institution might say, "Brother so and so physically abused you and that is the source of your trauma, not the sexual abuse that you suffered at the hands of Brother so and so, also at the same institution." Institutions have a legal opportunity to put evidence before the court to say that the trauma is real, but that the compensation should be split in half or apportioned differently. That is absolutely bizarre. The first recommendation is that physical abuse, as well as sexual abuse, should be made part of claims. That is the situation in every other state in Australia. That would be an important reform.

The second thing is that the process is still very slow. Victims who get the courage to come forward with a claim are often presented with a delay of three, four or even five years before their case gets to trial. That is simply too long. We have suggested a number of reforms to speed up claims. The first concerns the process of setting aside old deeds that were entered into before the statute of limitations was removed. That should be dealt with concurrently with the substantive claim, rather than having a two-step process. That would enable claims to be dealt with more quickly.

Permanent stays have become a key feature of the defence that institutions now put before the courts to impede survivors seeking justice. Permanent stays should not be dealt with as a separate application; they should be dealt with only at the end of the trial and not at the beginning. At present, when survivors try to negotiate a settlement, the threat of a permanent stay hangs over them like a sword. They live with the fear that they could go through all this work and then have an application for a permanent stay granted, even before they get a chance to go to court. Currently, there is the perverse situation in which if a permanent stay is granted, the survivor may have to pay the costs of the institution. How can that be just? When a survivor comes forward and makes a claim, they often do not know whether the perpetrator is still alive or the state of the evidence that the institution will be able to bring.

They have none of that knowledge. The recommendation we are making is that permanent stays be heard only at the conclusion of the evidence and not as a first step before a trial has begun.

I will briefly mention a couple of other points. Claims should continue if the survivor sadly passes away. Institutions currently have a rather perverse incentive to drag out a claim if a survivor is elderly. If they pass away, the claim dies with them under the current interpretation of the law. That should end. The committee also recommends having a separate list so that courts deal with these cases quickly and expeditiously. The chair of the committee has also mentioned that.

I will mention the case of one survivor to highlight some of the issues that we have dealt with in this report. The case between RJS and Perth Diocesan Trustees—the Anglican Church—was settled this week, two days before the claim was to go to trial. The survivor in that case, a fabulous bloke, began his journey in 2018 and his case was only going to go to court this week. That is way too long. It was only this week, with a trial date staring the Anglican Church in the face, that it settled for $1.7 million. The recommendations we have made will hopefully mean that those settlements can be entered into much earlier, rather than putting survivors through a long and traumatic process in order to get justice, as the survivor in this case received today. I acknowledge the effort to which he went to achieve justice, not just for him, mind you, but also other members of the survivor community.

Finally, I thank the chair, the member for Cottesloe, for the leadership he has shown on this committee. It has been absolutely fantastic to have him as chair of the committee for this report. The knowledge of the member for Nedlands has been absolutely fantastic, and the passion of the members for Churchlands and Burns Beach has been absolutely brilliant as well. I thank them. The staff, Dr Alan Charlton and Dr Sam Hutchinson, were of great assistance to the committee as well.

I look forward to the Attorney General giving this report due consideration and to him applying the same commitment and vigour that he applied to the 2018 reforms to the next raft of reforms that we seek through this report. Thank you very much.

MS C.M. TONKIN (Churchlands) [10.57 am]: I also rise to make a short contribution to the presentation of the Community Development and Justice Standing Committee's report *Seeking justice: Improving options for survivors of institutional child abuse: Volume 1: Legislative and high-level administrative matters*, which I believe is very important. Hopefully, the adoption of its recommendations will ease the distress of the many people who are seeking justice. I also acknowledge and thank the survivors and advocates who have come here today to witness our presentation of the report. I thank all those who gave generously of their time and effort to help the work of the committee through making submissions and giving evidence.

I would like to read a short article from the *Post* newspaper of 25 November. I certainly picked up on this article, given the timing of the presentation of this report. The article encapsulates many of the issues that we were dealing with. It is headed "Priest witnesses sought" and states —

> A man who wrote a detailed letter about sexual abuse of boys by a priest in the 1960s and 1970s could hold crucial information for a court case against the Anglican Church.
>
> A legal firm is calling for witnesses for the civil action, which is being taken by a victim of deceased priest Michael Painter, who was in Nedlands parish in 1963–66 and at St Andrew in East Claremont in 1970–74.

I believe this is the same person about whom my good colleague the member for Bassendean spoke. It continues —

> Rightside Legal is seeking anyone with knowledge of Painter's activities with teenage boys around the time.
>
> The letter claiming he had abused boys in the western suburbs was addressed to police investigating him in March 1994, just prior to his plea of guilty in June 1994 to abusing a teenage boy.
>
> Painter committed suicide after his guilty plea was reported on the front page of The Sunday Times newspaper under the headline "Sex Priest Cover-up".
>
> The letter claims Painter groomed boys during social evenings at church and invited them to a room he rented in Tareena Street, Nedlands, in the 1960s.
>
> He also organised excursions and other activities for teenagers in the Nedlands–Churchlands area.

Michael Painter was a prolific abuser. We heard evidence that he was implicated in the abuse of at least 18 young people. I was introduced to Michael Painter in the mid-1980s when I worked at Anglicare. He was a homesharer under the program through which vulnerable young people were supported in accommodation at private homes. I do not know whether he was active as an abuser at that time. I did not work under that program. However, it seems his career as an abuser likely spanned decades, and the fact that he was allowed to be a homesharer speaks volumes about the blindness to the abuse that people suffered.

Like so many victims of child abuse, the person referred to in the *Post* article concerning abuse by Michael Painter has waited a long time for justice. The removal of the statute of limitations under the Civil Liability Legislation

Amendment (Child Sexual Abuse Actions) Act 2018 allowed victims, such as those of Michael Painter, to seek redress through civil actions. However, they often face problems in obtaining evidence in support of their claims simply because of the passage of time and possibly because of the death of the perpetrator and the availability of witnesses, some of whom have long disappeared into the woodwork or are deceased.

However, a High Court majority decision on 1 November 2023 found that the removal of limitations on civil actions in these cases fundamentally changed their nature. I quote from the committee report —

> Parliament ensured that no claim for damages for death or personal injury resulting from child abuse can be characterised as 'historical'. Just as there is no 'historical murder' while a person is alive to mourn the victim, there is no 'historical child sexual abuse' while there is someone alive claiming to have suffered harm from the abuse.

The path to justice for those who suffered harm from child abuse is often long and uncertain. It is my hope, and that of the members of our committee, that actions on our 12 recommendations—thank you, Attorney General—will result in easing that path and along with it the considerable stress that victims experience.

Members: Hear, hear!

THE ACTING SPEAKER (Mr D.A.E. Scaife) [11.03 am]: Thank you, member. Before I call the next speaker, I just want to, in concluding that section, acknowledge the survivors and their advocates in the public gallery during those speeches and, on behalf of the Parliament, acknowledge your patience and your courage and your pain over many years.