

**Extract from Hansard**

[ASSEMBLY — Tuesday, 28 November 2017]

p6160b-6179a

Mr John Quigley; Mr Sean L'Estrange; Dr Tony Buti; Dr Mike Nahan; Mr Simon Millman; Ms Cassandra Rowe; Mr Peter Rundle; Mrs Jessica Stojkovski; Mrs Lisa O'Malley; Mrs Liza Harvey; Mr Bill Johnston; Ms Mia Davies

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

*Declaration as Urgent*

**MR J.R. QUIGLEY (Butler — Attorney General)** [4.09 pm]: In accordance with standing order 168(2), I move —

That the bill be considered an urgent bill.

Perhaps the opposition could indicate its consent for this motion.

**MR S.K. L'ESTRANGE (Churchlands)** [4.09 pm]: Yes; we are happy to proceed to the second reading.

Question put and passed.

*Second Reading*

Resumed from 22 November.

**DR A.D. BUTI (Armadale)** [4.10 pm]: I stand to contribute to the second reading debate on the incredibly important Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017. When the Attorney General introduced this bill to the house last week, he stated —

On behalf of the McGowan state Labor government and the people of Western Australia, it gives me great pleasure to introduce this bill that fulfils an election commitment to remove the limitation periods in respect of civil actions for child sexual abuse. As members will be aware, this is a historic bill. In some respects, the government's legislation will go further than any similar legislation in any other Australian jurisdiction to date.

Those words are very important. It is a very historic bill and, in some respects, it does go further than any other jurisdiction in Australia, which is quite interesting because until this bill is passed, Western Australia has arguably the most draconian Limitation Act in Australia. I will talk about that a bit later. The ability to take a civil action outside the limitation period is non-existent in Western Australia. That is why this bill is very important. The issue of being able to take civil litigation regarding child sexual abuse has become topical over the last 15 to 20 years with the stolen generations and the British child migrants, and we now have the Royal Commission into Institutional Responses to Child Sexual Abuse. If we look at other issues that do not necessarily relate to sexual abuse but to stolen wages, we find that all those possible civil actions that people would like to take regarding wrongs that have been committed were barred as a result of the statute of limitations. The reason we have limitation periods is very important in our judicial system and I will talk about that shortly.

The Attorney General mentioned that this bill will arguably go further than any other legislation in existence in Australia at the moment. As I said, up to now, we have probably had the most draconian legislation for limitation periods. We can look at cases that have succeeded in other jurisdictions. The Trevorrow case in South Australia has been the only successful case for the stolen generations. There were the Cubillo and Kruger cases in the Northern Territory. There was also the Williams case in New South Wales. These cases were all able to proceed outside the limitation periods. Trevorrow and Cubillo were able to proceed under limitation acts in South Australia and the Northern Territory because the acts allowed a discretion to waive the limitation period in certain circumstances, one being what is known as the discoverability rule. Often, the problem is that a person does not know that they have a cause of action, especially if they are a child; they may not realise they have a cause of action until many years after the statute of limitation period has been barred. The discoverability rule allows that once a person discovers they have a cause of action, the clock starts ticking. It may tick for a year, so they have to bring an action within one year of knowing that they had a cause of action. That is not the case under the Western Australian legislation, but in South Australia and in the Northern Territory, it was.

The Trevorrow case did not directly deal with child sexual abuse but it definitely dealt with child neglect and it was a stolen generation case. The Cubillo case dealt with numerous causes of action, but not child sexual abuse. The Kruger case went to the High Court on constitutional grounds and was, unfortunately, very unsuccessful because it should not have been argued on constitutional grounds. The Williams case in New South Wales dealt with a young Aboriginal girl who was removed to an institution. The action did not succeed in the end, but it was able to continue outside the limitation period on the basis of the action being in equity. The action was taken on many different fronts, but one was a breach of fiduciary duty. A breach of fiduciary duty comes under what we call equity and, under the New South Wales legislation, Justice Kirby stated that actions that have been commenced in equity are not caught up by the statute of limitations. That is the general legal principle: actions based in equity do not get caught up by the statute of limitations. They can be caught up by an equity defence known as laches, but not by the Limitation Act.

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In Western Australia, that is not the case. Our legislation includes all actions, whether they are in common law or in equity. In Western Australia up to now, a potential plaintiff who sought to take an action outside the limitation period basically had no chance. That was brought home more recently, I think in 2013, by the Collard case that was heard in the Supreme Court. That action was commenced outside the limitation period and one of the arms they tried to bring in was its breach of fiduciary duty, which, of course, is in equity, but it is quite clear under our legislation that all actions are caught whether they are in equity or common law. Potential plaintiffs in Western Australia also faced another hurdle if they sought to sue the state or a state institution: the Crown Suits Act. The historical viewpoint was that an action could not be brought against the Crown, but the Crown Suits Act created an action against the Crown—a right to sue the Crown. The Limitation Act basically tries to narrow the action a person has against individual parties because the traditional view was that the Crown could not be sued but, of course, non-Crown persons or organisations could be sued. The view was that a limitation should be put on that right to sue because of evidentiary issues and not wanting to unduly prejudice the defendant due to the passage of time whereby evidence and memories may have long gone. This has been talked about for many years. I am sure that the Attorney General would recall that when Hon Jim McGinty was the Labor Attorney General, a Law Reform Commission report about limitation periods came down. We have changed the limitation period over time; we brought in an amendment to the Limitation Act to allow victims of asbestos diseases to bring an action out of time. It is not that it has not happened in Western Australia, but it was in a very limited situation regarding asbestos diseases. We have never taken this step to allow victims of child abuse—in this case, historical child abuse—to bring actions out of time. That is why this very historic bill is before the house. I mentioned the Crown Suits Act. It was a major hurdle for people who sought to bring an action against the Crown. As a result of a piece of legislation that was passed in 2005, the Limitation Legislation Amendment and Repeal Act, the specific limitation period that applied to the Crown Suits Act was basically abolished so, by analogy, the Limitation Act also applies to actions that would normally have come under the Crown Suits Act. That, of course, is very important to realise.

That is basically what we have before us today. There are three parts to the legislation, including part 3, which is the substantive part. The Attorney General mentioned that this bill, in many respects, goes further than any similar legislation in other jurisdictions. One of the reasons it goes further than any other limitation act in Australia is that the provisions introduced in part 2 of the bill ensure that an action that would otherwise succeed is not barred because the defendant no longer exists—when the defendant cannot be identified. For example, a certain institution may no longer be in existence. A child may have been sexually abused in 1965 at institution A that may no longer be in existence. Part 2 of the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017 will, as the Attorney General mentioned, pierce the shield and allow an action to commence and not fail due to that institution no longer being in existence.

Members know that the Royal Commission into Institutional Responses to Child Sexual Abuse has now been in existence for a number of years. As to limitation periods, page 52 of its report on redress and civil litigation states —

... limitation periods are a significant, sometimes insurmountable, barrier to survivors pursuing civil litigation.

...

We are satisfied that current limitation periods are inappropriate given the length of time that many survivors of child sexual abuse take to disclose their abuse.

...

We recognise that there are benefits to all parties if civil proceedings are determined as close as possible to the time the injury is alleged to have occurred.

...

Notwithstanding these considerations, we are satisfied that the limitation period for commencing civil litigation for personal injury related to child sexual abuse should be removed and that the removal should be retrospective in operation.

...

It seems to us that the objective should be to allow claims for damages that arise from allegations of institutional child sexual abuse to be determined on their merits.

...

It is also desirable that national consistency be sought in this area.

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We acknowledge that institutions may face additional claims if limitation periods were removed with retrospective effect. However, we are satisfied that limitation periods have worked great injustices against survivors for some time. We consider that institutions' interests are adequately protected by the need for a claimant to prove his or her case on admissible evidence and by the court's power to stay proceedings in the event that a fair trial is not possible. Institutions can also take steps to limit expensive and time-consuming litigation by offering effective redress and by moving quickly and fairly to investigate, accept and settle meritorious claims.

Removing limitation periods may create a risk that courts will interpret the removal as an indication that they should exercise their powers to stay proceedings in a more limited fashion. We consider that it should be made clear that the removal of limitation periods does not affect the courts' existing powers.

...

We consider that state and territory governments should implement our recommendations to remove limitation periods as soon as possible. Our recommendations on the duty of institutions and identifying a proper defendant —

Being recommendations 89 to 95 —

... may take longer to implement. However, our recommendations to remove limitation periods should be implemented without delay.

The Attorney General has sought to comply with that recommendation with the introduction of this bill and seeking to have it passed before we rise on Thursday.

The commentary in the royal commission's report on redress and civil litigation states that limitation periods are needed to ensure that defendants are not unduly affected by people not having taken actions when they should have, but we are here dealing with historical child abuse that can have had massive effects on the victims. The victims may not have had the ability or knowledge to bring an action. Actually, until this bill passes, people outside the limitation period who suffered through child sexual abuse cannot bring an action in Western Australia. I have stated that we have the most draconian Limitation Act in Australia.

[Member's time extended.]

**Dr A.D. BUTI:** This bill was very carefully crafted to ensure that the existing justice system around the bringing of an action will not be completely removed. The normal need to prove a case will remain. This legislation will not mean that people can claim to have been sexually abused and automatically be successful in their case. They will still have to go through the very stressful process of revisiting a very painful period in their lives. That is obviously why other forms of compensation such as redress schemes and so forth are looked at. The point is that the removal of the limitation period is a redress scheme in itself. It is reparation. That can be seen in international law. Reparation has become a very important feature of the political and legal system internationally and in Australia since the early 1990s. In Australia, we have had the stolen generation, British child migrants, institutional child abuse and stolen wages, but Canada has had residential schools and there have been genocide prosecutions that have gone over decades in other parts of the world. All have looked at reparation models.

Members should look at the International Covenant on Civil and Political Rights, the United Nations' Universal Declaration of Human Rights and Theo van Boven's principles on reparation for human rights abuses. Child sexual abuse is obviously a human rights abuse. The van Boven principles state that reparation should guarantee the human rights abuse will not be repeated. We should establish rehabilitation measures like counselling and so forth, and restitution in the form of monetary compensation. One recommendation often made is the removal of a limitation period so that a person can bring an action. This bill is a reparation measure in response to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

People who have suffered a historical wrong should not be denied their day in court if they want it. Some will not want it. If this bill brought before the house by the government is passed, it will become a reparation measure for victims. It is also symbolic. It tells child sexual abuse victims that this government, and hopefully this Parliament, acknowledges the wrongs that have been committed on them sometimes by state institutions and sometimes by non-state actors. Whether someone utilises the ability to bring an action that would have otherwise been out of time, the fact that we have removed the statute of limitation for historical child sexual abuse is in itself a reparation measure that will result in tangible monetary consequences if those people are successful, but will also have symbolic worth. That can provide major therapeutic benefits to child abuse victims. This government will look at this among other measures. This is a justice measure. Members could see it as restorative justice, restoring justice; corrective justice, correcting a past wrong; or distributive justice, trying to ensure that a victim of child sexual abuse whose ability to maximise their economic potential may have been severely reduced due to psychological

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or physical harm as a result of that abuse. Allowing monetary compensation provides some form of redistribution—that is, distributive justice theory. It could be corrective justice, distributive justice or restorative justice, but whatever justice members want to call it, it is good justice; that is what it is. It is in line with our commitments under international law and the commitments that we took to the election. It is in line with justice theories and being a government that cares about its citizens and, hopefully, a Parliament that cares about its citizens. Let us not be under the illusion that this is necessarily a panacea. It is an incredibly important measure. I repeat that the Attorney General has brought a historic bill to this place. Litigation should not be seen as the answer to all wrongs in our society, but it is unjust to continue to deny victims of historical child abuse the ability to gain justice due to a Limitation Act that is the most draconian in Australia. I worked at the Aboriginal Legal Service for a number of years and we had clients who were part of the stolen generation. Not all were subjected to child sexual abuse, but quite a number were. I dealt with many members of the Collard family, who took the action I mentioned previously that went to the Supreme Court in, I think, 2013. What they went through was appalling, but they were not Robinson Crusoe, because many clients at the Aboriginal Legal Service were part of the stolen generation, who told horrific stories of being removed from their families—arguably for their own good. When the state took over the loco parentis duty, the state, as their parents, failed in its duty. Sometimes it was not the state; it was another institution. But if they became wards of the state, the state had that responsibility. They were supposed to have been taken away to be provided with a better opportunity in life. I do not want to get into the debate about other agendas.

Of course, in the “Bringing them home” report of the national inquiry into the separation of Aboriginal and Torres Strait Islander children from their families, other accusations or claims are made about the real agenda behind the stolen generation experiment. It was an experiment—an experiment that failed. Of course, some people who were removed were not subject to abuse and received a good education et cetera, but people should not have to be part of an experiment that went wrong to be ensured of a proper education in our society. Leaving that aside and concentrating on those members of the stolen generation, I still remember many of those people. Unfortunately, many have passed away, so they will not be able to be beneficiaries of this bill that is before the house, but a number of members of the stolen generation are still alive today. I will not encourage them to take action, but at least they will have the opportunity to take action if this bill is passed. I often think about the late Robert Riley, who was the CEO of the Aboriginal Legal Service—a great orator and one of this state’s great statesmen. He was the CEO of the Aboriginal Legal Service when I worked there and was the instigator of the stolen generation project that I was fortunate enough to be the coordinator of. As a young child he was removed and sent to Sister Kate’s Children’s Home. I interviewed him in his office and he relayed the story of being raped as an eight or nine-year-old. It was the first time that he had told anyone about that episode. It was kind of a cathartic experience for him and he relayed that story at the launch of *Telling Our Story* at the old Sister Kate’s Children’s Home in Queens Park. He also relayed the story of asking the people who worked at Sister Kate’s at the time whether his mum or dad would come to see him. They told him that his parents had died, but they had not; his mother was alive. He was punished for asking about his parents. Unfortunately, within 18 months, Robert Riley took his life at that hotel in Bentley on Albany Highway. His was a tragic story. He was a very strong believer that we needed not only a political solution to those issues, but also a legal option. One of the arguments that we ran at the Aboriginal Legal Service at the time was that the limitation period should be removed or discretion should be allowed to take an action out of time if certain conditions were met. This bill before the house goes a lot further than I would ever have expected. It is incredibly comprehensive and the Attorney General and the government should be congratulated for bringing this bill before the house. I trust that the opposition is also of the same view and will be very supportive of this bill. In a civil society, we cannot have a situation in which historical wrongs have taken place but people are denied justice because of something that is out of the control of the plaintiff. The statute of limitations is not really a legal technicality; it is a bit more substantive than that. The discoverability rule that many limitation acts have is quite a good measure because it allows people to take an action once they realise they have a cause of action. This bill goes even further than that. As the Attorney General mentioned last week, this bill does not provide a definition of child sexual abuse. We will leave that to the courts, which will be interesting. On normal legal principles, I imagine that the judiciary will have to look at the standards of the time. I think, though, that child sexual abuse has always been child sexual abuse. Of course, the courts will have to make sure that it fits within the period that the alleged wrong took place, but I do not see that as being a problematic issue because, whenever it happened, child sexual abuse is child sexual abuse.

I reiterate that this bill fulfils one of our major election commitments and will ensure that we are a civil, just government and, hopefully, Parliament, if the bill is passed. It honours our obligation under international law and will remove the infamous distinction of Western Australia having the most draconian statute of limitations legislation in Australia. It is appalling that we have a Limitation Act in Western Australia that denies justice to victims of historical child sexual abuse. We are not saying that this is a panacea, but it is an incredibly powerful

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reparation measure because, if anything, it is for victims of child sexual abuse acknowledgement and recognition that we care and we understand the wrongs that have been committed against them and the damage that they have incurred. That on its own is incredibly powerful, but there is also the monetary compensatory element. It is often asked how monetary compensation for victims of child sexual abuse is determined. It probably goes with a lot of civil actions. It is not an exact science, but the court will work out a way to determine that as it does for normal tort actions. This is an action in tort: economic loss, pain and suffering et cetera is worked out. It is nothing novel in that area. I think more importantly it says to victims that they now have the option of going down that route. But if victims do not want to go down that route, at least they know that this government, and hopefully this Parliament, understands and has empathy for the suffering they have endured.

**DR M.D. NAHAN (Riverton — Leader of the Opposition)** [4.41 pm]: I am not the lead speaker on the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017, but I rise to offer my and my party's in-principle support for the legislation. I commend the government for bringing this bill to the house.

It is a difficult issue and difficult legislation to draft, and, appropriately, it has taken some time. As a Parliament, we owe it to the victims of child abuse to pass such legislation. Importantly, we have an obligation to make sure that the legislation is right and addresses the wrongs that it seeks to address and provides the pathway that it seeks to provide. The Liberal and National Parties would have liked to have passed such legislation during our time in government. A private member's bill was presented to the previous Parliament during the last term. Of course, in principle we supported that legislation, particularly its aim to remove the statute of limitations, but we needed to make sure the legislation would do what it stated it would do. It would have been an insult to victims and their families if we did not ensure that the legislation would do the task that it set out to do; that is, to remove the statute of limitations and provide a pathway for actions against the institutions that allowed, or in some cases perpetrated, sexual abuse against children. In other words, the legislation needs to be watertight for victims of child abuse so that they could pursue their victimisers. It is a matter of record that that did not happen. The legislation was not up to scratch. We followed up with a subcommittee to examine the matter because the consensus was that injustice had to be corrected. The subcommittee was led by the now Deputy Leader of the Opposition, and she will probably speak to that later, when she speaks to the bill. The subcommittee heard representations from a range of victims and victims' loved ones, from institutions and from others. The former government and this opposition is committed to allowing survivors of child sexual abuse the ability to take civil action against perpetrators and when relevant and possible against the institutions that failed to protect them as children. Like the government, we are committed to introducing legislation as a matter of urgency. As I said, drafting this legislation is difficult and, once again, I commend the government for bringing this legislation to this chamber, and I wish it well.

I acknowledge that the government faced myriad issues in getting this legislation right. Noting the difficulties, let me indicate the opposition's in-principle support to removing the statute of limitations to enable victims of child sexual abuse to take action against their perpetrators and when relevant and possible against the institutions that failed them. Sexual abuse is traumatic. Some of us can go online and read the reports of the Royal Commission into Institutional Responses to Child Sexual Abuse. I think it is now into its second or third year. It is one of the longest and most drawn out royal commissions of any time. It is a shocking story of human beings inflicting such pain onto children—it is unimaginable. But through history humanity has sometimes done terrible things to each other, and that is why we need laws to protect our most vulnerable—our children. Many times, children were put into institutions for care, for moral guidance, for education and either the institutions or the people within the institutions failed to do that in the most unimaginable way—whether it was sexual, physical or psychological abuse. That abuse has impacted victims throughout their lives. They were, after all, only children. The people inflicting the pain were adults who were there to protect, teach and guide them and to give them moral values, and they abrogated that in the most atrocious way.

Many victims will be unable to take action. Sadly, some victims have passed away and some have taken their own lives. Others had their lives ruined. They did not get through school, they struggled through work and they had difficulty in relationships with family and other loved ones. They had poor life choices forced on them by the abuse when they were children. We need to remove the statute of limitations for these victims. I am no psychologist or lawyer or expert but, clearly, anyone who has interacted normally with children knows that children hold things in, particularly of this type, for years, if not decades. They are afraid to come forward or to talk about it with their parents or their loved ones. They hold it in, and when it does come out many years, if not decades, later it has already had an indelible and often negative impact on their lives. That is why the statute of limitations, despite its use and utility elsewhere, simply should not apply to victims of child sexual abuse. I congratulate the government for addressing this issue.

When the Premier was in opposition he brought up three relevant examples. First is the former boys from Katanning who were abused at St Andrew's Hostel—the victims of Dennis McKenna. The person running the

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hostel sexually abused them and their stories were not believed. The evidence is that he did that over many years. He was an icon in the community and respected by many. Even when there were signs that he was doing such things, they were overlooked or ignored. When victims expressed their stories and concerns, they were ignored. It was not only the abuse inflicted on the children, but also that they needed to overcome and battle with questioning an icon of the community when people did not believe them. The Premier also told of those men finding the courage to come forward, but that by the time they did so, the capacity to take legal action had passed. Likewise, the Premier highlighted the victims of HMAS *Leeuwin*. These victims went through HMAS *Leeuwin* as boys in the care of men. Boys aged 14 and 15 went to *Leeuwin* and it took years—decades—for them to come to terms with the abuse that they endured. By the age of 24, their opportunity to take legal action had expired. This highlights the importance of removing the statute of limitations. The victims had been through the most harrowing of experiences and for them to discuss it with the people closest to them, let alone a court of law, was worse than difficult; it takes time.

Well known Western Australian Eoin Cameron also had stories. He had access to the bully pulpit. He was a morning show presenter at ABC Radio, and had been a radio presenter for many decades in many radio stations around Australia. The Premier referred to a radio interview with Eoin in which he recounted his experiences of boarding school. He told stories of being called to the office, his pants being taken down and the pain he felt when he was abused. As the Premier indicated, when I heard this story, I wondered how many people this happened to and how many were only now coming to terms with it. Eoin recounted his story publicly and passionately, and it helped others who had similar stories to come out and express their concerns, to get the pain of their chests and hopefully someday to have the perpetrators held responsible. I am also aware that he supported many victims by speaking on their behalf at the Royal Commission into Institutionalised Response to Child Sexual Abuse or encouraging them to make submissions. He encouraged many people to seek assistance and support, and those people now deserve the opportunity to seek compensation. That opportunity will present itself with the removal of the statute of limitations, which this bill seeks to do. As I said, there is in-principle support for this legislation, and we want to get it right. I look forward to it progressing through Parliament.

I will just ask a couple of legitimate questions. Looking at Eoin Cameron's experience, and I never discussed it with him even though I had many long discussions with him, the issue is that I am not sure whether he was personally subject to sexual abuse, but there was clearly physical abuse of a most horrendous type. Indeed, physical and sexual abuse sometimes appear to go together. Maybe we should expand the legislation to cover not just sexual abuse, but physical abuse, and perhaps also psychological abuse. Going back to the essence of the story, when young children are put by their parents or society into the care of an institution, and a leader of that institution or a person condoned by the institution perpetrates either sexual violence or physical violence, it should not be tolerated in society. That is what this bill seeks to address, both by removing the statute of limitations and allowing us to peer through the various trust arrangements and other legal protection mechanisms so victims can get access to retribution, reconciliation and recompense from the agencies and institutions that perpetrated the abuse. As we well know, many of these institutions are religious in nature. They are the representatives of God and they perpetrate this abuse. In some cases, those institutions clearly protected the perpetrators from the courts and actions. Those institutional cover-ups should never have been allowed and they should not be able to be perpetrated in the future. They should be broken through to achieve recompense for the victims of the past. These are some of the most important institutions in society, one of which I have been involved in for decades.

This is a very important piece of legislation. It is one we will not see the end of, because I am sure the royal commission into the sexual abuse of children will come up with a whole range of recommendations requiring commonwealth and state laws, and we will follow through with those. This is the correct path. I guess in life we ask why things have taken so long, and the response would be that perhaps it is a failing of humanity sometimes not to see when there is a blatantly obvious need for action. Sometimes it is only certain crises, in this case the Katanning hostel, that bring the issue to the attention of everybody and then action is precipitated. I am confident that with the comprehensiveness of the royal commission, this bill, once passed, and others that will be precipitated by the findings of the royal commission, will be able to bring on more concerted action to stop this stuff from happening and to address the pain that has been inflicted on many people. I commend the bill.

**MR S.A. MILLMAN (Mount Lawley)** [4.54 pm]: It is with a great sense of pride that I stand to speak on the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017. It is incredibly humbling. As all members will be aware, prior to entering Parliament as the member for Mount Lawley, I practised as a lawyer and I practised extensively in the area of personal injuries matters in seeking compensation on behalf of people who suffered injury, loss and damage. The law firm I used to work at spent a lot of time in the 1990s pursuing the Catholic Church on behalf of hundreds of victims of child sexual abuse at locations such as Castledare, Bindoon and Clontarf. As I come to the end of the first year that I have spent in Parliament, it gives me a chance to look

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back and reflect. Often people said to me that I was mad and asked me why I would go into Parliament when I had this great job as a lawyer in which day after day I was acting for victims and representing people in their pursuit of justice. People asked why I was giving all of that away so I could go into Parliament and play this political game. It is legislation such as this that makes the hair on the back of my neck stand on end, because my answer to those people was, "Wait one moment. Parliament is the place that makes laws." Although on a day-to-day basis I might have been able to assist one person in his or her pursuit of justice, when a person can be part of a Parliament that passes legislation such as this that will enable justice for hundreds of people, I realise that I made the right decision in order to be able to participate in that process and in this debate. I say at the outset that to be standing here speaking about this legislation is incredibly humbling.

I thank the member for Riverton for his comments indicating the opposition's support for the bill. I also note with interest his comments about victims of physical abuse. One of the things that we saw in litigation involving the Catholic Church during the 1990s and in the Royal Commission into Institutional Responses to Child Sexual Abuse is that sexual, physical and emotional abuse often go hand in hand, so I was interested in the comments of the member for Riverton in that regard.

In my speech this afternoon I propose to do a few of things. Firstly, I want to talk about the importance of limitation periods in making sure that justice is served and the role they play in the legal system. Secondly, I want to talk about why this legislation is unique. Further, I would like to talk about the four things it seeks to do. The member for Armadale has already touched on these, as has the member for Riverton, but I want to explore why the bill seeks to do those things, the ways it will achieve those things and what the consequences for victims or plaintiffs will be as a result of those positive changes to the legal process that this bill will result in. I want to finish by passing on some comments from colleagues and friends of mine in the eastern states who have had some connection with the royal commission.

At the outset, it is a well-established principle in common law jurisdictions that statutes of limitations, or limitation periods, have an important role to play in the legal system. The effect of a statute of limitations is to encourage a plaintiff with a valid cause of action to pursue that cause of action diligently. It also provides justice between the parties, because if a stale claim is allowed to be litigated, the defendant may not have access to the necessary evidence to defend the claim. I set that up as a general context in which statute of limitation provisions operate. I do that so that members in the chamber can be aware of why the particular circumstances pertaining to child sex abuse claims put those claims into a separate category in which those legal principles, which underpin the limitation periods, do not have proper application. The other area in which we have had law reform on limitation period questions in the last two decades is with asbestos victims. Again, that was a unique provision in the Law Reform (Miscellaneous Provisions) Act amendments that were passed in 2003. Those amendments were passed not to remove the statute of limitations but to properly categorise them and clarify that if a person is a victim of an asbestos-related disease or asbestos exposure, their time for bringing a claim was counted from the moment they had knowledge that they suffered a disease. Even though there were latency periods of 20 to 40 years, once a person was diagnosed with having an asbestos-related disease, the statute of limitation period began to run. It was necessary to amend the statute of limitations for asbestos sufferers, because if we counted the time back to when they were exposed, the six-year limitation period would have well and truly passed.

The first thing that the bill seeks to do is lift the statute of limitations. Secondly, it provides for, in effect, the suing of unincorporated associations. At law, unincorporated associations do not have the necessary legal capacity in order to be respondents to legal proceedings. The example I would give is from the legal proceedings commenced against the Catholic Church in the 1990s on account of the victims of the Christian Brothers. Proceedings for those plaintiffs were brought to bring justice for victims in Western Australia. Because of the strict statute of limitations provisions that operated in Western Australia, which the member for Armadale has already alluded to, the lawyers brought those proceedings in Victoria and in New South Wales. The Victorian proceedings were unsuccessful because Justice Hayne, in the Victorian Supreme Court, said that it was inappropriate to bring proceedings for Western Australian victims in the Victorian court. Proceedings in New South Wales commenced and were allowed to proceed, notwithstanding that they were on behalf of Western Australian victims, but unfortunately the Catholic Archbishop of Perth made an application to be removed as a defendant. At the first instance, the judge, Justice Levine, refused that application. The solicitors for the archbishop appealed and it was successful, so the archbishop could not be a defendant in those proceedings. The solicitors for the plaintiffs sought special leave from the High Court to appeal to the High Court and that special leave was refused. By virtue of that decision, the legal principle that an unincorporated association cannot be defended in legal proceedings was maintained and in the explanatory memorandum to the bill, members will see the reference to the Ellis defence, the decision of the Court of Appeal in New South Wales in the trustees of the Roman Catholic Church against Ellis, whereby that legal doctrine was upheld. However, the bill provides that rather than having to sue the unincorporated association, a plaintiff in these sorts of proceedings can proceed against the office holder. That is the first thing.

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Secondly, it places the office holder today in the position of the office holder at the time that the act was committed. For example, if it was the archbishop of the Roman Catholic Archdiocese of Perth who was the office holder in 1980 when the offence was committed, then the proper office holder who can be a defendant to those proceedings is the archbishop of the Roman Catholic Archdiocese of Perth. That problem was identified by the New South Wales Supreme Court and the High Court in the 1990s, and it was identified by the Court of Appeal in the New South Wales Supreme Court in *Ellis* in 2007. That is the second nuisance that this bill responds to.

The third legal problem is that even if a person were to sue the archbishop of the Roman Catholic Archdiocese of Perth, what assets are available to that office holder? Again, in a masterful stroke of legal drafting, the bill allows for the office holder, in consultation with trustees who are related parties, to call upon the property held in trust, notwithstanding that the trust deed may have particularly narrowed provisions that allow for the dispensation of property only in particular circumstances. The exemption that is allowed for means that the available trust money can then be applied in the settlement of damages claims. That is the third legal problem that the bill addresses.

The fourth issue the bill addresses, which is again a testament to the drafters of the legislation, is that it provides an opportunity to, notwithstanding the historical nature of the claims made, trace back through organisations. As the member for Riverton just said, a lot of the organisations and a lot of the defendants in these proceedings are likely to be religious organisations. The information that I have from Victoria and New South Wales is about similar provisions. For example, today in Western Australia we have the Uniting Church in Australia. The Uniting Church was formed by the amalgamation of the Methodist congregation, the Presbyterian congregation and the Congregationalists. In Victoria, the moderator of the Uniting Church has accepted that they will be the office holder who will respond to claims brought against any of those preceding organisations. Members can see that notwithstanding that it might have been the Methodist church or the Presbyterian church that was responsible for committing the act historically, there is a person, an office holder, who can be the party to the legal proceedings. That framework is excellent. It is a brilliant piece of legislative drafting that creates the entirely appropriate context in which the people who ought to have been responsible for discharging their duty of care to these children can now take their proper place as defendants in proceedings whereby these children will be able to seek access to justice.

The reason it is so important is that it comes back to the very point that we started; that is, what is the unique particular characteristic of victims of child sexual abuse that allows for the lifting of the limitations period and people to access justice in these circumstances? If we look at all the material that has come through from the Royal Commission into Institutional Responses to Child Sexual Abuse and all the evidence that has been presented about the way in which child sexual abuse is reported, there is a significant period that passes whilst people come to terms with the incredible trauma that has been inflicted upon them. If the ordinary set of circumstances was allowed to persist in respect of the limitation period, none of these victims would have the opportunity to pursue claims against the wrongdoers. This legislation marks a departure from a well-established and, in my view, appropriate legal principle that we have limitation periods, but it does so in circumstances whereby that departure is entirely justified by the particular circumstances. It is for other people, much more versed in the psychological and emotional effects, to go through that.

I do not propose to go through in chapter and verse some of the incredibly distressing stories that have come out from the royal commission. I commend to people who are interested in the Western Australian circumstances a report from the Royal Commission into Institutional Responses to Child Sexual Abuse titled "Report of Case Study No. 11", published in December 2014. The subtitle of the report is, "Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School".

For members who are interested in the legal battles that were fought by the plaintiffs against the Christian Brothers in the 1990s, I strongly commend the book *In the Shadow of the Cross: The Story of VOICES* by Bruce Blyth. The foreword of the book is by Hayden Stephens, a solicitor at the law firm that acted on behalf of the Christian Brothers victims. I also recommended the book *That disreputable firm ... the inside story of Slater & Gordon*, in particular chapter 14, "Taming the sexual tiger". That will provide members with an opportunity to see the many complicated and intractable legal problems that existed for these victims of child sexual abuse as they endeavoured to seek justice and compensation. I join with the Attorney General in placing on the record my personal gratitude to the Solicitor-General, the Department of the Attorney General and the Parliamentary Counsel's Office for the work that has gone into drafting this legislation.

I have a note from Prue Gregory, the principal lawyer at knowmore, who are the solicitors assisting the royal commission. Ms Gregory asked me to pass on her thanks to the Attorney General for introducing this legislation. She says the following in her note —

This is a really good piece of legislation.

...

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Division 2 is a stand-out—there are so many clients who will benefit from the provisions in this division.

...

I am particularly pleased with the treatment of prior compensation payments in Division 3.

[Member's time extended.]

**Mr S.A. MILLMAN:** I am reminded by the memo from Ms Gregory that a consequence of the unsuccessful prosecution of cases against the Christian Brothers in the 1990s was that a lot of claims were settled for paltry and meagre sums of compensation, sometimes as little as \$2 000. Other cases were statute-barred by virtue of the operation of the statute of limitations. Those cases were settled without proper contemplation of what a plaintiff might ordinarily be entitled to, consistent with the principles of the law of negligence and damages, and consistent with putting the plaintiff back into the position in which he or she would have been had it not been for the wrongful act that had been committed.

Another provision of this bill that deserves comment and for which the Attorney General deserves to be congratulated is that this legislation will not preclude a person who has received a compensation payment from pursuing a further claim. Obviously, the principle against double recovery will apply. That means that whatever compensation a person may have received in the past through a redress scheme or settlement negotiations will be taken into account, but that will not act as a barrier to the person commencing and prosecuting further proceedings.

I want to make one last comment about how I expect this bill will operate. This is particularly pertinent for plaintiffs who are giving consideration to instituting and prosecuting proceedings. I can say from my experience—as a practitioner with, as I have said, no psychological or emotional training—that one of the most difficult things about these types of legal proceedings is that they are often extremely distressing. I have spoken to a number of practitioners in light of the introduction of this legislation, and I have received the almost universal response that they will endeavour to adopt a sensible and pragmatic approach to bringing these claims forward and negotiating settlements of compensation before the matter proceeds to trial. To my mind, it is a testament to the character of the participants in the litigation that they will apply their experience to ensuring that the smallest amount of distress as is possible is occasioned, and that resolution is reached as economically, as efficiently and as quickly as possible. I am optimistic that the legal profession will acquit itself well in this very unique set of circumstances.

With those comments, I will return to the point at which I started. I am incredibly proud to have the opportunity to stand in this place and endorse this legislation, and I hope it will have a speedy passage through this Parliament.

**MS C.M. ROWE (Belmont)** [5.16 pm]: I rise to contribute to the second reading debate on the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017. I wish to start by acknowledging the hard work and dedication of the Attorney General. The Attorney General has been a tireless advocate for social justice throughout his entire working life, and more broadly an advocate for righting the many wrongs of the past. I also wish to congratulate the Premier on bringing this very important legislation before the Parliament. I hope this bill will go some way towards helping those victims whose lives have been totally shattered and ripped apart by child sexual abuse to find some peace or at least a path towards peace.

The purpose of this bill is to help implement the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. This inquiry has been far-reaching and wideranging and has been taking evidence from across the entire country over the last few years. The royal commission was established to uncover systems within institutions that failed to protect children. The findings have been nothing short of horrific. I refer to an article on [www.news.com.au](http://www.news.com.au) of 6 February this year titled “Catholic authorities reveal 4,444 people allege they were victims of child sexual abuse at hands of church”. The article reveals some truly shocking statistics that have come to light through the findings of the royal commission. According to the article, over the last 35 years in the Catholic Church alone, there were over 4 400 reports of child abuse, and the average age of the victims was 11.6 years for boys and 10.5 years for girls. Since 1960, 1 265 Catholic priests and religious brothers have been accused of child abuse.

Needless to say, we have failed to protect thousands of children across this country against the most vile and monstrous perpetrators. This should never have happened. It is important that we take this opportunity to publicly acknowledge that we have failed these victims and say sorry for the wrongs of the past. The interim report of the royal commission recommends that all state and territory governments legislate to remove any limitation periods that apply to claims for damages. This is due to the nature of the injuries inflicted on the survivors. They feel a great and deep sense of shame. They are often unable to come forward for many, many years—in fact, decades. The royal commission found that the average time taken to disclose abuse was 22 years. Currently, the statute of

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limitations in Western Australia is six years. New South Wales, Victoria, Queensland and the Northern Territory have already moved to abolish these limitations.

The royal commission has heard over 5 000 personal stories. I would like to share one of those stories with the Parliament today. Some of these stories are very harrowing, but it is important that we hear these stories, particularly in this place. They tell stories of systemic denial, disgraceful cover-ups and the prioritisation of reputation over the protection of children. As a mother of two young children, reading these stories whilst preparing for this speech today was deeply upsetting on a personal level. In fact, it was more than upsetting; it was sickening, and it really broke my heart to read what happened to these victims and, of course, their families. I would like to share the story of a man named Scott—his full name was not disclosed—as told to the royal commission and as published on its website. I quote —

When Scott was growing up in Western Australia, it was common for children from country areas to board in towns at state-run hostels, adjacent to the schools. Harold Fletcher was warden at the hostel where Scott was accommodated and over three decades, sexually abused many boys and girls, including 12 year old Scott.

Scott told the Commissioner that Fletcher's brother and sister-in-law also worked at the hostel, and as a former Citizen of the Year, Fletcher was held in high regard by the community.

To quote Scott directly —

'He controlled the town, he was that powerful. To anyone over 20, he probably looked like the nicest man in the world. There was no-one to tell about the abuse, and they wouldn't have believed you if you did.'

Within a few weeks of Scott's arrival in 1978, the hostel residents went on a camping trip. Fletcher shared a tent with Scott and during the night started fondling him.

He told the commission —

'I didn't know what to do. I already knew that to be accepted, you didn't make waves. If you did, you'd get isolated, and then you were gone.' Over the next year, Fletcher regularly came to Scott's bed at night and tapped him on the foot.

Then he stated —

'That meant you had to go to his room, and that's where he'd rape you. I couldn't go to school one day, because of what he'd done the night before. He said, "Your brother's coming soon, isn't he?" I felt so terrible that I couldn't protect my brother.'

Scott told the Commissioner that Fletcher abused many boys in his dormitory, though none of them ever spoke about it. He said Fletcher stopped abusing him after about two years. 'Once you were a bit older, you didn't get the tap on the foot anymore. He'd move on to the younger ones.'

In 2011, Scott learned that charges of child sexual assault had been brought against Fletcher by several past residents of the hostel.

He recalled this moment to the commission very clearly —

'I was listening to the radio at work and when I heard it, I broke down. I thought I've got to fix this. It was eating me away, but I had kids and was paying a mortgage and working, and there was so much going on that I'd never had time to think about it.' Scott called the lawyer involved in the case and disclosed that he'd also been abused. More victims came forward and in 2013, Fletcher's existing jail sentence was extended to a total of 22 years. ...

...

Scott's wife told him that learning about the abuse made clear to her a lot of his past behaviour. He'd never felt comfortable touching or hugging his children and was still hesitant about showing affection to his grandson. ...

In 2012, the Western Australian Government announced a limited redress scheme for people who had been abused as children in hostels. Scott applied for and was awarded the maximum compensation amount of \$45,000.

I listened to all the stories on the website of the royal commission and found it really hard to stomach and to listen to all of them in their entirety. They are absolutely harrowing. Scott's case is just one example of many of how

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this abuse ruins lives, beyond repair in many instances. This abuse was not limited to only state-run hostels; it was endemic across church care as well.

The eleventh case study examined by the royal commission was the Congregation of Christian Brothers in Western Australia's response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage in Clontarf, St Mary's Agricultural School in Tardun and Bindoon Farm School. In taking these children into care, the Christian Brothers, a Catholic organisation, was obligated to provide care and to educate the children. This obligation was not fulfilled, with many students receiving little to no education and put to physical labour. In addition, 11 men came forward to report sexual abuse against 16 named brothers. The abuse involved being observed while showering, as well as being abused in the dormitory rooms and the rooms of the brothers. They also spoke of sexual abuse being committed by other boys. This sexual abuse was combined with intense emotional, psychological and physical abuse committed by some of the brothers. Most of the boys did not report the sexual abuse; and, if they did, they often received a belting.

The relevant Christian Brothers provincial council knew of the allegations of sexual abuse against some of the brothers in the Christian Brothers institutions around Australia. In each instance, allegations of child sexual abuse were raised against brothers who had also been the subject of earlier allegations. Although correspondence reveals that they knew the damage that sexual abuse could do to children, they viewed engaging in abuse as simply a moral lapse or a weakness. Despite this, at least one brother was transferred to another institution, where he continued to have contact with children after being the subject of an allegation involving children.

The Christian Brothers issued a full apology to former residents in 1993 and took a number of steps to redress the situation. In mid-1993, Slater and Gordon began to research and consider the causes of action for damages it might pursue on behalf of the men. It became apparent early in the research that the Limitation Act 1935 would likely prevent the men from bringing their claims in WA. The Limitation Act required that a claim for damages must be brought within six years of the date of the tort, and in these cases that meant within six years of the abuse. At the time Slater and Gordon received instructions, the men were already decades outside the limitation period for bringing a claim. Criminal proceedings were often not possible, with the then Director of Public Prosecutions deciding not to prosecute the named brothers as, due to legal reasons, they were not able to combine several charges with different complainants into a single case, and there being essentially no confirmatory or corroboratory evidence, this would have made convictions significantly less likely.

Nationally, according to the royal commission, over 775 allegations were made against the Christian Brothers, with 196 allegations related to abuse at the four institutions I have just mentioned. The 196 allegations were made by 101 complainants, with 96 complainants receiving a monetary settlement. The total amount paid in compensation in response to those allegations was over \$3 million, with an average settlement payment of around \$36 000 per complainant.

It is simply disgraceful that this abuse went on for so long, especially with extremely vulnerable children in the care of the state or the church. The Australian Institute of Family Studies, which is a federal government body, published a paper in 2013 that found strong links between child sexual abuse and the onset of depression, alcohol and substance abuse, as well as an increased risk of re-victimisation. The AIFS research stipulates, and I quote —

... evidence now clearly demonstrates the link between child sexual abuse and a spectrum of adverse mental health, social, sexual, interpersonal and behavioural as well as physical health consequences.

In women, child sexual abuse is linked to a higher chance of eating disorders; and, in men, it is linked to anxiety-related disorders. This research by the AIFS links child sexual abuse with personality, and psychotic and schizophrenic disorders. The same research also found a heightened risk of suicidal ideation and, in fact, suicide.

This bill is just one piece of the puzzle for ending child abuse, but it is an important one. This bill cannot and will not change the past for many of these survivors, but it is crucial in allowing them to seek redress. Abolishing the limitation period for child sexual abuse provides survivors a chance to seek some justice through the courts. The royal commission found that without the removal of these time frames, victims who often do not report their abuse for decades, as mentioned, well after the time frame has expired, would be robbed of their opportunity to have their claims addressed and determined by courts on their merits. This legislation is rectifying that injustice.

The victims of child sexual abuse carry the scars of their trauma throughout their lives. I cannot begin to imagine the hurt, despair and anger they have gone through in their lives. I wish to offer my sincere sympathy for what they have endured. It is horrific and I am so sorry they have had to experience such trauma. I truly hope that this bill can begin to heal some of the pain of the past for victims.

I wish to commend this bill to the house.

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**MR P.J. RUNDLE (Roe)** [5.30 pm]: I am the lead speaker for the National Party and I rise to make a relatively brief contribution to the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017, which is very important to our party. Can I firstly acknowledge all the child sex abuse survivors, and I would like to make special mention of Kirsty Pratt who is here in the Speaker's gallery today. Kirsty has been a great advocate for all the victims and I really admire her determination to turn up here every day. I have no doubt that she has harassed the Attorney General on many occasions. I think it is a real credit to her that she is here every day and she has decided to see this legislation through. I really want to acknowledge Kirsty. I would also like to mention some of Kirsty's family members and other people who were here last week when the Attorney General introduced the legislation: Jodie Greasley, Janelle Shand, Louise Oversby and also some family members in Jillian and Kim Beale; Di Darlow; Tricia and John McPharlin; Tony Pratt, Kirsty's husband; Oaklee Greasley; and Peter Gersmanis. I think it was great that all those family members were here last week to support Kirsty when the legislation was introduced.

Firstly, I would like to point out why this legislation is so important to me. Being the member for Roe, I think it probably affects my electorate almost more than any other electorate. I would like to share a couple of experiences I have had over the last year or two and tell members why this legislation is so important to me. My first experience was of the constituents of both Esperance and Katanning who had such a big effect on me. Last year while I was campaigning for the seat of Roe, I was at the Esperance show and our Leader of the National Party, the member for Central Wheatbelt was there. We were introduced to Jillian Beale, whose family members were abused, which really demonstrated to me how she was hurting and how her family was hurting. Even though I was only a candidate at the time, it really brought home how much the legislation means to those families.

At this point, I would like to mention my predecessor, Graham Jacobs, the member for Eyre. Graham was a great advocate for his community in Esperance. He brought on a private member's bill that really triggered this legislation in a lot of ways. At the time when we were at the Esperance show, Parliament was in the throes of discussing his private member's bill. Obviously, as I think we are all well aware, it was not progressing that well. To see Jillian's passion when she came up to me really demonstrated how important the legislation was. I took it upon myself that if I did happen to be successful in running for the seat of Roe, as it is now, I would certainly try to do what I could to help pass this legislation. Harassing the Attorney General and the Premier the other week with questions on the length of time it has taken to bring this legislation on was an important part of that because the victims have been waiting. The previous government's promises to bring this legislation in were certainly front and centre in the victims' minds, so I felt it incumbent on me to ask those questions. I am very pleased that the Attorney General has brought on this legislation. Also in relation to the Esperance community, the history of the Condingup Primary School also had such a big effect on so many people.

Likewise, when I was at the Katanning show, which happened to be I think two weeks after the Esperance show, Parliament was also in the throes of debating legislation brought on by Graham Jacobs. I received a substantial amount of grief from people who survived abuse at St Andrews Hostel in Katanning. Although I expressed to them at the time that I was a candidate and not in Parliament, it demonstrated to me how important the legislation was to them. It reiterated to me that if I was successful, I would do something about it. The likes of Roy Addis, Joan Jolly, Mick Hilder and Todd Jefferis were victims of abuse at St Andrews Hostel where Dennis McKenna was the hostel warden in the mid to late 1970s. I attended Katanning High School at that time and many of the borders who were coming in from the outlying regions had been at the hostel and had unfortunately been subjected to his abuse. It is quite ironic, in a lot of ways, how these things can be hidden. Dennis McKenna was awarded citizen of the year in Katanning. That shows how the general community may not know what is going on. The grief we saw from the community shows how, even now, we are looking at what we are going to do with the hostel's premises, which I know the member for Cottesloe is well aware of. The hostel is a good facility but there are memories of what happened in the late 1970s. It is really hard to reconcile whether we will ever find another use for it.

I wanted to explain a little bit of that background information about why this legislation is so important to me. For me, Todd Jefferis' quote says it all. Todd was one of the victims of abuse from St Andrews Hostel. Todd said that enabling a wronged and powerless person access to a process for redress is a small thing that the government can do for survivors. This legislation leads into that.

Andrew Murray is one of the royal commissioners. I regard him as a good friend. I was on the Western Australian Regional Development Trust with him until he was called away to be on the Royal Commission into Institutional Responses to Child Sexual Abuse. I have spoken to Andrew a couple of times about the legislation. The royal commission has been a guiding light for all states with its potential legislation and for looking at some of the things that can be done. The royal commission found that 22 years is the average time for people to disclose sexual abuse. That is a very important finding. The amendment to the Limitation Act 2005 will remove the limitation periods for prospective and retrospective sexual abuse litigation. That is a very important point. All members know that

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many of the victims are young, and removing the statute of limitation time frame will give them the opportunity to have a think about it and perhaps come to terms with it. Obviously, not everyone will come to terms with it, but it provides them with the opportunity to commence an action many years down the track. The royal commission really has led very well in its finding about the 22 years.

The amendment of the Civil Liability Act 2002 will provide the legal basis for victims to sue institutions in the name of their current office holders, and enable the use of assets to discharge of any child sexual abuse liability. I think that is just as important as the amendment of the limitations legislation because it will enable a link to be created and clarity provided on defendants. No doubt one of the biggest problems with previous legislation is that if something happened in the late 1970s, as it did in Katanning, there may be no-one left to defend the claim and the current office holders or office bearers of the institution or the church or whoever it may be have been able to wash their hands of the situation. I think this legislation will provide that important link. As important will be the ability to claim against an individual or the institution; I believe that will provide flexibility.

Another part of the bill contains detailed directives to determine the proper defendant. That probably flows from the previous point. When I have seen coverage of this issue on TV and through other media over the last few years, I have noticed that we have not really been able to identify the correct defendant. I am pleased to see that is a part of this legislation. The bill will also allow courts to consider ex gratia payments or compensation payments made by non-government organisations when determining the damages payable. There will now be flexibility. There have been previous redress schemes and so forth, and this legislation will allow the courts to take those into account. That is important.

Another provision in the bill is the cap on legal fees. I congratulate the Attorney General for including that as part of the legislation. We do not want specialist lawyers coming up with exorbitant fees. Two or three legal firms have been quite active in this space, and one of the lawyers flew across from Sydney last week when the Attorney General introduced the legislation. That demonstrated to me how important it was to that firm and that lawyer, and I think that is key for the victims this legislation is designed to help.

To summarise, we all recognise how important this legislation is. I certainly do, and it is such an important issue in my electorate. I look forward, hopefully in the not-too-distant future, to providing a good result for the victims in the electorate of Roe and the wider state. In summary, the time frame is the most important thing, followed very closely by the link that it provides, following on from the recommendations of the royal commission. The royal commission is ongoing, but a lot of its recommendations have been incorporated into this legislation. The member for Armadale said that under the statute, the ability to commence litigation outside the limitation period is non-existent; he was exactly right. There is absolutely no ability. This legislation is very important, and the Nationals support it and the victims in our electorates. We look forward to the legislation going through.

**MRS J.M.C. STOJKOVSKI (Kingsley)** [5.46 pm]: I rise today to contribute to the debate on the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017. My learned colleague the member for Roe stated that the average time for the disclosure of child sexual abuse is approximately 22 years. This bill will lift the statute of limitations for the bringing of child sex abuse court actions. That lifting of the statute acknowledges that trauma suffered by victims of child sex abuse is very different from trauma suffered by most other victims of crime. The legislation acknowledges that it may take a long time for victims to process what has happened to them, and to then disclose. There may be many reasons why a child may not disclose sexual abuse at the time of, or shortly after, the crime. Shame, terror, confusion and self-blame are some that immediately spring to mind. Disclosures made to public officials have also sometimes been ignored, particularly in the St Andrews Hostel case. Disclosures were ignored or the victims were not believed, and in some instances they were actively rejected. Threats of legal proceedings for defamation often occurred, and in some instances, including those at St Andrews Hostel, expulsion from the hostel could have effectively ended schooling for the students if they had nowhere else to go, and that was used as a measure to keep victims in line.

As to lifting the statute of limitations and time span of disclosure, feelings of shame and guilt are often fostered by the perpetrator to create a mindset of the children believing they are responsible for the abuse or that they have in some way encouraged or wanted the abuse to occur. That makes it very difficult for any child to process what has happened to them and disclose it to a person who will help them. Some victims may feel obliged to remain silent out of family loyalty if the perpetrator is a family member. Some victims might not be able to comprehend what has happened to them or have the emotional maturity to vocalise their experiences. For many, the fear of not being believed would also be a significant factor in their decision to disclose. During the inquiry into St Andrews Hostel and other institutional responses conducted by Peter Blaxell in 2011–12, many victims disclosed for the first time. Although their abuse had been suffered in the late 1970s and 1980s, it was not until 2011 and 2012 that they felt confident enough to disclose what had happened to them. The Blaxell report identified that many former students made their disclosures for the first time during the inquiry, that it was the first time they had spoken about

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their experiences since leaving the hostel, and that some of them had not even discussed these matters with their closest family members. The inquiry was concerned about victims who made disclosures, so it employed Crisis Care to provide support. The report stated —

Crisis Care has provided this high level of support throughout the Inquiry, and it has been of great assistance to many of the witnesses. Crisis Care has always remained independent of the Inquiry and has not disclosed any confidential information to Inquiry staff without permission from the relevant witness. However the evidence generally as well as the feedback received from Crisis Care does indicate that many former victims of sexual abuse continue to experience:

- feelings of anger, fear, depression and anxiety
- difficulty in relationship development and nurturing because of betrayed trust issues
- confusion of sexual relationships and sexual identity
- addictive and compulsive behaviour
- guilt and self-blame
- feelings of isolation and dissociation.

All these feelings, which most adults would have difficulty processing, were inflicted upon the young victims of child sexual abuse. This legislation not only recognises the requirement for a change to the statute of limitations, but also provides mechanisms for victims to make claims and receive payments. I can think of nothing worse than a child or an adult who has suffered child sexual abuse making a disclosure and attempting to make a claim against the perpetrator only to find that they are not able to do so because of a legal technicality or that they are not able to claim compensation because the person responsible is not able to access assets to pay compensation. In the past, if an institute was no longer in existence or was very different from its previous form, there was no way to make a claim against it. Also, if the head of a non-incorporated institute had changed, legal proceedings could not be brought against that institute. It is my understanding that legal proceedings need to be brought against a person or an incorporated body. Therefore, if the head of a non-incorporated body had changed, there was no way for a victim to bring proceedings against it because it could not be named specifically. This legislation seeks to amend that and to give victims the opportunity to make a claim against an institution even if the head of that institution has changed. The current head of the institution would be named as the person being claimed against. The continuity of mechanisms for the legal proceedings provided by this legislation will give further support to these victims. As I said, there would be nothing worse than a person making a disclosure and finding out that they cannot make a claim against the institute that was involved in the abuse. The ability to access assets held by or for an institute is also very important, as it provides reassurance to victims that if they are found to require compensation, these institutions can access assets to provide compensation.

Finally, an important part of the bill that I will highlight is that victims who settled for smaller amounts in the past can investigate the possibility of reopening proceedings if those smaller settlement amounts were taken because of the statute of limitations in existence at the time. This is really important because there may be many victims who settled because they felt that they had to and that they had no other choice. This legislation will give them the option of investigating whether their situation can be dealt with under this new legislation. I think it is a very important piece of legislation. As somebody who has been part of foster families for many years, I have seen the impact of abuse—sexual, physical and emotional abuse—on children who are in state care or who have been put into the foster care system. Those experiences have affected children for their entire lives. If they were not too traumatic, sometimes they have been able to use those experiences to change how they proceeded with their lives, but sometimes they have not been able to escape what has happened to them. I know that this is not something that is exclusive to the foster siblings I have had over the years. It is something that can be seen across the board. I think that this is a very important step. My understanding is that it is just the first step. I know that the royal commission report will be handed down mid-next month and that it will be very important in informing any future steps that we take to ensure that these vulnerable children—whether they are still children or are now adults—can be supported by our system and can see the appropriate and proper compensation for the traumas they experienced as children.

**MRS L.M. O'MALLEY (Bicton)** [5.56 pm]: It is fitting that I rise to speak on the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017 wearing the colour orange. Along with many of my parliamentary colleagues, I wore orange today in recognition of the 16 Days in WA to Stop Violence Against Women campaign. It is acknowledged that violence includes physical, psychological, economic, emotional, spiritual and sexual abuse. It is a fundamental violation of human rights. Violence in all its forms is abhorrent and the perpetration of violence against another is completely unacceptable. When that violence is of a sexual nature

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and committed against a child by a person who is in a position of trust, it is an act of such great depravity that I cannot possibly state or give adequate description to it in language that is suitable to this place. Child sexual abuse is not easy to discuss, let alone to develop appropriate legislation for—that is, legislation that does justice to the enormity of the issue. I acknowledge the efforts of the Attorney General and everyone involved in the preparation of this bill. In particular, I thank the Attorney General for the compassionate manner in which he has approached his task. He has ensured that the people who will be most affected by this legislation, the victims of child sexual abuse, were always uppermost in his mind. The image of the Attorney General walking hand-in-hand with one of those who had suffered sexual abuse as a child is a perfect illustration of the compassionate manner in which he approached his task. I extend my personal gratitude and admiration to him. I take this opportunity to acknowledge the tenacity and commitment of the many survivors of historical child sexual abuse who have campaigned continuously to have this legislation brought to this house, such as Kirsty Pratt and many others who have campaigned tirelessly and with single-minded purpose. They have been here in the gallery day after day and are there now as we debate this historic legislation. I greatly admire their ability to overcome the devastating experience of childhood sexual abuse to seek a long overdue opportunity for justice. Nothing will return their lost innocence, remove the memories of pain and violation, or return the many lost years that followed the abuse for far too many. I cannot know what life is like for those who suffered childhood sexual abuse and all the ways that the evil acts done to them in the past have impacted them throughout their lives. I hope that with the passing of this bill, the future for the survivors will be a more positive and hopeful one.

The sexual abuse of children is a crime of unimaginable horror for everyone who has not experienced it. For those who have, the fact that those crimes may have happened many years ago should not be a barrier to being able to seek justice and compensation in our civil courts. The Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017 seeks to remedy this. It is the first stage of legislative reform in Western Australia in response to recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse in its “Redress and civil litigation” report, which was tabled in the commonwealth Parliament on 14 September 2015. The two parts of the bill to be dealt with in this debate and the subsequent passing of this legislation are part 2, which deals with amendments to the Civil Liability Act 2002, and part 3, which deals with amendments to the Limitations Act 2005. It is noted that the bill contains the first set of amendments in this state that focus on historical child sexual abuse. The royal commission has made many other recommendations in areas of both civil and criminal law and the McGowan government will continue to consider all these recommendations.

*Sitting suspended from 6.00 to 7.00 pm*

**Mrs L.M. O'MALLEY:** The Royal Commission into Institutional Responses to Child Sexual Abuse made many other recommendations in areas of civil and criminal law. The McGowan government will continue to consider all these recommendations and, where required, further tranches of legislation will be introduced. The amendments to the Civil Liability Act 2002 under part 2 of the bill provide a legal basis for commencing actions against institutions in the name of their current office holders for historic child sexual abuse. It can be very difficult to identify a proper defendant when decades may have passed between the historic childhood sexual abuse being committed and a victim being ready to seek justice for those crimes. Provisions within these amendments enable that identification to occur. This is particularly important when there is a lack of perpetual succession in unincorporated institutions. These difficulties were highlighted by the royal commission as creating impediments to justice for child sexual abuse survivors. Part 2 of the bill will ensure that liable institutions meet their liabilities to survivors of child sexual abuse. There will be provisions for responsible parties, such as institutions, trustees and office holders, to use assets held by liable institutions to pay compensation. The bill goes further to ensure that in the event that a person has already received compensation from a child sexual abuse action, there will be provision for a court to take this into account to avoid double compensation.

The Royal Commission into Institutional Responses to Child Sexual Abuse found that the average time for a victim to disclose child sexual abuse was 22 years. Part 3 of the bill deals with the amendments to the Limitation Act 2005 to remove the limitation periods for all child sexual abuse actions, both retrospectively and prospectively. The royal commission found that it typically takes many years for survivors of child sexual abuse to report their abuse and seek justice. Without the removal of the limitation period, many survivors of child sexual abuse would be unable to seek justice or compensation.

In closing, I would like to give some human context to the issue of historical childhood sexual abuse and its lifelong impacts. I have heard many stories of abuse at the hands of a parent, sibling, relative, trusted family friend, teacher, coach or other influential and known adult, but there is one story that stands out more than any other. A good friend of mine survived historical sexual abuse at the hands of one of the most trusted and influential people in his life—his father. The secrecy of the abuse was to such an extent that it was not until much later in life that he discovered that other siblings had also suffered the same abuse. Far from being destroyed by his experience, he

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has achieved much in his life and has given many years to the service of others. In later life, he found a way to deal with the damage done to him—through painting. I attended one of his exhibitions a few years ago and there was one painting that affected me deeply and which I can still see clearly today. He had painted a shadowy and indistinct image of a man lying behind a small child. It was not graphic; the intent was simply suggested. What struck me was the image of a third person in the painting; it was of a woman looking out the window with her back to the two figures on the bed. The woman was looking the other way. With this bill, we are looking ahead with a steady gaze to enabling legislation that will provide access to justice and compensation to the survivors of historical sexual abuse. It is a good thing that we do here today and it is important that we take a moment to acknowledge that. The passing of the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017 will remove many of the impediments to justice for the survivors of historical child sexual abuse. I thank the Attorney General for this historic piece of legislation and I commend it to the house.

**MRS L.M. HARVEY (Scarborough — Deputy Leader of the Opposition)** [7.05 pm]: I, too, rise to support the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017. As members have heard, there is no doubt that the existing limitation periods are a significant and sometimes insurmountable barrier to victims of child sexual abuse seeking a civil remedy or pursuing civil litigation. The existing limitation periods in WA are inappropriately short for claims because of the unique nature of the impact of abuse on children. As many members have said, victims often do not find themselves in a position to disclose abuse until many years after the crimes occurred. I am pleased that the government has brought this legislation forward. I also appreciate the government's consideration of the position the opposition finds itself in today, with our lead speaker unfortunately too unwell to attend Parliament this week. The opposition acknowledges that this legislation is complex. Indeed, it was a legislative amendment that we were trying to work our way through at the end of last year. I am very pleased to rise and support the bill today. I hope the member for Hillarys will recover to good health in the near future and I look forward to his presentations and contributions to Parliament when we resume for the autumn session.

When looking into this issue in the final months of our government, I was privileged to chair a committee and to meet with many victims, advocates and various representatives from institutions, government, the school sector, various religious institutions and other institutions that had responsibility for the care and wellbeing of our state's children. From our committee deliberations we determined that it would be beneficial to include in the remit of the legislation victims of serious physical abuse and other abuse perpetrated in connection with sexual or physical abuse against a child. I am interested to know from the Attorney General in his response to the second reading debate why the government chose to deviate from the definition of "child abuse" in the New South Wales legislation. Section 6A of the New South Wales Limitation Act 1969 defines "child abuse" as —

... any of the following perpetrated against a person when the person is under 18 years of age:

- (a) sexual abuse,
- (b) serious physical abuse,
- (c) any other abuse ("**connected abuse**") perpetrated in connection with sexual abuse or serious physical abuse of the person (whether or not the connected abuse was perpetrated by the person who perpetrated the sexual abuse or serious physical abuse).

That comprehensive definition of child abuse actions allows for those individuals who have suffered other forms of child abuse to also seek a civil remedy under legislation. No-one in this chamber would argue that victims of child sexual abuse suffer immeasurably over many years. For some, the scars of the abuse render them incapable of forming loving relationships with their partners and children. Many suffer from substance abuse. Many have ongoing mental health issues. Many suffer as a result of absences from school or, indeed, because the trauma they have suffered renders them incapable of concentrating or learning in an environment in which they may have experienced horrific criminal acts being perpetrated against them. Many find it difficult to find fulfilling and successful careers. Although many victims gone to have very successful lives and to form meaningful relationships, there is no doubt that the lives of some have been catastrophically altered and their outcomes catastrophically adjusted as a result of their victimisation as children. However, in the committee deliberations, I found out that these effects are also felt by many victims of serious physical abuse. Indeed, I was not aware until meeting some of these victims during that committee deliberation process of the ongoing health issues and consequences suffered by victims of serious physical abuse, many of whom spent their childhood malnourished and were often subject to brutal beatings and hard labour. I heard of adults with serious arthritis and other ailments directly linked to malnourishment as a child and the direct result of beatings they had received as children when medical attention was not sought and bones were not healed properly. The commitment we arrived at was to ensure that victims of serious physical abuse could also be included. I hope over the summer recess the Attorney General may consider refining the definition to include these victims as well.

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I believe that victims of child sexual abuse from within family settings will now have the ability to use this legislation to seek a civil remedy against the family or household member who was the perpetrator of abuse. Given that most child sexual abuse crimes are committed in households by family members, this is certainly going to be of benefit to those many victims of child sex abuse and domestic violence scenarios. However, as I mentioned earlier, victims of serious physical abuse or neglect will not be afforded that same opportunity. We all know that domestic violence extends across every demographic, with some perpetrators likely to have significant wealth. Extending the definition to include serious physical abuse such as the case in New South Wales will ensure some civil remedy for those victims as well.

The Parliamentary Counsel's Office has done a thorough job in navigating the very complex area of ensuring that an institution can be identified as a proper defendant. This is a very complex area of law, and, indeed, it is somewhat fair to say that some institutions have deliberately restructured themselves in the past in an attempt to avoid being held accountable through civil actions such as those that will be possible once this legislation passes.

I am also pleased that the government has ensured through clause 7 that the Crown Suits Act 1947 is also included to ensure that children who were offended against in government-run institutions will no longer be statute barred from that legislation and will be able to seek a civil remedy from the state government for actions suffered while in the custody or care of the state, be that in a school, hostel or foster care arrangement.

One area in which the legislation is silent is in its intersection with the Criminal Injuries Compensation Act 2003. Section 21 of that act provides that the criminal injuries compensation assessor may require an applicant to explore other available remedies if the applicant has reasonable grounds for taking proceedings independently of the CIC act for damages, insurance payments or to obtain compensation. Although this may sound like a curious issue to raise, in the stories I heard from many victims during that committee process many of them felt that although some of them had received compensation through the criminal injuries compensation process, that it would be unlikely that they would have the emotional support or strength, or indeed the support structures around them, to pursue a civil litigation claim. However, many said that they had benefited from a criminal injuries compensation claim by accessing professional counselling services that had given them a better sense of self, made them stronger emotionally and generally placed them in a position whereby they felt that they could stand up for themselves. Many victims will need this level of support and counselling to get to a point at which they can articulate their story to a lawyer in a court. It is a brave thing to attend court and to talk of experiences such as these, particularly if the victim is suffering from post-traumatic stress disorder, for example, as many of whom do, as they will effectively be reliving the experience as they retell it. There is an ability in this legislation for any compensation payment received from other sources to be considered and potentially deducted from a damages judgement or settlement, but I would not like to see victims denied the faster, easier route to some compensation from the criminal injuries compensation scheme that might set them up emotionally to then pursue a civil claim. The legislation allows for that compensation payment to be taken into consideration by the court as part of a court damages order or settlement process. It would be interesting also to see whether after the success of a civil claim the government could, through amendment of the CIC act, pursue the perpetrator or responsible institution for the value of the compensation paid for by taxpayers to these victims. However, the legislation is silent on this matter and hopefully after the briefing today that the opposition received, the Attorney General may be given information or perhaps an amendment to the legislation that contemplates an exemption for victims of child sexual abuse from being directed to a civil remedy by the assessor, thereby potentially putting the victim at an emotional disadvantage to pursuing justice. It could be a simple amendment that would allow for a victim of child sexual abuse to have the ability to apply for criminal injuries compensation without having to pursue a civil remedy.

I expect that the first few cases brought about once this legislation is passed will be a learning curve for lawyers, authorities, institutions and the courts, and that it is likely in the future that amendments may need to be revisited, given the complex legal matters that were considered through this process. I hope that the institutions that will be subject to potential civil actions will act in good faith and not attempt to hide assets or victimise victims with protracted court processes. I hope that the institutions charged with the care and safety of our children and that failed to deliver them a safe environment free from abuse, neglect and the criminal actions of vile individuals will ensure that they have made provision for victims to pursue claims that will hopefully follow a process of meaningful mediation and just settlements, rather than the practices in the past of denial and manipulation that have further exacerbated the sufferings of these victims of child sexual abuse. In fact, I believe that the community expects these institutions to stand up for victims and to be honest about their failure to execute their responsibility to protect our children who are in their care and to provide them with a safe environment. Anything short of taking total responsibility stands in the way of a full recovery for these children and for the institutions to be respected by the community. Although it will take time to pass through this Parliament, it is correct to have the legislation

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interrogated thoroughly to ensure that victims will not be caught up in anomalous outcomes that can result from hastily executed legislation.

I have remarked in debate in this house at other times that one of my biggest regrets that I will carry with me for a long time is that as a government we did not pursue amending legislation such as this at an earlier point in our term. When the Royal Commission into Institutional Responses to Child Sexual Abuse started handing down and releasing recommendations, other jurisdictions sought immediately to look at ways they could implement its recommendations, and, sadly, we did not do that. As a result, victims in Western Australia have had a harder fight to seek civil remedy and to see the statute of limitations lifted. That is a regret that I and many members of the former government now in opposition—the few who are left—carry with us; it is a regret about something that we did not achieve while we were in government.

Although we talk about victims of child sexual abuse, I do not like the word “victim”, because the individuals who I have met through this process do not appear to me as victims. They have had terrible things done to them. Atrocious things have been perpetrated against them. Those victims have come forward to report the abuse to a relevant authority. Many have made numerous attempts during their lifetime to try to have their claims heard. They have tried to have somebody in an institution or someone in authority take them seriously—even a police officer to take them seriously—and not discount their claims. They have had to fight to bring forward any kind of action or attention to some of the shocking things they have endured. Not only that, every time they have fought to be heard, they have had to relive their experience by retelling it to another entity, and then continue to retell their story. For some of these very brave people, the retelling of their story gives them an opportunity to heal a little more. For some, it just makes it exponentially worse every time they have to revisit it. That depends on the psychology of the individual involved. It is also perhaps dependent on the extent of the abuse they have endured.

Many of us in this chamber know victims of child sex abuse. Sadly, it is so prevalent in our community that most people can report knowing an individual close to them, or an individual they went to school with, who was a victim of abuse. I am certainly one of those individuals who has had close experience with victims of child sex abuse and family violence. It really frightens me that some of the victims who have been so traumatised, and have locked away some of the experiences and actions that led to the abuse, end up being re-victimised. They end up being victims of different forms of abuse again and again in a pattern that they find difficult to see emerging in their lives. An even more frightening thing is that we see that the children of those victims are also becoming repeat victims of various forms of abuse. When those individuals become parents, they have no insight or ability to identify the behaviours that are indicative of somebody being subjected to child sexual abuse or physical abuse. We need to grapple with some of these issues as a society by introducing protective behaviour programs and trauma counselling being more readily available right across the state.

[Member's time extended.]

**Mrs L.M. HARVEY:** Those individuals in regional areas have an even bigger problem with access to services that can help them overcome the trauma and get to a point at which they might be able to go to a police officer and lay out a claim of historical child sexual abuse.

These are the areas that we need to consider. As a community, we need to look at some of the outcomes from the courts for these perpetrators of child sexual abuse. One of the things I found particularly frustrating about some of the issues in Roebourne was that hundreds of victims of child sexual abuse are in that community. Perpetrators of child sex abuse have recently been released back into that community. People who have offended against children before have received very short, three-year sentences. Offenders are returned to a community of vulnerable children—children who have already been groomed by seniors in those communities to be victims of child sexual abuse. Until the courts start to recognise that these crimes against children need to carry a serious offence and that these perpetrators need to be separated from victims for longer periods, I fear that vulnerable communities will continue to be exploited in this way by serial offenders. That was one of my concerns when I was Minister for Police. I found it very disturbing to see the very long sentences that were dished out, for example, to the so-called Evil 8 offenders. The young girl in that case was a victim of a paedophile ring that had repeatedly abused her. Some of the perpetrators of her abuse received long sentences of eight years or more. In an Indigenous community, why do we see that offenders against Indigenous children receive much shorter sentences? That is a hard question that we need to ask of our judiciary, and it needs to be looked at. When I was starting to observe and get to a point of informing policy around the last election campaign, I saw discrepancies there. Nobody in any Aboriginal community will say that the sexual abuse of children is in any way, shape or form culturally acceptable. It has never been culturally acceptable. We are seeing some kind of bizarre mismatch because the sentences handed out to people who have offended against Indigenous children are inconsistent with the sentences handed out to those who offend against non-Indigenous children. We need to have a cold, hard look at that and examine whether a cultural issue in

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our courts means that children in Aboriginal communities are more vulnerable and the perpetrators of abuse against those children receive much shorter penalties than offenders against children in other communities.

I do not wish to add too much to this debate. I hope that the Attorney General, in his response to the second reading debate, will articulate why the government has limited this legislation to just victims of child sexual abuse and not victims of serious physical abuse or even connected abuse. I would have been supportive of that and I believe the opposition would have been supportive of that, given that all victims of these shocking abuses against children have a lifetime of healing ahead of them if they are going to have successful lives.

I commend this bill to the house. I congratulate the government and Parliamentary Counsel's Office on delivering this commitment. Once again, I place on the record my sincere regret that this was not achieved under the former Liberal government's watch. I stand very pleased in this chamber to support it today.

**MR W.J. JOHNSTON (Cannington — Minister for Mines and Petroleum)** [7.27 pm]: I will not speak very long on the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017. I want to draw the attention of the house to page 4 972 of *Hansard* on Thursday, 19 October 2017. The member for Scarborough asked the Attorney General a question. I will read the question out. It states —

I refer to the Attorney General's previous answer about his failure to introduce legislation to remove the statute of limitations for victims of child sex abuse to seek compensation. On the one hand the Attorney General says he does not have the resources of Parliamentary Counsel, but on the other he says the legislation was debated last year. Is it not true that the Attorney General has not introduced the legislation not because of Parliamentary Counsel, but because he was rolled by the member for Cannington and other party colleagues?

I rise briefly to express my absolute anger with the suggestion by the member for Scarborough that somehow or other I was opposed, or am opposed, or at any time was opposed, to this legislation. That is a despicable personal slur on me. It was provided to the chamber with no evidence. The member has not yet apologised for having made that slur on my character. It is despicable that anyone would suggest that I have somehow interfered with this legislation to prevent its debate by Parliament. It is a despicable lie—there is no other word for it. Anybody with character would apologise for having made that despicable slur on me. I will not let this disgraceful behaviour go unremarked in this Parliament.

**MS M.J. DAVIES (Central Wheatbelt — Leader of the National Party)** [7.29 pm]: The National Party, as our lead speaker has already articulated, supports the passage of the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017. Before I get into some of the detail—some of which has been covered by the Deputy Leader of the Opposition, because we served on the same cabinet subcommittee of the previous government—I will note that this legislation was supposed to be one of the current government's priorities. Bringing this legislation on in the final week of Parliament is better than not at all, certainly for those who have been waiting for it. Victims and their families placed their faith in the Attorney General and Premier who, when in opposition, made a commitment that this legislation would be a priority for a Labor government. For them it has probably been a confusing and frustrating year, or past few months, as they have waited for this day to come.

Many members have risen to speak on this bill; some have related stories of victims that they know, while others have worked in an environment in which they have faced the gruelling process of listening to and advocating on behalf of victims of child sex abuse. That says one thing: that this issue is all too prevalent in our community, and it is a horrible reflection of that reality that all members who have risen to speak on this bill have spoken from both personal and work-related experiences. Having said that, being in the position of advocating for and listening to victims and receiving that information pales into insignificance compared with the experiences of those who every day have to live with the memories and impacts of the abuse that was visited on them at a very vulnerable time of their life. I cannot pretend to understand or relate to that experience at all, and I sincerely hope no-one I know—family, friends or colleagues—ever knows it either, but that is the reality of this world. It happens, and that reality has been reflected in this chamber during this debate.

In common with other members, I have known for many years families who have dealt with the impact of abuse. There are others whom I have come to know through my parliamentary role. As many members will understand, we have all sorts of issues coming through our electorate office doors in our communities. I will be the first to say that when I first became a member, this was one of the things I was wholly unprepared for, because it is enormously confronting. Firstly, it is confronting for someone to be trusting enough to share that information, but it is also confronting to be asked to advocate on their behalf and to be part of the change that could potentially make their lives better. It is heartbreaking, sickening and disempowering for the people who have lived through it and there seems to be an utter inadequacy in offering comfort or assistance in some cases. This legislation is a real

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and tangible offering to those who have had this cruelty visited on them at their most vulnerable time of life, and to their families.

As I said before, I was a member of the previous government's cabinet subcommittee on civil litigation for child abuse, along with the Deputy Leader of the Opposition. I note the work that was done by the previous member for Eyre, Dr Graham Jacobs. It was the desire of the previous government to ensure that all legislation was properly canvassed and examined by the appropriate stakeholders before being introduced to the Parliament.

That debate was probably one of the worst I have sat through during my time in Parliament, which is not as long as some other members sitting in this place. At the time, the then opposition's proposal was that Dr Jacobs' private member's bill should just fly through and that the then government should just support what Dr Jacobs had brought to the house. The bill was debated with vehemence. I note the remarks made by the member for Cannington just before I stood to speak. For members who were not part of that debate, some of the comments made in this place were tantamount to accusing those of us who did not support the progress of the bill of being supporters of paedophiles. Many of us sat in this chamber and listened to that accusation coming to us from the then opposition with the same indignation and horror as the member for Cannington has just expressed. I can assure members that no-one in government at that stage sought to downplay the importance of what Dr Jacobs had done, or was unsupportive of trying to find a remedy for victims who had advocated for justice for so long. It was distressing to have that accusation made by members who are now in government. If the member for Cannington is going to come into this place and make statements like that, he should remind himself of that debate and of some of the statements that were made by members last year. For me it was arguably one of the more distressing debates I have had in either house of this place, and we have had some fairly serious and very personal debates on issues that have long-lasting ramifications for the people we are talking about. Given the passage of time between the Labor Party taking office and this legislation being brought to the house, I am sure the Attorney General has discovered that it is quite a complex issue and that a number of things needed to be canvassed beyond what Dr Jacobs brought to this house.

From my reading and recollection, we are the fifth Australian jurisdiction to bring some version of this legislation into being. I understand that Victoria, New South Wales, the ACT, Queensland and now WA all have some version of this legislation. It will provide an opportunity for justice for those victims who have had to live with the darkness brought into their lives by not only the perpetrators of the crime but also those who turned the other way. A previous member spoke about people who have ignored the issues or who have enabled, created and sustained systems that resulted in these children falling through the cracks. We, as a society, have consequently been unable to protect some of our most vulnerable members.

Much has been said about the royal commission findings and the growing acceptance in our community that there can be absolutely no legal, scientific, ethical or practical justification for maintaining a limitation period for crimes of this nature, particularly when we are talking about crimes perpetrated against children. Members have spoken about the fact that it is well understood that it takes many years for someone who has been the victim of child abuse to reconcile the fact and be in a position to be able to tell their story. Through that royal commission and through many of the other investigations and inquiries that have been held in various different Parliaments around this nation, we as a community and a nation have reached an understanding that this is something we can no longer ignore.

The Deputy Leader of the Opposition raised some issues that we canvassed in the previous government's subcommittee, which the Attorney General might like to address. I am sure advice was provided in relation to the rationale for limiting the legislation to deal only with sexual abuse. That is not to say that we are trying to create a catch-all. Much of the evidence that was provided to us by victims and advocates made it clear that it is very hard to delineate between sexual and other forms of abuse. Often it is all bound into one; physical abuse accompanies sexual abuse and mental abuse, and it is very hard —

**Mr J.R. Quigley:** That's why we've left the definition open-ended.

**Ms M.J. DAVIES:** Okay, we look forward to hearing the explanation. We genuinely had a quite significant conversation and we asked victims, advocates and institutions to provide us with advice on our deliberations.

I am also interested in the interaction between the criminal injuries compensation scheme and what is being proposed. This is a complex area and we certainly discovered things raised by some of the people who provided evidence to the subcommittee that we had not even turned our minds to. If those following this debate have already had any interaction with the criminal injuries compensation scheme, it will be of interest to them as the debate starts to unfold.

We have reached a time at which these issues are being aired because victims and their advocates have been brave enough to tell of their experiences. As I said before, we now have responsibility as a community to make sure that

**Extract from *Hansard***

[ASSEMBLY — Tuesday, 28 November 2017]

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we provide them with an avenue to justice. Other members of Parliament have acknowledged that at moments like these in debates in the Parliament, we can understand the full power of the chamber and our roles as members of Parliament to provide some relief and recourse to those who require assistance, and empower these people. I share the thoughts of the Deputy Leader of the Opposition on the terminology of “victim”, because so many people who have been in this situation do not see themselves as victims, but we need to provide some recourse and empower them to bring the perpetrators to justice, as well as those who turned a blind eye and created the system that allowed these things to occur. I trust that the implementation of the legislation, once we have debated it in this place and the other house, is done in a manner that will not re-victimise those who seek to bring their abusers to justice. This measure will be welcomed not only in my community. I have shared conversations across the state with the member for Roe and many others who are watching very closely. I know the Attorney General understands, as he has no doubt had discussions with very similar people, if not the same people. I commend the bill to the house, and look forward to its passage through the Parliament and its implementation in a way that provides some relief to those people who have been watching so keenly.

Debate adjourned, on motion by **Mr D.A. Templeman (Leader of the House)**.