

## 3-POINT REFORM PACKAGE FOR VICTIMS OF CHILD SEXUAL ABUSE

The Greens NSW have today released a 3 point reform package to better serve and support victims and survivors of past child sexual abuse in the pursuit of justice, both through civil compensation and sentencing law reform. These reforms are designed to deliver justice for the many thousands of victims and survivors of historical sexual abuse. Regardless of who wins the NSW election, the Greens will be moving on this legislation as soon as the new Parliament returns.

1. Remove time limits for victims' civil damages claims
2. Bring sentencing for past child abusers into the 21<sup>st</sup> century
3. Stop churches hiding their money in trusts

19 March 2015

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### 1. Remove time limits for victims' civil damages claims

The Royal Commission into Institutional Responses to Child Sexual Abuse has found that the average time to report child sexual abuse is over 20 years (consistent with a 2010 Australian study). Yet the law in NSW requires civil compensation claims to be brought within 3 years after a person turns 18 – otherwise the claim can be time-barred. This timeframe is grossly out of step with reasonable expectations of how long it might take a victim of child sexual abuse to be able to talk about their experience, let alone find the courage to bring a claim for civil compensation. Whilst an application can be made to allow a civil claim out of time, it is up to the judge's discretion. The criminal law sets no limits on the prosecution of these offences. Plainly, the civil statutory limitation period was not set with these kinds of claims in mind.

The Royal Commission has called for submissions on this issue, but NSW should act now. Victoria has already introduced a Bill to this effect (moved on 18 March 2015), as recommended by their Parliamentary Inquiry which said, "There is no public policy justification for applying limitation periods to civil cases relating to criminal child abuse." Various overseas jurisdictions have made similar reforms (see Attachment 3), and even the Catholic Church's Truth Justice and Healing Council recommended that limitation periods should be significantly extended. Particularly when the Church concedes that abuse occurred, the statutory limitation period should not be used as a shield against compensating victims.

In consultation with victims, support groups, lawyers and other stakeholders, the Greens NSW have drafted the Limitation Amendment (Child Abuse) Bill 2014 which would mean that civil claims by victims of child sexual abuse are not subject to any limitation period. There is no justice in denying compensation to victims for serious harm caused, on the basis of a legal technicality that ignores reality.

*"It is unacceptable that NSW law requires victims to make any claims for damages by age 21 when we know that it often takes decades for survivors of child sexual abuse even to tell anyone about it."*

*"NSW Parliament cannot stand by while organisations that allowed children to be abused hide behind the statute of limitations to defeat legitimate claims by victims of child sexual abuse."*

- David Shoebridge MLC



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## 2. Bring sentencing for past child abusers into the 21<sup>st</sup> century

In 2015, NSW courts deliver severe punishment for modern day child sexual offences. This is not the case for historical offences committed between the 1960s and the early 1990s. Whilst it is appropriate that courts today sentence for past offences with regard to the maximum penalties at the time of the offence and other technical sentencing requirements, they are also forced by precedent to consider the sentencing patterns of the historical era. Historical sentencing practices reflected contemporaneous community values and attitudes that we now know were uninformed and incorrect.

In decades past, child sexual abuse was often considered a forgivable indiscretion rather than an abusive, abhorrent, life-destroying crime. In the 1970s, 1980s, and the early 1990s, full time custodial sentences were not required for many sexual offences (eg indecent assault). As a result, sentences are commonly much more lenient. For example, 4 out of 5 former teachers convicted of abusing boys at Knox between 1970 and 2009 served no jail time. This is completely at odds with what the Chair of the Royal Commission into Institutional Responses to Child Sexual Abuse has repeatedly said: *“What many may consider to be low levels of abuse of boys and girls can have catastrophic consequences for them.”* When the sentence finally handed down to the abuser does not reflect the moral culpability and the harm caused, victims and the community feel a deep and legitimate sense of injustice.

It also brings the justice system into disrepute and undermines public confidence in the courts. NSW Judges have called the sentencing requirement “artificial and inappropriate” and “illogical”, and several have expressed discomfort with applying flawed assumptions to child sexual assault sentencing. President Mason of the NSW Court of Criminal Appeal commented that increased sentences for child sexual assault have *“come about in response to greater understanding about the long-term effects of child sexual abuse and incest; as well as by a considered judicial response to changing community attitudes to these crimes... a sentencing court should prefer today’s attitudes to the laxer patterns of previous years... it is wrong for a court to apply earlier patterns that have been repudiated as erroneous.”*

This requirement for courts to sentence in accordance with outdated sentencing practices can and should be overcome by an amendment to the Crimes (Sentencing Procedure) Act 1999 (NSW). It is not acceptable for child abusers to be given sentences that judges now acknowledge are seriously inadequate.

*“It is unacceptable that the law is telling judges to sentence child sexual abusers based on the flawed and uninformed community attitudes of the 1960s or 1970s.”*

*“Of course judges must apply the law from the time the offence occurred, but the range of sentences must be informed by what the community now knows about the damaging impact of child abuse, not past unenlightened views.”*

*“Without this sentencing reform judges are bound by common law to continue to deliver unjustly short sentences for historical child abuse.”*

*“The community can’t have faith in a justice system that has to pretend it’s in the dark ages to sentence child abusers from the 1960s or 70s – judges should represent the community of today not 40 years ago.”*

- David Shoebridge MLC



## 3. Stop churches hiding their money in trusts

Victims of child sexual abuse by clergy or officials of the Catholic and other churches must have a right to seek redress from the organisation that abused them – particularly where the perpetrator either has no assets or had died. But many churches' property is held in property trusts such as The Roman Catholic Church Trust Property Act 1936 (NSW) that shield it from victims' claims – the 'Ellis defence'. A number of other religious bodies also have similar statutory trust structures and this trend continues as recently as last year.

The Royal Commission has called for submissions into these barriers to civil litigation. The Catholic Church's own Truth, Reconciliation and Healing Council agrees that civil litigation should be available to claimants who want to bring actions against Catholic Church bodies.

In consultation with victims, support groups, lawyers and other stakeholders, The Greens NSW have drafted The Roman Catholic Church Trust Property Amendment (Justice for Victims) Bill 2014 to allow victims of sexual abuse to sue the property trusts on behalf of the Catholic Church, removing the 'Ellis defence'. This reform should also be extended to other, similar religious organisation property trusts in NSW. There is no policy justification to allow such an artificial quarantine of any organisation's assets, or to retain a law that shields any organisation from legitimate compensation claims.

*"Why should the community accept that the Catholic Church cannot be sued and that it doesn't exist in the eyes of the law – of course it exists, of course it has assets, and if it has caused harm, it should be able to be sued.*

*"A law that quarantines an organisation's wealth from legitimate claims by victims is itself an abuse. Parliament has the power to change that, and where an organisation is at fault, it should pay," Mr Shoebridge said.*

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