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MEDIA RELEASE

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BETTER ACCESS TO JUSTICE FOR CHILD ABUSE SURVIVORS

The NSW Government will overhaul civil litigation laws to enable thousands of survivors to sue institutions responsible for child abuse, Attorney General Mark Speakman announced today.

Mr Speakman said NSW is implementing recommendations of the Royal Commission's Redress and Civil Litigation Report, including two new forms of civil liability for child abuse and new measures to enable historic and current claims of child abuse against organisations including churches who could not previously be sued.

"The NSW Government will remove legal barriers that have stopped survivors of child abuse from seeking the justice they deserve. The Royal Commission found many survivors felt let down by the current civil litigation system which made it difficult for them to seek damages and hold institutions to account," Mr Speakman said

"These reforms will provide access to new avenues to allow survivors to pursue compensation so they can focus on recovering and moving forward with their lives."

The changes include:

- Legislating to prevent institutions relying on the so-called 'Ellis Defence'. The defence enabled certain institutions operating with associated trusts, to avoid liability for child abuse. Courts will have power to appoint trustees to be sued if those institutions fail to nominate an entity with assets as a proper defendant and allow the assets of the trust to be used to satisfy the claim;
- Codifying the vicarious liability of institutions for employees and extending it so that they will be liable for non-employees like volunteers or religious officers who have taken advantage of their position to carry out abuse; and
- Imposing a new statutory duty of care on all institutions that exercise care, supervision or authority over children to prevent child abuse. An institution will be liable for child abuse unless it can prove it took reasonable precautions to prevent the abuse.

These changes are the latest example of NSW leading the way in supporting survivors of institutional child sex abuse. We are the first state to pass laws enabling the National Redress Scheme and to introduce a comprehensive criminal justice response to the Royal Commission.

Limitation periods have already been removed for claims relating to death or personal injury as a result of child abuse, including against a perpetrator or a negligent institution. Guiding principles were also introduced for civil child abuse claims made against the NSW Government to provide a more compassionate and consistent approach.

The civil litigation reforms will be introduced before the end of 2018 and follow extensive consultation with stakeholders including government and non-government agencies, survivor groups, churches, the insurance industry and legal profession.