




Speech By
Michael Berkman

MEMBER FOR MAIWAR

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CIVIL LIABILITY (INSTITUTIONAL CHILD ABUSE) AMENDMENT BILL

Introduction

 **Mr BERKMAN** (Maiwar—Grn) (12.39 pm): I present a bill for an act to amend the Civil Liability Act 2003, the Limitation of Actions Act 1974 and the Personal Injuries Proceedings Act 2002 for particular purposes. I table the bill and explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

Tabled paper: Civil Liability (Institutional Child Abuse) Amendment Bill 2018 [[1773](#)].

Tabled paper: Civil Liability (Institutional Child Abuse) Amendment Bill 2018, explanatory notes [[1774](#)].

The purpose of this bill is to implement recommendations 89 to 94 of the 2015 *Redress and civil litigation report* of the Royal Commission into Institutional Responses to Child Sexual Abuse. As the members of this House are aware, the royal commission was unprecedented in our nation's history in its scale and scope. It was conducted over five years and ended on 15 December 2017. During its time the royal commission: received complaints regarding over 4,000 institutions or entities; conducted approximately 60 public hearings and published further research papers; held 8,013 private sessions with victims and survivors; received 25,964 letters and emails; and received 42,041 direct telephone calls. The royal commission made 2,575 referrals to authorities, including police.

The royal commission laid bare the horror that so many children had suffered for so long, and it described for all of us how that horror was magnified by decades of silence and denial by those in authority and barriers to obtaining justice. Among these are the barriers to civil litigation. This bill gives a voice to those children—now adults—by correcting that power imbalance between survivor and institution and, through the creation of tangible consequences for institutions, will contribute to preventing the same horror from occurring in the future.

The recommendations of the 2015 *Redress and civil litigation report* were the result of extensive consultation with victims, child protection organisations, government and non-government institutions and insurance companies. The report recommended the creation of the National Redress Scheme, and I commend the government for joining Queensland to this scheme. The report also recommended reforms to remove barriers to civil litigation; for example, the removal of time limits and legislating the duty of institutions. In 2016 time limits were removed, however, until now the duty of institutions has not been legislated in Queensland.

I remind the House that recommendation 46 of the commission states that the National Redress Scheme should not commence until after the parliament legislates reforms relating to time limits and the duty of institutions. This was reinforced by Mr Warren Strange, CEO of knowmore, the respected provider of pro bono legal services to survivors of abuse, in his evidence to a parliamentary committee on 20 July 2018, where he stated—

Unless you can make—

institutions—

legally responsible for those actions and you can then access that property to satisfy any judgement, again, it might be a Pyrrhic victory to prosecute a civil claim.

...

The Royal Commission's recommendations are designed to address—
this. He continued—

We looked at this going back in 2016 with the issues paper that the department released. We are still waiting to see those reforms happen by way of a bill before parliament and it is important that it does.

This sentiment was echoed by Michelle James, then president of the Australian Lawyers Alliance, who stated to the same parliamentary committee on 20 July 2018, '... it is optimum that the two matters,' the redress scheme and recommendations 89 to 94, 'are legislated together.'

With the commencement of Queensland's participation in the redress scheme imminent and with two years having lapsed since the government issues paper, I introduce this bill to ensure that this parliament and the state of Queensland comply with recommendation 46 of the royal commission and the principles of fairness and justice that it represents.

Part 2 of this bill creates a non-delegable duty of care for institutions in respect of child abuse perpetrated by an official of the institution. This is also known as vicarious liability. This bill seeks to create statutory vicarious liability for child abuse, ending decades of legal uncertainty on the matter. The bill creates a defence for institutions, and the onus of proof for that defence rests with the institution. Part 2 also imposes a duty on institutions to nominate a proper defendant if the institution is not able at law to be sued or if the institution is not in a financial position to meet their liability. Part 2 also makes associated trusts of institutions liable for the liability of the institution. Appropriate safeguards are provided for trustees who act in accordance with this provision. This implements royal commission recommendation 94.

Definitions in this bill such as 'institution', 'official' and 'related entity' are intentionally worded to ensure that the types of child abuse that occurred in the past—and that may be expected to occur in institutions in the future—are captured by this bill. These definitions intentionally have regard to the likely changing face of institutional structures, including the likely delegation or outsourcing of important child services where abuse could be expected to occur. To achieve this, 'institution' is defined by function rather than structure; that is, it is defined by reference to the delivery of child services to ensure that any organisational structure may be appropriately covered.

The definition of 'official' is consistent with royal commission recommendation 92. 'Child abuse' is intentionally defined in part 2 of this bill to extend beyond sexual abuse and to include serious physical and connected abuse where connected to the sexual or physical abuse. Part 3 applies the same definition to the Limitation of Actions Act 1974, and part 4 applies this definition to the Personal Injuries Proceedings Act 2002. This definition of 'abuse' is consistent with the definition in other jurisdictions. This definition of 'child abuse' has had the wide support of child protection organisations and legal NGOs since 2016, and it was a matter included in the government's issues paper at that time. Karyn Walsh from Micah Projects previously stated in relation to the definition of 'child abuse' that—

Whilst the Royal Commission was limited to make recommendations in line with its terms of reference the role of legislation in Queensland is to provide fair and equal access to justice for any person who has experienced childhood physical, sexual or psychological abuse

Karyn Walsh went on to say—

Micah Projects supports a no limitation period for actions for child abuse *in all its forms* sexual, physical and psychological injury ...

She continues—

Excluding psychological abuse creates a hierarchy of childhood abuse, which does further harm ...

Bravehearts has similarly stated its support for a broader definition of 'child abuse'. It said—

... as it is broad enough to ensure that the related harms perpetrated in connection to the sexual assault or serious physical abuse is adequately considered.

On the question of the best definition of 'child abuse', knowmore has similarly stated—

We are of the view that Parliament should pass legislation that removes limitation periods not just for claims arising from child sexual abuse, but also for claims of serious physical abuse and, once either of those thresholds is met, any connected abuse.

I could quote further, as these sentiments of support for the broad definition of 'child abuse' were mirrored by such eminent organisations as the Queensland Family and Child Commission, Indigenous Lawyers Association, Centre Against Sexual Violence, Gold Coast Centre Against Sexual Violence, Protect All Children Today, Queensland Advocacy Incorporated and the Queensland Child Sexual Abuse Legislative Reform Council. This is the advice of the experts, those who are on the ground every day seeing the reality of life for victims and survivors of abuse and who know what laws are needed. This parliament would do well to heed the wisdom of their experience.

This bill will not open a floodgate of litigation. Compensation through litigation in Queensland is very measured and moderate. Survivors must prove on the balance of probabilities that the abuse occurred, and the injury must be quantified by medical experts. In this state, as in other Australian jurisdictions, there are very tightly controlled caps on the quantum of compensation for general damages, which is often known as pain and suffering. Claims for economic loss must be very tightly proven and are subject to appropriate standards of evidential scrutiny. In other words, providing victims and survivors with the right access to appropriate litigation is a sensible measure for this parliament to champion and will simply have the effect of providing survivors of abuse with the right to have their claim properly tested, either in court or in pre-court negotiated proceedings. This bill does not reduce the standards of evidence that a court would expect.

Stopping child abuse should be the natural inclination of all adults. It should not take a royal commission to call time out on child abuse, yet it did. The royal commission found that many institutions and senior leaders of institutions have, for decades, operated without any sense of genuine consequence for their actions. This was possible because they knew that the law protected them and obstructed justice for survivors of child abuse.

This bill corrects that imbalance and puts survivors of abuse in institutions on a more level footing. The intended consequence of this bill is that institutions will invest in child protection and the prevention of child abuse and will actively engage in early reporting of offenders to reduce the incidence of abuse, even if only to reduce their own liability. Because of this, legislating the legal liability of institutions for child abuse is an important pillar of child protection.

The royal commission found that offenders would intentionally target their victims, preying on those most isolated and vulnerable—children taken from single mothers under misguided state policy, Indigenous children removed from kin and culture, country children sent to a city boarding school, children from broken homes. These were the very children whom the adults in the institutions had a duty to love, nurture and protect yet those adults preyed on, exploited and abused. These children had committed no crime, yet crimes were committed against them. When children reported, sometimes they were not believed but often the institutional leaders knew all too well that the abuse was occurring. They simply put the interests of the offender, the institution and themselves ahead of the rights of the child, to protect their brand. Those offenders and senior leaders who protected them do not deserve the respect of our community or the protection of this parliament.

For too long institutions have wielded improper influence over policymakers at the expense of equal access to justice, at the expense of good policy, at the expense of the rights of children being abused and at the expense of the rights of the adults those children have become. The measures put forward by this bill put an end to the improper influence and protection of culpable institutions. These measures are not an attack on institutions. In fact, these laws will help futureproof our institutions and help them become more child safe, healthier and more robust.

The most recent national census shows that the major religious institutions are experiencing unprecedented exodus from their ranks, with trust at an all-time low. Trust must be earned. The measures proposed in this bill will help institutions earn back the trust of the community by creating consequences unless child-safe policies and child protection measures are implemented and maintained within institutions. Institutions can help themselves to earn back community trust by embracing the measures proposed in this bill. There should be no fear of crippling litigation into the future. If institutions are concerned about their finances, there is a very simple way to reduce their future risk to zero: do not allow the abuse of children, do not cover it up and do not protect the offenders.

On 15 June this year Queensland's Premier spoke of the courage of survivors of abuse in giving their evidence to the royal commission. She said—

I ... acknowledge the immense bravery of all who have shared their horrific stories. Their courage in coming forward and working with the royal commission is to be applauded.

I put forward this bill to honour that courage of survivors of child abuse and to ensure their courage and hard work results in lasting change so that no future generation of Queensland children has to suffer the same horror.

I also acknowledge the Leader of the Opposition's deep commitment to the implementation of the royal commission's recommendations and to a strong child protection framework in Queensland. Accordingly, on behalf of victims and survivors of abuse I ask the government, the opposition and all crossbenchers to not politicise this issue but instead join together in bipartisan support of this bill in the interests of making Queensland the safest possible place for our children to live, grow and learn. I commend this bill to the House.

First Reading

Mr BERKMAN (Maiwar—Grn) (12.53 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Legal Affairs and Community Safety Committee

Mr DEPUTY SPEAKER (Mr Stewart): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.