




Speech By
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MEMBER FOR MANSFIELD

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CIVIL LIABILITY AND OTHER LEGISLATION AMENDMENT BILL

 **Ms McMILLAN** (Mansfield—ALP) (4.19 pm): The Palaszczuk government absolutely desires to protect children from child sexual abuse. I find the member for Lockyer's comments quite disturbing. I stand, like him, before the House today to make my contribution to the debate on the Civil Liability and Other Legislation Amendment Bill. This bill aims to expand the capacity of the justice system for survivors of child sexual abuse who pursue a claim for civil damages for personal injury arising from the abuse. This bill addresses recommendations 91 to 94 of the 2016 Royal Commission into Institutional Responses to Child Sexual Abuse.

In the commission's *Redress and civil litigation report* recommendations were made to improve the capacity of the justice system in order to provide fair access and outcomes for survivors of child sexual abuse. This bill will largely amend the Civil Liability Act 2003 in order to incorporate the recommendations such as introducing a reverse onus and establishing a statutory framework for nominating a suitable defendant. This complements the Palaszczuk government's actions in the previous parliament when it removed the statutory limitation period that previously applied to victims of institutional abuse.

Firstly, the bill seeks to reverse the onus of proof where the defendant must show that all reasonable steps were taken to prevent the sexual abuse of a child. Originally, in civil matters the onus usually rests with the person commencing the proceedings—that is, the person who suffered the damage. However, this amendment aims to take the burden off sexually violated children when they wish to commence proceedings. Although this amendment potentially breaches the fundamental legislative principle that legislation have sufficient regard to an individual's rights, it is well justified. This is mainly due to the fact that the commission discovered that countless institutions failed to take reasonable steps to prevent abuse from occurring, despite the abuse being suspected, reported or even confirmed.

The reverse onus addresses the power imbalance between an abused child and the offender or an institution associated with the offender. Introducing a reverse onus also makes sense in a practical way as the commission is satisfied that institutions are in a better position to demonstrate steps taken to mitigate harm to children. Also, this responsibility placed upon institutions provides greater incentive for institutions to incorporate higher standards of governance in their own efforts, as well as their compliance with the requirements of insurers.

Significantly, we will see a change in the institutions' regulations, as we should, as their liability can be discharged where they can prove, on the balance of probabilities, that all reasonable steps were taken to prevent child sexual abuse from occurring. Therefore, in introducing this reform, children harmed are allowed equal and fair access to justice where they are not burdened by the current onus to demonstrate that an institution breached its duty of care.

The second reform I wish to address in this bill is the establishment of a statutory framework for nominating a suitable defendant. This amendment will allow the court to order a claim to proceed against trustees of an associated trust of the institution if there is no nominee for the institution or the nominee does not have sufficient assets to satisfy an award for damages. Again, this reform can be viewed as a breach of fundamental legislative principles, however this departure is more than justified.

This amendment intends to overcome the barriers that a victim may face if an institution does not nominate a proper defendant or if an institution's assets are not held by the institution itself but in an associated trust. We have seen many examples of this. In doing this, survivors will be able to recover financial support and assistance from the proper defendant which they were rightly entitled to.

It is heartbreaking to think that some survivors cannot receive compensation as the current law will not allow them to recover it where a proper defendant cannot be confirmed. An award for damages will never right the wrong that these survivors have suffered and endured. However, compensation will assist these survivors seek the support and counselling they require to navigate the challenges in their life.

As a former principal, I spent many years dealing with and supporting our young people who had been victims of abuse.

Mr Stewart interjected.

Ms McMILLAN: I take the interjection from the member for Townsville. I am sure he too has supported many young people. We know that this kind of abuse can affect our children, their families and their lives. It is vital that there is adequate legislation to enliven equal access to justice. I commend the commission for recommending the above reforms as well as the Palaszczuk government for its efforts to consult with a range of stakeholders, including government, legal firms, church groups, educational institutions, victims' representatives and community organisations. In engaging with varied perspectives, I am confident that this bill offers a well-rounded approach in providing support and access to justice by those sexually abused children. I commend the bill to the House.