




Speech By  
**James Lister**

**MEMBER FOR SOUTHERN DOWNS**

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### **CIVIL LIABILITY AND OTHER LEGISLATION AMENDMENT BILL**

 **Mr LISTER** (Southern Downs—LNP) (3.53 pm): I, too, rise to speak to the Civil Liability and Other Legislation Amendment Bill 2018. For many people, this bill has been a long time coming, particularly those who have been the victims of institutional child sexual abuse and their friends and loved ones. The bill implements the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse in its *Redress and civil litigation report* in order to address power imbalances between those who are victims making a claim and institutions. I will talk more about that during the course of my contribution.

The recommendations made by the committee aim to improve the capacity of the justice system to provide fair access and outcomes to survivors of child sexual abuse wishing to pursue a claim for civil damages for personal injury arising from the abuse. It achieves that in two ways. I note that this morning the Attorney-General said that there will be some further additions to the bill. I understand that one of those concerns a broadening of the classification of ‘abuse’. I thank the Attorney-General for that.

The bill introduces a reverse onus of proof—and that will be applied prospectively, not retrospectively—under which an institution must prove it took reasonable steps to prevent the sexual abuse of a child in its care by a person associated with the institution to avoid legal liability for the abuse. That is the statutory duty of institutions. The bill also establishes a statutory framework for the nomination of a proper defendant by an unincorporated institution to meet any liability incurred by the institution.

As the law stands currently, a victim of institutional child abuse must prove their case in court. In that situation, the power imbalance that I mentioned before is particularly stark because, in many situations, the respondent—the institution—is powerful and is able to conduct a well-funded defence and the victim may not. The act of proving one’s case in court can be traumatic, particularly with the kinds of matters to which this bill applies. I certainly would not want to go into court to face a large and powerful defendant and make claims of deeply personal abuse. I am sure that is something that would be very difficult to do.

The bill inserts a new section 33D into the Civil Liability Act to provide that an institution has a duty to take all reasonable steps to prevent the sexual abuse of a child by a person associated with the institution while the child is under the care, supervision, control or authority of the institution. We expect institutions to take all reasonable steps to prevent that. A person associated with an institution includes an officer, representative, leader, member, employee, agent, volunteer, or contractor of the institution, religious leader of the organisation, a delegated entity or a delegated individual. Obviously, you need to be able to find a defendant if you want to mount a case.

If the duty is breached, the onus of proof is reversed. I think that is a good thing. The reverse onus of proof is favourable because, as I say, it addresses the power imbalance and ensures that the survivor does not have to prove the wrongdoing, which is the truly difficult part for someone in those

circumstances. The reverse onus of proof also has the effect of encouraging institutions to engage in higher standards of compliance. That is always a good aspect of law—to make sure that the prospect of sanction motivates those who may do the wrong thing, or may be negligent, to improve their game.

The bill provides a variety of mechanisms by which defendants may be liable including, among other things, the liability of an incorporated institution that was unincorporated at the time of the abuse, the liability of current and former office holders, court discretion in allowing a claim to proceed against trustees and the satisfaction of a judgement from assets of an associated trust. This is intended to overcome the difficulties that a victim may face in identifying a proper defendant to sue—for example, owing to the lack of perpetual succession in unincorporated institutions. This amendment also overrides the Ellis defence that organisations have been relying upon to protect institutions from being recognised as a legal entity and, therefore, from being sued, as the assets in trust accounts have been protected. I acknowledge the press conference held by the Attorney-General this morning where I believe she said that the definition of ‘abuse’ will be expanded in the amendments in this bill to include all forms of abuse. I think that is a very good thing.

I would like to pay tribute to some of the people who were involved in the committee process and provided valuable input into this bill. I refer to people such as a constituent of mine, Mr Kelvin Johnston, from the Queensland Child Sexual Abuse Legislative Reform Committee. Mr Kelvin Johnston has been very generous with his time and has been a tireless advocate in this space and made an interesting contribution to the committee process.

Although I cannot mention this person by name because they wish their name to be suppressed, there is a person who made a submission, submission No. 7, who was particularly generous with their time in helping myself and also, I would say, my honourable friend, the member for Lockyer, who is also on the committee, to understand the issues. This person has a uniquely insightful perspective on these matters and has a real ability to convert the complex and emotional tenets of these subjects into something which is constructive for a legislative purpose. That person provided a 70-odd-page submission which is excellent and I pay tribute to them. I know they are probably watching and I would like to thank them sincerely for the great good they have done for the community.

There is also the question of strict non-delegable duty. The commission recommended that states and territories impose a non-delegable duty of certain institutions for institutional child sex abuse, recommendations 89 and 90. The commission recommended that the non-delegable duty should apply to all institutions that operate the following facilities or provide the following services and be owed to children who are in the care, supervision, control or authority of the institution in relation to the relevant facility or service: a day school or a boarding school; a detention centre under the Youth Justice Act; a residential facility; a facility operated by an entity for profit that provides services for children and involves the entity having the care, supervision, control or authority over the children; an institution that is a religious institution—a facility operated by the organisation at which a service or activity is provided by the participants of that organisation; but does not include a facility at which foster care or kinship care is provided. I am not certain yet what the government’s intentions are. I believe that there will be some amendment in that space as well, which I will look forward to seeing.

For many people who have worked in advocacy in this field, the coming of this bill is a very important moment. My own understanding of the issues associated with this bill and the royal commission has improved a great deal from my contact with those who participated in the committee process and I am grateful to them for their time. I would like to put on record my sorrow and regret that our society has let people down. It occurs to me how vulnerable young people are when they are in the care of an institution and how helpless many found their situations in times past. Whilst it is difficult to amend wrongs once they have been done, we can try to various extents. I think it is vital that we do all we can to ensure that the evils perpetuated on children that have been identified and which have led to this legislation never be repeated, and that we be eternally vigilant in caring of our most vulnerable, our children. The LNP looks forward to seeing the amendments. This is a good bill. I support it. I thank those who have been involved and I commend it to the House.