




Speech By
Joan Pease

MEMBER FOR LYTTON

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CIVIL LIABILITY AND OTHER LEGISLATION AMENDMENT BILL

 **Ms PEASE** (Lytton—ALP) (5.08 pm): I rise to speak in support of the Civil Liability and Other Legislation Amendment Bill 2018. Before commencing my contribution I would like to place on record my thanks to the Attorney-General and Leader of the House for the immense amount of work the Attorney and the Department of Justice and Attorney-General have put into this bill. May I also acknowledge that today is the one-year anniversary of the national apology to victims and survivors of institutional child sexual abuse. May I reaffirm that I am sorry and that we believe you, and what happened to you was not your fault.

This bill represents a very important and extensive body of work to assist victims of institutional child sexual abuse get justice. The Royal Commission into Institutional Responses to Child Sexual Abuse in its *Redress and civil litigation report* made recommendations for improving 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—and this bill does that. The bill includes amendments that will: introduce a reverse onus to be applied prospectively 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; and establish a statutory framework for the nomination of a proper defendant by an unincorporated institution to meet any liability incurred by the institution.

When a court is considering whether an institution has taken reasonable steps, a court will consider the matter of the institution, the resources that were reasonably available to the institution, the relationship between the institution and the abused child and the position in which the institution placed the person in relation to the child, and issues that may be relevant, such as authority, power, trust, control and the ability to achieve intimacy with the child. The issue of nominating a proper defendant to sue has been a difficult matter for survivors of institutional child sexual abuse. Many not-for-profit institutions and churches are unincorporated, with no legal personality, and consequently cannot be sued. Another problem for survivors is that the assets of institutions are often bound up in trusts and are not able to be accessed for civil claims.

The bill proposes amendments that are intended to overcome the difficulties a survivor may face in identifying a proper defendant. The bill provides for the liability of an incorporated institution that was unincorporated at the time of the abuse, the liability of the current office holder where there is a cause of action against a former office holder of the institution which was unincorporated at the time the cause of action occurred and is currently an unincorporated body, nomination by an unincorporated institution or a person as the proper defendant to meet the institution's liability and, if no nomination is made within 120 days or if the nominee is incapable of being sued or has insufficient assets, a court may order, where appropriate, the claim to proceed against the trustees of an associated trust of the institution.

There is authority for an institution which has a liability under a judgement in settlement of a child sexual abuse claim, if it elects to do so, to satisfy the liability out of the assets of the institution and the assets of an associated trust that the institution uses to carry out its functions or activities, and there is the continuity of institutions or officers where an institution or relevant office holder has changed over time.

The bill also includes an amendment to section 64 of the Civil Proceedings Act 2011 with the objective of ensuring that a person under a legal incapacity may recover the costs of trustee management fees in the award of damages for wrongful death of a member of the person's family. This amendment clarifies the law resulting from conflicting court decisions and ensures that an amount awarded to a child for the loss of a parent following a tragic car accident will not be significantly depleted by the cost of managing the funds. These are very important reforms for survivors of institutional child sexual abuse. I commend the bill to the House.