Speech By

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MEMBER FOR MACALISTER

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CIVIL LIABILITY AND OTHER LEGISLATION AMENDMENT BILL

Mrs McMAHON (Macalister—ALP) (4.03 pm): I rise to contribute to the debate on the Civil Liability and Other Legislation Amendment Bill 2018. I would like to start by acknowledging the work of the Legal Affairs and Community Safety Committee, the secretariat and support staff. I would also like to thank the 11 organisations and individuals who made submissions to the committee and the four organisations that attended and made submissions in the public hearing. Following on from the public briefings and hearings, the committee made one recommendation: that the bill be passed.

The introduction of this amendment bill is about ensuring that Queensland delivers on recommendations 91 to 94 of the Royal Commission into Institutional Responses to Child Sexual Abuse. These recommendations themselves were contained within the *Redress and civil litigation report* released by the royal commission which included the recommendation to establish the National Redress Scheme. I am proud to be part of a Labor government that made and has come good on its commitment to participate in the National Redress Scheme. This bill seeks to improve the capacity of survivors of child sexual abuse who seek to pursue a claim for civil damages and personal injuries caused by institutions at the centre of the offending.

I note the announcement made by the Attorney-General earlier today that amendments will be moved during consideration in detail to extend the definition of abuse applicable under this act to include serious physical and psychological abuse as well as sexual abuse. I note that this was a recommendation of several submitters, including knowmore, Care Leavers Australasia Network and Australian Lawyers Alliance. I thank the Attorney-General for considering these submissions.

Firstly, the bill will introduce a reverse onus of proof on institutions to prove that they took reasonable steps to prevent sexual abuse of a child in their care by a person associated with the institution. I am well aware that applying a reverse onus of proof, even prospectively, is not something to be taken lightly and as a committee we had to consider a potential breach of fundamental legislative principles against the objectives of the bill and who would benefit from such an application. On the prospectivity issue, I understand that several submitters sought to have this particular provision made retrospective. I can advise the House that the prospective effect of the proposed duty of institutions was a specific recommendation by the royal commission in the *Redress and civil litigation report*. In the case of this bill, the committee felt that the departure from such fundamental legislative principles around reverse onus of proof was justified primarily because this amendment is designed to address the power imbalance that currently exists for victims and survivors accessing the justice system. The idea that a single litigant could gather and obtain the required information about an institution to validate their claims on their own meant that the prospect was daunting, exhaustive and ultimately too difficult in many instances. The royal commission also felt that this reverse onus of proof in this instance was justified.

Further, the practical effect of this amendment means that a greater level of governance is required by all relevant institutions in that they will need to keep and maintain greater focus on ensuring all necessary policies and procedures are in place to ensure the safety of children and that these should be clear and overt. Where an institution clearly fails in its obligations, where it has been negligent, where it has not taken reasonable steps to protect a child, then it should be held liable.

I will take this time to outline what may be considered when determining whether reasonable steps have been taken: the type of institution, the resources available to that institution, the nature of the relationship between the institution and the child and the position which the alleged perpetrator was placed in by the institution and their access to the child. I note that the list of reasonable steps is not proscriptive or exhaustive, and it is not meant to be. While some organisations sought a more concrete definition of reasonable steps, a submission by the NGO knowmore, an organisation specifically created to help survivors engage with the royal commission, stated that a narrower definition would be unhelpful. The department stated that as all organisations are different, reasonable steps would vary from institution to institution.

The second significant amendment in this bill is the nomination of a proper defendant by an unincorporated institution to address the liability incurred by that institution. In many instances a victim seeking to take on an institution will have difficulties in identifying a defendant when making an application to the court, particularly where the organisation is or was unincorporated at the time of the offending behaviour or the offender previously employed by the institution is now deceased. This amendment will allow unincorporated institutions to nominate a person as a proper defendant. On this particular issue I must point out and make it clear to all Queenslanders who have taken on roles on a board or a committee, whether paid or voluntary, that the nomination of the proper defendant being sued in these instances is in the name of the office only and not in a personal capacity and that the personal assets of the office holder cannot be accessed.

There are also further aspects of this amendment that address the issue of institutions who fail to nominate a proper defendant or who structure their organisations in such a way as to escape liability, which again improves the survivor's access to justice through the courts. As I said, the bill is about fairness and access to justice for our most vulnerable.

In standing here we must admit that while this bill seeks to provide fairness and access to victims of child sexual abuse, we in this House must acknowledge what it cannot do. It cannot rebuild a broken child. It will not prevent the nightmares. It will not remove the fear and anxiety that follow like shadows, as unwanted lifelong companions, and it will not restore lost faith. These and many things we cannot change no matter how many bills we pass. However, it is incumbent upon us in this House to influence and change the things that we can. It is one of the reasons why I stand here today in this House and it is bills such as this that seek to make justice available to all. I commend this bill to the House.