




Speech By
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MEMBER FOR MAIWAR

Record of Proceedings, 22 October 2019

CIVIL LIABILITY AND OTHER LEGISLATION AMENDMENT BILL

 **Mr BERKMAN** (Maiwar—Grn) (5.13 pm): I rise to speak to the Civil Liability and Other Legislation Amendment Bill on this significant day, the anniversary of the national apology to survivors and victims of institutional sexual abuse. This bill was introduced in a bit of a rush on 15 November 2018, hot on the heels of my having introduced the Civil Liability (Institutional Child Abuse) Amendment Bill two weeks earlier, on 31 October that year, just days after the national apology. It is unfortunate that survivors of abuse had to wait in limbo for almost a year for the government finally to bring its own bill to this stage, but the bill is welcome now that it has finally arrived.

The Attorney-General is to be commended for the many amendments to the government bill, including the last-minute announcement this morning that the government has finally listened to stakeholders and experts who have long been calling for legislation to extend equal rights to survivors of horrific physical abuse. I welcome the government's adoption of amendments to provide for the survivors of physical and associated psychological abuse consistent with clauses 3, 6 and 9 of my private member's bill. This is such an important amendment for survivors, and I thank the government on their behalf for bringing these amendments. I also commend the shadow Attorney-General and opposition for strongly supporting the reforms that apply to physical abuse, as proposed in my bill. I congratulate the shadow Attorney-General for his intention to introduce amendments to that effect.

The inclusion of physical abuse in this bill is long overdue and comes after three long years of advocacy by prominent survivors and NGOs including: the Queensland Child Sexual Abuse Legislative Reform Council, Bravehearts, Micah Projects, Care Leavers Australasia Network, Blue Knot, Survivors and Mates Support Network, Tzedek, End Rape on Campus, Beyond Blue, Protect All Children Today, and a number of individual survivors of abuse. Applying these reforms to physical abuse has also long been recommended by eminent independent legal bodies including knowmore legal services and the Australian Lawyers Alliance, among others.

I take this opportunity to extend special recognition to Mr Rob Pyne, the former Independent member for Cairns, who in 2016 introduced the first bill in Queensland to propose that physical abuse and associated psychological abuse be included in royal commission reforms. Today's important amendment by the government has its roots in that early version introduced by Mr Pyne. The government is to be commended for having the sense and good reason to adopt these entirely appropriate reforms. There is, of course, some work that remains to be done. I draw to the House's attention the statement of reservation in the committee's report which, in addition to the issue of physical abuse, also emphasised stakeholder input that the government bill does not have retrospective effect and fails to legislate strict liability.

I have been provided with a letter written by prominent survivor advocacy groups. Signatories to the letter include many of those NGOs I just named. In this letter, in addition to the issue of physical abuse, these groups are united in identifying other major flaws in the government bill, and they plead with the government to amend the bill. I table a copy of that letter in case it has not already been tabled.

Tabled paper: Letter, dated 5 October 2019, from multiple authors to the Premier and Minister for Trade, Hon. Anastacia Palaszczuk, and the Attorney-General and Minister for Justice, Hon. Yvette D'Ath, regarding the Civil Liability and Other Legislation Amendment Bill 2018 [1904](#).

Their first concern is that the bill fails to legislate strict liability, as outlined in recommendations 89 and 90 of the royal commission report. As a matter of principle, there should be a very high bar set for any government to ignore the recommendations of a properly constituted royal commission, particularly one that has operated for five years nationally, costing half a billion dollars and receiving evidence from all stakeholders and with an unprecedented level of national buy-in and legitimacy. Certainly, any government intent on turning its back on the recommendations of such a royal commission owes it to the community to explain its actions thoroughly. As I understand, this government is yet to offer any satisfactory explanation for ignoring the royal commission so blatantly in this respect.

Without strict liability, this bill will deliver fewer rights to survivors of abuse than they already have under common law. The 2016 High Court decision in *Prince Alfred College v ADC* delivered vicarious liability with retrospective effect. The Attorney-General acknowledged this in the House on 12 June this year; however, that judgement, like all case law, dealt with one specific case. It is not all encompassing. Case law such as this cannot be expected to apply to all survivors. Legal experts have advised that the Queensland government should legislate strict liability to ensure that the statute is in addition to and preserves existing vicarious liability at common law. By way of example, I recommend to the House the approach taken in New South Wales at section 6H of its Civil Liability Act.

The other main concern raised by NGOs is the Attorney-General's proposed amendment to the Civil Liability Act to prevent in all circumstances an apology from being tabled in court as potential evidence of an admission of liability. Such an amendment does not sit comfortably with this bill at all. The purpose of this government bill is to legislate the duties of institutions and to enshrine the rights of victims of abuse. It therefore would be grossly inappropriate for this government to use this bill to create a coverall shield of immunity for institutions that denies victims of abuse the right simply to put their evidence before the court to be properly tested. To do so, particularly today, on the anniversary of the national apology, seems striking.

The principle of every government should be that justice is best served by the presentation of evidence before the court for the court to properly rule on on a case-by-case basis. The proposed amendment, by having the effect of obstructing evidence from being properly tested by the court, risks bringing the administration of justice into disrepute. Quite simply, the best way to resolve any question around liability would be for the Attorney-General to legislate statutory liability as per recommendations 89 and 90 of the royal commission. Then the issue of an apology letter would be irrelevant since liability would be established by statute.

In closing, as others have in this debate, I extend my sincere personal thanks to the advocates and survivors who have fought so hard to achieve whatever justice can be afforded to survivors in the circumstances. In particular, I want to thank Kelvin Johnston and submitter No. 7, who has chosen to remain anonymous throughout this process. Their assistance and input have been absolutely invaluable, as others have noted. I commend them for all of the work they have done over so many years.

If our institutions are to survive, it will be because they lift their standards and performance to the level expected by the community, not because they continue to hide behind improper and unjust protections provided by this parliament. I stand with the survivors and advocacy groups, who are the experts in this field and should be listened to. I stand by the community, which has invested considerable public resources in a five-year national royal commission and which expects to see that effort result in lasting and effective change that will ensure our institutions are child safe and trustworthy. It is long overdue that this House affords survivors of serious physical abuse the same rights and access to justice that are afforded to survivors of sexual abuse. I commend this bill to the House. I am honoured to have been able to help make these amendments a reality.