




Speech By  
**Stephen Andrew**

**MEMBER FOR MIRANI**

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**CIVIL LIABILITY AND OTHER LEGISLATION AMENDMENT BILL**

 **Mr ANDREW** (Mirani—PHON) (4.26 pm): I rise to speak in the debate on the Civil Liability and Other Legislation Amendment Bill 2018. I thank my fellow members of the Legal Affairs and Community Safety Committee and the parliamentary secretariat for their efforts and members of the public for their contributions to this amendment bill.

While it is clear that the abuse of the weak and powerless in society should not be tolerated under any circumstances, I have residual concerns about how these changes to the law will impact in practice. May I suggest that imposing a reverse onus of proof could impart a serious, unintended impact on the long-term operation of the not-for-profit community based and small business based providers that are typically lean and simple operations. Whilst I am sure an extremely high percentage of these institutions and staff strive to deliver the best care and uphold and comply with the law, due diligence with regard to a reverse onus of proof will almost certainly add to their risk management. In effect, this will add another layer of legality for facility managers and staff, with significant costs and liabilities involved, just to cover a potential, but otherwise exceptional, failure.

Those who sit in this House represent small and medium business operators who would regularly point out how hard it is to administer future risk, along with the increasing costs of legal affairs that, in the worst case, could take down a business in a short time. Hence, I hold fears that the added burden will devalue the quality and surety of care provided—the fundamental purpose of these businesses—whilst putting a wall of mistrust between the provider's staff and its clients.

In effect, the reverse onus of proof will increase the cost of care going forward and likely threaten the viability of not-for-profit and smaller organisations that, by their nature, have not got the resources to manage the additional statutory and legal requirements. The impact of any government imposition multiplies the further the organisation is from George Street, Brisbane. This impacts unfairly on small, decentralised organisations.

Furthermore, the explanatory notes state, 'The reverse onus amendments may result in more cases involving the State being litigated.' The obvious outcome is that a future government could seek to reduce the risk and avoid this financial liability by exiting the sector at the very time the cost-effective and flexible community sector is downsizing capability.

Where will all this lead? Straight into the hands of an oligopoly of large and often multinational corporate providers. By virtue of limited operations remaining, they will set the price and terms by virtue of commercial-in-confidence—indeed, a nasty predicament that could lead to the complete opposite of the original intent of these changes. Furthermore, it could leave a future parliament to unscramble the egg with a huge reinjection of public funds to restore balance and accountability.

To conclude, whilst I appreciate the principled intent of reversing the onus of proof, I am uncomfortable with flipping the legal process on its head. Perhaps the best long-term approach need only be to fund more legal support to provide fair access to justice for every client but under the existing legal frameworks.

I have in front of me the amendments to be moved by the Leader of the House. Amendment No. 26 amends the bill to insert a new part 4 and part 5, expanding the removal of the limitation periods in relevant acts and defining 'abuse' of a child to mean—

- (a) sexual abuse or serious physical abuse of the child; or
- (b) psychological abuse of the child perpetrated in connection with sexual abuse or serious physical abuse of the child.

My father grew up in an institution and was flogged every day—and that did not happen just for days; it happened for years. He had to be taken out of school at age 11 to go into the cane fields to cut cane. He was flogged so severely that his mother used to check inside his pants every afternoon and then flog him again. It was a very terrible time for him. Hopefully, this legislation will sort some of those situations out. It is a bad thing when you have a young kid who will not come in out of the cold and has to be so hungry to go in and face the music and then do it all again the next day. This is good legislation.