Legislative Council

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VICTIMS OF ABUSE IN STATE CARE (COMPENSATION) BILL

The Hon. A. BRESSINGTON (20:58): I rise to indicate that I also support the second reading of the Victims of Abuse in State Care (Compensation) Bill 2009. In doing so, I commend the Hon. Robert Brokenshire on making a move to have victims of abuse in state care acknowledged and vindicated through fair and proper compensation. I will flag my support as 'in principle' but I also flag that I intend to move some amendments because I truly feel that this bill falls far short of what is deserved by these victims.

I acknowledge, though, that this bill is a step forward and will perhaps put a bomb under the government to bring forward a bill that is in line with other states that have made the decision to accept responsibility for the trauma and pain suffered by children who were removed from their families with the understanding that they would be protected and offered a better life.

We must never forget the magnitude of the abuse that took place, and we must also continually remind ourselves that the neglect at the hands of the state claimed the lives of 377 children who died while in state care. I propose that any legislation passed in this place to deal with this travesty must reflect the losses that have been inflicted on us as a society and more so on those who survived.

Our poor history goes back to 1908: that is the earliest death that could be tracked by the research undertaken by the Mullighan inquiry. It would be my hope, wish and dream that this parliament could take meaningful steps to ensure that, from 2009 (almost exactly 100 years later), we could close the gaps, tighten the practices and make sure that such abuse does not happen again.

That is a big ask, I know, and I have no doubt that in the past steps were taken that have obviously failed. So, the answer is not to accept that this problem is bigger than all of us but to strive for best practice in all areas of child protection, and when problems are identified find the solutions rather than making excuses for why they are occurring or denying that it is happening.

It is also true that legislation alone is not the answer. As I have said many times, legislation without the political will to apply the law and without ministerial oversight, it is nothing more than an empty debate, with no visible outcome for anyone, especially the children.

I do not lay the blame at the feet of this government alone for what has been decades of abuse and neglect, and it is unfortunate that this government alone has been made responsible for finding the funds to provide victims with redress and services. However, my only thoughts at this stage are for the victims, past, present and future. I must say as a citizen, that in 2002, I was disappointed with the reluctance of this government to establish the inquiry and disappointed that the Attorney-General made light of the demand for an inquiry with the following comment made on FIVEaa:

Graham Archer from Channel 7's *Today, Tonight* was calling for a royal commission into child abuse in South Australia covering a period from 30 to 40 years and barristers were all joking that this was a tremendous idea because it meant $35 million would be spent on them.

Well, I would say that it was money well spent and that the victims of such heinous abuse deserved every cent invested in the Mullighan inquiry. I also hope those barristers to whom

the Attorney-General was referring feel some deep sense of shame after what has been uncovered during the course of the inquiry, and I hope that one day they will find it in their heart to own their comments and publicly apologise for their flippant attitude to this state's shame.

The report of the Inquiry of Children in State Care Commission Inquiry was difficult to read, and there is no doubt that it was a very difficult project for the Hon. Ted Mullighan QC, who wrote:

Nothing prepared me for the foul undercurrent of society revealed in the evidence to the inquiry; not my life in the community or my work in law as a practitioner and a judge. I had no understanding of the widespread prevalence of the sexual abuse of children in South Australia and its frequent ly devastating and often lifelong consequences for many of them. I was not prepared for the horror of the sexual cruelty and exploitation of little children and vulnerable young people in state care by people in positions of trust and responsibility or the use of them at paedophile parties for sexual gratification, facilitated by the supply of drugs and alcohol. I had no understanding that for many the consequences of having been sexually abused as a child was the loss of a childhood and an education.

The Hon. Ted Mullighan went on to say:

While the full extent of the sexual abuse of children in state care can never be known, it is possible that the people who gave evidence to the inquiry are just the tip of the iceberg.

We are all very familiar with Mr Ki Meekins and his persistence over the years to raise this issue in the public arena and to expose one of the best kept secrets of our history in South Australia. Although I am sure that Ki Meekins has been a thorn in the side of both major parties over the years, as is the case with most who find themselves on the wrong side of the state, he has gained the respect of many in his efforts to expose the abuses of the past and to change the system for the kids in state care.

In his book *Red Tape Rape*, he exposes the systematic abuse of children who were exposed to the predators who worked in or volunteered for or simply attached themselves to institutions responsible for the care and protection of those children. Ki Meekins' book is a chilling account of that abuse and of the process of literally turning our most vulnerable children into nothing more than 'street fodder'. Then, through ongoing neglect, the state continued the abuse by turning a blind eye and a deaf ear to the troubled and tormented individuals who were unfortunate enough to be under the guardianship of the minister.

Like most other members in this and the other place, I have had conversations with some of the victims of abuse in state care and, to this day, it is easy to see the torment in their eyes and hear it in their voices. Some 40 or more years on, many cannot recount their experiences without breaking down, and, of course that is a sure sign that the wounds are still wide open and that healing is a long way off. In fact, for some the word 'healing' has little or no meaning because they have not been treated with the respect and empathy they deserve.

We continue to ignore the fact that these children would have been no worse off if they had not been removed, and the state and every minister played a part in prolonging their pain and suffering and still do to this day. It is well understood that Ki Meekins does not represent all victims, and it is my heartfelt belief that this group (which should be cohesive) has been split and, with this split, as usually happens, we have some who want different outcomes for different reasons.

I personally do not believe that the demands made by Mr Ki Meekins and his group on behalf of those they represent are extreme. What he has been seeking is long-term, effective support that would enable those he represents to move forward with their lives. In short, he asks for:

- adequate redress in line with other state models;
- a health card (referred to as a Gold Card) that would provide ongoing support for people to recover emotionally over time and have all their health needs met;
- a healing centre where specific services can be provided to meet the unique distress of adults who suffer the ultimate betrayal as children; and
- a desire for all those who perpetrated the abuse of our children to be held to account.

Not too many would see any of these requests as extreme, and anyone who would has little regard for the harm that has been done in the past that now affects how the victims of this abuse function in the here and now. It takes courage just to get out of bed every day and carry around the baggage of 40 years of painful memories and, of course, the everlasting belief that to trust others will cause further pain and suffering.

As has been mentioned in this place many times, child protection workers have a very difficult job. They are damned if they do and damned if they don't. I do not believe that any one of us in this place envies the decisions that have to be made. We also acknowledge that mistakes will be made, because that is part of the human experience, and we all accept that government intervention is often less than ideal.

In saying that, we must also acknowledge the past in order to ensure a better future. By acknowledging the mistakes made and facing the consequences of those mistakes, we are less likely to continue to repeat what is a sad past in the area of child protection.

It is even sadder to know that the same mistakes are still occurring, and one of the problems I have with this bill is that, in a fashion, it literally reinstates a statute of limitations, which I find curious given the hard work put in by the Hon. Andrew Evans to overturn that law and pave the way for victims of abuse in state care to move closer to being recognised.

With the wording of clause 4(a), I believe that this bill provides compensation only to those who turn 18 years prior to 1 February 2009. I am still not sure of the relevance of this date but, to me, it ignores the fact that abuse is still occurring, or at least that allegations are being made and, if proven, those abused children will need to be dealt with in the future. Children enduring abuse or neglect today are no less deserving than those who experienced it prior to 1 February 2009. By dealing only with past abuse, this bill condemns future victims to going through the same arduous and painful process as those in the past.

In my opinion, if we are going to have a bill dealing with neglect and abuse in state care, it must have foresight as well as hindsight and must be able to include those victims who are yet to come forward from the recent past and present. It is naive to view this as a problem that belongs in the past, because there are still many problems in the area of child protection and the services available to those children removed from their families.

Clause 5(4) also provides limited access to compensation by only allowing applications to be made within 12 months of the bill's proclamation or within a longer time specified by the minister. I have drafted an amendment to delete any reference to an application period because, as I said, I believe it is almost a return to the statute of limitations style of legislation the Hon. Andrew Evans worked so long and hard to have repealed.

Many whistleblowers in this state have been told that the reason they will never be acknowledged or vindicated by the state is that 'the state cannot afford to compensate all

victims'. My response to that statement is: improve your systems, policies, practice, training and supervision, and make a commitment that the buck will always stop with the minister and the chief executive. Close the loopholes and make sure that no level of abuse of power, position or negligence will be tolerated.

When we contemplate and justify what we will not do as though it is something we cannot do, when in fact we simply refuse, the grief and pain caused and suffered is only escalated by the insult that is carried out. In turn, our burden and liability do not diminish or disappear but become even greater. It was Nixon who said, 'It is not the crime that is the problem: it is the cover-up.' Who would know better than he, and would we not think that the government of the day would have lessons to learn from those who have suffered the ultimate embarrassment and public humiliation, if only to avoid the same?

This was the experience of the James Hardie victims when the company, after it was established that it had known of the dangers of asbestos, set out to silence the victims and stonewall the compensation. The same processes were used against victims of child sexual abuse within the Anglican and Catholic churches until, eventually, the tide of public opinion forced a formal apology and moves towards some compensation.

Why is it that we feel the Crown of South Australia should behave less honourably and with greater impunity than a private corporation or non-government body would ever get away with? Is it not the ultimate litmus test of how an oppressive dictatorship would operate?

The first necessary step in genuinely setting out to protect victims of the state is a full and complete acceptance of the premise, not that we cannot afford to compensate victims, but, rather, that we cannot afford not to. We impose harsher penalties on criminal offenders guilty of far less than the state has ever been held to account for and, as I recall it, our Premier (Hon. Mike Rann) made a promise to be the model litigant as far as victims of abuse in state care were concerned.

A media release entitled, '$22 million compensation fund available to former state wards', dated 2 April 2008, states:

Any person who was sexually abused while in care, is eligible to immediately seek compensation through the Victims of Crime Fund that has $22 million available for victim compensation,' Premier Mike Rann said. Victims of sexual abuse while children in state care are eligible for a payment of up to $50,000 without having to suffer again by being dragged through the court process. And this fund is available to survivors now...While the state government will be considering what's happened interstate, survivors who want to pursue a civil settlement against the state and other non-government organisations that may be involved in their case are free to do so through the court process. The state government is committed to acting as a model litigant, and any civil claims by survivors will of course be dealt with compassionately and expeditiously.

So in April 2008 there was $22 million available to victims. What must be realised is that this money is not from the pockets of the state government but, rather, from the Victims of Crime Compensation Fund, for which many of the victims who gave evidence to Mullighan are simply not eligible. For those who are, and who have applied, paltry sums are the result.

In one notable example, a gentleman who has been left in the most sorry state, suffering agoraphobia and unable to trust anyone, received the sum of just over $20,000, following what was an arduous and painful application, and, of the amount received, nearly 75 per cent was taken in legal fees. How this government can feel a sense of satisfaction in this result and claim that its duty to these victims is discharged staggers belief.

It would also be reasonable to put to members in this place that the model litigant would be prepared to accept full responsibility for the situation created by the state, and the model litigant would ensure that redress and services were in place to meet the needs of the victims, rather than what we have at present.

The motion, moved last year and supported unanimously, did little to spur the government into action, and what we got was a good news story of what the government had already done, even though the services were poor, inaccessible and less than desirable to meet the needs of those victims. There was no admission that, in fact, improvement was needed, and there was no acknowledgment that there was any intention to expand and improve on what was in place.

Since the Mullighan report we have seen a government that has baulked at its responsibility to its most vulnerable citizens, and we have seen a government that has stalled in delivering promises that, no doubt, make good media on the day. This government has been called arrogant by political commentators, and Dean Jaensch, just last week, said that this government is the most arrogant government this state has seen, but there is also a belief that on this issue this government has shown a callous disregard for its citizens and, sadly, on this matter, I agree.

We are in the midst of a global financial crisis, we can expect to face some tough times and every government must prioritise but, please, it is hard to convince those who were abused in state care that when this inquiry began in 2002 there would not be demands for redress and adequate services, and some forward planning certainly would not have gone astray in putting things right.

South Australia has dragged the chain on this one, and it is a poor indictment on the value that we place on those who have suffered unspeakable wrongs and a poor insurance policy for future victims. I know that minister Rankine has some great initiatives in the pipeline to address the level of care children receive, and I know that she is a person with not only the intent but also the backbone to demand better of her department. I hope that the Premier and the Treasurer can also display a show of heart on this matter before much longer and make it happen.

The last thing that any one of us wants to hear is that the victims are still the victims and that only the face of the abuse has changed to that of rejection, delay, invalidation and, worst of all (the ultimate insult), penny pinching. This government has wasted far greater resources than these victims combined would ever need by stonewalling their claims and litigating them through the courts only to argue that the state never owed them a duty of care anyway. We expect convicted serious offenders, whether murderers or rapists, to admit their guilt before we release them on parole or rehabilitate them into the community, but our Crown does not have to give any undertakings never to repeat the deceitful or criminal conduct of the past.

To me, it is unthinkable that, under these circumstances, the state would even contemplate denying a duty of care because, after all, every minister and government employee was meant to be the replacement family for these children. They were meant to be the protectors of the children, not the protectors of those who preyed upon them. This bill before us is a dream come true for the government in actual fact, so much so that I was inclined to think that the government had some input into its drafting.

It provides minimal redress for victims ranging from $7,000 to $43,000 in two tiers. If a former state ward can demonstrate that they suffered significant physical or psychological injury as a result of the abuse, they are eligible for the maximum payment of $43,000, and I

do believe that is being amended. If, however, they cannot demonstrate that the abuse caused significant injury, they are eligible for a maximum payment of $7,000, with the differentiation provided for in sections 6(1)(a) and (b). However, I am a little curious. If a child or an adult can prove they were sexually abused while in state care, I am a little befuddled as to why we would not consider they would have those long-term injuries and harms, because anyone in psychology and psychiatry knows that abuse and trauma stay with a person for life unless it is actually dealt with appropriately with appropriate services and therapy.

I do not mean to be critical of the Hon. Robert Brokenshire for putting forward this bill. I am sure his intentions were pure of heart but, as I have said, we have to get this very right—all aspects of it—because it will be the difference between making amends and continuing to fester disappointment and grief. Having applications made to the A-G in the first instance has several advantages; notably, an application will presumably be of negligible expense (if not free) and could possibly be prepared by a competent lay person.

It is also a matter of political nous that a denial or payment of a paltry sum will rest upon the shoulders of the A-G and, in turn, the government of the day rather than on the courts, which are above criticism. However, this bill lacks greatly by not allowing a decision of the Attorney-General to be reviewed by the courts, specifically by section 6(6). As such, the subjective determination by the A-G loses any enforceable structure, and there will be no precedence to guide the A-G's decision; no transparency in process and reasoning will be involved.

I will be moving an amendment allowing victims refused or dissatisfied with the determination of the Attorney-General to appeal to the District Court. The burden of proof is undoubtedly low, requiring only that the A-G be subjectively satisfied that the claimant suffered abuse or neglect and that significant physical and psychological injury did or did not occur. In my opinion, these figures do not recognise the severity of the abuse many victims suffered. While it will no doubt be argued that these figures are comparable to the figures under the Victims of Crime Act 2001 (under which payments are made for victims of rape, etc.), this argument ignores the distinguishing circumstances of these victims.

They were under the care of the state when the abuse and neglect occurred, and any payment made needs to reflect just this. It has always been my concern that the state will use a form of ex gratia payment for specific instances of abuse that occurred to abdicate its broader breach of duty of care to wards of the state. This would be done by making a payment which is most likely to be a paltry sum on the condition that the state ward will not pursue a civil action for a breach of that duty of care. This bill allows that in section 6(3) which is then further reinforced by section 12.

Blackmailing victims into withdrawing their claims for further compensation and relinquishing their full legal entitlements to other forms of compensation is the kind of conduct we expect from unscrupulous and dishonest insurance companies, not of a purportedly civilised and democratic Western government. Why the Hon. Robert Brokenshire would seek to facilitate this is beyond my reasoning but, I repeat: the bill before us is, in its current form, a dream come true for the government.

This bill also fails to prevent the A-G from silencing the recipient of a payment. Although slightly different, because it was an out-of-court settlement, Ki Meekins was silenced from speaking out about the abuse he suffered and the amount paid to him. It is possible, due to the politically sensitive nature of the abuse and the payments, that the A-G will also attempt to

silence recipients of a payment under this bill. This is something we cannot allow and, hence, I will be moving an amendment to prevent such an occurrence.

Where is our collective conscience? Do we simply breathe a sigh of relief, grateful that it was not ourselves or a loved one put through these experiences? How dare we tell victims that they can like it or lump it when we deny them the right to sue the state for a breach of duty of care in exchange for nothing more than a mere $43,000 or, when amended, $50,000. Is this the value we place on a lifetime of family breakdown, personal trauma and lost economic opportunity, amongst other things, that these victims may have suffered? If so, then shame on us.

Debate adjourned on motion of Hon. T.J. Stephens.