



Legislative Assembly for the
Australian Capital Territory

Standing Committee on Legal Affairs

Submission cover sheet

Inquiry into the Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025

Submission number: 006

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Submission regarding Inquiry into the Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 ('the Bill')

1. Background

- 1.1 We are a Sydney-based law firm which specialises in historical child abuse civil claims. Our practice area includes claims in the Australian Capital Territory and all Australian jurisdictions. Our Senior Partner, Peter Karp, has acted and advocated for survivors of historical child abuse for three decades.
- 1.2 This submission addresses the *Terms of Reference* in so far as it aims to assist the Standing Committee on Legal Affairs in its consideration of the Bill before it reports back to the Legislative Assembly on 24 September 2025. We understand that the Committee will particularly examine how the Bill will ensure survivors who were abused by individuals associated with organisations, who were in positions '*akin to employment*', are able to access justice.
- 1.3 Despite the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse ('Royal Commission') that survivors have a vehicle to establish institutional liability for abuse committed against them as children, the High Court ruled in *Bird v DP (a pseudonym)* [2024] HCA 41 ('*Bird v DP*') that vicarious liability will not apply to relationships which are not strictly between an employer and employee, such as that of a Catholic priest and a child parishioner, or a Scout Leader and a Boy Scout.
- 1.4 Now, eight months on from the judgment, survivors have been devastated by the impact of this decision, with institutions limited from liability for the criminal acts of persons who were not technically an employee but who were nonetheless tasked with the care of children. Survivors are unable to obtain fair compensation for the abuse committed against them. Institutions are now making minimal settlement offers, if at all, to survivors where there is a priest, religious brother, scout leader or other volunteer involved, in circumstances where survivors had successfully settled claims and received Court judgments in their favour against the same institutions before *Bird v DP*.
- 1.5 Survivors who suffered abuse at the hands of an employee maintain the right to utilise vicarious liability as a means of claiming civil compensation, whereas those who suffered at the hands of a non-employee, do not. For example, where two sisters attended a school and one was abused by a teacher, while the other was abused by a priest at the school chapel, only the first can assert vicarious liability against the institution.
- 1.6 The High Court in *Bird v DP* stated that: "*Reformulation of the law of vicarious liability is properly the province of the legislature*" ([67]).

1.7 Survivors require immediate and consistent intervention by State Parliaments.

2. Current Legislative Frameworks for Organisational Liability

2.1 As an example, the current legislative frameworks in New South Wales, Victoria and the Australian Capital Territory for organisational liability for child abuse operate, in short, as follows:

2.1.1 New South Wales and Victoria currently have provisions defining when persons are '*individuals associated with institutions*.' Religious leaders are included in these definitions. These definitions link to provisions regarding organisational duty of care for child abuse, applying prospectively. For New South Wales, this is Section 6E of the *Civil Liability Act 2002* (NSW), linking to Section 6F. For Victoria, this is Section 90 of the *Wrongs Act 1958* (Vic), linking to Section 91.

2.1.2 In New South Wales, there are then additional provisions for vicarious liability for organisations for criminal acts of employees and persons who are '*akin to an employee*' (which is defined more narrowly than '*individuals associated with institutions*'), again applying prospectively. This is Sections 6G and 6H of the *Civil Liability Act 2002* (NSW). Following the *Bird v DP* decision, New South Wales is deferring action until the Standing Council of Attorneys-General considers a way forward, having negated the Motion of the Hon Jeremy Buckingham to amend the *Civil Liability Act 2002* (NSW) on 4 June 2025.

2.1.3 In Victoria, there is no equivalent to Sections 6G and 6H of the *Civil Liability Act 2002* (NSW), which leaves vicarious liability as purely a common law matter, now made problematic by *Bird v DP*. The Wrongs Amendment (Vicarious Liability) Bill 2025 (Vic) introduced in February 2025 aimed to address this gap. The Victorian Attorney-General has indicated that the Australian Labor Party will introduce retrospective laws to Parliament by the end of 2025, with drafting having already begun.

2.1.4 In the Australian Capital Territory, there is no equivalent to any of the above provisions in the *Civil Law Wrongs Act 2002* (ACT), which leaves vicarious liability as purely a common law matter for all survivors, now made problematic by *Bird v DP*.

3. Proposal for Legislative Intervention in the Australian Capital Territory

3.1 As Plaintiffs' lawyers, it is our primary concern in the aftermath of *Bird v DP* that survivors are able to access justice no matter the circumstances of their abuse, the employment status of the perpetrators of their abuse, or the status or timing of their civil claims.

3.2 As indicated in the speech of Mr Shane Rattenbury MLA, Leader of the ACT Greens, when introducing the Bill on 25 June 2025, we provided the first iteration of the Bill to Mr Rattenbury MLA in March 2025, and assisted in reviewing each of its following versions prior to its presentation in the Assembly on 25 June 2025.

- 3.3 When making our initial recommendations to Mr Rattenbury MLA, as there are no existing provisions which deal with organisational liability for child abuse in the Australian Capital Territory, we proposed inserting into the *Civil Law Wrongs Act 2002* (ACT) a hybrid of the existing provisions in the New South Wales and Victoria equivalent legislation, as set out at 2.1.1 to 2.1.3 above, with the aim being to ensure that the scope of the definition of '*akin to an employee*' is broad enough to capture persons such as religious leaders and volunteers, and critically, that the provisions have a retrospective application. Such provisions would importantly ensure that survivors who have been abused by non-employed individuals tasked with their care by an organisation can still access justice, and that these provisions would apply to historical survivors of child abuse, rather than only those abused from 2025 onwards. **We support and endorse the proposed Part 8A.1A which remedies these gaps in the legislation.**
- 3.4 We further suggested in April 2025 that transitional and remedial provisions may be required to ensure that rights of action accrued before or after the commencement of the provisions would benefit from the amendment. Such provisions would importantly ensure that survivors have the benefit of the retrospective amendments even if their proceedings were commenced but not finally decided before the commencement of the proposed Part 8A.1A. **We support and endorse the proposed Chapter 21 which provides this safeguard.**
- 3.5 In June 2025, we additionally proposed that the existing provisions within the *Civil Law Wrongs Act 2002* (ACT) which enable the setting aside of '*abuse settlement agreements*' be amended to enable survivors who entered into such agreements before the commencement of the proposed Part 8A.1A to apply to have those agreements set aside if the agreement involved a person who would have been an employee of the organisation had the proposed Part 8A.1A been in force at the relevant time. **We support and endorse the proposed amendment to the definitions under Section 114J(1) which remedies this gap in the legislation for survivors who would be caught in the period between the *Bird v DP* decision and the commencement of the proposed Part 8A.1A.**

4. Conclusion

- 4.1 As Plaintiffs' lawyers with an extensive practice in this area, we urge the Committee to pass the Bill as swiftly as possible to ensure survivors can access justice despite the employment status of their perpetrators, the timing of their abuse, or their civil claims, in keeping with the spirit of the Royal Commission.

Peter Karp, Senior Partner

KARP O'NEILL LAWYERS

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