



Submission cover sheet

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

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Chair
Standing Committee on Legal Affairs
By email: LACommitteeLegal@parliament.act.gov.au

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30 July 2025

Dear Ms Barry *Chiaka*

Thank you for the opportunity to make a submission to the Standing Committee's inquiry into the Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 (the **Bill**).

I am writing to provide the Committee with a submission on behalf of the ACT Government. This submission provides information on civil litigation and redress pathways in the ACT for victim survivors of child sexual abuse, the impact of the High Court's decision in *Bird v DP* on civil litigation pathways for victim survivors in the ACT, and highlights the comprehensive legislative reform that has been pursued by government to the *Civil Law (Wrongs) Act 2002 (CLWA)* and other relevant legislation since the Royal Commission into Institutional Responses to Child Sexual Abuse (the **Royal Commission**).

Organisational liability for child abuse

Bird v DP (a pseudonym) [2024] HCA 41 confirmed the position at Australian common law that an organisation can only be held vicariously liable for the acts of its employees and there is no such liability for the acts of those who are not in an employment relationship, for example if the relationship is 'akin to employment'.

As the common law for vicarious liability applies in the ACT, the High Court's decision confirmed the principles informing vicarious liability in the Territory as well as other states that have not codified vicarious liability.

The decision does not impact the availability of other civil litigation options for claimants in the ACT who wish to bring an action in negligence against an institution based on an alleged breach of duty of care owed to the claimant. A cause of action remains available for a claimant to assert direct liability such as that an institution was negligent in failing to take precautions against the risk of harm. As discussed in this submission, the ACT Government has introduced reforms since the Royal Commission with the aim of improving access to civil justice pathways for victim survivors and participates in the National Redress Scheme for people who have experienced institutional child sexual abuse.

The government acknowledges that there have been calls for law reform since the High Court's decision in *Bird v DP*.

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The Attorney-General is engaging with the Commonwealth, state and territory counterparts through the Standing Council of Attorneys-General (SCAG) to discuss the impact of the High Court's decision in *Bird v DP*. SCAG has agreed to work together to further consider the impacts of the High Court decision and to consider potential reform options.¹ As part of this agreement, the ACT government is actively considering possible legislative change.

Vicarious liability reforms in Australia

The Royal Commission's *Redress and Civil Litigation report* recommended that jurisdictions introduce a non-delegable duty on certain institutions for institutional child sexual abuse (recommendation 89), that the non-delegable duty apply to a specified list of institutions who provide care, supervision or control of children (recommendation 90) and that the amendments operate prospectively (recommendation 93).² The following states and territories have legislated to extend the application of vicarious liability, which achieves a similar outcome to the creation of a non-delegable duty, as a response to these recommendations:

- In NSW, the *Civil Liability Act 2002* (NSW) was amended in 2018 to prospectively extend vicarious liability to organisations for child abuse perpetrated by employees and persons 'akin to an employee'.³
- In Tasmania, the *Civil Liability Act 2002* (TAS) was amended in 2019 to prospectively extend vicarious liability to organisations for child abuse perpetrated by employees and individuals 'akin to an employee'.⁴
- In South Australia, the *Civil Liability Act 1936* (SA) was amended in 2021 to prospectively extend vicarious liability to institutions for child abuse perpetrated by employees and individuals 'akin to an employee'.⁵
- In the Northern Territory, the *Personal Injuries (Liabilities and Damages) Act 2003* (NT) was amended in 2022 to prospectively extend vicarious liability to institutions for child abuse perpetrated by employees and individuals 'akin to an employee'.⁶

In line with the recommendation of the Royal Commission, to date no jurisdiction has legislated with retrospective effect.

Reforms in the ACT

The ACT Government is committed to ensuring the survivors of child sexual abuse can access justice. The Government has introduced reforms to implement the Royal Commission's recommendations and improve civil justice pathways for victim survivors.

Limitation period

The *Justice and Community Safety Amendment Act 2016 (No 2)* removed limitation periods for all civil actions relating to child sexual abuse in an institutional context in response to recommendations 85-88 from the Royal Commission's *Redress and Civil Litigation report*. The amendment to the *Limitation Act 1985* (Limitation Act) was applied retrospectively.

¹ Standing Council of Attorneys-General communique (21 February 2025), https://www.ag.gov.au/sites/default/files/2025-02/scag-communique_21-feb-2025.pdf

² Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation report* (September 2015) <https://www.childabuseroyalcommission.gov.au/redress-and-civil-litigation>

³ *Civil Liability Act 2002* (NSW), ss 6G-6H.

⁴ *Civil Liability Act 2002* (TAS), ss 49I-49J.

⁵ *Civil Liability Act 1936* (SA), ss 50A, 50G

⁶ *Personal Injuries (Liabilities and Damages) Act 2003* (NT), s 17G.

Prior to the amendment, victim-survivors of child sexual abuse in an institutional context had a limitation period of six years after the child had reached 18 years of age to seek redress for the harm they had suffered. This posed a significant barrier for victim-survivors by setting time limits within which victim survivors can initiate civil litigation. This significant reform provides reasonable opportunity for victim survivors in the ACT to seek justice and compensation from these institutions, regardless of when the abuse occurred.

End of the 'Ellis defence'

The *Civil Law (Wrongs) (Child Abuse Claims Against Unincorporated Bodies) Amendment Act 2018* ended the use of the 'Ellis defence' to ensure that survivors are able to take civil actions against institutions, regardless of the legal structure of the institution.

The 2018 Amendment Act implemented recommendation 94 of the Royal Commission's *Redress and Civil Litigation report* to:

- enable an unincorporated body to nominate an entity as the defendant in a proceeding for a child abuse claim
- allow a court to make an order to appoint a related trust as defendant to a child abuse claim; and
- allow trustees to apply trust property to meet liability for child abuse.

These reforms ensure that victim survivors are able to sue a readily identifiable entity that has the financial capacity to meet claims in relation to a personal injury that arises from institutional child abuse.

Unjust settlements

The *Justice and Community Safety Amendment Act 2022* reformed the CLWA and Limitation Act, to provide the Court with the power to set aside unjust child abuse settlements so that victim survivors can seek the compensation to which they may be entitled and remove any limitation period for child physical abuse.

Prior to this reform, many child abuse survivors who entered into unjust settlement agreements were barred from seeking further compensation as a condition of settlement. The reforms allow a survivor to have an agreement set aside if, at the time it is sought to be set aside, the agreement is not just and reasonable.

The Amendment Act also expanded the definition of child abuse under the CLWA and Limitation Act to include 'physical' abuse. This expansion allows all victim survivors in the ACT the opportunity to receive equal treatment before the law, by enabling those who suffered abuse as children to bring claims for damages regardless of when the abuse occurred and the type of abuse experienced.

National Redress Scheme

Finally, I wish to draw the Committee's attention to the ACT Government's participation in the National Redress Scheme since 1 July 2018. The ACT was one of the first jurisdictions to opt into the Scheme, which offers counselling and psychological services, monetary payments and direct personal responses to victim survivors of institutional child sexual abuse.

Victim survivors who seek and receive redress from the scheme are unable to continue to take civil action against an institution or its associate institutions. Free assistance for survivors to consider their options and apply to the Scheme is available through Redress Support Services and knowmore Legal Service.

The ACT Government continues to work closely with the Commonwealth, state and territory governments on implementation of the Redress Scheme to ensure it is accessible and responsive to victim survivors of child abuse in the ACT.

I trust that the above information assists the Committee and highlights the Government's considerable law reform efforts and commitment to implementing the Royal Commission's recommendations to ensure victim survivors in the ACT have access to justice through civil proceedings and the National Redress Scheme.

As the Minister with the portfolio responsibility for the *Civil Liability (Wrongs) Act 2002*, I thank the Committee for its work and look forward to engaging further with the inquiry process.

Sincerely

Tara Cheyne MLA
Attorney-General