



**Comments on report on -
Inquiry into the Civil Law (Wrongs)
(Organisational Child Abuse Liability) Amendment Bill 2025**

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Submitter: Catholic Archbishop of Canberra and Goulburn

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Catholic Archdiocese of Canberra and Goulburn
Commentary on Report of Standing Committee on Legal Affairs, re:
On Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025
Archbishop Christopher Prowse, Catholic Archbishop of Canberra and Goulburn,

Dear Ms Barry,

I thank you for your invitation to provide comment on the recent Inquiry by the Legal Affairs Committee into the proposed Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025.

As you pointed out, in your invitation of 10 October, it was regrettable that the Catholic Archdiocese of Canberra and Goulburn omitted from the original invitation list. From our information other organisations with a similar interest may also have been omitted. Where it seemed prudent we have provided these comments to those organisations for their information.

We do thank you for this current invitation since we believe it is important that Members of the Assembly are aware of the views of the Archdiocese on the proposed legislation and, potentially other similar views.

Introduction

The Catholic Archdiocese of Canberra and Goulburn in itself and through its agencies is the largest ACT non-Government employer. Through Calvary ACT, Southern Cross Care, Catholic Health Care, Marymead CatholicCare and the St Vincent de Paul Society, our network of parishes, Catholic Education, schools, early learning centres and Religious Institutes the Church supports significant portions of the ACT Community – both Catholic and non-Catholic – to flourish.

It must be acknowledged that we, along with government and other institutions, religious and secular, share a shameful legacy where public figures, members of the clergy, volunteers and employees have been perpetrators of child sexual abuse. The Archdiocese neither shies away from this admission, nor do we seek to avoid responsibility for the actions of those associated with the Archdiocese. For this reason, the Archdiocese has long been committed to both supporting victims obtain just reparation and to do everything possible to ensure such crimes are never repeated.

Archdiocesan procedures

1. All clergy, employees and volunteers of the Archdiocese, its parishes and agencies are required to hold the relevant jurisdictionally based working with children clearance. Additionally, all members of the Archdiocesan clergy, and any personnel who work across borders, are required to hold valid clearances for both the ACT and NSW.
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2. The Archdiocese has a Code of Conduct (currently under its five-year policy review) which is applicable to all clergy, employees and volunteers. Our specific agencies in the fields of education, health and welfare have applicable Codes of Conduct which reflect the Archdiocesan Code but also include additional industry specific emphases.
3. All clergy in the Archdiocese complete annual training in professional conduct addressing the needs of and interactions with vulnerable persons and children.
4. All members of the clergy ministering within the Archdiocese are required to have a professional supervisor to support them in their professional contributions to the life of the Church and their service to members of the Catholic faithful.
5. Each parish conducts regular professional standards training for key partners and collaborators, including all Archdiocesan employees with a focus on appropriate care and ministry for children and vulnerable persons.
6. Additionally, our policy framework and application of the same is externally audited every three years to validate our approach and to provide quality assurance for the measures we are applying.

Claims by victims against the Archdiocese

1. The Archdiocese acts always within the provisions of the applicable law while striving to support victims of abuse through provision of monetary and non-monetary recompense and reparation for crimes committed by members of the clergy and employees.
2. Further, the Archdiocese:
 - a. prioritises mediation to achieve positive outcomes and to minimise secondary trauma for victims; judicial proceedings are a last resort for us, though they are sometimes preferred by plaintiff's legal counsel;
 - b. has not sought to avoid liabilities through reference to the inapplicability of vicarious liability – arguing that the clergy are not employees and therefore not subject to the common law provisions in relation to vicarious liability. However, the Archdiocese acknowledges that employees of the Archdiocese or its agencies may well give rise to vicarious liability under the conditions spelt out by the High Court in *Bird vs DP* and other decisions, most notably *Lepore*.
3. Should the proposed Bill pass, the Archdiocese will act in accord with the provisions determined by the legislature and the courts and will continue to prioritise the needs and situations of victims.



The Bill

The Archdiocese recognises the concerns expressed to Members of the Assembly by constituents, in particular by victims of abuse, in relation to the decision of the High Court in *Bird vs DP*. It is our view that this proposed amendment appears as a proactive response but is misguided and misdirected in a number of respects; further, that for organisations such as the Archdiocese, there will be little practical import or application.

The Bill, rather than seeking to educate the public, continues to permit a misapprehension that there is an equivalence between negligence and vicarious liability, when those seeking to propose and enact the amendment are aware that no such equivalence exists. Entities such as the Archdiocese may well be found negligent for behaviours by those associated with the Church – as noted above, this is not something we seek to avoid. In such instances vicarious liability would not apply given the negligence for the primary event. The Report appears to suggest – presumably as a rationale for recommending enactment – that it would correct a judicial failing that prevents survivors of abuse from seeking reparation; and, that the Bill would create a remedy to this supposed problem. It would seem incumbent on the Assembly to make evident that these claims misrepresent both the legal position and the High Court's ruling in *Bird vs DP*.

The Archdiocese has a number of specific concerns with the Bill and the Report on the Inquiry.

1. The retrospective nature of the amendment is legally problematic due to the inherent lack of justice by holding people accountable for actions only later determined to apply to them, undermining justice and creating uncertainty about the nature of statutory law itself.
2. The scope of the amendment is such that a number of unintended consequences are likely to arise:
 - a. Small community and sporting groups with limited resources will be subject to claims due to the past actions of volunteers or contractors for whom they did not have the level of responsibility that would have applied to employees – it is unlikely that they will have insurance coverage in relation to vicarious liability for volunteers and contractors. This may mean closure or personal liability for office holders, especially in unincorporated associations of limited means;
 - b. As has been identified in related contexts, even volunteers for political parties not always subject to thorough vetting – particularly during elections periods. This raised the risk that parties may be subject to claims of vicarious liability extending far into the past;



- c. Further that charities, for example the Red Cross or Salvation Army who use volunteers to engage in door-to-door collections may be caught up in the amendment – not only into the future but extending far into the past;
 - d. It may be that office holders and former office holders of unincorporated associations will now be held personally liable for the actions of volunteers over whom they had no or very limited authority;
 - e. Such groups may struggle to recruit and use volunteers, threatening the viability of community activities and their ability to exist;
 - f. Certainly, such entities will find it challenging to attract office holders into the future;
 - g. The retrospectivity of the Bill may also mean that office holders of the past may now be held financially liable for the actions volunteers – even to the point of bankruptcy;
 - h. Even for incorporated entities the retroactive nature of the legislation may render insurance coverage insufficient as it typically excludes volunteers and contractors – potentially reducing compensation available to victims;
 - i. Potential additional litigation may arise to clarify the undefined terms 'akin to employment' and 'associated with an organisation'.
3. It seems that retrospective nature of the Bill means that organisations will now be liable for crimes committed by volunteers associated with their organisations but where abuse was not committed directly in the course of their volunteering but only analogously or tangentially, this could include both charities and political parties, for example.
 4. It is the view of the Archdiocese, relying on the other provisions of *Bird vs DP* that, notwithstanding this Bill and similar legislation in other jurisdictions, it is unlikely that vicarious liability will be found to be applicable in most instances to members of the clergy, though volunteers and contractors within our various ministries may now be captured.

The Report

The Report of the Legal Affairs Committee broadly reflects the weight of submissions received – which may also reflect the omission of invitations to a wider range of entities and organisations.

That being noted, there are a number of inaccuracies in the Report that the Committee should seek to correct:

- The High Court decision in *Bird vs DP* did not “create significant gaps in the law” (3.9, 3.16, 3.21). The decision affirmed the legal reality that vicarious liability which applies in employment situations does not apply in relationships which are “akin to employment”, contractors or volunteers.



- The assertions that this amendment will "enable all victims to access justice and ensure organisations were accountable" is unlikely to be the case - barriers will continue to exist for example where police determine that matters should not proceed to criminal charge or where victims are unable to secure legal counsel for whatever reason.
- In response to the Royal Commission, legislatures instituted the National Redress Scheme precisely to strive to overcome the legal barriers that exist for many victims.

A number of the submissions from lawyers and academics appear to suggest the amendment will address all the issues raised in *Bird vs DP* whereas the intent of this Bill is simply in relation to the employment relationship not the broader legal questions considered by the High Court.

The observation at 3.33 drawing on the submission of the *Bravehearts* organisation that argues the bill may incentivise more rigorous safeguarding policies, is one which the Archdiocese and its various agencies supports – it is, as highlighted earlier in this submission, in fact our current practise and subject to external audit. What is not observed at this point is that it is also potentially the case that small community organisations may simply not have resources available to undertake such rigorous safeguarding policies.

It would, therefore, seem prudent, that as the Assembly contemplates this amendment, it also give thought to avenues or mechanisms that would provide funding to enable community organisations and other unincorporated associations to put in place what is now community expectations in this area.

A second provision that the Assembly should link to this amendment is a form of personal insurance provided by the ACT, akin to Directors and Officers insurance, for the office holders in such community groups and unincorporated associations to prevent them being held personally liable for the actions, even criminal actions of volunteers, contractors and others who would now be deemed to have a relationship akin to employment.

Further, we note the various definitional issues raised by Dr Silink which point to the risks of significant further litigation in order to determine the actual scope of the effect of this amendment.

While state and territory legislators are clearly under a degree of pressure from some constituents to act to overcome what has been affirmed by *Bird vs DP*, this is clearly a situation where singular action by each jurisdiction is inadvisable. We note that the Standing Council of Attorneys- General is considering this matter and that it would be preferable for a single national approach, even should it require mirroring legislation in each jurisdiction, to address what is a conundrum that has national applicability.



As the Royal Commission observed and various commentators since, a legislative approach which does not create a form of 'post-code lottery' is clearly better for survivors of abuse and, also, for organisations seeking to ensure that their obligations are fulfilled in a consistent manner.

Thank you for taking the time to consider these views as you contemplate the Report on this legislation before the Assembly. We have supplied a copy of this communication to other religious leaders in the ACT and also to certain MLAs including the Leaders of the respective political parties.

Yours sincerely in Christ,

Archbishop Christopher Prowse
Catholic Archbishop of Canberra and Goulburn
17th October 2025