



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

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

Submission to the Standing Committee on Legal Affairs,
Legislative Assembly for the Australian Capital Territory

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Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.¹

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input to the Standing Committee on Legal Affairs ('Committee') on the Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 (ACT) ('Bill').
2. ALA members remain deeply concerned about the real and ongoing impact of the High Court's decision in *Bird v DP (a pseudonym)* [2024] HCA 41 ('*Bird v DP*') on victim survivors of institutional child sexual abuse and their ability to access justice in the ACT and across Australia.
3. As legal practitioners who represent those victim survivors, we remain committed to ensuring access to justice for all victim survivors of abuse. We welcome the Committee's intention to examine how this Bill will ensure victim survivors "who were abused by people associated with organisations or in positions akin to employment are able to access justice".²
4. The ALA supports the passage of this Bill. It is a direct legislative response to the High Court of Australia's decision in *Bird v DP* through much needed amendments to the *Civil Law (Wrongs) Act 2002* (ACT)

The High Court's decision in *Bird v DP (a pseudonym)* [2024] HCA 41 and its ramifications

5. In *Bird v DP*, the High Court decided that the Catholic Church cannot be held vicariously liable for the sexual abuse of a child committed by a priest because the priest was not an employee of the Diocese in Ballarat, Victoria.
6. The priest who committed the sexual abuse of the child survivor whilst carrying out pastoral activities as a representative of the Diocese was not an employee. There was no evidence of negligence by the Diocese, so the question was whether being 'akin to an employee' was sufficient to give rise to vicarious liability.
7. It was held that vicarious liability does not arise in the absence of employment. That was so despite the Bishop having authority as great as an employer over the priest and the work

² Standing Committee on Legal Affairs, Legislative Assembly for the Australian Capital Territory, 'Inquiry into Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025' (Media Release, 4 July 2025).

(pastoral home visits, which gave the opportunity for child abuse) being a fundamental function of the Diocese.

8. Current legislation in most states and territory jurisdictions, with the exception of the ACT and WA, is such that this judgment creates two distinct categories of victim survivors of child sexual abuse, a distinct two-tiered system of justice in Australia impacting victim survivors of child sexual abuse by non-employees which is wholly dependent on when and where they were sexually abused, that is, victim survivors abused before prospective vicarious liability legislative reforms were introduced in NSW, Victoria, Queensland, South Australia, Tasmania and the Northern Territory are now unable to access justice.
9. **The decision has underscored the urgent need for legislative vicarious liability reforms to be introduced in the ACT (as well as in WA).**
10. Australia is now distinctly at odds with decades of authority in the highest courts of other Commonwealth jurisdictions such as Canada, the United Kingdom, Ireland and New Zealand.
11. The ALA is also of the view that this decision is not in line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (**'Royal Commission'**). One of the significant outcomes of the Royal Commission was to remove legal barriers for victims of historical child sexual abuse. This decision creates yet more legal barriers for victim survivors of historical institutional child sexual abuse seeking to access justice.

The impact on victim survivors

12. The ALA has read several of the individual victim survivor submissions that demonstrate why this Bill is not only necessary, but its implementation into law is needed **urgently**.
13. The submissions from individual victim survivors demonstrate the real-world impact that the *Bird v DP* decision is having. In other jurisdictions across Australia, many civil claims have been unable to proceed or lost noting the change as to the position of vicarious liability overnight.
14. The ACT cannot and should not fall into the same category. That is disastrous for victims of historical child abuse who have had to wait decades before they have even had the opportunity to bring a compensation claim.

Responses to the High Court's decision

15. The ALA welcomes the recent announcements from Attorney-General the Hon. Sonya Kilkenny that Victoria will be proceeding with a legislative response to address the High Court's decision in *Bird v DP*,³ and from Attorney General the Hon. Dr Tony Buti that WA will also develop vicarious liability legislation to address *Bird v DP*.⁴
16. ALA members agree that the best and most **expeditious** reform avenue in this space will be for states and territories to legislate changes in their respective jurisdictions. As the High Court noted in its Judgment:⁵ *"Reformulation of the law of vicarious liability is properly the province of the legislature."*
17. **The ALA submits that with this Bill already before the Legislative Assembly the ACT has an opportunity to lead the way in relation to vicarious liability law reform for victim survivors of historical institutional abuse.** When the ACT passes this Bill, it will have a positive flow on effect on other jurisdictions to also take similar steps.

Elements of the Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 (ACT)

18. This section of the ALA's submission will address the specific elements of this Bill.

Definitions

19. The ALA supports the non-exhaustive nature of the definitions in this Bill that is, the definitions of "employee",⁶ "organisation",⁷ and "responsible for a child".⁸

³ Victoria State Government, 'Statement From The Attorney-General' (18 June 2025) <www.premier.vic.gov.au/statement-attorney-general-2>.

⁴ WA State Government, 'Legislation to strengthen support for survivors of child sex abuse' (3 July 2025) <www.wa.gov.au/government/media-statements/Cook%20Labor%20Government/Legislation-to-strengthen-support-for-survivors-of-child-sex-abuse-20250702>.

⁵ *Bird v DP (a pseudonym)* [2024] HCA 41 at [67].

⁶ Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 cl 114BB and 114BC.

⁷ Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 cl 114BB, 114BD and 114BE.

⁸ Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 cl 114BD.

20. We agree that the definitions in legislation like this should be non-exhaustive and interpreted broadly in order to ensure access to justice for all victim survivors, taking into account the range of contexts in which children have been abused.
21. It is appropriate that religious organisations are covered under the new legislation; however, it would not be appropriate to limit the scope of these reforms to religious institutions only. The Bill, we submit, appropriately accounts for this.⁹

Prospective and retrospective application

22. The ALA strongly supports the application of this Bill's provisions prospectively and retrospectively.¹⁰
23. It is essential, we submit, that all victim survivors of abuse can access justice under these reforms and are not limited to accessing justice based on when they were abused. Doing so, would create a two tier system.
24. Regarding the Royal Commission's recommendation for prospective application of vicarious liability reforms, our members submit that the expectation at that time was that the common law across Australia would follow the common law in other common law jurisdictions namely, that there is vicariously liability in situations 'akin to employment'. The unexpected decision in *Bird v DP* changed all of this, and it is crucial that state and territory jurisdictions now respond with retrospective application of vicarious liability legislation to provide victim survivors with much-needed clarity and access to justice.

Ability to set aside unjust settlements

25. The ALA notes the following explanation of the proposed addition to section 114J(1):¹¹

This inclusion is intended to ensure that survivors who were abused as children before the new vicarious liability legislation came into force and entered into unjust settlements are able to apply to the court to have those unjust settlements set aside. This will mean they then have the capacity to seek a fair settlement. This will create parity between different cohorts of survivors

⁹ See, eg, Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 cl 114BC(3)(b).

¹⁰ *Civil Law (Wrongs) Act 2002* (ACT) s 114BA; Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 cl 114J(1)(b)(iii).

¹¹ Explanatory Statement, Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 (ACT) 6.

and ensure that survivors who were abused as children before the commencement of the Act and entered unjust settlements are able to access justice.

26. The ALA notes that the ability to set aside a previously entered into settlement already exists pursuant to section 114K of the *Civil Law (Wrongs) ACT* 2002.

27. The ALA supports providing an option for victim survivors to have unjust settlements set aside in the interests of equal and fair access to justice.

Conclusion

28. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to the Standing Committee on Legal Affairs on the Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 (ACT).

29. The ALA strongly supports the Bill and its expeditious transition into law so as to ensure proper access to justice for victims of historical child abuse.

30. The ALA is available to provide further assistance to the Committee on the issues raised in this submission.

Hassan Ehsan

President, ACT Branch Committee

Co-chair, Abuse Law Special Interest Group

Australian Lawyers Alliance