



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

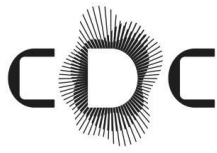
Comment number: 003

Submitter: Cricket ACT

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The Chair
Standing Committee on Legal Affairs
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

24 October 2025

Dear Chair

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

We refer to your letter dated 10 October 2024.

ACT Cricket Association Limited (ACT Cricket) thanks the Standing Committee on Legal Affairs for the invitation to make a submission on the Inquiry into the *Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025*.

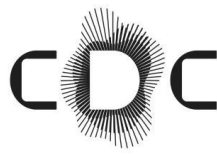
ACT Cricket acknowledges the need for legislative reform and hopes its submission assists in the Legislative Assembly's consideration of the Bill.

Yours sincerely,

Olivia Thornton
CEO
ACT Cricket Association Limited



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

ACT Cricket thanks the Standing Committee on Legal Affairs for its invitation to make a submission into the *Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 (the Bill)*.

We acknowledge the need for legislative reform and are supportive of change which will bring greater clarity to this complex area of law. We have some concerns about the scope of the Bill as presently drafted and are hopeful our submissions in this regard will assist the Legislative Assembly's overall consideration.

Current state of organisational liability for child abuse

In assessing the need for legislative reform, it is helpful to first consider the law as it presently stands in relation to organisational liability for child abuse. We note:

If an individual can establish on the balance of probabilities that an organisation which owed that individual a duty of care was negligent (by doing or not doing something) and that negligence resulted in the child abuse which caused the individual to suffer injury, then the organisation will be liable to that individual for damages.

Even if an individual cannot establish that the organisation was negligent, an organisation is vicariously liable for child abuse perpetrated by its employee in connection with that employee's role – thus providing another avenue for an individual to claim damages from the organisation.

If an individual is unable to establish that the organisation was negligent or that it is vicariously liable for the perpetrator of the child abuse (or, alternatively, if an individual does not wish to be put to the standard of proof of a common law claim), the National Redress Scheme provides for financial and other redress.

The law therefore already provides for redress irrespective of whether organisational liability can be established.

Royal Commission into Institutional Response to Child Sexual Abuse

The liability of organisations for child abuse was the subject of consideration by the Royal Commission into Institutional Response to Child Sexual Abuse (**the Royal Commission**).

On 11 January 2013, the Governor-General of the Commonwealth of Australia issued Letters Patent in relation to the Royal Commission. An extensive inquiry then ensued, seeking to address:

What institutions and governments should do to better protect children against child sexual abuse and related matters in institutional contexts in the future;

What institutions and governments should do to achieve best practice in encouraging the reporting of and responding to reports or information about allegations, incidents or risks of child sexual abuse and related matters in institutional contexts

What should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting, investigating and responding to allegations and incidents of abuse;

What institutions and governments should do to address or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including in particular, ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services.

Around 8,000 private sessions were held in 96 different locations across Australia, including in every capital city, via telephone from overseas and with inmates from more than 61 correctional centres. In



addition, written accounts were received from 992 individuals. 57 public hearings and 67 private hearings were ultimately held, totalling some 444 public hearing days in which more than 1300 witnesses were heard and 134 institutions were examined.

After almost five years of inquiry, the Royal Commission published its final report in December 2017, spanning 17 volumes and comprising tens of thousands of pages. Suffice to say, the inquiry conducted by the Royal Commission was comprehensive and considered.

The Royal Commission's Redress and Civil Litigation Report spanned 668 pages, including a recommendation that state and territory governments introduce legislation to impose a non-delegable duty on institutions which operate the following facilities or provide the following services:

Residential facilities for children, including residential out-of-home care facilities and juvenile detention centres but not including foster care or kinship care;

Day and boarding schools and early childhood education and care services, including long day care, family day care, outside school hours services and preschool programs;

Disability services for children;

Health services for children;

Any other facility operated for profit which provides services for children that involve the facility having the care, supervision or control of children for a period of time but not including foster care or kinship care;

Any facilities or services operated or provided by religious organisations, including activities or services provided by religious leaders, officers or personnel of religious organisations but not including foster care or kinship care;

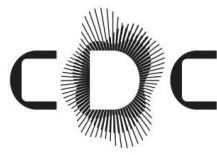
However, the Royal Commission noted that any legislative change should apply prospectively and not retrospectively.

In respect of vicarious liability, the Royal Commission consulted widely, considering developments in the law in the United Kingdom and Canada. It was noted that in both of those jurisdictions, the law had accepted that an institution would be vicariously liable for the criminal acts of its members or employees that caused harm to children, either because the act causing harm was so closely connected to an employee's employment, that it would be fair and just to hold the employer liable, or because in the operation of its enterprise the employer created or significantly increased the risk of their employee causing harm.

The Royal Commission concluded that the time had come when Australian parliaments should impose liability on *some* types of institutions for the deliberate criminal act of a member or employee as well as for the negligence of that member or employee. It considered it reasonable to impose that liability on residential facilities for children, school or day care facilities, religious organisations or other facilities operating for profit that provided services for children that involved the facility having care, supervision or control of children for a period of time. However, the Royal Commission specifically noted that it did not suggest that liability should be extended to not-for-profit or volunteer institutions generally.

Absent legislative change, the Royal Commission expressed concern Australian courts would ultimately recognise and impose the relevant liability retrospectively. It did not believe this to be appropriate and considered change needed to be made by statute to avoid the injustices that would arise if changes were left to the common law. It had specific regard to the burden that retrospective change would impose on insurers or institutions, noting:

"If the liability was left to the development of the common law and applied retrospectively, in combination with the removal of limitation periods we recommend in Chapter 14, relevant institutions would face potentially large and effectively new liability for abuse that has already occurred, potentially over many previous decades. Even if it were possible to obtain insurance in respect of retrospective liability on



such a scale, the insurance would be likely to be unaffordable for many institutions. No institution could now improve its practices or take steps to prevent abuse that has already occurred.”

Subsequent to the Royal Commission, a number of states and territories legislated to extend the application of vicarious liability:

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 employee’;

In Tasmania, the *Civil Liability Act 2002* (TAS) was amended in 2019 to prospectively extend vicarious liability to organisation for child abuse perpetrated by employees and individuals ‘akin to an employee’;

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’; and

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’.

In line with the recommendation of the Royal Commission, no state or territory has legislated with retrospective effect.

Comments on The Bill

In November 2024, the High Court of Australia delivered its judgment in *Bird v DP (a pseudonym)* [2024] HCA 41, confirming the long established position at Australian common law that an organisation can only be vicariously liable for the acts of its employees and not for persons who are not in an employment relationship, including those who may be in a relationship with an organisation ‘akin to employment’.

The Bill is proposed in response to this ruling.

The Explanatory Statement accompanying the Bill notes “...*this Bill is required to ensure survivors who were abused by people associated with organisations or in positions akin to employment are able to access justice. It is necessary because, without it, institutions that have had children abused in their care can avoid responsibility for the actions of those they effectively employed.*”

However, we note the law as it presently stands already provides redress to survivors of child abuse, including in circumstances where liability may not be able to be established against an organisation at common law.

Further, while the Bill suggests that the High Court ruling was contrary to the recommendations of the Royal Commission, as outlined above, we note the Royal Commission recommended legislative change to avoid the risk of retrospective change and the undue burden that would bring to insurers and institutions and did not recommend liability be extended to not-for-profit or volunteer institutions generally.

In line with the recommendation of the Royal Commission, no state or territory has legislated with respect to vicarious liability with retrospective effect. To do so now in the ACT would be out of step with the considered recommendations of the Royal Commission and the other jurisdictions of Australia.

In circumstances where organisations cannot take steps in the current day to address risks which would now exist in relation to the past by virtue of retrospective reform, the Bill effectively seeks to impose strict liability on organisations in relation to the past. This will be a considerable burden on organisations, and in particular not-for-profit organisations.



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Conclusion

ACT Cricket is committed to ensuring that every cricket participant, including children and young people, participates in our sport free of abuse, harassment, bullying or any other form of inappropriate conduct.

While ACT Cricket is supportive of legislative reform that can bring greater clarity to this complex area of law, we are concerned the scope of the Bill goes beyond the extensive considerations and recommendations of the Royal Commission and legislation in other states and territories.

If there is any aspect of this submission which requires clarification, we would welcome the opportunity to discuss the matter with you further.