



Attorney-General  
Minister for the Arts and Cultural Events  
Minister for Building Quality Improvement  
Minister for Business and Regulatory Services  
Minister for Seniors and Veterans  
Member for Ginninderra

Mrs Elizabeth Lee MLA  
Chair  
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)  
ACT Legislative Assembly  
GPO Box 1020  
CANBERRA ACT 2601

Dear Ms Lee

I write in response to the Standing Committee on Justice and Community Safety's Scrutiny Report No 21 of 11 September 2018 which comments on the *Civil Wrongs (Child Abuse Claims Against Unincorporated Bodies) Amendment Bill 2018* (the Bill).

The Committee requests a response in relation to comments on the Bill about the possibility that provisions of the Bill may limit the right to freedom of association (section 15 of the *Human Rights Act 2004* (HRA)) and right to the equal protection of the law without discrimination (section 8 of the HRA).

### Right to freedom of association

The Committee notes that the Bill could apply to a wide range of organisations. The Committee also notes that these organisations will have difficulty structuring any assets they hold in such a way as to avoid those assets being available to compensate survivors of child sex abuse. The Committee concludes that this may limit the right to freedom of association because it may serve as a deterrent to forming an organisation, in particular a religious or cultural organisation.

At the outset, I confirm the Committee's observations about how the Bill works. Survivors of child sexual abuse have an existing right to sue, and to recover damages in a personal injury claim from responsible institutions. This Bill ensures that legal technicalities around how an institution is formed do not frustrate those rights.

This was a core recommendation of the Royal Commission's Redress and Civil Litigation Report (Recommendation 94). Consistent with the Royal Commission recommendations the provisions of the Bill will apply to a broad range of unincorporated organisations, to ensure that plaintiffs are not deprived of access to justice in relation to institutional child abuse.

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Gordon Ramsay MLA



Nothing in the Bill directly prevents people from associating, and there is no provision of this Bill that identifies a particular kind of organisation or purpose. Insofar as there is an effect on the financial risks faced by unincorporated bodies, it is a consequence of survivors of child sex abuse seeking and receiving lawful compensation.

As a community, we have a responsibility to protect children from abuse and to acknowledge past failures. The Government's view is that there is no legitimate human rights interest in creating associations that, after being held legally responsible for child abuse, can shield their assets from survivors who are entitled to compensation.

### *Right to equal protection of the law without discrimination*

The Committee comments that provisions of the Bill discriminate on the basis of age and, therefore engages the right to equal protection of the law without discrimination protected by section 8 of the HRA. The Committee seeks a justification for why the provisions of the Bill will only apply to claims for child sex abuse, using the framework set out in section 28 of the HRA, which is provided below.

### *Importance of the purpose of the limitation*

This Bill engages the right to equal protection of the law without discrimination (section 8 HRA). As previously indicated, the provisions of the Bill are intended to give effect to recommendation 94 of the Royal Commission into Institutional Responses to Child Sexual Abuse Redress and Civil Litigation Report. That recommendation was directed at ensuring survivors of institutional child sexual abuse are able to sue a defendant that has sufficient assets to meet liability arising from the abuse of the survivor. The provisions of the Bill are directed at supporting those survivors at the point when they are seeking to bring a claim against an unincorporated body.

While the provisions of the Bill only apply in relation to survivors who were children when they were subjected to institutional abuse, the operation of the provisions for the nomination of a defendant or the court appointment of a related trust as a defendant are not limited by reference to the age of the person wishing to bring a child abuse claim against an unincorporated body.

To the extent that confining the benefit of the provisions to those who were abused as children (excluding those abused as adults) is considered a limitation, the limitation is intended to ensure that the reforms are those justified by reference to an appropriate evidence base (in this case, the Royal Commission recommendations).

### *Nature and extent of the limitation*

The limitation is that the provisions for nomination or appointment of a proper defendant are not available to plaintiffs who were subjected to institutional abuse as adults.

These changes are a direct response to the Royal Commission's thorough evidence base about institutional failures to protect against child sexual abuse. There are existing features of the civil and criminal law specific to child sexual abuse cases, also following from the Royal Commission, such as the removal of time limits for bringing a law suit arising from injury arising from child sexual abuse (*Limitation Act 1985*, section 21C).

There are other examples of legislative provisions which treat children or people in a particular age range beneficially or protectively, relative to others, in recognition of particular needs or vulnerabilities. In some instances, similar to the provisions of the Bill, the beneficial or protective treatment is contingent on the age of a person at the time of a particular event occurring.

It is also relevant that the *Discrimination Act 1991*, one of the objects of which is to promote and protect the right to equal protection of the law without discrimination, provides (at section 57H) that it is not unlawful to discriminate against a person in relation to the provision of genuine benefits, including concessions, to someone else because of his or her age.

*Relationship between the limitation and its purpose*

The limitation is directly related to the purpose of ensuring that the reforms made by the Bill are those justified by reference to a sound evidence base.

The Royal Commission clearly identified the need for reform of civil wrongs legislation to support access to justice for people who were subjected to institutional abuse as children. The Royal Commission's extensive examination of the shortcomings of existing civil law regimes and recommendations for reform provides justification for the extent and limits of the changes that are made by the Bill. There is no basis on which it is considered appropriate or justified to broaden these reforms.

*Any less restrictive means to achieve the purpose*

There is no less restrictive means to achieve the purpose of the potential limitation.

I thank the Committee for its report and consideration of the Bill.

Yours sincerely

Gordon Ramsay MLA  
Attorney-General