

Your Ref:
Our Ref: 828

2 August 2019

Secretary
Office of the Secretary
Department of Justice

By email to: secretary@justice.tas.gov.au

Dear Secretary

Organisational Liability for Child Abuse Bill 2019

Thank you for the opportunity to provide comment on the draft Justice Legislation (Organisational Liability for Child Abuse) Amendment Bill 2019. I am grateful also to have received a comprehensive briefing by officers from your Department on the draft Bill which has assisted to inform my comments.

The draft Bill proposes amendments to the *Civil Liability Act 2002* by:

- Imposing a statutory non-delegable duty upon all organisations that exercise care, supervision or authority in respect of children to prevent child abuse. The imposition of this duty will form part of a cause of action in negligence.
- Enabling the rebuttal of the statutory non-delegable duty by an organisation where it can establish that it took 'reasonable precautions' to prevent the child abuse from occurring.
- Extending vicarious liability to organisations for the perpetration of child abuse perpetrated by its employees and by individuals who are 'akin to employees'.
- Enabling child abuse proceedings to be brought against unincorporated organisations and compelling an organisation or an associated property trust to pay liabilities in certain circumstances including child abuse that occurred, and/or proceedings that have commenced, before the amendment.

These amendments arise from recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) in its [Redress and Civil Litigation Report](#).



The draft Bill also proposes an additional amendment to the *Limitation Act 1974* which would allow a Court to set aside a previous settlement between an organisation and a survivor if 'it is in the interests of justice to do so', so that a survivor may commence civil litigation.

Comment

At the outset, I can indicate my in-principle support for the approach adopted by the draft Bill.

The draft Bill makes it clear that all organisations with the responsibility for children must do everything in their power to protect children and prevent child abuse from occurring.¹ This duty to prevent child abuse will apply to all organisations (incorporated or not), that exercise care, supervision or authority in respect of children. Organisations may be held liable if they fail to prevent child abuse from occurring even where they have delegated the exercise, care, supervision or authority in relation to a child to another organisation.

It is important to acknowledge that organisations with responsibility for children may vary widely from small community organisations staffed by volunteers or small businesses, to larger or more complex organisations like schools, child care centres, churches or Government Agencies. In recognition of this, the draft Bill allows a Court to adopt a qualitative approach to determining whether an organisation took reasonable precautions to prevent child abuse, by taking into account matters such as the nature of the organisation, the resources reasonably available to the organisation, and whether the organisation complied with any applicable standards in respect of child safety.

Reforms such as those proposed in the draft Bill highlight the pressing need for us to progress and appropriately resource other important initiatives recommended by the Royal Commission to build organisational capacity to promote the safety and wellbeing of children in their care including recommendations regarding child safe standards and recommendations specific to particular organisational contexts such as contemporary out-of-home care.

I commend the Tasmanian Government for its ongoing commitment to implement the recommendations of the Royal Commission and I look forward to future opportunities to contribute to this important work.

Yours sincerely

Leanne McLean

Commissioner for Children and Young People

cc *The Hon. Elise Archer MP, Attorney-General*
The Hon. Roger Jaensch MP, Minister for Human Services

¹ For the purposes of the draft Bill, 'child abuse' in relation to a child means sexual abuse, or serious physical abuse of the child; and any psychological abuse that arises from the sexual abuse or serious physical abuse.