

FACT SHEET

Justice Legislation Amendment (Organisational Liability for Child Abuse) Bill 2019

The Justice Legislation Amendment (Organisational Liability for Child Abuse) Bill 2019 makes amendments to the *Civil Liability Act 2002* and the *Limitation Act 1974*.

The Bill implements the Government's commitment to introduce a number of legislative amendments arising from the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse in its Redress and Civil Litigation Report.

The Bill also makes an amendment the *Limitation Act 1974* that complements the work of the Royal Commission.

The Bill amends the *Civil Liability Act 2002* to provide:

- a statutory duty on organisations that exercise care, supervision or authority over children to prevent child abuse perpetrated by individuals that are 'associated with the organisation';
 - the statutory duty is 'non-delegable', meaning that each organisation is responsible for the child where the child's care has been delegated to another organisation;
 - An individual 'associated with an organisation' includes, but is not limited to including, an individual who is an office holder, officer, employee, owner, volunteer or contractor of the organisation and also includes –
 - if the organisation is a religious organisation – a religious leader (such as a priest or minister) or member of the personnel of the organisation; and
 - an individual that is prescribed or who is within a class of organisation that is prescribed.
 - an organisation that has responsibility for a child must take reasonable precautions to prevent an individual associated with the organisation who, by virtue of being associated with the organisation, has –
 - authority, power or control over a child; or
 - the trust of a child; or
 - the ability to achieve intimacy with a child –from being able, by virtue of that authority, power, control, trust or ability, to perpetrate child abuse on the child.
 - an organisation will be presumed to have breached the duty unless the organisation can establish that it took 'reasonable precautions' to prevent the child abuse.

- in assessing whether an organisation took 'reasonable precautions' to prevent the abuse, a court may take into account any of the following:
 - the nature of the organisation;
 - the resources reasonably available to the organisation;
 - the relationship between the organisation and the child;
 - whether the organisation has delegated their care, supervision or authority over the child to another organisation;
 - the role in the organisation of the individual who perpetrated the child abuse;
 - the level of control the organisation had over that individual;
 - whether the organisation complied with any applicable standards (however described) in respect of child safety;
 - any other matter prescribed by regulations;
 - any other matter the court considers relevant;
- organisations will be held vicariously liable for the perpetration of child abuse by individuals whose relationship with the organisation is akin to employment, as well as regular employees;
 - an individual is 'akin to an employee' of an organisation if their role within the organisation:
 - is for the aims or purpose of the organisation; and
 - gives the individual authority, power or control over a child or enables the individual to achieve intimacy with, or the trust of, a child;
 - an individual is not akin to an employee if his or her role within the organisation is carried out for a recognisably independent business of the individual (or of another person or organisation);
- that an organisation is vicariously liable for child abuse perpetrated against a child by a person who is an employee (including an individual that is akin to an employee) if, at the time the abuse was perpetrated:
 - the person, by virtue of being such an employee, had –
 - authority, power or control over the child; or
 - the trust of the child; or

- the ability to achieve intimacy with the child; and
 - the person was able, by virtue of that authority, power, control, trust or ability, to perpetrate the child abuse on the child.
- these amendments do not affect, and are in addition to, the common law as it applies with respect to vicarious liability.
- that survivors of child abuse are able to sue unincorporated organisations, such as church groups, that were previously unable to be sued due to a lack of 'legal personality';
 - an unincorporated organisation may appoint a proper defendant with legal personality and sufficient assets to satisfy the claim, with the proper defendant's consent;
 - where the unincorporated organisations does not appoint a proper defendant within 60 days of the initiation of proceedings, the plaintiff may ask the court to appoint a proper defendant;
 - an unincorporated organisation has 28 days to identify any associated trusts and their financial capacity so the court may appoint a trustee as a proper defendant;
 - a trust is an associated trust of an unincorporated organisation if the organisation has, directly or indirectly, sufficient power and control over the trust;
 - once appointed, a proper defendant for an unincorporated organisation acts on behalf of the organisation and is responsible for conducting the proceedings as the defendant;
 - an unincorporated organisation's functions may be exercised by a management member, and courts have broad powers to make orders and directions, including directing a management member to exercise a function of the unincorporated organisation so that proceedings and orders are complied with.

The Bill amends the *Limitation Act 1974* to provide:

- that a court may set aside a previous settlement between an organisation and a survivor 'if it is in the interests of justice to do so', enabling the survivor to commence civil litigation against the organisation.
- in determining whether the settlement should be set aside 'in the interests of justice', a court is to have regard to the following:
 - the amount of the agreement;
 - the relative strengths of the bargaining positions of the parties; and
 - any conduct, by or on behalf of the organisation to which the agreement relates, that –

- relates to the cause of action; and
- occurred before the settlement was made; and
- the court considers to have been oppressive.

this amendment does not apply to settlements that are an offer of redress made under the National Redress Scheme