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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELEVENTH ASSEMBLY

**CIVIL LAW (WRONGS) (ORGANISATIONAL CHILD ABUSE LIABILITY)
AMENDMENT BILL 2025**

**GOVERNMENT AMENDMENTS
SUPPLEMENTARY EXPLANATORY STATEMENT**

**Presented by
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CIVIL LAW (WRONGS) (ORGANISATIONAL CHILD ABUSE LIABILITY) AMENDMENT BILL 2025

This Supplementary Explanatory Statement relates to the Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 (the Bill) – Government Amendments. It has been prepared to assist the reader of the bill and to help inform debate. It does not form part of the bill and has not been endorsed by the Legislative Assembly.

OVERVIEW OF GOVERNMENT AMENDMENTS

The Government proposes amendments to the Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025, presented to the ACT Legislative Assembly by Mr Rattenbury MLA on 25 June 2025.

The Bill which was intended as a legislative response to the High Court's decision in *Bird v DP (a pseudonym)* [2024] HCA 41, proposes to extend organisational vicarious liability for child abuse perpetrated by both individuals 'akin to an employee' and individuals 'associated with an organisation'.

The Government amendments omit proposed section 114BC of the Bill and substitute a new section providing for the meaning of 'employee'. Employees, for the purposes of vicarious liability of organisations for child abuse, will be defined to include individuals 'akin to an employee'.

This approach aligns the ACT law on the class of persons whose actions organisations would be vicariously liable for child abuse with other Australian jurisdictions which have legislated for organisational vicarious liability for child abuse (New South Wales, South Australia, the Northern Territory and Tasmania).

The High Court's decision in *Bird v DP (a pseudonym)* [2024] HCA 41 considered whether, under the common law of Australia, vicarious liability applies – or should be extended – to a relationship between a wrongdoer and a defendant that is akin to employment. It found that, at common law, vicarious liability does not apply in these circumstances. The amendments are intended to respond to the High Court's decision and enable the courts to undertake an assessment as to whether an individual meets the statutory test, which will be considered on a case-by-case basis with reference to the circumstances of the relationship between the wrongdoer and the organisation.

This approach balances the extension of organisational liability and accountability for institutional child abuse with the need for the careful consideration of the circumstances of the relationship between the perpetrator of abuse and the organisation before vicarious liability is attributed to the organisation.

The amendments are not intended to exclude religious leaders, such as priests or ministers, or other members of the personnel of religious organisations, whether or not they are ordained, from the meaning of 'employee'. Where such an individual

carries out activities that are a part of the ordinary activities carried out by the organisation and for the benefit of the organisation, it is intended that they will be 'akin to an employee' of the organisation under s 114BC (2) of the Bill.

Finally, the amendments provide for a regulation making power to prescribe circumstances where an individual is or is not akin to an employee. This provides the means to provide further clarity, if required, on the definitional scope of an employee, and to respond to legislative and common law developments in Australia.

CONSULTATION ON THE PROPOSED APPROACH

The Standing Committee on Legal Affairs conducted an inquiry into the Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025. The Committee's final report observed that the scope of the bill, particularly the definitions of 'akin to employment' and individuals 'associated with an organisation' is a contested space, even among those who support expanding vicarious liability. The Committee noted that the scope of the definition is a policy question for the Legislative Assembly to consider.

The Attorney-General has engaged with her counterparts through the Standing Council of Attorneys-General to discuss potential reform options in response to the *Bird v DP (a pseudonym)* [2024] HCA 41 decision.

CLIMATE IMPACT

Nil.

CONSISTENCY WITH HUMAN RIGHTS

Rights engaged

Rights Promoted

The amendments promote children's rights to protection (section 11, *Human Rights Act 2004*). The Bill, as amended, will extend organisational vicarious liability for child abuse perpetrated by individuals who are akin to employees of the organisation. The establishment of this liability will enable vicarious liability claims to be made against organisations for historical matters and confirms the responsibility that organisations have to safeguard children in their care from abuse.

Rights Limited

The amendments may affect natural persons who are members of committees of unincorporated organisations. The imposition of liability on these natural persons does not give rise to human rights limitations.

CLAUSE NOTES

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Clause 4

Proposed new section 114BC

Page 3, line 1 –

This clause omits proposed new section 114BC and substitutes a new section providing for the meaning of *employee*.

The new section provides that an employee of an organisation, for the purpose of the proposed new part 8A.1A regarding liability of organisations, includes an individual akin to an employee of the organisation.

This amendment provides that an individual is akin to an employee of an organisation if the individual carries out activities that are part of the ordinary activities carried out by the organisation and for the benefit of the organisation, or if a circumstance prescribed by regulation applies to the individual.

A regulation under subsection 2 (b) may also prescribe circumstances in which an individual is not akin to an employee.