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

ELEVENTH ASSEMBLY

Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025

REVISED EXPLANATORY STATEMENT

**Presented by
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Introduction

This explanatory statement relates to the Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

The overview

(1) A statement of the purpose of the bill and its intended effect

The Bill is intended as a legislative response to the High Court of Australia's judgement in *Bird v DP* (a pseudonym) [2024] HCA 41 delivered on 13 November 2024. In *Bird v DP*, by a unanimous decision, the High Court ruled that, despite the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse that survivors have a vehicle to establish institutional liability for wrongs committed against them as children, these recommendations did not pave the way for a broadening of the common law doctrine of vicarious liability to apply to relationships which are not strictly between an employer and employee, such as that of a Catholic priest and a child parishioner.

However, Gageler CJ, Gordon J, Edelman J, Steward J and Beech-Jones J ruled at [63] that '...the issue is squarely in the hands of the legislatures', and at [67] that: 'Reformulation of the law of vicarious liability is properly the province of the legislature.'

In her dissenting judgment, Gleeson J stated at [73] that: 'In 2015, the Royal Commission into Institutional Responses to Child Sexual Abuse anticipated that Australian courts, too, would recognise and impose liability on institutions for criminal acts of their members or employees that cause harm to children, in the absence of legislative action.' Her Honour later expressed concern at [76] that: 'Without vicarious liability being an available cause of action for such historical abuse, the point of removing those limitation periods is significantly diminished...'

Given the High Court seems to have ruled out expansion of vicarious liability through common law, 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. Without this Bill, there is an unjust asymmetry between, for example, a child abused by a teacher in a classroom in a religious school and a child abused in the same school but by the priest in the sacristy instead.

The Bill expands the definition of 'employee' to include an individual who is akin to an employee of the organisation or who is associated with the organisation. Individuals are akin to employees if they carry out activities that are ordinary part of the activities carried on by the organisation, and for the benefit of the organisation. An individual who is associated with an organisation includes an office holder, officer, owner, volunteer or contractor of the organisation and includes in the case of religious institutions, a religious leader such as a priest or a minister, or member of the personnel of the organisation whether or not the individual is ordained.

The devastating, lifelong impact of abuse in childhood and the multi-generational harm it causes cannot be overstated and nor can the willingness of large institutions to use every loophole to evade responsibility for it. The purpose of the Bill is to ensure that the organisations

who harboured individuals who were akin to employees or associated with the organisation when they abused children can be held vicariously liable for the abuse. It is intended to provide clarity around those who fall into these categories, operate to broaden the common law doctrine of vicarious liability to apply to relationships which are not strictly between an employer and employee, create equity between survivors and result in greater rights for survivors.

Human rights issues

Child abuse violates children's most basic rights including the right to protection of family and children. Section 11 of the Human Rights Act 2004 sets out the right of the family and children to be protected. It identifies that at s 11(1) 'The family is the natural and basic group of society and is entitled to be protected by society' and at s 11(2) 'Every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind'.

This Bill holds organisations vicariously liable for the abuse of children by people akin to an employee of the organisation or associated with the organisation. The Bill recognises that children are especially vulnerable to abuse and need to be afforded the strongest possible protection, particularly by those entrusted with their care. This Bill also recognises the need to remedy limitations in existing law (particularly as a result of *Bird v DP*) and the difficulties plaintiffs face when holding organisations to account for child abuse committed by people acting in roles akin to employment or who were associated with the organisation. The Bill supports the right of protection of children under a 11(2) of the Human Rights Act.

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 by clause

Clause 1 - Name of Act

This Act is the Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Act 2025.

Clause 2 - Commencement

This Act commences on the day after its notification day.

Clause 3 - Legislation amended

This Act amends the Civil Law (Wrongs) Act 2002.

Clause 4 - New Part 8A.1A

This clause inserts a new Part 8A.1A - Liability of organisations.

These additions fall into Chapter 8. The definition of 'child abuse' in s 114AA means that the Act applies to all forms of child abuse which includes physical and sexual abuse.

The amendments cover historical child abuse, civil proceedings started after the commencement of the amending Act and proceedings that have not yet finished at the time of the commencement of the amending Act. This is because s114BA applies which sets out that 'This chapter applies in relation to child abuse or alleged child abuse of a person who is the

subject of a child abuse claim, regardless of when the abuse or the alleged abuse happened.’ For clarity, the Act is intended to operate retrospectively.

There are three definitions for the new Part 8A.1A which are set out in new s 114BB. Firstly, to define ‘employee of an organisation’ the reader is referred to s 114BC. This will be covered in detail below. Secondly, ‘organisation’ is defined non-exhaustively as it ‘includes’ an administrative unit, a territory authority and an unincorporated body. It should not be limited to those entities identified. The third and final definition of the Act is ‘responsible, for a child’ which refers the reader to new section 114BD, which will also be covered in detail below.

The meaning of ‘employee’ for Part 8A.1A is set out in s 114BC. An employee of an organisation includes an individual who is akin to an employee of the organisation. As set out in s 114BC(2) a person is akin to an employee of an organisation if the individual carries out activities that are (a) part of the ordinary activities carried out by the organisation and (b) for the benefit of the organisation.

S 114BC(1) is not exhaustive because it *includes* rather than limits. ‘Activities’ has a wider meaning than for example the word ‘business’ and should be interpreted broadly. The word is not ‘business’ as that may carry profit connotations which does not suit all of the institutions s114BC should cover such as sporting institutions, Scouts and the like. It is not ‘duties’ which suggests action required by one’s position or occupation, office, or function like the duties of a soldier or a clergyman. The certain formalities of particular roles is already captured by the plain and ordinary meaning of ‘employee’ and the purpose of this section is to include people in, for example, volunteer roles. ‘Activities’ is more inclusive to the institutions that will be covered by these provisions.

An employee of an organisation includes an individual who is associated with the organisation (s 114BC(1)(b)). This is laid out in s 114BC(3) where an individual associated with an organisation includes (a) an office holder, officer, owner, volunteer or contractor of the organisation. In relation to the inclusion of contractors, it is noted there is a difference between an ‘independent contractor’ (who is properly excluded from vicarious liability for the reasons articulated by both the majority judgment and by Gleeson J) and a (small ‘c’) ‘contractor’ who may fit the definition of an ‘employee’ either directly or by being in a position ‘akin’ to an employee by virtue of having the characteristics of such individuals in this relationship (for example, by being under the control of the employer/organisation, their work being sufficiently integrated into the work of the employer/organisation), and other characteristics for example subservience and dependence (see generally the judgment of Gleeson J in Bird).

An employee of an organisation also includes an individual who is associated with the organisation, if the organisation is a religious organisation—a religious leader, such as a priest or minister, or other member of the personnel of the organisation, whether or not the individual is ordained (s 114BC(3)(b)). It is reasonable to say generally that:

- Ordained individuals are those who have been formally or officially appointed as a member of the clergy, usually through a recognised ceremony. This category includes people like bishops, priests, and deacons.
- Non-ordained individuals can nevertheless occupy positions of influence, relational power and status. As lay women or lay men they perform activities or have powers in the institution. These include for example, non-ordained preachers, ministers, readers, chaplains, pastors, and a myriad other leaders, officials or office-bearers.

The appropriate purpose of using the concept of ‘member of the personnel’ is to include within the scope of ‘employee’ all those in positions of sufficient relational and/or institutional power and influence who by virtue of this status have the additional capacity to inflict abuse and should fall within the scope of the organisation’s vicarious liability.

114BC(3)(a) and (b) should be interpreted appropriately broadly to avoid the capacity for unduly constrained interpretation and challenges. It has been drafted to ‘include’ and not limit individuals who are associated with the organisation if the organisation is a religious organisation.

Under s 114BC(3)(c) an employee of an organisation also includes an individual, or an individual belonging to a class of individuals, prescribed by regulation.

Section 114BC(4) sets out that for new Part 8A.1A, an individual who is associated with an organisation to which the exercise of care, supervision or authority over a child has been delegated, in whole or in part, is also taken to be an individual associated with the organisation from which the exercise of care, supervision or authority was delegated.

Section 114BC(5) observes that a regulation may prescribe circumstances in which an individual is akin to an employee or not akin to an employee.

S 114BD sets out organisations that are responsible for the child. Firstly, (1) An organisation is responsible for a child if it, including any part of it, exercises care, supervision or authority over the child. Furthermore, under (2) If an organisation, including any part of it, delegates the exercise of care, supervision or authority over the child to another organisation, in whole or in part, each organisation is responsible for the child.

S 114BE establishes the conditions under which an organisation will be vicariously liable for child abuse perpetrated by employees, being an organisation that is responsible for a child is vicariously liable for child abuse perpetrated against the child by an employee of the organisation if—

- (a) the apparent performance by the employee of a role in which the organisation placed the employee supplies the occasion for the perpetration of the child abuse by the employee; and
- (b) the employee takes advantage of the occasion to perpetrate the child abuse.

S 114BE (2) sets out that in determining whether the apparent performance by the employee of a role in which the organisation placed the employee created the opportunity for the child abuse to occur, the court must consider whether the organisation placed the employee in a position in which the employee has one or more of the following:

- (a) authority, power or control over the child;
- (b) the trust of the child;
- (c) the ability to achieve intimacy with the child.

The following section identifies that this section does not affect, and is in addition to, the common law in relation to vicarious liability (s 114BE(3)).

Clause 5 – Definitions in Part 8A.3 – section 114J (1)

This clause inserts a new definition into s 114J(1) of ‘abuse settlement agreement’ by adding a new paragraph b(iii). This has the impact that ‘abuse settlement agreement’ now also includes an agreement ‘that settles a child abuse claim and prevents the exercise of an action on a cause of action to which the [Limitation Act 1985](#), section 21C (Personal injury resulting from

child abuse) applies’ and ‘happened before the commencement of part 8A.1A, and the child abuse claim involved child abuse by a person who would have been an employee of an organisation if that part had been in force when the agreement was made.’

This inclusion is intended to ensure that survivors who were abused as children before the new vicarious liability legislation came into force and entered into unjust settlements are able to apply to the court to have those unjust settlements set aside. This will mean they then have the capacity to seek a fair settlement. This will create parity between different cohorts of survivors and ensure that survivors who were abused as children before the commencement of the Act and entered unjust settlements are able to access justice.

Clause 6 – New chapter 21

This clause inserts a new chapter 21 which is a transitional provision. It sets out that Part 8A.1A applies to proceedings commenced but not finally decided before the day section 4 of the Act commences. The new chapter 21 expires three years after it commences.

Clause 7 – Definitions

This clause inserts three new definitions, being ‘employee, of an organisation’, ‘organisation’ and ‘responsible, for a child’ which were expanded upon in clause 4 above.