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

**Sexual Assault Support Service Inc. (SASS) Submission**

**July 2019**

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Sexual  
Assault  
Support  
Service

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

## *SASS submission*

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### Introduction

Sexual Assault Support Service (SASS) is a free and confidential service for people of all ages who have been affected by any form of sexual violence. We also provide counselling to children and young people who are displaying problem sexual behaviour (PSB) or sexually abusive behaviour (SAB), along with support and information for their family members and/or carers, and deliver a Redress Scheme Support Service to survivors of institutional child sexual abuse.

The range of support options available at SASS includes counselling, crisis support, case management and advocacy. We also provide information and support to professionals, and deliver training workshops and community education activities in a range of settings including schools and colleges.

SASS welcomes the opportunity to respond to the Tasmanian Government's Consultation Paper on the Justice Legislation (Organisational Liability for Child Abuse) Amendment Bill 2019.

### Comments

#### 1. Proposed changes to the *Civil Liability Act 2002*

We note that the Bill proposes the following changes to the *Civil Liability Act 2002*:

- Imposing a statutory non-delegable duty upon all organisations who exercise care, supervision or authority over children;
- Enabling the rebuttal of a statutory non-delegable duty by an organisation by establishing that the organisation took 'reasonable precautions' to prevent the abuse;
- Extending vicarious liability on organisations for child abuse to perpetration of child abuse by individuals whose relationship with the organisation is akin to employment; and
- Enabling child abuse proceedings to be brought against unincorporated organisations and compel an organisation or an associated property trust to pay liabilities in certain circumstances including child abuse that occurred, and/or proceedings that have commenced, prior to the amendment.

SASS supports these proposals. With regard to the third point concerning the extension of vicarious liability, we propose that this be broadened from just 'individuals whose relationship with the organisation is akin to employment'. We note that the Royal Commission recommended the category of persons for whom an organisation should be liable to include:

....[an] institution's officers, office holders, employees, agents, volunteers and contractors. For religious organisations, persons associated with the institution also include religious leaders, officers and personnel of the religious organisation.<sup>1</sup>

This is a particularly important point when considering who should be classed as persons associated with religious institutions, as the category of people for whom a religious institution should be held liable is greater than just those whose relationship with the organisation is akin to employment. Evidence from the Royal Commission demonstrated that perpetrators from within religious organisations were associated with the institution in a wide variety of roles. The scope of an organisation's liability therefore should not be limited by specifying too narrowly the class of persons associated with it.

We therefore recommend that the legislation provides guidance on, but is not exclusive regarding, which categories of people an institution should be held liable for. The Royal Commission recommendation on this point provides guidance;

**Recommendation 92.**

For the purposes of both the non-delegable duty and the imposition of liability with a reverse onus of proof, the persons associated with the institution should include the institution's officers, office holders, employees, agents, volunteers and contractors. For religious organisations, persons associated with the institution also include religious leaders, officers and personnel of the religious organisation.<sup>2</sup>

**2. Proposed changes to the *Limitation Act 1974***

We note that the Bill proposes the following change to the *Limitation Act 1974*:

- A Court can 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.

SASS is strongly in support of this proposed change, noting that previous civil litigation settlements for survivors of institutional child sexual abuse have in many cases been inadequate, and would not be considered appropriate in the current context. We refer to the statement made by the Royal Commission that,

Where civil litigation has settled, many survivors have told us that the settlement payments were inadequate and that legal technicalities forced them to accept these settlements without ever having their claims determined on their merits.<sup>3</sup>

We hope that the Tasmanian Government will take our views on this matter into account. Please contact us for any further details on this submission.

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<sup>1</sup> Royal Commission into Institutional Responses to Child Sexual Abuse (2015), *Redress and Civil Litigation Report*, p.77.

<sup>2</sup> *Ibid*, p.57.

<sup>3</sup> *Ibid*, p.96.