



Our **Mission** is to prevent child sexual assault in our society.
Our **Vision** is to make Australia the safest place in the world to raise a child.

2nd August 2019

Department of Justice Office of the Secretary
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Submission: Justice Legislation (Organisational Liability for Child Abuse) Amendment Bill 2019

To whom it may concern,
We thank you for the opportunity to provide a submission to the *Justice Legislation (Organisational Liability for Child Abuse) Amendment Bill 2019*.

Bravehearts acknowledges the importance of civil litigation processes for many survivors of child sexual assault as an avenue for not only accessing financial compensation for experiences harm, but also for receiving an acknowledgement of harm committed and institutional responsibility. We would note that it is particularly important for survivors to receive appropriate compensation, given the lifelong, wide-ranging effects of child sexual assault.

We also acknowledge the need for governments, on the back of the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, to review and ensure that legislation enables a fair and just process and that the best interests of survivors is prioritised.

We congratulate the Tasmanian government for introducing this current Bill.

Bravehearts supports the proposed amendments in the *Justice Legislation (Organisational Liability for Child Abuse) Amendment Bill 2019*. We believe that it provides an appropriate framework in response to recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse and offer the following comments.

Amendments to the *Civil Liability Act 2002*:

Bravehearts is pleased to see the inclusion of sexual abuse and serious physical abuse. From over twenty years working with clients we know that child sexual assault rarely happens in isolation from other forms of abuse; physical abuse, psychological abuse and neglect are often factors in the harms suffered. For example, grooming of children and young people by sex offenders often involves psychological manipulation and abuse.

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However, we note that definitions of ‘child abuse’ within the current Bill limits the extension of harm covered to “any **psychological abuse** [our emphasis] of the child that arises from the sexual abuse or serious physical abuse”. We would argue that this definition should instead state “and any other abuse perpetrated in connection with sexual abuse or serious physical abuse”.

Bravehearts would also support the application of the extension of harm from sexual and serious physical abuse to include whether or not the other abuse was perpetrated by the person who perpetrated the sexual abuse or serious physical abuse. By the very nature of being victimised by a perpetrator, children and young people are often made vulnerable to other forms of abuse by other adults and/or peers.

In respect to this last statement, Bravehearts fully supports the Royal Commission recommendation to extend all institutional liability to all persons associated with an institution, as well as the inclusion of the full range of persons ‘associated with’ an organisation as per the Royal Commission’s recommendation. Our position is that if a child or young person has been harmed by a peer, unless the organisation can show that it had in place appropriate safeguards, policies and procedures for preventing and responding to harm, then organisational liability should be extended to such matters. All organisations working with or engaging children and young people, have a duty of care to ensure, as far as practicable, the safety and protection of those children and young people from **all harm**.

Amendments to the *Limitations Act 1972*

Bravehearts fully supports the proposed amendment to the *Limitations Act 1972* allowing the Court to set aside previous settlements if “in the interests of justice to do so” to allow a survivor to proceed with a civil litigation action.

Concluding comments

For survivors of sexual assault in institutional contexts the civil litigation system has historically been particularly adversarial. Over the years, experiences of Bravehearts’ clients has been that the civil system is more often than not inaccessible, excessively expensive, inadequate and lengthy. Survivors have often been required to recount traumatic childhood experiences, with the result that the civil litigation process can result in re-traumatisation for survivors.

Civil litigation against institutions willing to incur large legal costs to defend against action often involves high costs for survivors, with the cost of pursuing civil claims often a significant impediment for survivors.

Whether a survivor chooses to apply for recompense through the National Redress Scheme, or there civil processes, we believe that we must ensure that there is adequate legal and emotional support provided.

We believe that the recommendations as handed down by the Royal Commission and implemented by State and Territory governments will have positive changes for the safety and protection of children and young people within organisational and institutional settings.

Organisations themselves may need to undertake an audit of policies and procedures and implement any necessary changes. Likely, this would include cultural reform and specific trainings for many organisations.

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Once again, we congratulate the Tasmanian government for introducing this current Bill and thank you for the opportunity to provide this submission. Please contact us on research@bravehearts.org.au if any further information is required

Kind Regards,



Hetty Johnston AM
Founder & Director



Carol Ronken
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