

Our ref: LOR/AMN

2 August 2019

Amber Mignot
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Department of Justice
Child Abuse Royal Commission Response Unit
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Dear Ms Mignot

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

Thank you for your letter of 28 June 2019, enclosing a draft copy of the *Justice Legislation (Organisational Liability for Child Abuse) Amendment Bill 2019*.

The Society commends the State Government for its commitment to implement the recommendations of the Royal Commission. With respect to the draft bill, the Society has a number of concerns. Primarily, that concern stems from the bill proposing amendments to the *Civil Liability Act* that go further than the Royal Commission's recommendations.

Recommendation 89 is that state and territory governments introduce legislation to impose a non-delegable duty on certain institutions for institutional child sexual abuse despite it being the deliberate criminal act of a person associated with the institution.

Recommendation 90 is that institutions operating certain facilities, or providing certain services, should have that non-delegable duty imposed upon them.

Recommendation 91 states that irrespective of whether a non-delegable duty is imposed, that state and territory governments introduce legislation to make institutions liable for institutional child sexual abuse by persons associated with the institution, unless the institution proves it took reasonable steps to prevent the abuse. This reverse onus should be imposed on all institutions.

The draft bill seeks to impose vicarious liability on all organisations for the acts of an employee so long as 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.

It is important to note that 'employee' is given a very wide meaning. It includes an individual who is akin to an employee, which means that individual's role within the organisation is for the aims or purposes of the organisation.

Similarly, the meaning of organisation is about as wide as is possible. Organisation means 'any organisation'.

If the legislation is passed in its current form, there may be significant flow-on effects. For example, all junior sporting clubs will be vicariously liable for the criminal actions of just about all people volunteering their services to assist the club.

Further, notwithstanding the permissive provisions of Division 4 regarding representative defendants, there remains a question as to who is going to be responsible to pay damages in the case of

unincorporated organisations. For example, are the committee members of an unincorporated underage football club, or musical group, to be personally liable? Even for more sophisticated organisations, imposing vicarious liability is likely to affect whether insurance cover can be obtained and, if so, the premium of any cover.

The Society strongly urges government to consider amending the draft bill to reflect the recommendations of the Royal Commission on these issues. There appears to be no good reason to impose burdens on organisations over and above those that result from the recommendations of the Royal Commission.

Yours faithfully

A handwritten signature in blue ink, consisting of a stylized, cursive 'L' followed by a long horizontal stroke.

Luke Rheinberger
Executive Director