

2 August 2019

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Office of the Secretary
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By email: haveyoursay@justice.tas.gov.au

Dear Sir/Madam,

Thank you for the opportunity to provide input in relation to the exposure draft of the *Justice Legislation (Organisational Liability for Child Abuse) Amendment Bill 2019* (the Bill).

Maurice Blackburn congratulates the Tasmanian Government on playing a national leadership role in implementing the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).

Maurice Blackburn has, since the findings of the Royal Commission were handed down, been actively monitoring the progress of States and Territories in their endeavours to incorporate relevant recommendations into legislation. Our advocacy work in this area has attracted significant attention from various parliamentary committees, as well as the media.

We believe that in recognising those States and Territories showing courageous leadership in striving for a victim-centred and child safe response (often against powerful lobbying by major institutions), we might encourage other jurisdictions to see what's possible.

The Bill, as presented, will not only help to ensure that the considered recommendations of the Royal Commission are implemented over time, but that a victim-centred approach to this change process is front and centre.

Maurice Blackburn recognises that this Bill will:

- Impose a non-delegable duty of care on organisations, such that they must accept liability for child abuse committed by associated individuals¹,
- Enshrine the vicarious liability of organisations in legislation,
- Enable proceedings against unincorporated organisations, thereby requiring that a proper defendant be identifiable in all cases, as well as functionally removing the use of the 'Ellis Defence'², and
- Allow courts to set aside deeds of release from previous claims³.

¹ In response to Redress & Civil Litigation Report recommendations 89 to 93

² In response to Redress & Civil Litigation Report recommendations 94 and 95

³ Queensland, Victoria and Western Australia have similarly committed to this course of action.

These are important actions, not only in ensuring that victims have rights to proper recourse, but that institutions will no longer be able to hide behind the legal technicalities which have enabled them to avoid responsibilities for their actions and those of their staff and volunteers.

Maurice Blackburn further notes that the provisions in the draft Bill are in addition to an already impressive list of legislative achievements implemented by the Tasmanian parliament since the Royal Commission, including:

- A legislated commitment to participate in the National Redress Scheme⁴,
- Legislated penalties for failing to report child sexual abuse⁵,
- A lifting of the limitations period for making a claim⁶, and
- An imposed requirement that Model Litigant standards (or equivalent) should be upheld by institutions⁷.

The sum total of the above legislative initiatives places Tasmania amongst the most proactive States in terms of implementing the important recommendations of the Royal Commission. Several larger, more populous and better resourced States are significantly less advanced than Tasmania in making these requirements a reality.

We further recognise that the draft Bill is in addition to the *Criminal Code and Related Legislation Amendment (Child Abuse) Bill 2018*, which is currently before the parliament. This Bill seeks to address another of the Royal Commission's important recommendations, that:

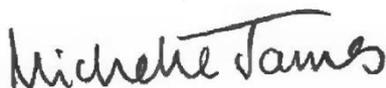
*Laws concerning mandatory reporting to child protection authorities should not exempt persons in religious ministry from being required to report knowledge or suspicions formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession.*⁸

Maurice Blackburn urges the Tasmanian parliament to prioritise and expedite the progression of *both* Bills.

We congratulate the Department on this consultation process. It is vitally important that community voices are heard in these policy development processes. We encourage the Department to actively seek and prioritise the voices and opinions of victims in this process.

Maurice Blackburn would be pleased to share our experiences and expertise in representing victims of institutional childhood sexual abuse, with the Department. If we can be of further assistance during this consultation process, please do not hesitate in making contact via (07) 3014 5032 or mjames@mauriceblackburn.com.au.

Yours sincerely,



Michelle James
Principal, Abuse Law
Maurice Blackburn

⁴ <https://www.justice.tas.gov.au/national-redress-scheme>

⁵ In response to recommendation 33 of the Royal Commission's Criminal Justice report

⁶ In response to recommendation 85 of the Redress and Civil Litigation report

⁷ In response to recommendations 96 to 99 of the Redress and Civil Litigation report

⁸ Recommendation 7.4 of the Royal Commission's final report