

Civil Liability (Institutional Child Abuse) Amendment Bill 2017

Explanatory Note

Short Title:

This bill may be cited as the Civil Liability (Institutional Child Abuse) Amendment Bill 2017.

Policy Objectives and the reasons for them:

The object of the bill is to implement Recommendations 89 – 94 of the 2015 *Redress and Civil Litigation Report* of the Royal Commission into Institutional Responses to Child Sexual Abuse (“the Royal Commission”).

Brief statement of the way the policy objectives will be achieved by the bill and why this way of achieving the objectives is reasonable and appropriate:

The bill amends the *Civil Liability Act 2003* inserting Part 6, Liability of institutions for child abuse, section 49C Definitions for part, section 49D Duty of care for institutions, section 49E Particular institutions must nominate defendant, and 49F Judgements relating to child abuse may be paid from trust funds.

The amendments are reasonable and appropriate as they are consistent with the recommendations of the Royal Commission to:

“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”; and,

“introduce legislation to make institutions liable for institutional child sexual abuse by persons associated with the institution unless the institution took reasonable steps to prevent the abuse. The ‘reverse-onus’ should be imposed on all institutions”; and,

“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”; and,

“introduce legislation to provide that...where the institution is alleged to be an institution with which a property trust is associated, then unless the institution nominates a proper defendant to sue that has sufficient assets to meet any liability arising from the proceedings: a) the property trust is a proper defendant to the litigation, b) any liability of the institution with which the property trust is associated that arises from the proceedings can be met from the assets of the trust”.

The amendments put forward by the bill do not go beyond the recommendations.

Alternative way of achieving the policy objectives:

There is no alternative way of achieving the policy objectives.

Administrative cost to government of implementing the bill:

The passage of this bill should not result in any administrative cost to government. The bill applies to the liability of institutions which includes private and government institutions.

The bill may reduce litigation costs to government by providing clearer laws, reducing legal argument over the matters addressed in the bill.

Where government institutions face a cost arising from the application of any law arising from this bill this would be an operational cost. Such costs (payment of liability) may be offset by savings to government elsewhere – for example payment of liability for a survivor’s health care treatment may be offset by savings to the public health system that would have otherwise funded the health care.

Consistency of the bill with Fundamental Legislative Principles:

The bill is consistent with FLPs. The amendments apply prospectively not retrospectively.

Consultation carried out in relation to the bill:

Four years of evidence before the Royal Commission including two years of extensive government, stakeholder, industry, institutional, legal, insurance, NGO, child protection advocacy and community consultation specifically focusing on the policy objectives. Further consultation has been carried out since the release of the recommendations in 2015 confirming wide-spread support for the implementation of the recommendations in Queensland including submissions to a Government Issues Paper.

A simple explanation of the purpose and intended operation of each clause of the bill:

The bill amends the *Civil Liability Act 2003* by inclusion of Part 6 Liability of institutions for child abuse.

‘Section 49C Definitions for the part’ defines: child abuse; duty of care; institution; official of an institution; and, relevant child. Definitions contribute to consistency with other Queensland legislation.

'Section 49D Duty of care for institutions' creates the non-delegable duty and places the onus upon an institution to prove it took reasonable steps to prevent child abuse.

'Section 49E Particular institutions must nominate defendant' provides that an institution not capable of being sued must nominate a suable entity.

'Section 49F Judgements relating to child abuse may be paid from trust funds' provides that a property trust is a proper defendant to litigation and liability may be met from the assets of the trust.

Consistency with legislation in other jurisdictions

The bill forms part of a national framework of legislation in all states and territories implementing the recommendations of the Royal Commission.