

Civil Liability (Holding Institutions Accountable for Child Abuse) Amendment Bill 2026

Explanatory Notes

Short title

The short title of the Bill is the *Civil Liability (Holding Institutions Accountable for Child Abuse) 2026*.

Policy objectives and the reasons for them

Victims and victim survivors expect to have their day in court.

Victims and victim survivors expect their governments to act when needed to ensure that there are the laws in place that protect them and give them avenues to seek redress.

Victims and victim survivors should not have to wait and have to lobby elected governments of the day to act, when the answer and actions required are not complex.

Victims and victim survivors should not wait for the Crisafulli LNP Government that talks about supporting victims to act. The inaction of the Crisafulli LNP Government to date is another example of all photo ops and lack of delivery from the government.

The Bill is a legislative response to the High Court of Australia's judgement in *Bird v DP (a pseudonym)* [2024] HCA 41 which was delivered on 13 November 2024. As outlined in the High Court of Australia's judgment summary:

... the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria, which dismissed an appeal by the nominated defendant for the Roman Catholic Diocese of Ballarat ("the Diocese") against a decision of the Supreme Court of Victoria, which held that the Diocese was vicariously liable for sexual assaults committed by one of its priests.

The principal issue on the appeal to the High Court was whether the relationship between the priest and the Diocese, in the absence of an employment relationship, could give rise to a finding of vicarious liability on the part of the Diocese for the assaults committed by the priest. A majority of the High Court held that the principles of vicarious liability are confined to employment relationships, holding that the High Court has repeatedly refused to extend the boundaries of the doctrine of vicarious liability to include independent contractors, or by reference to policy considerations. Expanding the doctrine to accommodate relationships that are "akin to employment" would produce uncertainty and indeterminacy. As the priest was not an employee, there could be no finding of vicarious liability on the part of the Diocese.

While the High Court's decision is respected and based on legal principles, it is up to democratically elected parliaments across the country to ensure that the laws of the day keep pass with modern community standards. In fact, the High Court's decision in this patter at

paragraph 67 of their judgement stated “*reformulation of the law of vicarious liability is properly the province of the legislature*”.

The *Royal Commission into Institutional Responses to Child Sexual Abuse* (Royal Commission) recommended that “*state and territory governments should introduce legislation not 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*” and “*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*”.

While it is noted that there was a recommendation that this should not be retrospective, this does not accord to modern day community expectations and standards. Laws that have passed the Victorian Parliament and ACT Parliaments in respect of this matter were retrospective. It is also understood that the intention of the Royal Commission would not have been to create a two-tier system of vicarious liability where it applies to some but not other cases of child abuse.

Since the handing down of the High Court decision in November 2024, the Crisafulli LNP Government have done nothing for 1 Year, 5 Months and 9 Days, that is 525 days of inaction.

The Crisafulli LNP Government has sat on their hands and not progressed legislation to support victim survivors, like other legislatures around the country have done. While the Crisafulli LNP Government might want Queenslanders to believe that the matter has been resolved or overtaken by the recent *AA v The Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle*, this, as many legal stakeholders have stated is not the case.

While the High Court decision in the aforementioned *AA* case is welcomed as it opens the door regarding the issue of non-delegable duties, this case does not resolve the matter heard in the *Bird v DP* case, which was in relation to vicarious liability.

While the Queensland Labor Opposition welcomes the *AA* case decision, it does not mean that further legislative work cannot be progressed to open the vicarious liability option for all victim survivors, not only those abused by ‘employees’. The current status of vicarious liability post the High Court case creates a hierarchy of legal recourse based on who abused the individual rather than the fact that abuse occurred and that institutions should be able to be held accountable.

Queenslanders do not want a legal system where one set of rules and redress applies to some survivors, but a different set of rules and redress applies to other survivors who have experienced just as heinous abuse.

That is why the Queensland Labor Opposition has worked with victim survivors, supporters and legal stakeholders to take action, where the Crisafulli LNP Government has failed to do so.

This Bill introduced by the Queensland Labor Opposition seeks to provide another tool in the toolkit of victim survivors to start an action to seek redress. While this legislation does not mean that they will be successful 100% of the time, it provides another avenue for victim survivors to seek redress through a potential claim of vicarious liability.

In fact, the proposed laws do not guarantee success, it doesn’t open the ‘floodgates’ as the Crisafulli LNP Government and others might argue. It simply gives victim survivors an avenue to test their case in the courts. A right all survivors should have, not just those abused by formal employees of an institution.

What Queenslanders would argue only certain individuals deserve redress for child abuse.

This Bill will amend the *Civil Liability Act 2003* to allow institutions to potentially be held vicariously liable for claims for the abuse of children under their care, supervision, control or authority if the abuse is perpetrated by persons not employed by the institutions but in relationships akin to employment by the institutions. The laws are also retrospective to ensure that all victim survivors have the ability to take appropriate steps in their path of redress and healing, as they deem appropriate.

Achievement of policy objectives

Amendments in the Bill will provide another avenue for victim survivors to seek redress through the courts for the abuse that they have suffered.

The Bill will ensure that a legal loophole is closed and a key to that legal loophole is provided to enable victim survivors to take matters to the courts to potentially hold institutions accountable for abuse that they have suffered.

The Queensland Opposition does not have the full resources of the Queensland Government and as such, if any drafting elements need to be enhanced then the Queensland Opposition is prepared to work with the Queensland Government to ensure the policy objectives are achieved – which is to provide an additional

Alternative ways of achieving policy objectives

There are no known alternative ways of achieving the policy objectives to support victims.

Estimated cost for government implementation

Any implementation costs are expected to be met from within existing budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with the fundamental legislative principles, but where it deviates, in particular in terms of the retrospective element, it is justified and responsible to do so, as it relates to the serious and important matter of child protection.

Consultation

The Queensland Labor Opposition consulted with Queenslanders, in particular victim survivors, survivors' families and friends and the wider community.

In addition, consultation and discussions have occurred with experts in the legal profession, including Maurice Blackburn and the Australian Lawyers Alliance.

Consistency with legislation of other jurisdictions

The governments of the Australian Capital Territory (ACT) and the Victorian have shown courage and acted to ensure that victims are supported. The ACT and Victorian Governments

have amended their respective Civil Liability related laws to ensure that victim survivors have another pathway to seek redress.

Notes on provisions

Clause 1 provides the Short Title of the Act.

Clause 2 provides the Act which will be amended by this Bill which is the *Civil Liability Act 2003*.

Clause 3 provides for an updated definition to associated with.

Clause 4 is the main amendments to the *Civil Liability Act 2003* which will restore an ability for victim survivors to seek redress and healing.

This clause extends the class of person associated with an institution to also include “*in a relationship with the institution akin to being employed by the institution*”.

This clause also ensures that the matter is put beyond doubt that an institution is declared to be able to be held vicariously liable in the past and will ensure that section 11A of the *Limitations of Actions Act 1974* applies, as such it will apply retrospectively. This is appropriate to ensure that victim survivors are supported.

This clause also provides for an avenue for the courts to determine if a previously settled right of action before the relevant High Court case decision should be set aside and then reconsidered under the proposed new legislative framework.

Clause 5 provides for an updated definition to associated with and is consequential in nature.

Clause 6 provides for an updated definition to associated with and is consequential in nature.