

**Queensland Catholic Education Commission**

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ABN: 57 525 935 419

# Civil Liability and Other Legislation Amendment Bill 2018

## Response from the Queensland Catholic Education Commission

December 2018

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### **Queensland Catholic Education Commission**

The Queensland Catholic Education Commission (QCEC) welcomes the opportunity to provide feedback on the draft Civil Liability Amendment Bill 2018 (the Bill).

QCEC is the peak strategic body with state-wide responsibilities for Catholic education in Queensland. This submission is provided on behalf of five Diocesan Catholic School Authorities (CSAs) and 17 Religious Institutes and other incorporated bodies which, between them, operate a total of 304 Catholic schools that educate more than 147,000 students in Queensland.

The purpose of the Bill is to implement recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) in its *Redress and Civil Litigation Report*. The recommendations deal with improving the capacity of the justice system to provide fair access and outcomes to survivors of child sexual abuse wishing to pursue a claim for civil damages for personal injury arising from the abuse. QCEC supports the overall aim of the recommendations, while acknowledging that their application to CSAs will require extensive review of, and possible modifications to, existing practices, particularly in respect of the management of volunteers and contractors in school settings.

### **Reverse Onus of Proof**

Recommendation 91 of the Royal Commission's *Redress and Civil Litigation Report* states that State and Territory Governments should 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. It was recommended that this 'reverse onus of proof' be imposed on all institutions dealing with children.

To implement this recommendation, the Bill establishes a reverse onus of proof under which an institution must prove it took all reasonable steps to prevent the sexual abuse of a child in its care by a person associated with the institution to avoid legal liability for the abuse. An 'institution' is defined broadly to mean an 'entity that provides an activity, program or service of a kind that gives an opportunity for a person to have contact with a child'.

The reverse onus of proof that is established will apply prospectively only. QCEC supports this position as institutions that are covered by the Bill, including CSAs, will need to be made aware of the changes and consider the actions they should take to ensure systems and practices in place continue to meet necessary standards including in relation to the revised scope of their obligations. This will include the keeping of detailed records of steps taken to prevent abuse, such as records of training provided to staff, volunteers and contractors, regular policy reviews, investigations of inappropriate conduct, volunteers and employment screening and reference checking. These are practices well entrenched in school settings but given the revised scope of obligations proposed by the Bill, this will no doubt provide an opportunity for schools to continue to consider best practices in this area.

The factors listed at 33E (3) of the Bill, which are to be taken into account in determining whether an institution has taken all reasonable steps to prevent abuse, are not exhaustive and therefore each particular case will need to be judged on its specific merits. Therefore, CSAs are faced with the ongoing task of ensuring that appropriate arrangements are in place that will enable them to effectively demonstrate the reasonableness and comprehensiveness of their preventive steps. This will be a process that needs to be continually reviewed and documented as part of CSAs overall governance and risk management strategies.

#### **Person Associated with an Institution**

A 'person associated with an institution' is defined to include 'an officer, representative, leader, member, employee, agent, volunteer or contractor of the institution'. For religious organisations this will include 'a minister of religion or religious leader of the organisation'.

This definition will cover all individuals engaging in activities in a school, whether paid or unpaid and whether employed by a CSAs or not. In respect of volunteers, parental and carer engagement in their child's education and active involvement in all activities of the school are strongly promoted. In addition, broader community members can make valuable contributions to students' education by sharing their knowledge and experiences. It would be an unfortunate outcome of the proposed legislation if this important aspect of school life was diminished due to liability and insurance concerns.

In a similar manner, the role and management of contractors in schools will need to be continually monitored. This will require further consideration of what in fact constitutes 'taking all reasonable steps' in the situation of independent persons or entities being engaged to deliver a service or goods to a school. In the absence of employment contract or management control arrangements, CSAs will need to develop and implement a framework that allows them to meet their duty of care obligations in these circumstances.

Thank you for your attention to this submission. For any further information or clarification, please contact Chris Woolley, Director – Governance Strategy and Corporate Services, by phone (07) [REDACTED] or email [REDACTED]



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