



Our **Mission** is to prevent child sexual assault in our society.
Our **Vision** is to make Australia the safest place in the world to raise a child.

12th December 2018

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane, Qld 4000
E-mail: LACSC@parliament.qld.gov.au

Submission: *Civil Liability and Other Legislation Amendment Bill 2018*

To whom it may concern,

We thank you for the opportunity to provide a submission to the *Civil Liability and Other Legislation Amendment Bill 2018*.

Bravehearts believes that civil litigation processes are important mechanisms to assist survivors of child sexual assault achieve appropriate levels of monetary redress. It is particularly important for survivors to receive appropriate compensation, given the lifelong, wide-ranging effects of child sexual assault. We acknowledge the need for governments, on the back of the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, to review and ensure that legislation enables a fair and just process and that the best interests of victims is prioritised.

We commend the Queensland government for its ongoing and proactive commitment to reviewing current legislation in light of the Royal Commission recommendations and we welcome the *Civil Liability and Other Legislation Amendment Bill 2018* in response to recommendations 91-94 of the *Redress and Civil Litigation Report*.

In relation to the current Bill, we believe it provides an appropriate framework in response to the recommendations made by the Royal Commission, and offer the following comments.

Amendments to the *Civil Liability Act 2003* – reverse onus

In recognition of the multitude of barriers for survivors when they are placed in a position to prove that an institution failed in their duty of care, Bravehearts fully supports the introduction of legislation that reverses the onus of proof in claims.

As we have noted in our submissions to other governments, we believe that providing guidance around what constitutes reasonable steps is necessary to ensure that organisations are aware of their responsibilities. As noted by the Royal Commission and within the current Bill's

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explanatory note, reversing the onus of proof may have the added impact of increasing organisational focus on governance and risk mitigation.

Defining ‘reasonable steps’ would provide clarification around expectations of organisational responsibility. Although consideration does need to be given to the wide variety of organisations (size, structure and resourcing), Bravehearts does believe that there are basic minimum standards that would be applicable to all organisations, for example: that the interests, safety and protection of children and young people is paramount; that appropriate child protection policies and procedures are in place; that regular risk management audits are conducted; that a reporting/complaints procedure is transparent and in place; and that staff are regularly trained in child protection issues.

Bravehearts advocates that child-safe organisations include not just a focus on policy and process, but on instilling a child-safe culture, embedding the organisation’s commitment to child protection in practice and attitudes throughout the organisation, and that this is achievable in any organisation.

Amendments to the *Civil Liability Act 2003* – proper defendant

Bravehearts supports the proposed reform introducing legislation to require unincorporated associations to nominate a proper defendant and where they fail to do so, providing for plaintiffs to seek a court order naming the trustees as the proper defendant.

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We are pleased to see these reforms are to be applied both prospectively and retrospectively and agree that this move away from the fundamental legislative principle that legislation “should not adversely affect rights and liberties, or impose obligations retrospectively”, is justified due to the barriers victims face where a proper defendant is not nominated.

Bravehearts supports the adoption in law of Recommendation 94, that:

State and territory governments should introduce legislation to provide that, where a survivor wishes to commence proceedings for damages in respect of institutional child sexual abuse 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.

Once again, as noted in the Explanatory Notes to the Bill, we agree that any departure from fundamental legislative principles is justified in that the amendment seeks to ensure that organisations will not use an unincorporated status or asset structure to avoid liability and responsibility for the harm of children within the care of the organisation.

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Bravehearts additionally supports the Royal Commission recommendation to extend all institutional liability to all persons associated with an institution.

We additionally note in relation to the considerations relating to the connection between the perpetrator or the abuse and the organisation, our position is that if the contact with the victim is facilitated by or through the organisation or as a direct result of the organisation, the organisation has a responsibility and duty of care to ensure that proper safeguard are in place and that policy, process and procedures are followed.

Bravehearts supports the inclusion of the full range of persons 'associated with' an organisation as per the Royal Commission's recommendation.

We thank you for the opportunity to provide this submission. Please contact us on [REDACTED] if any further information is required

Kind Regards,



Carol Ronken
Director of Research