



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.

3<sup>rd</sup> December 2018

Committee Secretary  
Legal Affairs and Community Safety Committee  
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**Submission: *Civil Liability (Institutional Child Abuse) Amendment Bill 2018***

To whom it may concern,

We apologise for the delayed response to the request for submissions to the *Civil Liability (Institutional Child Abuse) Amendment Bill 2018* and hope that our late comment is able to be accepted.

We welcome the Bill as introduced by Mr Michael Berkman MP, Member for Malwar, which puts forward changes to the *Civil Liability Act 2003*, the *Limitation of Actions Act 1974*, and the *Personal Injuries Proceedings Act 2002*. We also acknowledge the good work of both the Queensland Government and Opposition in supporting to the recommendations handed down by the Royal Commission.

Bravehearts acknowledges the importance of civil litigation processes for many victims of child sexual assault as an avenue for not only accessing financial compensation for experiences harm, but also for receiving an acknowledgement of harm committed and institutional responsibility. We would note that it is particularly important for survivors to receive appropriate compensation, given the lifelong, wide-ranging effects of child sexual assault.

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

**Civil Liability Act 2003**

***Section 49C***

In relation to section 49D, we welcome and support the definitions as prescribed in the current Bill.

We would like to specifically offer our full support for the expansion of the definition of 'child abuse' to include sexual abuse, serious physical abuse and any other abuse perpetrated in connection with sexual abuse or serious physical abuse, whether or not the other abuse was perpetrated by the person who perpetrated the sexual abuse or serious physical abuse. From over twenty years working with clients we know that child sexual assault rarely happens in

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isolation from other forms of abuse; physical abuse, psychological abuse and neglect are often a factor in the harms suffered. For example, grooming of children and young people by sex offenders often involves psychological manipulation and abuse. In addition, by the very nature of being victimised by a perpetrator, children and young people are often made vulnerable to other forms of abuse by other adults and/or peers.

### **Section 49D**

Bravehearts fully supports the introduction of legislation that reverses the onus of proof in litigation claims.

Defining the term ‘reasonable precautions’ (s49D(3)) might be beneficial in that it will give organisations guidance about the scope of what would be reasonable, and add clarity around the minimum expectations of organisations. We note, as we did in our submission to the New South Wales Government, it may be appropriate for a definition of ‘reasonable precautions’ to be graduated according to the type of service provided, and to consider that organisations vary in size and structure. The ‘reasonable steps’ for organisation A may vary to that of organisation B.

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 and embedding the organisation’s commitment to child protection in practice and attitudes throughout the organisation. This may require some resourcing for organisations.

In addition, similar to Safe Work Australia, we advocate that a body and ‘code of practice’ may need to be established to oversee organisations to ensure that they are taking all necessary steps.

### **Section 49E and 49F**

Bravehearts is supportive of the implementation of the Royal Commission’s ‘proper defendant’ recommendation and that where organisations fail to do so, the trustees may be held responsible for any liability in relation to breaches of duty of care. We are pleased to see this reform is to be applied both prospectively and retrospectively.

### **Limitation of Actions Act 1974**

In line with our comments above, we fully support the amendment of the definition of ‘child abuse’, in relation to the removal of limitation periods, to include sexual abuse, serious physical abuse and any other abuse perpetrated in connection with sexual abuse or serious physical abuse, whether or not the other abuse was perpetrated by the person who perpetrated the sexual abuse or serious physical abuse.

### **Personal Injuries Proceedings Act 2002**

Again, consistent with our comments above, we fully support the amendment of the definition of 'child abuse', in the *Personal Injuries Proceedings Act 2002*, to include sexual abuse, serious physical abuse and any other abuse perpetrated in connection with sexual abuse or serious physical abuse, whether or not the other abuse was perpetrated by the person who perpetrated the sexual abuse or serious physical abuse.

### **Concluding Comments**

For survivors of sexual assault in institutional contexts the civil litigation system has historically been particularly adversarial. Over the years, experiences of Bravehearts' clients has been that the civil system is more often than not inaccessible, excessively expensive, inadequate and lengthy. Survivors have often been required to recount traumatic childhood experiences, with the result that the civil litigation process can result in re-traumatisation for survivors.

Civil litigation against institutions willing to incur large legal costs to defend against action often involves high costs for survivors, with the cost of pursuing civil claims often a significant impediment for survivors.

Whether a survivor chooses to apply for recompense through the National Redress Scheme, or there civil processes, we believe that we must ensure that there is adequate legal and emotional support provided.

In addition, as noted in the Mr Berkman's First Reading Speech (31 October 2018), the proposed changes under this current Bill will hopefully "... help future-proof our institutions and help them become more child safe, healthier and more robust."

We believe that many organisations will need to undertake an audit of policies and procedures and implement any necessary changes. Likely, this would include cultural reform and specific trainings for many organisations.

It may be necessary for some organisations to be funded to build capacity and knowledge. We believe that the recommendations as handed down by the Royal Commission and implemented by State and Territory governments will have positive changes for the safety and protection of children and young people within organisational and institutional settings.

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

Kind Regards,



Hetty Johnston AM  
Founder & Executive Chair



Carol Ronken  
Director of Research

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