



**Legislative Assembly for the  
Australian Capital Territory**  
Standing Committee on Legal Affairs

# **Inquiry into the Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025**

Legislative Assembly for the Australian Capital Territory  
Standing Committee on Legal Affairs

---

Approved for publication

---

Report 3  
11th Assembly  
September 2025



# About the committee

## Establishing resolution

The Assembly established the Standing Committee on Legal Affairs on 3 December 2024.

The Committee is responsible for the following areas:

- Emergency Management and the Emergency Services Agency
- Policing and ACT Policing
- Corrective Services
- Attorney-General
- Human Rights
- Victims of Crime
- Access to justice and restorative practice
- Public Trustee and Guardian

You can read the full establishing resolution [on our website](#).

## Committee members

Ms Chiaka Barry MLA, Chair

Mr Taimus Werner-Gibbings MLA, Deputy Chair

Mr Shane Rattenbury MLA

## Secretariat

Ms Kathleen de Kleuver, Committee Secretary

Mr Adam Walker, Assistant Secretary

Ms Kate Mickelson, Assistant Secretary

Mr Satyen Sharma, Administrative Officer

## Contact us

**Mail** Standing Committee on Legal Affairs  
Legislative Assembly for the Australian Capital Territory  
GPO Box 1020  
CANBERRA ACT 2601

**Phone** (02) 6207 0524

**Email** [LACommitteeLegal@parliament.act.gov.au](mailto:LACommitteeLegal@parliament.act.gov.au)

**Website** [parliament.act.gov.au/parliamentary-business/in-committees](http://parliament.act.gov.au/parliamentary-business/in-committees)

## About this inquiry

The Civil Law (Wrongs) (Child Abuse Liability) Amendment Bill 2025 was presented in the Assembly on 25 June 2025 and referred to the Standing Committee on Legal Affairs. Standing order 174 refers all bills presented to the Assembly to the relevant standing committee for inquiry. A Committee has three weeks from the date of presentation, or one week after the tabling of the relevant scrutiny report, whichever is later, to advise the Speaker on whether it will undertake an inquiry.

If the Committee does decide to undertake an inquiry, it must report within three months from the date of presentation of the bill, with the exception of bills presented in the last sitting period of a calendar year, in which case the Committee has four months to inquire and report.

The Committee decided to inquire into the bill on 1 July 2025. The reporting date is 24 September 2025.

# Contents

<b>About the committee</b>	<b>i</b>
Establishing resolution	i
Committee members	i
Secretariat	i
Contact us	i
<b>About this inquiry</b>	<b>ii</b>
<b>Acronyms &amp; Abbreviations</b>	<b>iv</b>
<b>Recommendations</b>	<b>v</b>
<b>1. Introduction</b>	<b>1</b>
Background to the bill	1
Conduct of the inquiry	3
<b>2. Legislative scrutiny comments</b>	<b>4</b>
<b>3. Issues raised in evidence</b>	<b>5</b>
Support for the bill	5
Opposition to the bill	8
Concerns concerning definitional scope	9
<b>4. Conclusion</b>	<b>13</b>
<b>Appendix A: Submissions</b>	<b>14</b>

# Acronyms & Abbreviations

Acronym or Abbreviation	Long form
ACT	Australian Capital Territory
ALA	Australian Lawyers Alliance
the bill	Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025
<i>Bird</i>	<i>Bird v DP (a pseudonym)</i> [2024] HCA 41
the Committee	Standing Committee on Legal Affairs
CRCC	Canberra Rape Crisis Centre
Royal Commission	<i>Royal Commission into Institutional Responses to Child Sexual Abuse</i>
SCAG	Standing Council of Attorneys-General
Scrutiny Committee	Standing Committee on Legal Affairs (Legislative Scrutiny Role)

# Recommendations

## Recommendation 1

The Committee recommends that the Assembly pass the bill.



# 1. Introduction

## Background to the bill

1.1. The Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 (the bill) was introduced by Mr Shane Rattenbury MLA on 25 June 2025 and was referred to the Standing Committee on Legal Affairs (the Committee).<sup>1</sup>

1.2. The bill amends the *Civil Law (Wrongs) Act 2022*.

1.3. The bill's explanatory statement summarises its intended effect as follows:

The Bill expands the definition of 'employee' to include an individual who is akin to an employee of the organisation or who is associated with the organisation. Individuals are akin to employees if they carry out activities that are ordinary part of the activities carried on by the organisation, and for the benefit of the organisation. An individual who is associated with an organisation includes an office holder, officer, owner, volunteer or contractor of the organisation and includes in the case of religious institutions, a religious leader such as a priest or a minister, or member of the personnel of the organisation whether or not the individual is ordained.<sup>2</sup>

1.4. The bill, as explained in the explanatory statement, is 'intended as a legislative response to the High Court of Australia's judgement in *Bird v DP (a pseudonym)* [2024] HCA 41 (*Bird*) delivered on 13 November 2024'.<sup>3</sup>

1.5. In that case, the High Court ruled 5-2 that vicarious liability cannot be imposed on an institution for a member's unlawful conduct absent of a genuine employer-employee or agency relationship between the institution and a member.<sup>4</sup>

1.6. As outlined by the ACT Government in its submission, as the common law for vicarious liability applies in the ACT, the decision in *Bird* 'confirmed the principles informing vicarious liability' in the ACT and other states which have not codified vicarious liability in response to the recommendations of the *Royal Commission into Institutional Responses to Child Sexual Abuse* (Royal Commission).<sup>5</sup>

1.7. Specifically, recommendations 91 and 92 of the Royal Commission's *Redress and civil litigation* report were that:

- a) state and territory parliaments legislate 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; and

---

<sup>1</sup> ACT Legislative Assembly, *Minutes of Proceedings*, No 24, Wednesday 25 June 2025, p 319.

<sup>2</sup> [Explanatory Statement](#), Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025.

<sup>3</sup> [Explanatory Statement](#), Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025.

<sup>4</sup> *Bird v DP (a pseudonym)* [2024] HCA 41 (13 November 2024) [44]–[72]

<sup>5</sup> ACT Government, *Submission 10*, p 1.

- b) 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.<sup>6</sup>

1.8. The Royal Commission recommended (recommendation 93) these changes not be retrospective.<sup>7</sup>

1.9. The ACT Government and Dr Allison Silink highlighted in their submissions that to date New South Wales, Tasmania, South Australia and the Northern Territory have legislated to extend vicarious liability as a response to the recommendations of the Royal Commission (see Table 1).<sup>8</sup>

Jurisdiction	Act	Summary of relevant provisions
New South Wales	<i>Civil Liability Act 2002</i> (NSW)	Prospectively extends vicarious liability to organisations for child abuse perpetrated by employees. ‘Employee’ includes an individual who is ‘akin to an employee’ of the organisation.
Tasmania	<i>Civil Liability Act 2002</i> (Tas)	Prospectively extends vicarious liability to organisations for child abuse perpetrated by employees. ‘Employee’ includes an individual who is ‘akin to an employee’ of the organisation.
South Australia	<i>Civil Liability Act 1936</i> (SA)	Prospectively extends vicarious liability to institutions for child abuse perpetrated by employees. ‘Employee’ includes a person who is ‘akin to an employee’ of the institution.
Northern Territory	<i>Personal Injuries (Liabilities and Damages) Act 2003</i> (NT)	Prospectively extends vicarious liability to institutions for child abuse perpetrated by either employees or individuals ‘akin to an employee’.

Table 1: Summary of vicarious liability extensions by jurisdiction [Source: Dr Allison Silink, *Submission 2*, pp 15-17; ACT Government, *Submission 10*, p 2].

1.10. To date no jurisdiction has legislated with retrospective effect, consistent with the Royal Commission’s recommendation. However, the Victorian Attorney-General indicated the Victorian Government would, in response to the *Bird* decision, introduce retrospective legislation to the Victorian Parliament by the end of 2025.<sup>9</sup>

1.11. The bill’s explanatory statement argues that the bill would ensure access to justice by extending the operation of vicarious liability in the ACT:

<sup>6</sup> Commonwealth of Australia, Royal Commission into Institutional responses to Child Sexual Abuse, *Redress and civil litigation* (2015), pp 53–57.

<sup>7</sup> Commonwealth of Australia, Royal Commission into Institutional responses to Child Sexual Abuse, *Redress and civil litigation* (2015), pp 55, 57.

<sup>8</sup> Dr Allison Silink, *Submission 2*, pp 6–7, 15–17; ACT Government, *Submission 10*, p 2.

<sup>9</sup> Karp O’Neill Lawyers, *Submission 6*, p 2; Richard Willingham, ‘[Churches to be held vicariously liable for abuse under new Victorian laws to be proposed to parliament](#)’, *ABC News*, 17 June 2025, (accessed 27 August 2025).

Given the High Court seems to have ruled out expansion of vicarious liability through common law, this Bill is required to ensure survivors who were abused by people associated with organisations or in positions akin to employment are able to access justice. It is necessary because, without it, institutions that have had children abused in their care can avoid responsibility for the actions of those they effectively employed. Without this Bill, there is an unjust asymmetry between, for example, a child abused by a teacher in a classroom in a religious school and a child abused in the same school but by the priest in the sacristy instead.<sup>10</sup>

- 1.12. In its submission, the ACT Government indicated that the Attorney-General was engaging with counterparts in other jurisdictions through the Standing Council of Attorneys-General (SCAG) to discuss the impact of *Bird* and consider potential reform options. The ACT Government advised that it was actively considering possible legislative change.<sup>11</sup>

## Conduct of the inquiry

- 1.13. On 1 July 2025, the Committee resolved to conduct an Inquiry into the Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 and called for submissions.
- 1.14. The Committee received 20 submissions, which were published on the inquiry webpage and are listed in [Appendix A](#).
- 1.15. The Committee did not hold public hearings for this inquiry.

---

<sup>10</sup> [Explanatory Statement](#), Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025.

<sup>11</sup> ACT Government, *Submission 10*, p 2.

## 2. Legislative scrutiny comments

- 2.1. In its report, the Standing Committee on Legal Affairs (Legislative Scrutiny Role) (Scrutiny Committee) highlighted that the bill seeks to impose liability on an ‘organisation’, which is given a broad, non-exhaustive definition, and includes an unincorporated body.<sup>12</sup>
- 2.2. The Scrutiny Committee noted that an unincorporated body is not a separate legal entity but is a group of individuals, and therefore the definition could include other groups of individuals.<sup>13</sup>
- 2.3. In the Scrutiny Committee’s view this, together with the bill’s expanded definition of ‘employee’, would mean the bill imposes obligations and liabilities directly on natural persons, which would give rise to the need for human rights considerations, such as the right to privacy and reputation.<sup>14</sup>
- 2.4. The Scrutiny Committee also highlighted that the explanatory statement does not address any human rights limitations of the bill, and asked Mr Rattenbury as the member presenting the bill to address the bill’s potential human rights limitations prior to the bill being debated:

The Committee requests the Member presenting the Bill to address potential limitations on human rights by the Bill and to set out why any limitations (if applicable) should be considered reasonable and proportionate using the framework set out in section 28 of the HRA, and that this statement be included in a revised explanatory statement prior to the Bill being debated in the Assembly.<sup>15</sup>
- 2.5. The Scrutiny Committee also observed that the bill would operate with retrospective effect.<sup>16</sup>

---

<sup>12</sup> Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 8*, August 2025, p 1.

<sup>13</sup> Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 8*, August 2025, p 1.

<sup>14</sup> Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 8*, August 2025, p 1.

<sup>15</sup> Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 8*, August 2025, pp 1–2.

<sup>16</sup> Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 8*, August 2025, p 2.

## 3. Issues raised in evidence

### Support for the bill

- 3.1. The bill received support in some form from most submissions.
- 3.2. These submissions, in expressing their support, generally cited at least one of three reasons:
  - A need to reform the existing state of the law to protect children;
  - A need to ensure organisational accountability for child sexual abuse; and
  - A need to enable all victim-survivors equal access to civil remedies by closing a legal loophole for certain organisations.<sup>17</sup>
- 3.3. One submitter, Josh, drawing upon their own experiences, supported the bill so that institutions could be held liable for child abuse perpetrated by persons engaged by them:

As a survivor of myself, I strongly urge the committee to pass this Bill ASAP so that institutions are held accountable for any abuse that an employee/volunteer/staff or member under their institution may do to a child...

This bill is not just necessary—it is urgent. It ensures that institutions are held to account for the people they employ, engage, or allow to volunteer under their name. It sends a clear message: the safety of children is not optional. It is a legal and moral obligation.<sup>18</sup>

- 3.4. A number of confidential submissions from other victim-survivors too drew upon their own experiences to support the bill, referencing their efforts to achieve redress and justice, and the barrier that the recent decision in *Bird* presents to this by restricting their ability to sue under vicarious liability because their abusers did not share a strict employment relationship with the parent organisation.<sup>19</sup>
- 3.5. Leanne, whose sibling was a survivor of institutional child abuse, expressed support on the basis the bill would in their view guarantee accountability and ensuring vulnerable children would be protected in the future.<sup>20</sup>
- 3.6. Accountability was also a core reason for supporting the bill for the Canberra Rape Crisis Centre (CRCC).<sup>21</sup>

---

<sup>17</sup> See for example, Josh, *Submission 1*, p 1; Leanne, *Submission 3*, p 1; Canberra Rape Crisis Centre, *Submission 4*, pp 1, 2; Karp O'Neill lawyers, *Submission 6*, p 3; Bravehearts, *Submission 12*, p 1; Children and Young People Commissioner & Victims of Crime Commissioner, *Submission 7*, p 2.

<sup>18</sup> Josh, *Submission 1*, p 1.

<sup>19</sup> Confidential, *Submission 5*; Confidential, *Submission 9*; Confidential, *Submission 11*; Confidential, *Submission 14*; Confidential, *Submission 15*, Confidential, *Submission 16*; Confidential, *Submission 17*.

<sup>20</sup> Leanne, *Submission 3*, p 1.

<sup>21</sup> Canberra Rape Crisis Centre, *Submission 4*, p 1.

- 3.7. Specifically, the CRCC referred to barriers that survivors of institutional child abuse currently faced in seeking redress and the need to ensure that organisations did not avoid liability simply because of the absence of a strict employer-employee relationship:

Despite ongoing national and local efforts, many survivors of child sexual abuse in institutional settings continue to face systemic barriers in seeking redress. CRCC supports the Bill's efforts to ensure that organisations cannot avoid liability simply because the perpetrator was not a formal employee of the organisation.<sup>22</sup>

- 3.8. Bravehearts, an agency focused on the prevention of sexual harm against children, also considered the Bill an 'essential reform' and highlighted the need to ensure all survivors could access justice in response to the limitations posed by *Bird*:

[We] note that the impetus for the Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 is rooted in recent judicial developments and interstate legislative reforms. Most significantly, the High Court of Australia's decision in *Bird v DP* [2024] HCA 32 ... Bravehearts supports the proposed amendments and believe that the reforms will improve equal access to justice for survivors, regardless of whether abuse was committed by formal employees or individuals acting under organisational authority, such as volunteers, ministry figures, scout leaders, and coaches<sup>23</sup>

- 3.9. Ms Jodie Griffiths-Cook, ACT Children and Young People Commissioner, and Ms Margie Rowe, ACT Victims of Crime Commissioner, expressed concern that the decision in *Bird* had created significant gaps in the law:

We echo the concerns in the Bill's explanatory statement that the High Court's decision in *Bird v DP* (a pseudonym) [2024] HCA 41 has highlighted significant gaps in the laws meant to protect children and young people and hold organisations responsible for child abuse.<sup>24</sup>

- 3.10. They were of the opinion that the bill would enable all victims to access justice and ensure organisations were accountable for harm caused to children under their care.<sup>25</sup>
- 3.11. Submissions from lawyers and legal academics primarily referenced the need to reverse the High Court's decision in *Bird* as their justification for supporting the reforms the bill sought to introduce.
- 3.12. Dr Allison Silink, a legal academic at the University of Sydney who has written in the field of vicarious liability for institutional child sexual abuse, supported the Bill, and argued the need for extending vicarious liability to relationships 'akin to employment' in way that would be consistent with the common law expansion in the United Kingdom, and to reverse the High Court's decision in *Bird*.<sup>26</sup>

---

<sup>22</sup> Canberra Rape Crisis Centre, *Submission 4*, p 2.

<sup>23</sup> Bravehearts, *Submission 12*, p 1.

<sup>24</sup> Children and Young People Commissioner & Victims of Crime Commissioner, *Submission 7*, p 2.

<sup>25</sup> Children and Young People Commissioner & Victims of Crime Commissioner, *Submission 7*, p 2.

<sup>26</sup> Dr Allison Silink, *Submission 2*, p 2.

- 3.13. Dr Silink considered that the High Court’s reasoning for not creating a common law concept of ‘akin to employment’ was ‘not borne out by a closer examination of the development of the law’, and put it at odds with other common jurisdictions such as England and Canada in which vicarious liability may be imposed in relationships which are ‘akin to employment’ or where the relationship is ‘sufficiently close’ despite not being a formal employment relationship.<sup>27</sup>
- 3.14. Dr Silink also considered the bill necessary given ‘many survivors are presently unable to access the legislative reforms already made to remove the limitation period and for a proper defendant because they have no cause of action’.<sup>28</sup>
- 3.15. She supported the bill’s retrospective application, observing that it would be consistent with common law developments in other jurisdictions.<sup>29</sup>
- 3.16. Karp O’Neill Lawyers similarly pinpointed the need to reverse the strict limits on vicarious liability arising from *Bird* in order to ensure all survivors of institutional child abuse could access justice, pointing out that two-tier system has arisen from *Bird*:
- 1.5 Survivors who suffered abuse at the hands of an employee maintain the right to utilise vicarious liability as a means of claiming civil compensation, whereas those who suffered at the hands of a non-employee, do not. For example, where two sisters attended a school and one was abused by a teacher, while the other was abused by a priest at the school chapel, only the first can assert vicarious liability against the institution.<sup>30</sup>
- 3.17. Karp O’Neill Lawyers highlighted that in the ACT, vicarious liability is purely a common law matter, meaning the decision in *Bird* presented a real and substantial barrier.<sup>31</sup>
- 3.18. The Australian Lawyers Alliance (ALA) expressed concern about the High Court’s decision in *Bird*:
2. ALA members remain deeply concerned about the real and ongoing impact of the High Court’s decision in *Bird v DP* (a pseudonym) [2024] HCA 41 (‘*Bird v DP*’) on victim survivors of institutional child sexual abuse and their ability to access justice in the ACT and across Australia...
4. The ALA supports the passage of this Bill. It is a direct legislative response to the High Court of Australia’s decision in *Bird v DP* through much needed amendments to the Civil Law (Wrongs) Act 2002 (ACT)<sup>32</sup>

---

<sup>27</sup> Dr Allison Silink, *Submission 2*, pp 7–8.

<sup>28</sup> Dr Allison Silink, *Submission 2*, p 8.

<sup>29</sup> Dr Allison Silink, *Submission 2*, pp 6, 10–11.

<sup>30</sup> Karp O’Neill Layers, *Submission 6*, p 1.

<sup>31</sup> Karp O’Neill Lawyers, *Submission 6*, p 2.

<sup>32</sup> Australian Lawyers Alliance, *Submission 13*, p 4.

- 3.19. Both the ALA and Karp O’Neill Lawyers supported the retrospective application of the bill, considering that it would prevent the creation of a two-tier system between those who could and could not access justice.<sup>33</sup>
- 3.20. The ALA called for the speedy passage of the bill: ‘The ALA strongly supports the Bill and its expeditious transition into law so as to ensure proper access to justice for victims of historical child abuse’.<sup>34</sup>
- 3.21. Hassan Ehsan, Special Counsel at Turner Freeman Lawyers, also called for greater accountability of institutions in cases of historical child sexual abuse, directly citing the decision in *Bird*:

I write this submission not only as a lawyer practicing in the area of historical child abuse litigation, but also as someone who has spent countless hours listening to the lived experiences of victim survivors. Many of them never intended to take legal action. What they were seeking was simply for the institution that failed them to accept responsibility and for it to be held to account.

What’s difficult to explain to survivors is that the law sometimes inherently protects those institutions not because the institution wasn’t involved, but because the abuser didn’t fit or does not fit into a particular legal definition. The trauma of the original abuse is compounded by the trauma of a system that allows technicalities to override accountability. For many years, I have guided victim survivors through the many legal hurdles and barriers that they have to go through to get a resolution to their claims for compensation. The High Court of Australia’s recent decision in *Bird v DP (A Pseudonym)* HCA 41 (*Bird v DP*) has created another legal barrier.<sup>35</sup>

- 3.22. Dr Laura Radermaker similarly supported the bill because it sought to close what she perceived as a legal loophole that would allow religious organisations to avoid vicarious liability for child sexual abuse.<sup>36</sup>

## Opposition to the bill

- 3.23. One public submission expressed opposition to the bill. Scouts ACT recommended that the bill not proceed in its existing form.<sup>37</sup> It was of the view that the decision in *Bird* provided ‘much needed clarity for institutions operating in complex environments’.<sup>38</sup>
- 3.24. While supportive in general of efforts to strengthen protections for children, Scouts ACT expressed concern with what they perceived as the bill’s potential to ‘undermine the viability of volunteer-based organisations that serve young people’.<sup>39</sup>

---

<sup>33</sup> Karp O’Neill Lawyers, *Submission 6*, p 3; Australian Lawyers Alliance, *Submission 13*, p 7.

<sup>34</sup> Australian Lawyers Alliance, *Submission 13*, p 8.

<sup>35</sup> Turner Freeman Lawyers, *Submission 18*, p 1.

<sup>36</sup> Dr Laura Radermaker, *Submission 19*, p 1.

<sup>37</sup> Scouts ACT, *Submission 8*, 2.

<sup>38</sup> Scouts ACT, *Submission 8*, p 6.

<sup>39</sup> Scouts ACT, *Submission 8*, p 2.

- 3.25. Scouts ACT argued that the bill’s expanded liability provisions introduced legal uncertainty which exposed community organisations to financial and operational risk by ‘capturing individuals not formally engaged, vetted, or accountable to the organisations’. They cited examples such as casual volunteers, parents assisting at events, and external partners.<sup>40</sup>
- 3.26. In their view, this would result in a framework which was ‘legally ambiguous, operationally burdensome, and financially unsustainable. It risks deterring informal community participation, reducing volunteerism, and compromising the inclusive, community-driven nature of our programs’.<sup>41</sup>
- 3.27. Scouts ACT also opposed the retrospective application of the bill, arguing that it could result in unanticipated legal liability for historic cases, financial strain from reopened claims and associated defence costs, and reputational risk, even where the organisation acted in good faith under the previous legal framework.<sup>42</sup>
- 3.28. The concerns of Scouts ACT are considered in more detail below.

## Concerns concerning definitional scope

- 3.29. Notwithstanding the clear support for the bill, bill’s proposed definitions of ‘employee’, ‘akin to an employee’, and an individual ‘associated with an organisation’ were contested in some submissions.
- 3.30. Some submissions, such as the CRCC, Karp O’Neill Lawyers and Bravehearts supported the bill’s definitions.<sup>43</sup>
- 3.31. For instance, Karp O’Neill lawyers, who provided the first iteration of the bill and assisted in its development, wrote that in making their initial recommendations to Mr Rattenbury MLA, they had proposed provisions with a deliberately broad scope for the definition of ‘akin to an employee’ to ‘capture persons such as religious leaders and volunteers’.<sup>44</sup>
- 3.32. Bravehearts also supported the bill’s definitions, arguing that an expanded definition allows organisations to be held accountable for abuses committed by a wider range of individuals, ensuring victim-survivors are not denied justice on the basis of employment status:

By expanding the definition of “employee” to encompass those “akin to employees” or otherwise associated with an organisation, the Bill (ACT Legislative Assembly, 2025b) corrects this judicially identified limitation and enables organisations to be held accountable for abuse committed by a wider range of individuals, including volunteers, ministry figures, and other representatives acting under organisational authority...

---

<sup>40</sup> Scouts ACT, *Submission 8*, p 2.

<sup>41</sup> Scouts ACT, *Submission 8*, p 2.

<sup>42</sup> Scouts ACT, *Submission 8*, p 5–6.

<sup>43</sup> See, for example: Canberra Rape Crisis Centre, *Submission 4*, p 3; Karp O’Neill Lawyers, *Submission 6*, p 3; Bravehearts, *Submission 12*, p 2.

<sup>44</sup> Karp O’Neill Lawyers, *Submission 6*, p 3.

The Bill's broader approach ensures that survivors are no longer denied redress due to technicalities of employment status, thus promoting fairness and facilitating survivor-centred justice outcomes.<sup>45</sup>

- 3.33. They agreed with the inclusion of unincorporated bodies, also on the basis that it would expand civil liability to ensure other organisations which have historically avoided accountability are also held responsible:

The inclusion of unincorporated bodies within the scope of the Bill further broadens the reach of civil liability, ensuring that community groups, clubs, and other informal organisations are subject to appropriate legal accountability. This expansion is particularly significant given that such bodies have historically evaded responsibility due to their lack of corporate status. Together, these amendments incentivise organisations to adopt more rigorous safeguarding policies and promote a culture of transparency and child safety.<sup>46</sup>

- 3.34. The ALA supported the non-exhaustive nature of definitions, stating that 'We agree that the definitions in legislation like this should be non-exhaustive and interpreted broadly in order to ensure access to justice for all victim survivors, taking into account the range of contexts in which children have been abused'. They further added that 'It is appropriate that religious organisations are covered under the new legislation; however, it would not be appropriate to limit the scope of these reforms to religious institutions only. The Bill, we submit, appropriately accounts for this'.<sup>47</sup>

- 3.35. However, some submissions questioned these definitions' framing and scope.

- 3.36. Dr Allison Silink highlighted that the drafting approach was similar to legislation in New South Wales, Tasmania and South Australia which defined an 'employee' to include a person who is 'akin to an employee'. She warned that that approach risked 'blurring the understanding of who is an employee', observing that the English common law of vicarious liability did not treat persons in a relationship 'akin to employment' as employees. Instead, the concepts of employee and a person akin to an employee were distinct, although vicarious liability could extend to both.<sup>48</sup>

- 3.37. She suggested that such an approach was 'undesirable and unnecessary', writing that 'The issue is that vicarious liability should extend to both employees and persons "akin to employees", but not because the concept of an employee is an umbrella term'.<sup>49</sup> Keeping the terms distinct, she argued, would retain 'the fidelity of the concept of an employee at common law and' achieve the same end in a manner more consistent with common law.<sup>50</sup>

- 3.38. Dr Silink also expressed concerns with the bill's inclusion of independent contractors in the meaning of 'employee', suggesting it was inconsistent with the common law meaning of 'employee' and the UK common law concept of 'akin to an employee', suggesting that, if

---

<sup>45</sup> Bravehearts, *Submission 12*, p 2.

<sup>46</sup> Bravehearts, *Submission 12*, p 2.

<sup>47</sup> Australian Lawyers Alliance, *Submission 13*, p 7.

<sup>48</sup> Dr Allison Silink, *Submission 2*, p 6.

<sup>49</sup> Dr Allison Silink, *Submission 2*, p 9.

<sup>50</sup> Dr Allison Silink, *Submission 2*, p 9.

the High Court in *Bird* had accepted the extension of vicarious liability to persons ‘akin to employment’, this would still not have extended to independent contractors.<sup>51</sup>

- 3.39. She considered independent contractors to be outside the scope of the bill’s core aim and that they should be dealt with separately.<sup>52</sup>
- 3.40. Dr Silink also raised concerns with the inclusion of ‘volunteers’ in the definition of a person ‘associated with an organisation’, observing that it did not include any further qualification as to the person’s role in that organisation.<sup>53</sup>
- 3.41. Dr Silink considered the extension of vicarious liability for child sexual abuse to any volunteer in any circumstances, regardless of how tangential the association with the organisation, as going beyond both the scope of the English common law when it came to volunteers and the bill’s key aim of reversing *Bird*.<sup>54</sup>
- 3.42. The ACT Children and Young People Commissioner and the Victims of Crime Commissioner argued for greater clarity around the scope of entities covered by the definition of ‘organisation’, observing that it made no express mention of incorporated bodies. They called for specific inclusion in the definition because sexual offending could also take place while a predator had a relationship akin to employment with an incorporated body.<sup>55</sup>
- 3.43. The Commissioners pointed to the provisions of a similar bill before the Victorian Parliament which specifically included in its definition of ‘relevant organisation’ a ‘body corporate established for a public purpose’.<sup>56</sup>
- 3.44. As noted above, Scouts ACT expressed major concerns with the definitions of ‘employee’, ‘akin to employees’ and ‘associated with the organisation’, arguing that ‘expansive and imprecise definition risked exposing Scouts ACT to vicarious liability for the actions of individuals’ who:
- a) were not members of the organisation;
  - b) had not undergone child safety screening, vetting or training;
  - c) were not bound by Scouts ACT’s codes of conduct or child protection policies; or
  - d) were involved on a casual, incidental or one-off basis.<sup>57</sup>
- 3.45. They believed the lack of precise definition of who was considered ‘associated’ with an organisation presented challenges for the organisation. These included identifying who they were legally responsible for, implementing appropriate risk management frameworks, and ensuring compliance measures across programs and settings which varied in contributors’ proximity and interaction with children.<sup>58</sup>

---

<sup>51</sup> Dr Allison Silink, *Submission 2*, p 8.

<sup>52</sup> Dr Allison Silink, *Submission 2*, pp 8, 11.

<sup>53</sup> Dr Allison Silink, *Submission 2*, p 10.

<sup>54</sup> Dr Allison Silink, *Submission 2*, p 10.

<sup>55</sup> ACT Children and Young People Commissioner & Victims of Crime Commissioner, *Submission 7*, p 2.

<sup>56</sup> ACT Children and Young People Commissioner & Victims of Crime Commissioner, *Submission 7*, p 2.

<sup>57</sup> Scouts ACT, *Submission 8*, p 4.

<sup>58</sup> Scouts ACT, *Submission 8*, p 4.

- 3.46. They argued that it was not feasible nor appropriate to require every individual entering a Scouts ACT site to complete safety protocols or training, pointing to examples such as tradespeople undertaking repairs, parents ‘flipping sausages at a fundraiser’, visiting experts leading one-off workshops, or a community member sewing costumes for a production.<sup>59</sup>
- 3.47. Scouts ACT argued that if these sort of individuals were captured under the bill’s expanded definition of ‘associated persons’, they, and similar organisations, would be compelled to take one of two courses of action:
- a) assume liability for individuals beyond their control and implement extensive and burdensome formal vetting and compliance, irrespective of the nature of role or risk level; or
  - b) limit or exclude community engagement, volunteering and informal contribution, which would ‘come at the cost of accessibility, inclusivity, and program richness, undermining the very community-based model that benefits children’.<sup>60</sup>
- 3.48. Scouts ACT also warned of the impact expansive vetting would have on the character of community participation in youth programs in the ACT, stating that ‘Volunteer-based organisations such as Scouts ACT are already under pressure to recruit and retain volunteers. If participation becomes contingent on time-consuming compliance processes, especially for low-risk, incidental involvement, many people will simply choose not to help’.<sup>61</sup>
- 3.49. The Committee notes a recent decision of the ACT Supreme Court in *QC v The Scout Association of Australia New South Wales Branch* [2025] ACTSC 228. In the decision dated 3 June 2025, McCallum CJ found that, in the case of a Scout Leader alleged to have abused the plaintiff on a week-long hike in the bush in the 1980s, the Scouts were not vicariously liable as the Scout Leader was not employed or engaged by the Scouts. The Chief Justice found that ‘To extent that it was based on a form of engagement that was something less than formal employment, that aspect of the claim was scotched by ... *Bird v DP...*’.<sup>62</sup>

---

<sup>59</sup> Scouts ACT, *Submission 8*, p 3.

<sup>60</sup> Scouts ACT, *Submission 8*, pp 3, 4.

<sup>61</sup> Scouts ACT, *Submission 8*, pp 3–4.

<sup>62</sup> *QC v The Scout Association of Australia New South Wales Branch* [2025] ACTSC 228 [10].

## 4. Conclusion

- 4.1. It is clear to the Committee from the evidence received that this bill has strong support and, if passed by the Assembly, will have a real and immediate impact in enabling those who are victim-survivors of child abuse to access justice that would otherwise be prevented by the judgement in *Bird*. It would also see the ACT implement one of the key recommendations of the *Royal Commission into Institutional Responses to Child Sexual Abuse*, albeit with retrospective application.
- 4.2. It is also clear however that the scope of this bill, particularly the definition of who should fall within relationships which are ‘akin to employment’, or who should fall within the meaning of individuals ‘associated with an organisation’, is a contested space, even among those who support expanding vicarious liability. The scope of the definition is a policy question for the Assembly to consider. The Committee notes that the Bill crafts a definition that places the onus on organisations to take responsibility for those who operate under their authority, and to be accountable for their actions.
- 4.3. The Committee considers that safeguarding children requires organisations to bear responsibility for the conduct of any individuals who gain access to children through their programs, formal or informal.
- 4.4. The Committee notes the contested views regarding the scope of the Bill and its definitions, and draws them to the attention of the Assembly.
- 4.5. The Committee makes one recommendation below.

### Recommendation 1

The Committee recommends that the Assembly pass the bill.

- 4.6. The Committee would like to thank all those who submitted to this inquiry.

Ms Chiaka Barry MLA

Chair

12 September 2025

## Appendix A: Submissions

No.	Submission by	Received	Published
1	Josh	18/07/2025	22/07/2025
2	Dr Allison Silink	24/07/2025	13/08/2025
3	Leanne	19/07/2025	13/08/2025
4	Canberra Rape Crisis Centre	29/07/2025	13/08/2025
5	Confidential	29/07/2025	13/08/2025
6	Karp O'Neill Lawyers	30/07/2025	13/08/2025
7	Children and Young People Commissioner & Victims of Crime Commissioner	30/07/2025	13/08/2025
8	Scouts ACT	30/07/2025	13/08/2025
9	Confidential	30/07/2025	13/08/2025
10	ACT Government	31/07/2025	13/08/2025
11	Confidential	31/07/2025	13/08/2025
12	Bravehearts	31/07/2025	13/08/2025
13	Australian Lawyers Alliance	31/07/2025	13/08/2025
14	Confidential	31/07/2025	13/08/2025
15	Confidential	31/07/2025	13/08/2025
16	Confidential	31/07/2025	13/08/2025
17	Confidential	31/07/2025	13/08/2025
18	Turner Freeman Lawyers	31/07/2025	13/08/2025
19	Dr Laura Rademaker	31/07/2025	13/08/2025
20	Confidential	07/08/2025	13/08/2025