

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

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

Submission to the

Justice, Integrity and Community Safety Committee

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Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

ALA members regularly act for survivors of institutional child sexual abuse. The views expressed in this submission are grounded in our members' direct experience of the legal barriers those survivors face in obtaining compensation.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.¹

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input to the Justice, Integrity and Community Safety Committee on its inquiry into *the Civil Liability (Holding Institutions Accountable for Child Abuse) Amendment Bill 2026* (the “**Bill**”).
2. The Bill was introduced by the Hon Meaghan Scanlon MP, Shadow Attorney-General, on 22 April 2026. It responds to the decision of the High Court of Australia in *Bird v DP (a pseudonym)* [2024] HCA 41 (*Bird*), which confined vicarious liability to true employer/employee relationships and left survivors of institutional child sexual abuse without a vicarious-liability remedy wherever the perpetrator was not formally an employee of the responsible institution.
3. The ALA supports the Bill in its entirety, including its retrospective effect and the limited power to set aside settlements entered into in the immediate post-*Bird* period. The ALA recommends one targeted refinement — the express inclusion of religious leaders within a new s 33IB — to align Queensland’s response with the equivalent reform already enacted in the Australian Capital Territory.²
4. Critically, the recent High Court decision in *AA v Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle (“AA”)* does not close the gap left by *Bird*. *AA* concerns non-delegable duty; *Bird* concerns vicarious liability. The two doctrines are independent, and each captures conduct the other does not. The ALA addresses this issue in detail below, because it is the single most important point for the Committee to understand.

Bird v DP and the need for vicarious liability reform

5. In *Bird*, decided on 13 November 2024, the High Court (Kiefel CJ, Gageler, Gordon, Edelman and Steward JJ; Gleeson and Jagot JJ partly dissenting) overturned the Victorian Court of Appeal and held that the Catholic Diocese of Ballarat was not vicariously liable for sexual abuse perpetrated by Father Bryan Coffey, an assistant parish priest, against a five-year-old child in 1971.
6. The decision has four consequences of immediate significance for survivors:

² *Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Act 2025*

- a. at common law, vicarious liability arises only out of a true employer/employee relationship, and relationships *akin to* employment are not sufficient;
 - b. extending the doctrine is a matter for Parliament, the majority holding that “*the law of vicarious liability is squarely in the hands of the legislatures*” (at [63]);
 - c. survivors abused by priests, religious novices, deacons, members of religious orders, volunteers, foster carers, contractor coaches and pastoral workers — none of whom are typically employees in the technical sense — are now without any vicarious-liability route in Queensland; and
 - d. the consequences have been immediate. Decisions applying *Bird* — for example, *Taylor v Trustees of the Christian Brothers* [2025] VSC 25 — have already defeated otherwise meritorious institutional abuse claims, and settlements in numerous other matters have been recalibrated downwards or abandoned.
7. Part 2A of the *Civil Liability Act 2003* (Qld), inserted following the Royal Commission into Institutional Responses to Child Sexual Abuse, already provides Queensland survivors with a prospective statutory duty of care (s 33D) and a reverse onus of proof (s 33E). That regime is structurally a failure-to-prevent claim: it requires the survivor to plead, and the institution to disprove, a failure to take all reasonable steps to prevent the abuse. It is not, and cannot be, a substitute for vicarious liability — a doctrine that attributes responsibility for the wrongful act itself, independently of any want of supervision. It is also not retrospective.
 8. Survivors should not be required to litigate institutional fault where, but for *Bird*, the institution would have been vicariously liable for the act of a person it placed in a position of trust over children. The proper repository of the liability framework is Parliament, not the courts — as the High Court has expressly recognised — and it is now for this Parliament to act.

The consequences of suing the institution alone

9. Restoration of vicarious liability delivers a practical litigation advantage of significant importance to survivors: the institutional defendant can be sued alone, without the survivor being required to join the individual perpetrator as a co-defendant.
10. In a typical post-*Bird* claim, the survivor must establish the institution’s failure to take reasonable steps, often through extensive evidence concerning the perpetrator’s conduct and the institution’s knowledge of it. Where the perpetrator is deceased, insolvent, unable to be

located, uninsured, or where joining them would compound the survivor's trauma, this is a substantial disincentive to litigation. Under the new s 33IC, the institution is liable for the perpetrator's act itself, and the survivor can pursue the institution alone.

Case Studies

11. The following are a series of three real-life, de-identified cases currently being run by Maurice Blackburn where clients have had matters significantly impacted, and in some cases unable to progress at all, as a result of the *Bird* decision.

Case #1

12. MB are acting for a man in a case against the Christian Brothers for alleged abuse by a Brother of a religious entity.
13. The man previously had strong prospects in bringing both a case of negligence and vicarious liability for the abuse.
14. While he still has a negligence case to pursue, the Brother concerned was a member of clergy and therefore not a formal employee of the religious entity.
15. This means his case of vicarious liability is now extremely difficult to pursue as a result of the *Bird* decision.
16. This client has previously rejected earlier low offers from the defendants on the basis they were inadequate compensation for the trauma he has endured.
17. In light of the *Bird* decision his prospects of seeking fair and reasonable compensation have significantly lessened.
18. This is again another case against a religious entity who is very commonly named in claims, named frequently in the royal commission, and is now escaping liability moreso than other defendants.

Case #2

19. MB are acting for a man in a case against a religious entity in Hobart.

20. As in other cases, the *Bird* decision has impacted this case because the perpetrator was not a formal employee of the institution.
21. While the client continues to have a viable negligence claim in relation to abuse suffered, he can no longer also bring a claim of vicarious liability due to the *Bird* decision.
22. While this does not stop his claim, it does significantly limit the extent of his claim and likely compensation that he will be able to seek as a result.

Case #3

23. The client was a student at a Catholic School in Melbourne between 1978 to 1979.
24. He was sexually abused by the parish priest of the school on numerous occasions.
25. The Parish Priest was a notorious perpetrator, with evidence of many other victims prior to 1978, however, the only evidence of knowledge was from 2005, when he was arrested and later convicted.
26. Therefore, the client had a strong case on the basis of Vicarious liability.
27. The client suffered an injury of PTSD, Persistent depressive Disorder, Substance Use Disorder, Gambling Disorder and Anxiety.
28. His claim assessed in the vicinity of approximately \$800,000.
29. The parties attended mediation in June 2024. The matter did not resolve, and the matter was progressing as if it were going to proceed to trial.
30. The *Bird* decision was handed down in December and the trial date had to be vacated. After a significant lapse of time the matter resolved on a commercial basis for \$400,000, plus costs.

The High Court decision in AA does not fix Bird v DP

31. It has been suggested in public commentary — including by the Premier — that the High Court's recent decision in *AA* removes the need for legislative intervention following *Bird*. The ALA respectfully disagrees. This is the central point of the submission, and the Committee should be in no doubt about it: *AA* does not close the gap exposed by *Bird*.
32. The two decisions concern different doctrines:

- a. *AA* concerns non-delegable duty. It confirms that institutions standing in certain recognised categories of special relationship to a child — typically quasi-custodial settings such as schools, hospitals and residential institutions — cannot discharge their duty of care by delegating it; and
 - b. *Bird* concerns vicarious liability — a doctrine that attributes the wrongful act itself to an institution by reason of its relationship with the perpetrator, and which the Bill restores for relationships akin to employment.
33. The doctrines overlap, but each captures conduct the other does not. Survivors should not be required to elect between them. Both routes should be available, as the Bill provides.

Case study: when each doctrine is, and is not, available

34. The following examples, all routinely encountered by ALA members acting for survivors, illustrate the practical limits of *AA* and the continuing need for legislative restoration of vicarious liability.
- a. **Vicarious liability only.** A visiting parish priest abuses a child during pastoral visits to the child’s family home. The child is not in the custody or care of the church, and no non-delegable duty arises, but the priest is in a relationship akin to employment with the diocese. Only vicarious liability under new s 33IC provides a remedy. This is the *Bird* fact pattern itself, and it remains uncovered by *AA*.
 - b. **Non-delegable duty only.** A contracted external music teacher abuses a boarding student at a school. Vicarious liability rarely attaches to true contractor relationships, but the school’s non-delegable duty to its boarding students applies.
 - c. **Both routes available.** A teacher employed by a school abuses a student in the school’s custody. Either doctrine sustains the claim, and the survivor should not be forced to elect.
 - d. **Neither route available without the Bill.** A volunteer leader, religious novice, deacon or pastoral worker abuses a child outside any quasi-custodial setting. *AA* does not close this gap; a new s 33IC provision does.

Case Study: Further Post AA Hypotheticals

35. The following case studies are presented to illustrate, by reference to realistic factual scenarios, the categories of cases in which a plaintiff would be left without adequate redress in the absence of the legislative reform proposed by the *Bill*.
36. Each case study is designed to demonstrate that the development of non-delegable duty principles in AA while welcome, does not fill the gap in the law identified in *Bird*.
37. It remains uncertain in a post AA landscape as to what scenarios will be captured by non-delegable duty and there has only been one decision post in the NSW Court of Appeal which was a case dealing with an established category of non-delegable duty of care (a school authority).

Case Study 1: Child Sexual Abuse by a Volunteer Youth Leader

38. A Queensland-based surf lifesaving club operates a "Nippers" junior development program for children.
39. The program is run predominantly by volunteer youth leaders who are recruited by the club, subject to the club's policies and code of conduct, required to wear the club's uniform, and who perform their roles under the direction and supervision of the club's board and its paid head coach.
40. One such volunteer, Mr G, has served as a youth leader for seven years. He is deeply integrated into the club's operations: he leads weekly training sessions, attends camps, and represents the club at inter-club carnivals.
41. He is not, however, an employee. He receives no remuneration and there is no contract of employment between him and the club.
42. Over a period of 18 months, Mr G sexually abuses three children during overnight training camps and during car trips to and from the beach, taking advantage of his position of trust and the authority conferred upon him by the club.
43. The children's parents had entrusted their children to Mr G's supervision on the basis of his position within the club.

Vicarious Liability

44. The relationship between the club and Mr G exhibits the hallmarks identified in *Bird* and an "akin to employment" basis.
45. Mr G's role was integral to the club's operations; the club exercised a degree of control over Mr G's conduct; Mr G was subordinate to and dependent upon the club's organisational structure; and the club's enterprise created the very risk that materialised.
46. The club placed Mr G in a position of authority, power, trust, and control over the children, and gave him the ability to achieve intimacy with his victims; the very factors identified in *Prince Alfred College Inc v ADC* (2016) 258 CLR 134.
47. However, since Mr G was a volunteer and not an employee, vicarious liability is not available under the current law.

Why Non-Delegable Duty Would Not Provide an Adequate Remedy

48. The non-delegable duty doctrine, as developed in *AA*, would face obstacles in this scenario. First, the recognised categories of non-delegable duty at common law remain limited. As Gleeson J noted in *AA*, the relationships giving rise to non-delegable duties acknowledged by the common law of Australia are: adjoining owners of land, employer and employee, school authority and pupil, hospital and patient, and occupier and invitee. A surf lifesaving club running a volunteer youth program does not fit within any of these established categories.
49. Second, the extension of the non-delegable duty in *AA* was justified by close analogy to the school-pupil relationship: the diocese, like a school authority, placed a person (the priest) in a position of care, supervision and control of children, and children were entrusted to the institution's care. However, as Gleeson J cautioned in *AA*, the expansion of non-delegable duties must be approached with "caution", and the categories of relationship giving rise to such duties should not be expanded without sufficient justification. Whether a secular community sporting club would owe a non-delegable duty to children participating in its programs remains untested and uncertain.
50. Third, and critically, the non-delegable duty as framed in *AA* requires that the child be "under the care, supervision or control" of the institution's delegate "as a result of the delegate purportedly performing a function" of the institution. In the case of the car trips, where Mr G isolated children during transport to and from training, it is at least arguable that the children

were not, at that point, under the "*care, supervision or control*" of the club as an institution, but rather in the informal custody of an individual volunteer acting outside any formally delegated function. As Steward J observed in *AA*, the scope of the non-delegable duty must be confined to those occasions where the institution has in fact assumed responsibility and does not extend to every interaction between the delegate and the child.

51. Without legislative reform extending vicarious liability to relationships "*akin to employment*", these children would be denied the most direct and well-established avenue of institutional accountability. They would be forced to pioneer an untested extension of non-delegable duty to a novel category of relationship, with no certainty of success, and with the prospect that some of the abuse, occurring during informal, unsupervised interactions, may fall outside the scope of any duty the court would be willing to recognise. The Bill would close this gap by permitting the court to consider the club's vicarious liability for the acts of Mr G on the basis that his relationship with the club was, in substance, *akin to employment*.

Case Study 2: Child Abused by a Visiting Clergy Member

52. A Catholic parish in a regional Queensland diocese arranges a youth retreat weekend at a campsite.
53. The retreat is staffed by the local parish priest and two additional clergy members: Father K, a member of a religious order based in another state, who has been invited by the diocese to assist with the retreat as a visiting spiritual director, and Brother M, a member of the same interstate religious order, who has been invited to assist with youth ministry activities.
54. Neither Father K nor Brother M is employed by the Queensland diocese. They are present at the retreat pursuant to an informal inter-institutional arrangement between the diocese and the religious order.
55. During the retreat, Father K sexually abuses a 12-year-old child in the campsite cabin to which Father K has been assigned. The abuse occurs after an evening prayer session that Father K has led in his capacity as spiritual director.

Vicarious Liability

56. The relationship between the Queensland diocese and Father K, while not one of employment, is one in which Father K was integrated into the diocese's enterprise for the purposes of the retreat.

57. The diocese invited Father K, assigned him a role, placed him in a position of trust and authority over the children, and derived the benefit of his services. In substance, Father K was performing the work of the diocese and representing the diocese to the children and their parents.
58. This is the type of relationship that Gleeson J described in *Bird* as warranting vicarious liability on an "*akin to employment*" basis: Father K's role was integral to the diocese's activity; the diocese exercised a degree of control over the conduct of the retreat; Father K was representing the diocese in carrying out its purposes; and the diocese, by engaging Father K, created the risk that materialised.
59. The factors from *Prince Alfred College*, authority, power, trust, control, and the ability to achieve intimacy with the victim, are all present.
60. Under the current law, however, the diocese cannot be held vicariously liable for Father K's acts because Father K is not its employee.

Why Non-Delegable Duty Would Not Provide an Adequate Remedy

61. The non-delegable duty as recognised in *AA* would face difficulty in this scenario because the duty was framed by reference to the relationship between a diocese and "*a priest of the Diocese*". Father K is not a priest of the Queensland diocese.
62. He is a member of an interstate religious order who has been invited to assist on a temporary basis. The non-delegable duty in *AA* was expressed as a duty to ensure that reasonable care was taken while a child was "*under the care, supervision or control of a priest of the Diocese, as a result of the priest purportedly performing a function of a priest of the Diocese*".
63. It is at least arguable that Father K, as an external visiting clergy member, was not "*a priest of the Diocese*" in any relevant sense and was not "*purportedly performing a function of a priest of the Diocese*" but rather performing functions of his own religious order.
64. The majority in *AA* emphasised that the connection between the child being under the care of the delegate and the delegate performing functions of the institution is a critical qualifying factor. Where the tortfeasor's institutional connection is to a different entity from the defendant institution, this qualifying factor may not be satisfied.
65. Further, the Queensland diocese, which organised the retreat, placed Father K in a position of authority, and created the risk, would escape liability entirely.

66. This scenario demonstrates that, even in the paradigm context of religious institutional abuse, the non-delegable duty developed in *AA* does not cover the field. Where the tortfeasor's relationship is with a different institution from the one that organised the activity, placed the tortfeasor in a position of trust, and created the risk, neither vicarious liability (under the current law) nor the non-delegable duty (as framed in *AA*) may provide a remedy. The Bill addresses this by permitting a finding of vicarious liability wherever the tortfeasor is in a relationship "akin to employment" with the institution, thus capturing the reality of inter-institutional arrangements in which individuals are, in substance, performing the work of the host institution.

The insurance and “floodgates” objection

67. It will be said that the Bill exposes institutions and their insurers to unquantifiable new liability. That objection is overstated. The class of cases enlarged by s 331B is narrow — only relationships akin to employment. The much wider category captured by s 33C, which already extends to volunteers, contractors and religious personnel, remains the basis of s 33D liability and has been priced by insurers since 2019. Since *AA*, institutional insurers have also priced exposure to non-delegable duty claims arising from quasi-custodial relationships. The Bill adds, at the margin, a vicarious-liability route for conduct for which the same institutions are typically already insured under their existing institutional-abuse cover. The incremental insurance impact is modest, predictable and well within the risk already underwritten.

Royal Commission recommendations and the need for consistency across jurisdictions

68. The Royal Commission's reform program was never intended to produce a jurisdictional lottery in which a survivor's remedy depends on the State in which the abuse occurred. It anticipated a nationally harmonised response, and the onus is on the Commonwealth, State and Territory governments to deliver it.
69. Queensland is not the first jurisdiction to legislate in response to *Bird*:
- a. the Australian Capital Territory has enacted the *Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Act 2025* (ACT), which received assent on 30 October 2025 and expressly captures religious leaders, whether or not ordained;

- b. Victoria has introduced the *Justice Legislation Amendment (Vicarious Liability for Child Abuse) Bill 2025* (Vic);
 - c. Western Australia has introduced the *Civil Liability Amendment (Child Sexual Abuse Actions) Bill 2025* (WA); and
 - d. the Standing Council of Attorneys-General continues to pursue nationally consistent reforms.
70. It will be said that the Royal Commission cautioned against retrospective vicarious liability (Recommendation 91), and that Queensland should defer pending the work of the Standing Council of Attorneys-General. Neither argument should delay the Bill:
- a. the Royal Commission cautioned against retrospectivity before any State had legislated; the position has materially changed, with the Australian Capital Territory having enacted and Victoria having introduced retrospective legislation;
 - b. the Bill’s retrospective effect is drafted as a declaration of the law as it has always been — a constitutionally orthodox technique used in prior Royal Commission-response statutes — and does not create liability for conduct that was lawful when it occurred; the conduct in question was always tortious; and
 - c. national consistency is welcome but does not require deferral; the Council’s processes have, in other reform contexts, taken many years, and Queensland survivors should not be required to wait.
71. Queensland should not adopt a narrower model than comparable jurisdictions, nor become the outlier that leaves its survivors without the remedy now available in the Australian Capital Territory.

Suggested improvements and specific amendments

72. The ALA supports each operative provision of the Bill — a new s 33IB (extension of “*associated with*”), s 33IC (the retrospective vicarious-liability declaration), s 33ID (limitation periods) and s 33IE (setting aside post-Bird settlements). The ALA proposes one refinement to retain consistency with the Australian Capital Territory legislation.

73. **Express inclusion of religious leaders in s 331B.** Consistent with the ACT model, a new s 331B should be amended to expressly include religious leaders (whether or not ordained) and other members of the personnel of a religious institution. The existing definition of “*associated with*” in s 33C already captures ministers of religion and religious leaders; express inclusion in s 331B will avoid years of post-enactment satellite litigation about whether a particular religious officeholder was “*akin to*” an employee — litigation that would itself re-traumatise survivors and frustrate the Bill’s evident purpose.
- a. For example, the ACT Act expressly captures an ordained priest or minister, putting beyond doubt that a parish priest of the kind considered in *Bird* falls within the regime.

List of recommendations

74. **That the Bill be passed.**
75. That the new s 331B be **amended to expressly include religious leaders (whether or not ordained) and other members of the personnel of a religious institution**, consistent with the *Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Act 2025 (ACT)*.
76. That the Committee convene public hearings, at which the ALA is willing to appear.

Conclusion

77. The ALA welcomes the opportunity to have input to the Committee on the Bill.
78. The Bill is a clean, targeted and principled response to a doctrinal gap that has produced obvious injustice for survivors of institutional child sexual abuse in Queensland. The ALA supports its passage, including its retrospective effect, and offers the single refinement set out above.
79. The ALA is available to provide further assistance to the Committee on the issues raised in this submission.



Peter Gibson

President, Queensland Branch Committee

Australian Lawyers Alliance