

Case updates and trends in institutional abuse matters:

- *Bird v DP and where to next?*
 - *Historical forced adoption cases in Tasmania – recent developments*
 - *What's the point of reviews? The Review into Paul Reynolds a year or so on*
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HOBART CPD DAY

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Royal Commission into Institutional Responses to Child Sexual Abuse

Redress and civil litigation report recommendations (2015)

*85. State and territory governments should introduce legislation to **remove any limitation period that applies to a claim for damages brought by a person where that claim is founded on the personal injury of the person resulting from sexual abuse of the person in an institutional context when the person is or was a child.***

86. State and territory governments should ensure that the limitation period is removed with retrospective effect and regardless of whether or not a claim was subject to a limitation period in the past.

87. State and territory governments should expressly preserve the relevant courts' existing jurisdictions and powers so that any jurisdiction or power to stay proceedings is not affected by the removal of the limitation period.

88. State and territory governments should implement these recommendations to remove limitation periods as soon as possible, even if that requires that they be implemented before our recommendations in relation to the duty of institutions and identifying a proper defendant are implemented.

Limitation Act 1974

5B No limitation period where sexual or physical abuse of minor

1 [...]

(a) an action for damages for personal injury to a person arising from or related to the sexual abuse, or serious physical abuse, of the person when the person was a minor

2 A reference in this section to the sexual abuse, or serious physical abuse, of a person when the person was a minor includes any psychological abuse that arises from the sexual abuse or the serious physical abuse.

UN Convention on the Rights of the Child

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Bird v DP [2024] HCA 41, at [46] per Gageler CJ, Gordon, Edelman, Steward and Beech-Jones JJ.

In Australia, an employer may be liable for the acts of its employees, but there is no vicarious liability, in the sense that it is being discussed now, for the acts of those not in a relationship of employment, namely acts of third parties outside of that context. If the act complained of is not that of an employee, then the defendant is not, without more, liable. [...] The relevant inquiry is, therefore, twofold: whether the alleged tortfeasor was an employee of the defendant, and then the separate question whether the relevant act or omission took place in the course or scope of that employment. [footnotes omitted].

Kondis v State Transport Authority (1984) 154 CLR 672 at [687]
(followed in *State of NSW v Lepore* [2003] HCA 4 at [512])

*In these situations the special duty arises because the person on whom it is imposed has undertaken **the care, supervision or control of the person** or property of another or is so placed in relation to that person or his property as to **assume a particular responsibility for his or its safety**, in circumstances where the person affected might reasonably expect that due care will be exercised.*

Civil Law (Wrongs) Act 2002 (ACT)

114BE Organisations vicariously liable for child abuse perpetrated by employees

(1) An organisation that is responsible for a child is vicariously liable for child abuse perpetrated against the child by an employee of the organisation if—

(a) the apparent performance by the employee of a role in which the organisation placed the employee supplies the occasion for the perpetration of the child abuse by the employee; and

(b) the employee takes advantage of the occasion to perpetrate the child abuse.

(2) In determining whether the apparent performance by the employee of a role in which the organisation placed the employee supplied the occasion for the perpetration of child abuse against a child, a court must take into account whether the organisation placed the employee in a position in which the employee has one or more of the following:

(a) authority, power or control over the child;

(b) the trust of the child;

(c) the ability to achieve intimacy with the child.

(3) This section does not affect, and is in addition to, the common law in relation to vicarious liability.

Civil Law (Wrongs) Act 2002 (ACT)

114BC Meaning of *employee*—pt 8A.1A

- (1) In this part: **employee**, of an organisation, includes an individual who—
- (a) is akin to an employee of the organisation; or
 - (b) is associated with the organisation.
- (2) For this section, an individual is **akin to an employee** of an organisation if the individual carries out activities that are—
- (a) a part of the ordinary activities carried out by the organisation; and
 - (b) for the benefit of the organisation.
- (3) For this section, an individual **associated** with an organisation includes—
- (a) an office holder, officer, owner, volunteer or contractor of the organisation; and
 - (b) **if the organisation is a religious organisation—a religious leader, such as a priest or minister, or other member of the personnel of the organisation, whether or not the individual is ordained; and**
 - (c) an individual, or an individual belonging to a class of individuals, prescribed by regulation.
- (4) An individual who is associated with an organisation to which the exercise of care, supervision or authority over a child has been delegated, in whole or in part, is also taken to be an individual associated with the organisation from which the exercise of care, supervision or authority was delegated.
- (5) A regulation may prescribe circumstances in which an individual is akin to an employee or not akin to an employee.

Reynolds Review recommendations

- 1. The establishment of a restorative engagement framework for Reynolds' victim survivors and victim survivors of other police officers' abuse who participated in the Review.*
- 2. That Tasmania Police establish a permanent restorative engagement framework for persons who have experienced grooming and/or sexual abuse by Tasmania Police officers.*
- 3. That Tasmania Police establish a framework which **strengthens community engagement and builds trust between Tasmania Police**, vulnerable community groups and Tasmanian sport and recreation organisations for the purpose of preventing, identifying and reporting grooming, sexual abuse and unacceptable sexualised conduct in sport.*
- 4. That Tasmania Police establish a dedicated victim management team which is funded and resourced to operate separately of the Professional Standards Command to support victims of reported sexual offending or misconduct where the perpetrator is a current serving or previously serving police officer.*
- 5. That consideration be given by Tasmania Police to making a recommendation to the Tasmanian Government for amendments to the Integrity Commission Act 2009 to ensure that all notifications made to the Integrity Commission in respect of members of Tasmania Police who are alleged to have groomed and/or sexually abused persons [serious misconduct] can be investigated independently by the Integrity Commission.*