

1 June 2018

Our ref WD: NFP

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

By email: community.affairs.sen@aph.gov.au

Dear Committee Secretary

National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 and related bill

Thank you for the opportunity to provide comments on the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 and related bill. Queensland Law Society (QLS) appreciates being consulted on this important legislation.

QLS has had the opportunity to contribute to the submission of the Law Council of Australia.

QLS wishes to add some comments in relation to the application of the scheme to institutions which are started as unincorporated associations. In broad terms the idea of a representative person is supported to provide certainty about the point of interaction with the Operator of the scheme and the unincorporated association.

Given the length of operation of the scheme and the desire for continuity when there are changes of leaders or governors, it is anticipated that some unincorporated associations may desire nominating a corporate entity within their structure to be their representative *person*. The Bill appears silent on whether "person" includes corporation, and while QLS notes the application of section 2C of the *Acts Interpretation Act 1901* (Cth) to have "person" include body corporate, there may be merit in this being clarified in the Bill.

We also note that it is proposed (under clause 131 and 141) that the representative have joint and several liability with the institution (or participating group of unincorporated associations) for funding contributions.

While the representative would no doubt obtain indemnities from the unincorporated association (or participating group), the question is, *if the institution is an unincorporated association, in whose hands the liability rests - the management committee at the time of the wrong or the current management committee at the time of the crystallization of the funding contribution liability?* While in practice this may be of little consequence as the Operator could no doubt simply look to the representative (and the representative look to the unincorporated

National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 and related bill

association), it seems to be in the interests of clarity in the law for the Bill to indicate where the liability rests. QLS suggests that this should properly be the *current management committee* as they control the assets of the unincorporated association.

It is noted that funding contribution liability does not arise by virtue of tortious liability. Therefore we suggest that the liability resting with the current management committee is consistent with the reasoning in *Anglican Development Fund Diocese of Bathurst in its own capacity and in its capacity as trustee of the Anglican Development Fund Diocese of Bathurst (receivers and managers appointed) –v– The Right Reverend Ian Palmer, Bishop of The Diocese of Bathurst; Commonwealth Bank of Australia –v– The Right Reverend Ian Palmer, Bishop of The Diocese of Bathurst* [2015] NSWSC 1856.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Principal Policy Solicitor, Wendy Devine by phone on (07) 3842 5896 or by email to w.devine@qls.com.au.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Ken Taylor', written over a horizontal line.

Ken Taylor
President