NSW Government Consultation Paper on the CIVIL LITIGATION recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse ("Paper")

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Thank you for the opportunity to respond to Consultation Paper '*NSW Government consultation in relation to the civil litigation recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse'*.

This paper sets out the submissions of Anglican Community Services trading as Anglicare (and hereinafter referred to as Anglicare Sydney). It primarily addresses matters that are relevant to Anglicare Sydney as well as noting other matters of concern to the sector more generally.

A. Background - Anglican Community Services

Anglicare Sydney is a Christian charity that provides aged care and social welfare services to some of the most disadvantaged and marginalised in the community. Anglicare Sydney is one of the largest social welfare providers in Sydney with a substantial amount of government funding to deliver a wide range of services.

We are committed to providing a child safe environment for the children we provide care and services to throughout our many programs including:

- Foster Care and Adoption Services;
- Early Learning Through Play;
- Child and Family Counselling;
- Preparing for School; and
- Refugee Services and Youth Support.

We continually review and update our policies and procedures to ensure any environmental risks are minimised so that children are in an environment that is as safe as possible. We are focused on continuing improvements to supervision and education of all staff, volunteers and contractors.

Anglicare Sydney participated in the Royal Commission consultation and Round Tables on this issue, prior to its merger with Anglican Retirement Villages on 1st July 2016. Anglicare Sydney also gave evidence to the Commission (Case Study 52) addressing the nature of community service provision, church structures and policies related to child safety.

Anglicare Sydney welcomes the opportunity to now participate and comment on this important reform process, including this Consultation Paper

B. Our support for the Royal Commission and NSW Government reform

At the outset, Anglicare Sydney applauds the work of the Royal Commission in bringing to light the heinous acts perpetrated against children by individuals associated with many organisations, and the calling out of the appalling lack of awareness, process and policy of many organisations that led to those offences. Anglicare Sydney abhors any form of abuse of children and we have been working continuously to improve our care and supporting systems to ensure the safest possible environment for children and young people in our care. We have an ongoing and longstanding commitment to provide support, care and restitution to survivors of historical abuse claims.

We broadly support the three categories of recommendations of the Royal Commission, as considered in this Consultation Paper, namely:

(a) Expanding the duties of institutions to prevent child abuse;

(b) Ensuring that survivors can easily identify a proper defendant to civil claims; and

(c) Requiring institutions to have insurance cover for child abuse.

We also welcome the reform initiated by the NSW Government in response to these recommendations, and agree that changes need to be made to existing legislation to ensure the rights of children are protected and that institutions are accountable for child abuse.

In this regard, we support the goal of removing legal barriers from the civil litigation system in NSW to make it easier for survivors of institutional child abuse in the future to seek justice, responses and outcomes from responsible institutions.

However, in doing so, we wish to ensure that reforms to the legal system are reasonable, appropriate and effective. Any reforms need to be considered in totality alongside other reforms (such as the removal of limitations periods) and also considered as to the likely adverse impact on the ability for organisations like Anglicare Sydney, independent of and as agents of Government, to provide services due to the increased costs and risks associated with such services.

We want safer environments for all children and young people in the care of organisations across Australia and access to justice if that organisation fails to protect them. We recognise this will come at additional costs but we are confident that society demands a safer environment for children, expects organisations to learn from the past and make every effort to not repeat the atrocities the Royal Commission has brought to light.

C. Our key recommendations

Our recommendations are as follows:

1. Increasing the legal responsibility of institutions for child abuse

We are broadly supportive of an increase to the legal responsibility of institutions for child abuse. Specifically, we make the following comments in relation to the reform proposals:

a) Non-delegable duty

We do not support the imposition of a new strict non-delegable duty of care on all institutions with respect to negligent and intentional criminal conduct by individual employees, agents or associates.

We note that the law seems to have been extended and clarified by the subsequent High Court judgment in Prince Alfred College v ADC [2016] HCA 37. This is a significant expansion in the law on vicarious liability in Australia as it applies to intentional criminal conduct. Given this ruling (handed down after the recommendation of the Royal Commission being discussed here), it is our position that this now sets an appropriate measure for determining when vicarious liability should arise for intentional criminal conduct.

We are concerned that the imposition of such a duty will significantly and unduly increase the risk profile and costs of service provision. It will unfairly burden organisations with liability for the deliberate criminal actions of individuals in circumstances regardless of the efforts of that institution exercising all due diligence to prevent abuse from occurring. As a consequence of this, institutions will be faced with prohibitive costs and may need to consider withdrawing critical service provision. The only way to guarantee no offence occurs would be to stop the service. Even if we were to stipulate 2 persons present in all situations, employees acting in concert would still be an unmanageable risk with a non-delegable duty threshold.

Creating a non-delegable duty would also create inconsistency and confusion at law by creating different tests and thresholds between various types of institutions with which the abuse is associated, regardless of the institution's comprehensive efforts to prevent the incident. Additionally the criminal conduct against a victim that does not meet the definition "child abuse" may be dealt with differently regardless of the risks or culpability of the institution in relation to that conduct. Just outcomes for the victim or institution would not be apparent.

Rather than radically changing the type of liability for this limited tort, it is our view, the introduction of a well-defined reverse onus of proof and liability for the conduct of associates (as discussed below) is a better means of providing victims with recourse.

b) Reverse onus

We support the proposal to reverse the onus of proof for all organisations working with children, so that liability is established in a claim (under common law principles of negligence or vicarious liability) unless the institution can prove it took 'all reasonable steps' to prevent the abuse from occurring. Coupled with the reverse onus of proof we consider it may be appropriate to increase the threshold for establishing proof of an offence (i.e. the standard of proof) given the weight of this change to the institution.

It should be noted that the creation of the reverse onus of proof creates a significant evidentiary burden on the institution often due to the lapse in time between offence and claim, in particular now that the limitation period has been removed. As the test will be based on 'reasonable steps', the passage of time, witness and documentary evidence may be impracticable to produce. Government could possibly assist to alleviate the conflict by providing strict and clear guidelines and thresholds of policy and process, audited at regular intervals, to ensure compliance with mandatory requirements for service provision sufficient to meet the 'reasonable steps' defence. This would provide organisations an opportunity to manage their exposure (and associated costs) by taking steps to mitigate against the risk of such liability.

c) Associates

While we support extending liability, for claims in negligence and under the principles of vicarious liability, to cover not just employees and agents, the concept of

'associates' must be precisely and carefully defined. In particular, it should not be defined so widely, in terms of time and scope, as to render the 'reasonable steps' defence meaningless.

For this reason, the definition should be restricted to persons that an institution has control or significant influence over and where there is a close connection between their work for the institution and the abuse. Furthermore, liability should only extend to conduct in relation to children who 'are in the care, supervision, or control' of the institution, rather than children who 'were' but are no longer in their care, supervision or control when an offence is alleged to have occurred. It will also be important to clarify whether or not an institution would be liable for abuse committed by a parent (and we understand this is not the intention of the proposed reform).

In implementing these reforms, it will be critical to provide institutions with clear guidance as to what constitutes 'associated persons' and 'all reasonable steps' in various contexts, to enable them to take appropriate measures to proactively manage their risks, manage their costs and acquit their responsibility against objective standards.

d) Definition of child abuse

We support the adoption of the broader definition of child abuse as set out in Limitation Act (Child Abuse) Act 2016, for the purpose of reversing the onus of proof in negligence/vicarious liability claims and introducing a defence of reasonable steps.

However, we do not support extending the definition of abuse to beyond child sexual abuse in the context of any non-delegable duty of care (and do not support the imposition of this duty for the reasons set out above).

2. Ensuring there is someone to sue

We agree in principle that a proper defendant should be identified for every entity providing services to children.

3. Requiring Institutions to hold insurance cover for child abuse

We support the introduction of a requirement for institutions to hold insurance, provided that affordable insurance premiums are available for the additional risks organisations are faced with under the proposed reforms. Before this recommendation is adopted, the NSW Government should put in place all the necessary mechanisms to ensure that insurance is available to all affected service providers at an affordable cost. This will involve also ensuring that excesses and other liability limitation mechanisms do not render the insurance irrelevant such that the institution is in most cases rendered economically self-insured with no effective risk transference.

D. Impact on our ability to deliver services

These matters require considerable prudence as in some cases it may be prohibitive to continue to provide services due to the risks, cost and the inability to guarantee against a random wrong. This random wrong can only be guaranteed not to occur by closing the service.

In supporting the intent of the proposed reforms, we note that they will inevitably increase the costs of providing children's services, with institutions bearing a significantly higher risk profile, having to take out more expensive insurance coverage, and needing to proactively implement appropriate measures to ensure the safety of children.

For organisations like Anglicare Sydney which provide a significant amount of services on behalf of government, it will be necessary for government to consider:

- an increased level of funding to cover these associated costs; and
- ensure access to affordable insurance coverage.

This will enable us to continue to provide critical services for the community. We are concerned to avoid a situation whereby these reforms lead to the closure or reduction in critical services, due to the inability of organisations to bear the full risk and costs associated with these well-intended changes.

E. Our response to the consultation questions

In relation to the Questions posed in the Paper we respond to the following questions:

Definition of child abuse

1. What kind of abuse should be covered by civil litigation reforms?

We support the adoption of the broader definition of child abuse as set out in *Limitation Act (Child Abuse) Act* 2016, for the purpose of reversing the onus of proof in negligence/vicarious liability claims and introducing a defence of reasonable steps.

However, we do not support extending the definition of abuse to beyond child sexual abuse in the context of a non-delegable duty of care for negligent or intentional criminal acts (and do not support the imposition of this duty for the reasons set out in this paper). It is not appropriate to extend such a non-delegable duty to all forms of serious child abuse, as this onerous strict liability for a range of offences will significantly increase the risk profile of service providers, and the cost and risk implications will adversely impact on the ability of such organisations to provide much needed services for the community.

Should the definition used in the Limitation Amendment (Child Abuse) Act 2016 (NSW) be adopted, or should a different definition be used?

The definition of 'child abuse' in the *Limitation Amendment (Child Abuse) Act 2016* (NSW) is workable and fair, and we support the use of this definition for offences involving child abuse, with a reverse onus of proof and to which a defence of reasonable steps may be pleaded.

However, we consider this definition to be too broad for the purposes of a non-delegable duty of care for negligent and deliberate criminal conduct.

New non-delegable duty of care

2. Should the Royal Commission's recommendations for a new non-delegable duty be adopted?

No. The imposition of a new non-delegable duty for negligent and deliberate criminal acts will unjustly impose liability on institutions who have put in place proper systems to care for and protect children, and where without fault on their part, abuse has occurred. The introduction of this type of duty will:

- increase the risk profile of service providers, and impair their ability to obtain adequate insurance for certain child services; and
- as a consequence, will result in such organisations needing to limit, reduce or cease the provision of services that benefit the community.

4. If the recommendation is adopted, which organisations should be subject to a new non-delegable duty of care? For example, should a new duty:

(a) Only be imposed on institutions which operate for profit, and have the care, supervision or control of children for a period of time?

No. If the duty is introduced, it should apply uniformly across all organisations.

(b) Only apply to large organisations?

No. The application of the duty should not be based on the size of the institution. The rationale for the non-delegable duty of care is to aid recourse for children who have been abused. Should a child who has been abused by a smaller organisation have less recourse than one by a large organisation? All organisations that provide services to children should be held to the same standard.

Distinguishing between the size of organisations may incentivise the use (or creation) of smaller organisations that may not have robust systems, may result in larger organisations exiting the market, and may deter such smaller organisations from growth.

(c) Extend to organisations which provide services to children as well as adults?

Yes. If such a duty is introduced, it should apply to all organisations that provide children services, including those that provide services to adults. Organisations that offer services to adults as well as children potentially have greater risks arising from the interaction of children with adults.

5. Should legislation list the organisations on which the non-delegable duty would be imposed, or would a more general definition be appropriate?

A statutory definition with clear criteria would likely be more appropriate, as a list of current organisations is likely to be costly and create an administrative burden to maintain and update.

6. If your organisation provides services to children, how would the imposition of a non-delegable duty impact on your organisation? Would it affect your organisation's ability to provide services to children?

The imposition of a non-delegable duty would impact on our organisations ability to continue to provide services to children. We may need to rely less on vetted and trained volunteers, increase supervision and staffing, and provide additional monitoring.

As there would likely be a significant increase in costs, if the NSW Government does not commensurately increase funding, then services would also need to be either curtailed or modified due to cost and risk considerations. The services most likely to be withdrawn or curtailed are those provided to the most needy and vulnerable children, often at high risk of abuse in their previous circumstances.

In this regard, many of these services to vulnerable children are currently provided by non-government organisations, operating as agents of the State in the execution of a duty which the public expects of the State. If these organisations withdraw from providing such services, the NSW Government will still need to provide these services, and would bare this additional legislated duty and associated increased costs in service provision.

Reverse onus of proof

7. Should the Royal Commission's recommendation to reverse the onus of proof in child abuse claims be adopted?

Reversing the onus of proof, so that an institution has to prove that it took reasonable steps to prevent abuse, would increase the likelihood of claims settling due to a perception of increased risk of a court awarding damages. This is the experience in other areas where reverse onus provisions have been introduced.

Given this, we are supportive of a reverse onus of proof in order to provide greater access to justice for victims of abuse, but only if the NSW Government provides strict guidelines and criteria for accreditation similar to that within the Work Health and Safety codes and commensurately increases funding for government funded children service providers to cover the increased costs of service provision.

8. What would be the benefit and/or implications of defining the term 'reasonable steps' in legislation?

There is significant benefit in having 'reasonable steps' clearly defined by way of statutory definition. This will enable organisations to better understand the standard of care expected of them, and enable them to proactively assess and acquit their duty to the requisite standard.

The definition of 'reasonable steps' should be formulated with reference to industry standards, with input of all appropriate stakeholders rather than abstract definitions from people with little knowledge of the services required and provided.

This is because such steps must be achievable for the broad range of service providers, including regional and remote services. The standard should be formulated in light of practical realities, as an unrealistically high standard may result in the diminution of much needed services, particularly in rural and regional areas.

9. If the recommendation is adopted, would it be useful to develop guidelines or industry standards about what is considered to be 'reasonable'?

Yes. Guidelines and industry standards would allow organisations to better understand what is expected of them and to develop audits tool to review current practices and identify areas for improvement. A statutory body such as the NSW Office of the Children's Guardian may be best place to develop and maintain these standards, with input from service providers. There is a significant amount of legislation and standards that apply to organisations providing care to children and any guidelines need to have regard to those existing frameworks.

Furthermore, such standards could serve to provide a degree of objectivity and certainty regarding best practice in a particular context, and assist with the sector's interactions with the insurance sector, risk assessment and insurance premiums.

For example, the proposed reforms will likely have major implications for the Out Of Home Care (OOHC) sector. The nature of OOHC is such that there cannot be continuous monitoring of foster carers by the institution as care happens in one of the most intimate environments, the home. An industry standard specifically relevant for the OOHC sector would enable institutions to understand expected standards and demonstrate that 'reasonable steps' have been undertaken in any given case. If this cannot be achieved, the impact of a random wrong will necessitate the closure of the service.

10. Would it be appropriate for a definition of reasonable steps to be graduated according to the type of service provided? If so, on what basis?

Yes, although this will require careful consideration. A graduation could be sensibly based on assessment of risk of harm, with more stringent measures required for higher-risk services. This assessment of the risk of harm could take into account a combination of factors, including the vulnerability of the child in question (e.g. in the care of the State, affected by a disability), and also the type of service provision (e.g. residential services).

For example, the risk of harm may be higher where there is only one adult worker interacting with the child (e.g. a child counselling session).

11. How could it be ensured that 'reasonable steps' were actually effective to improve the safety of children?

Ongoing research and evaluation could be used to assess the effectiveness of 'reasonable steps', such as by:

- analysing whether there have been improved outcomes and reduced incidents over time;
- seeking feedback from organisations and individuals regarding the adequacy and appropriateness of the steps;
- reviewing incidents to ascertain whether any steps could have prevented such harm from arising, and incorporating such learnings into industry guidance.

12. Would the recommendation to reverse the onus of proof affect an organisation's ability to provide services to children?

Yes, it is likely that this would result in an increase in the costs associated with service provision, however not to the same extent as the imposition of a non-delegable duty. This is because it would be possible for an organisation to implement processes and procedures within clear and concise guidelines to ensure child safety, and which could provide a viable defence in the face of an incident outside of our control.

Persons 'associated with' an institution

13. Should the Royal Commission's recommendation to extend institutional liability to 'all persons associated with an institution' be adopted?

There needs to be precise definition of who will be a 'persons associated' with an institution. The definition of 'all persons associated with an institution' cannot be so widely defined both in terms of time and scope as to render the 'reasonable steps' defence meaningless.

For this reason, the definition should be restricted to persons that an institution has control or significant influence over and where there is a close connection between their work for the institution and the abuse. For example, it is not be appropriate to hold an institution liable for the acts of an electrician, who is engaged by the institution as an independent contractor for a specific task and whose scope of work does not involve any need for contact with children.

Furthermore, in order for an institution to be liable, there should be a requirement for a close connection between the abuse and the person's responsibilities as allocated by the institution. This relates to children who 'are in the care, supervision, or control' of the institution, rather than children who 'were' but are no longer in their care, supervision or control.

It will also be important to clarify whether or not an institution would be liable for abuse committed by a parent (and we understand this is not the intention of the proposed reform). The proposed reform needs to consider such things as court sanctioned access by a birth parent to a child in care who is subsequently abused. In this type of matter the non-delegable duty and reverse onus become unworkable.

14. If the recommendation is adopted, should the term 'associated with' be defined in legislation, or decided on a case by case basis?

Yes. It would be helpful for the term 'associated with' to be defined in the legislation, including guidance as to the class of persons it covers and the length of time that the 'association' is deemed to exist. In our view, liability should be limited to children who are in the care, supervision and control of the institution, and not to children who were but are not longer in their care, supervision and control. For example, if a child met a worker and two years later is abused by the same person in a non-working capacity, is the organisation who employed the worker liable?

15. Should the range of persons 'associated with' an institution capture all of those referred to in the Royal Commission's recommendation? That is:

(a) for non-religious institutions: the institution's officers, office holders, employees, agents, volunteers and contractors

(b) for religious organisations: religious leaders, officers and personnel.

We would like these terms to be more clearly defined before commenting on this question.

16. How closely associated should an institution and a perpetrator need to be to result in potential liability? For example:

(a) Should an institution be liable for abuse perpetrated by an employee of a contracted cleaning company? What about a subcontractor of that cleaning company?

We also consider the recent matter of Prince Alfred College v ADC [2016] HCA 37 clearly expands the scope of vicarious liability that may be sufficient in dealing with the term 'associated' If liability is to be extended to associates, there should be similar protections in place to those that have been applied in cases where the scope of vicarious liability has been extended beyond employees; namely, there should be a requirement for a close connection between the abuse and the worker's responsibilities as allocated by the institution in order for such liability to arise. We note that this ruling occurred after the recommendations of the Commission were published and so the Commission had no opportunity to consider them.

For example in EB v Order of the Oblates of Mary Immaculate of the Province of British Columbia [2005] 3 SCR 45, the Supreme Court of Canada held that the school was not vicariously liable for the sexual abuse of a child by a baker employed by the school because the school had given no responsibility or authorisation for the baker to have contact with children. We support the adoption of a similar approach, whereby an organisation is able to mitigate their risk by having clearly defined roles for any workers that includes as far as practicable functional monitoring and oversight to ensure compliance.

(b) Should an institution be liable for abuse committed by an employee or volunteer in their own home, against a child met through the institution?

No. This is likely to be highly problematic. Organisations must have appropriate controls in place to eliminate grooming behaviour however it is inappropriate to hold an institution responsible for abuse in circumstances where the individual and child are outside the care, supervision or control of the institution. A key issue is the immediacy of the

connection and the lapse in time between initial contact and an offence must be definable. If not, this will increase the risk to institutions beyond their ability to mitigate.

For this reason, we support the proposal (at paragraph 6.36 of the Consultation Paper) that liability for the conduct of associates be limited to circumstances where such persons are under the control or authority of the institution at the time of the abuse provided that control or authority is practicable.

There is a need to balance the interest of victims to have access to recourse with placing undue risk and liability on service providers, particularly in relation to out of home care. If liability is too widely cast, service providers will likely exit the market, leaving a void in a much needed sector – and this in turn leads to an increased risk to children requiring out of home care services, as sector knowledge, processes and procedures would also disappear with the exit of established agencies.

Identifying a proper defendant

Questions 17 to 28 - Proper Defendant

We agree in principle that a proper defendant should be identified for every entity providing services to children. As Anglicare Sydney is established as a Body Corporate with legal personality, it is an entity that may sue and be sued in relation to child abuse claims. We have no further comments in relation to questions on this issue of identifying a 'proper defendant'.

Insurance

29. Should the Royal Commission's insurance recommendation be adopted?

Before this recommendation is adopted, the NSW Government should put in place all the necessary mechanisms to ensure that insurance is available to all affected service providers at an affordable cost including consideration of the deductible amount. This will involve also ensuring that excesses and other liability limitation mechanisms do not render the insurance worthless and as a consequence the institution is in most cases effectively economically self-insured.

30. Would the Royal Commission's civil litigation recommendations have a substantial impact on insurance premiums or the availability of insurance?

Yes. A strict non-delegable duty and/or introducing offences with a reverse onus of proof will likely significantly increase the risk profile of organisations and the prospects of damages awarded and therefore increase insurance premiums and /or cause insurers to limit their liability by other mechanisms such as increasing claims excesses and exclusion clauses.

31. How would an increase in insurance premiums impact on the viability of organisations offering services to children? Which types of institutions would have a problem? How could this be managed?

Some of our children's services are government funded and in order to continue these services we would need the NSW government to agree to increase that funding (and maintain that funding at an adequate level) to reflect the increased cost of insurance premiums.

Anglicare Sydney performs other children services in the community funded by charitable giving. For these services, to the extent that our costs rise due to insurance premium increases, our services would need to be adjusted and potentially reduced or ceased if we are not able to attract increased giving.

32. Should the recommendation also extend to organisations which are not recipients of government funding, such as religious organisations? How could the requirement be enforced in these cases?

No comment.

33. Should the Royal Commission's recommendation that unincorporated bodies have insurance extend to recipients of 'indirect' government funding? How far should this extend?

No comment.

Questions for the insurance industry

Questions 34 to 41 - Questions for the insurance industry

Our insurance costs are likely to increase as a consequence of these proposed reforms, and unless we are able to secure additional funding, this increase in cost will likely impact on our ability to continue to provide the same level of services. We have no further comments in relation to the questions 34 to 41 on the insurance industry.

Overall impact of the proposed reforms

34. **Would your organisation consider making changes to the service you provide, who the service is provided to, or how the service operates as a result of any of the proposed reforms in this Consultation Paper? Please provide examples.**

Yes. Each program would need to be reassessed in light of increased costs and compliance/risk requirements. We would likely review our services and only engage in services where we could be confident of being able to take as a minimum all of the 'reasonable steps' required (once defined). This may result in us modifying or withdrawing from services where reasonable steps are impossible to guarantee such as the 'random wrong' and/or supplementary funding is not obtained to enact these reasonable steps.

In order to give more detailed feedback we need clarity and greater detail on the proposed scope of increased liability and reasonable steps, enabling us to better estimate the likely cost impacts. However, we can make the following general comments:

- In relation to our government funded programs, in order to continue these services at the same level we would need the NSW Government to guarantee that funding would be increased (and maintained at an adequate level) to reflect the increased costs of service provision arising from, for example:
    - increased insurance premiums
    - legal costs
    - risk/compliance costs (e.g. higher screening costs)
    - increased staffing, and

    - physical changes to facilities to comply with new guidelines (e.g. structural changes to therapeutic spaces so there is a reasonable level of visual privacy but not total privacy).

- Likewise, our community funded programs will likely need to be modified or cease if we are not able to attract increased donations to support these services. Our smaller low fee programs are likely to be most cost sensitive and vulnerable to closure.

42. **What operational changes would organisations consider to be reasonably necessary to take in light of the proposed reforms? Is it likely that the behaviour of organisations would change in response to reform? What support would organisations need to offset these changes?**

    Operational changes will be required as risk profiles are being significantly altered and we would need to review our services accordingly. The following measures would support us in adapting to the proposed changes:

    - Clarity and certainty in the ambit of definitions and concepts in the legislation provided to organisations and service providers, e.g. key terms such as 'child abuse', 'reasonable steps', 'associated with'.

    - Establishment of appropriate avenues for organisations and service providers to seek clarity and certainty prior to a case reaching the courts.

    - Guidance provided as to which organisations and service providers are captured by the non-delegable duty provisions.

    - Industry specific guidance on 'best practice' standards or codes to which organisations in any given industry would need to meet for a 'reasonable steps' defence.

    - An industry specific body set up for organisations to have ongoing dialogue and consultation with in order to establish what would constitute 'best practice' in specific circumstances of each case – for example, in the OOHC sector, a team in FACS could be allocated the task of providing advice to NGOs on specific cases.

    - A process for organisations to demonstrate the additional costs incurred providing the same service(s) involved in complying with the new legislation (eg changes in systems and procedures; modification of infrastructure; additional staff or equipment purchased; additional insurance costs) and for such costs to be factored into in program funding from the date of commencement of the legislation.

    - Clarity and certainty as to how additional risks organisations will now carry could be mitigated.

    - Affordable insurance premiums for the additional risks organisations are faced with under the new legislation.

43. **Would the proposed changes to civil liability motivate institutions to improve child safety? How could the deterrent effect of the civil liability recommendations be optimised?**

    Any significant change to the risk profile of service providers and their exposure to liability will create an impetus for organisations to reduce that risk. However, that is not the only reason (or even the best reason) to improve child safety. The vast majority of organisations that provide children services are strongly motivated to ensure the safety of children in their care, and are willing to cooperate and implement measures to ensure

that their efforts are effective in achieving this aim. In this context, guidance and industry standards that specify proactive and preventive measures that should be introduced to improve child safety will have a more positive impact than a mere increased threat of litigation.

E. Concluding remarks

We trust that the response will assist the NSW Government in its goals of promoting safe provision of children services and access to justice for victims of child abuse. We look forward to further dialogue and interaction as this consultation process develops over the coming months.

If you have any questions or would like to discuss any of the matter raised in our submission, please contact James Zehnder at james.zehnder@anglicare.org.au or on 0406 381 569.

Yours sincerely,

Grant Millard

CEO

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