

# New Laws Affecting Churches 2018



## Background

In response to recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**) *Redress and Civil Litigation Report*, the NSW government has amended the *Civil Liability Act 2002* (NSW) to include new laws affecting religious organisations.

## New laws

The following laws came into effect Friday 26 October 2018:

### 1. A proactive duty to prevent child abuse

An organisation that exercises care, supervision or authority over children now has a **duty to prevent child abuse** being perpetrated by **individuals associated with the organisation**. This duty has a reverse onus of proof meaning an organisation is presumed to have breached the duty unless it can prove it took **reasonable steps to prevent abuse**. This means compliance with child safety standards including Synod policies is more important than ever for church organisations. This law applies prospectively from 26 October 2018.

### 2. Extension of vicarious liability

This reform adopts the common law approach to vicarious liability of an organisation for child abuse perpetrated by employees. Vicarious liability refers to where an employer can be held legally liable for the actions or omissions of its employees, provided the acts or omissions took place in the course of their employment. Importantly, the NSW reform further **extends vicarious liability to non-employees** whose relationship is **akin to employees**, including **volunteers and religious officers**. Again, compliance with Synod policies such as background checking and formal engagement of volunteers is more important than ever. This law applies prospectively from 26 October 2018.

In addition, a further reform has been passed that will come into effect upon proclamation.

### 3. Proper defendant reform

The Royal Commission identified that survivors have often faced difficulties taking legal action against religious organisations, which are often unincorporated associations with limited assets. This reform allows a survivor to sue an unincorporated association, which can nominate a 'proper defendant' to stand in its shoes. If a proper defendant is not nominated, the court can **appoint trustees of an associated trust as defendant** – such as the Synod's NSW Property Trust. This reform will **overturn the 'Ellis defence'** – referring to the case where Mr Ellis was unsuccessful in establishing a proper defendant to a claim against the Catholic Church. This law will apply retrospectively and prospectively from the date of proclamation, which is likely to be early 2019.

The above civil law reforms demonstrate the NSW government's continued commitment to implementing the recommendations of the Royal Commission. They follow **criminal law reforms** based on recommendations from the Royal Commission's *Criminal Justice Report* resulting in amendments to the *Crimes Act 1900* (NSW) and other legislation to include further provision for

sexual offences and for the protection of children from abuse. The new criminal offences came into effect Wednesday 27 June 2018 and include:

1. **Failing to report** child abuse to police;
2. **Failing to protect** a child from abuse;
3. **Grooming a child**; and
4. **Grooming a parent or carer** to access a child.

### **Information and support**

For more information about these laws, how they apply and how you can demonstrate compliance with child safety standards, contact the Safe Church Unit at [SafeChurch@nswact.uca.org.au](mailto:SafeChurch@nswact.uca.org.au).

To speak out about any safety issue or concern, including child safety matters, contact the Speak Out in Confidence 24-hour independent hotline on 1800 951 145.