



**An Bille um Dhliteanas Sibhialta (Imeachtaí i gcoinne
Comhlachtaí Neamhchorpraithe Daoine mar gheall ar
Dhrochúsáid Ghnéasach Leanaí), 2025**
**Civil Liability (Child Sexual Abuse Proceedings Against
Unincorporated Bodies of Persons) Bill 2025**

Meabhrán Mínitheach
Explanatory Memorandum



**AN BILLE UM DHLITEANAS SIBHIALTA (IMEACHTAÍ
I GCOINNE COMHLACHTAÍ NEAMHCHORPRAITHE
DAOINE MAR GHEALL AR DHROCHÚSÁID GHNÉASACH
LEANAÍ), 2025**

**CIVIL LIABILITY (CHILD SEXUAL ABUSE PROCEEDINGS
AGAINST UNINCORPORATED BODIES OF PERSONS) BILL
2025**

EXPLANATORY MEMORANDUM

Purpose of Bill

In a 2017 case called *Hickey v McGowan*, which concerned a plaintiff who alleged he had been sexually abused by a member of the Marist Order of brothers, which was unincorporated, the Supreme Court held that the plaintiff was entitled to obtain judgment against all the individuals who were members of the order at the time, but that he could not obtain a judgment against the order itself. The court suggested that the law in this area should be examined, with a view to reform. The Law Reform Commission published a consultation paper in 2022. Its final report is awaited.

The issue is that many voluntary non-profit associations, clubs, societies, political parties and other groups that are formed in pursuit of shared interests are unincorporated associations. Such associations do not have a legal existence separate and distinct from their members. Unincorporated associations cannot sue or be sued in their own name. Instead, the individual members at the time of the relevant wrongdoing have to be identified and sued. And, because unincorporated associations have no legal identity of their own, they cannot directly own property and require trusts to be established, through which property is held for their benefit. This may mean that assets held by an unincorporated association are beyond the reach of litigants.

In simple terms, the law as spelled out in *Hickey v McGowan* means that an unincorporated association cannot itself be held liable for wrongful acts committed by its representatives while acting on behalf of the association. Liability potentially falls upon the individual personally responsible and, depending on the circumstances, on the other members, who may be found to be vicariously liable. But determining who is or was a member at a particular time can be difficult, and that is only one of many barriers that face persons who wish to deal with or litigate against unincorporated associations: there is no procedure for nominating a representative defendant, property held in trust might not be available to satisfy judgments and insurance policies would not necessarily apply.

So far as child sex abuse claims against religious orders are concerned, it appears that most orders do select a nominee to represent them in

litigation but, in about 30 historical child sex abuse claims currently lodged in the High Court, one order has opted not to do so. In addition, the High Court has been informed of property transfers that are claimed to show a systematic effort by defendants to divest themselves, in order to frustrate recovery of damages.

This Bill is not intended to address all the issues raised in the LRC consultation paper. It is confined to the bringing of child sexual abuse proceedings against unincorporated bodies. It builds on reforms enacted in this area in some Australian states. The Bill has two purposes. First, it facilitates civil proceedings against unincorporated bodies such as, e.g., religious orders, and facilitates the recovery of any damages awarded from ‘associated’ trusts of such bodies. Second, it provides for a one-year extension to the normal limitation period provided for in the Statutes of Limitations, so as to enable any proceedings to which the Bill applies to be brought within 12 months of its enactment.

Provisions of Bill

Section 1 provides for the short title of the Bill and for it to come into operation immediately on its passing.

Section 2 is the interpretation section and defines certain terms. Chiefly, “unincorporated body” is defined as meaning an unincorporated body of persons which, or a branch of which is established in the State and the activities, administration and control of which is governed by a constitution or other such document or other written rules.

Section 3 provides for the application of the Bill to civil proceedings that are founded on tort and that seek to have an unincorporated body held –

- directly liable for negligence or breach of duty,
- vicariously liable for the wrongs of one of its members, or
- both directly and vicariously liable.

The rules will apply where damages are claimed in respect of personal injuries caused by an act of sexual abuse committed at a time when the wrongdoer was a member of the body concerned and the plaintiff was a minor.

Section 4 provides that such proceedings may be brought or may be continued against an unincorporated body in the name of the body or in a name reasonably sufficient to identify the body as if the body were a legal person.

Any changes in the membership of the body between the time when the sexual abuse is claimed to have been committed and the time when proceedings are instituted, or are heard and determined, may be disregarded.

For the purpose of the proceedings, any function to be performed by the unincorporated body may be performed by a management member of the body, and a court may make such orders and directions as it sees fit, including orders directing one or more management members of an unincorporated body to perform a specified function of the body.

Section 5 enables an unincorporated body to appoint one or more suitable legal or natural persons (including trustees of a trust) as proper defendant in the proceedings. A person is suitable to be appointed as proper defendant if the person can be sued in the State and has sufficient assets in the State to satisfy any judgment that may arise out of the proceedings.

Section 6 enables the court, where no appointment is made by the body, in default to appoint a proper defendant itself, including by appointing the trustees of an associated trust of the body. An associated trust is defined as a trust which the body controls or from which it benefits or whose trustees it appoints, etc.

Section 7 provides that, on the appointment of a proper defendant, that person effectively ‘steps into the shoes’ of the unincorporated body and is responsible for conducting the proceedings. The unincorporated body continues to participate in the proceedings and the court may make orders or directions in respect of the body as if the body were a legal person. Further, the court may make substantive findings in the proceedings against the unincorporated body as if the body were a legal person. The proper defendant incurs liability on behalf of the body, including liability for an award of damages and for costs.

By *section 8*, it is made clear that, notwithstanding any enactment or rule of law or any instrument (including a trust deed), the trustees of an associated trust may consent to be appointed by the body as a proper defendant, may supply any information about the trust that may be required, including financial information, and may apply trust property to satisfy any liability incurred by the trustee as a proper defendant in the proceedings. That liability is, however, limited to the value of the trust property.

Section 9 provides that any proceedings that could not, by virtue of the limitation period in the Statutes of Limitations, have been brought, may be brought not later than one year after the passing of this Act.

However, by *section 10*, this does not prejudice the power of a court to dismiss civil proceedings on the ground of there being such delay between the accrual of the cause of action and the bringing of the proceedings as, in the circumstances of the case and in the interests of justice, requires their dismissal.

Ivana Bacik TD
Nollaig, 2025.

