

Civil Liability and Other Legislation Amendment Bill 2018

Amendments during consideration in detail to be moved by
The Honourable the Attorney-General and Minister for Justice

1 **Clause 2 (Commencement)**

Page 4, line 7, ‘Part 2 commences’—

omit, insert—

Parts 2, 4 and 5 commence

2 **Clause 4 (Insertion of new ch 2, pt 2A)**

Page 4, line 16, ‘sexual’—

omit.

3 **Clause 4 (Insertion of new ch 2, pt 2A)**

Page 5, before line 1—

insert—

abuse, of a child—

(a) for division 2—means sexual abuse or serious physical abuse of the child; or

(b) otherwise, means—

(i) sexual abuse or serious physical abuse of the child; or

(ii) psychological abuse of the child perpetrated in connection with sexual abuse or serious physical abuse of the child.

4 **Clause 4 (Insertion of new ch 2, pt 2A)**

Page 5, line 2, ‘sexual’—

omit.

5 Clause 4 (Insertion of new ch 2, pt 2A)

Page 5, after line 25—

insert—

office of authority, in an institution, includes—

- (a) a position as a member of a management committee of the institution; and
- (b) a position in which the holder is concerned with, or takes part in, the management of the institution.

6 Clause 4 (Insertion of new ch 2, pt 2A)

Page 5, lines 27 and 28—

omit, insert—

- (1) For this part, a trust is an *associated trust* of an institution if the institution uses the trust to carry out its functions or activities and—

7 Clause 4 (Insertion of new ch 2, pt 2A)

Page 6, after line 20—

insert—

- (2) Also, a reference in division 4 or 5 to an *associated trust* of an institution includes a trust in relation to which an order is in force under section 33H(6) (in relation to any abuse claim against the institution).

8 Clause 4 (Insertion of new ch 2, pt 2A)

Page 6, line 25, ‘representative, leader,’—

omit, insert—

office holder, representative, leader, owner,

9 Clause 4 (Insertion of new ch 2, pt 2A)

Page 6, lines 29 to 30, ‘or religious leader’—

omit, insert—

, religious leader or member of the personnel

10 Clause 4 (Insertion of new ch 2, pt 2A)

Page 7, line 17, ‘sexual’—

omit.

11 Clause 4 (Insertion of new ch 2, pt 2A)

Page 7, line 19, ‘sexual’—

omit.

12 Clause 4 (Insertion of new ch 2, pt 2A)

Page 7, line 25, ‘sexually’—

omit.

13 Clause 4 (Insertion of new ch 2, pt 2A)

Page 8, line 23, ‘sexual’—

omit.

14 Clause 4 (Insertion of new ch 2, pt 2A)

Page 9, lines 16 to 18—

omit, insert—

- (3) The following apply for the purpose of a proceeding started or continued under subsection (2)—
 - (a) any liability that the former office holder has or would have had in relation to the cause of

action is taken to be a liability of the institution;

- (b) anything done by the former office holder is taken to have been done by the institution;
- (c) a duty or obligation that the former office holder would have had in relation to the proceeding is a duty or obligation of the institution;
- (d) the institution may rely on any defence or immunity that would have been available to the former office holder as a defendant in the proceeding;
- (e) any right of the former office holder to be indemnified (including under an insurance policy) in respect of damages awarded in an abuse claim extends to, and indemnifies, the institution.

15 Clause 4 (Insertion of new ch 2, pt 2A)

Page 9, line 22, ‘sexual’—

omit.

16 Clause 4 (Insertion of new ch 2, pt 2A)

Page 10, lines 14 to 17—

omit, insert—

- (3) The following apply for the purpose of a proceeding started or continued under subsection (2)—
 - (a) any liability that the former office holder has or would have had in relation to the cause of action is taken to be a liability of the current office holder;

- (b) anything done by the former office holder is taken to have been done by the current office holder;
- (c) a duty or obligation that the former office holder would have had in relation to the proceeding is a duty or obligation of the current office holder;
- (d) the current office holder may rely on any defence or immunity that would have been available to the former office holder as a defendant in the proceeding;
- (e) any right of the former office holder to be indemnified (including under an insurance policy) in respect of damages awarded in an abuse claim extends to, and indemnifies, the current office holder.

17 Clause 4 (Insertion of new ch 2, pt 2A)

Page 11, lines 11 to 26—

omit, insert—

- (6) On application by the claimant, a court may order that the trustee of a trust is the institution's nominee if the court is satisfied—
 - (a) the trust is, or used to be, an associated trust of the institution; and
 - (b) for a trust that is no longer an associated trust of the institution—a reason for causing the trust to cease to be an associated trust was to try to avoid trust property being applied to satisfy a liability that may be found under a decision on an abuse claim; and
 - (c) the order would be appropriate.
- (7) A court may—

- (a) order the institution to do the following within 28 days or any other period the court considers appropriate—
 - (i) identify to the court any trusts that are, or used to be, associated trusts of the institution;
 - (ii) provide particular information about the financial capacity of the trusts; and
- (b) make any other orders, and give the directions, it considers appropriate for the purpose of establishing—
 - (i) whether a trust is, or used to be, an associated trust of the institution; or
 - (ii) the financial capacity of a trust mentioned in subparagraph (i); or
 - (iii) whether a nominee of the institution has sufficient assets to satisfy a liability that may be found under a decision on the abuse claim; or
 - (iv) whether it would be appropriate to make an order in relation to a trustee under subsection (6).

18 Clause 4 (Insertion of new ch 2, pt 2A)

Page 11, line 29, ‘applies’—

omit, insert—

apply

19 Clause 4 (Insertion of new ch 2, pt 2A)

Page 13, lines 4 to 5, ‘that the institution uses to carry out its functions or activities’—

omit, insert—

of the institution

20 Clause 4 (Insertion of new ch 2, pt 2A)

Page 13, lines 23 to 25, ‘that the institution uses to carry out its functions or activities’—

omit, insert—

of the institution

21 Clause 4 (Insertion of new ch 2, pt 2A)

Page 14, after line 10—

insert—

- (5) The trustee is not liable for a breach of trust only because of doing anything authorised by this section.

22 Clause 4 (Insertion of new ch 2, pt 2A)

Page 14, before line 11—

insert—

33MA References to liability

A reference in this division to a liability under a judgment in, or settlement of, an abuse claim includes any costs associated with a proceeding for the claim.

23 After clause 4

Page 17, after line 7—

insert—

4A Amendment of s 72A (Application of pt 1A)

Section 72A—

insert—

- (3) Despite subsection (2)(c) and (d), this part applies to an apology made by or on behalf of an institution in relation to the abuse of a

child by a person associated with the institution.

(4) In this section—

abuse, of a child, means—

- (a) sexual abuse or serious physical abuse of the child; or
- (b) psychological abuse of the child perpetrated in connection with sexual abuse or serious physical abuse of the child.

associated with, an institution, see section 33C.

institution see section 33A.

24 Clause 6 (Amendment of sch 2 (Dictionary))

Page 17, after line 21—

insert—

abuse, of a child, for chapter 2, part 2A, see section 33A.

25 Clause 6 (Amendment of sch 2 (Dictionary))

Page 18, after line 10—

insert—

office of authority, for chapter 2, part 2A, see section 33A.

26 After clause 8

Page 18, after line 21—

insert—

9 Insertion of new pt 17

After part 16—

insert—

Part 17 **Transitional
provision for Civil
Liability and Other
Legislation
Amendment Act
2018**

112 Application of amended s 64

- (1) Section 64, as amended by the 2019 amendment, applies to an award of damages in a proceeding whether the proceeding was started before or after the commencement of the 2019 amendment.
- (2) In this section—
2019 amendment means the *Civil Liability and Other Legislation Amendment Act 2018*, section 8.

Part 4 **Amendment of
Limitation of Actions
Act 1974**

10 Act amended

This part amends the *Limitation of Actions Act 1974*.

11 Amendment of s 11A (No limitation period for actions for child sexual abuse)

- (1) Section 11A, ‘sexual’—
omit.

(2) Section 11A—

insert—

(6) In this section—

abuse, of a child, means—

- (a) sexual abuse or serious physical abuse of the child; or
- (b) psychological abuse of the child perpetrated in connection with sexual abuse or serious physical abuse of the child.

12 Insertion of new s 49

After section 48—

insert—

49 Transitional provision for Civil Liability and Other Legislation Amendment Act 2018

(1) Section 48 applies as if—

- (a) a reference in the section to section 11A were a reference to section 11A as amended by the 2019 amendment; and
- (b) a reference in the section to the commencement of section 11A were a reference to the commencement of the 2019 amendment.

(2) Subsection (1) does not limit the operation of section 48 apart from this section.

(3) In this section—

2019 amendment means the *Civil Liability and Other Legislation Amendment Act 2018*, section 11.

Part 5 **Amendment of Personal Injuries Proceedings Act 2002**

13 Act amended

This part amends the *Personal Injuries Proceedings Act 2002*.

14 Amendment of s 9 (Notice of a claim)

- (1) Section 9(9C), ‘sexual’—
omit.
- (2) Section 9(10)—
insert—
abuse, of a child, means—
 - (a) sexual abuse or serious physical abuse of the child; or
 - (b) psychological abuse of the child perpetrated in connection with sexual abuse or serious physical abuse of the child.

15 Insertion of new ch 4, pt 8

Chapter 4—
insert—

Part 8 **Transitional provision for Civil Liability and Other Legislation Amendment Act 2018**

87 Time for lodging notice for existing claims

(1) Section 9(9C) and (10), as amended by the 2019 amendment, applies to a claim mentioned in the section arising before or after the commencement of the 2019 amendment.

(2) In this section—

2019 amendment means the *Civil Liability and Other Legislation Amendment Act 2018*, section 14.

27 Long title

Long title, ‘and the *Civil Proceedings Act 2011*’—
omit, insert—

, the *Civil Proceedings Act 2011*, the *Limitation of Actions Act 1974* and the *Personal Injuries Proceedings Act 2002*

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