



Queensland

Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016



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2016

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2016

A Bill

for

An Act to amend the *Civil Liability Act 2003*, the *Civil Proceedings Act 2011*, the *Limitation of Actions Act 1974*, the *Personal Injuries Proceedings Act 2002* and the *Personal Injuries Proceedings Regulation 2014* for particular purposes

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Act 2016*. 4
5
6

Part 2 Amendment of Civil Liability Act 2003 7
8

Clause 2 Act amended 9

This part amends the *Civil Liability Act 2003*. 10

Clause 3 Replacement of s 73 (Exclusion of jury trial) 11

Section 73— 12

omit, insert— 13

73 Exclusion of jury trial 14

(1) This section applies to a proceeding in a court based on a claim that is— 15
16

(a) for personal injury damages; and 17

(b) not related to personal injury resulting from child abuse. 18
19

(2) The proceeding must be decided by the court sitting without a jury. 20
21

(3) In this section— 22

child abuse means any of the following 23

perpetrated in relation to an individual while the individual is a child— 1
2
(a) sexual abuse; 3
(b) serious physical abuse; 4
(c) any other abuse (*connected abuse*) 5
perpetrated in connection with sexual abuse 6
or serious physical abuse of the child, 7
whether or not the connected abuse was 8
perpetrated by the person who perpetrated 9
the sexual abuse or serious physical abuse. 10

Part 3 **Amendment of Civil Proceedings Act 2011** 11
12

Clause 4 Act amended 13
This part amends the *Civil Proceedings Act 2011*. 14

Clause 5 Insertion of new s 22A 15
After section 22— 16
insert— 17

22A Permanent stay or dismissal of child abuse proceeding 18
19

(1) This section applies to a proceeding if— 20
(a) the proceeding is brought against an institution (the *defendant*) for a personal injury resulting from child abuse; and 21
22
23
(b) one or more of the following apply— 24
(i) acts or omissions of the defendant in the proceeding caused or contributed to delay in the start of the proceeding; 25
26
27

- (ii) an inquiry has made a finding that the child abuse happened, or the defendant is liable for the child abuse; 1
2
3
 - (iii) the defendant has made an apology for the child abuse, or a circumstance related to the child abuse; 4
5
6
 - (iv) the defendant has otherwise admitted or acknowledged, either expressly or impliedly, the child abuse, or a circumstance related to the child abuse, happened; 7
8
9
10
11
 - (v) the defendant has made an express or implied admission of liability for the child abuse. 12
13
14
- (2) Despite any other Act, law or rule of law, the following are not grounds on which the court may permanently stay or dismiss the proceeding— 15
16
17
- (a) the period of time that has elapsed between the cause of action and the start of the proceeding; 18
19
20
 - (b) if subsection (1)(b)(iii) to (v) applies—the tendency of the period of time, or circumstances caused by or related to the period of time, to prevent, or make it difficult for, the defendant to deny or disprove admitted issues. 21
22
23
24
25
26
- Examples of circumstances caused by or related to the period of time—* 27
28
- the loss of evidence or unavailability of witnesses 29
- (3) Subsection (2) does not apply if the plaintiff in the proceeding delayed the start of the proceeding to prejudice the defendant or the fair trial of the proceeding. 30
31
32
33
- (4) In this section— 34
- admitted issue*** means— 35

-
- (a) for an apology mentioned in subsection 1
(1)(b)(iii)—the happening of any act, 2
omission or other thing apologised for; or 3
- (b) for an admission or acknowledgment 4
mentioned in subsection (1)(b)(iv)—the 5
happening of any act, omission or other 6
thing admitted or acknowledged; or 7
- (c) for an admission mentioned in subsection 8
(1)(b)(v)— 9
- (i) the liability for the child abuse; and 10
- (ii) the happening of any act, omission or 11
other thing admitted, either expressly 12
or impliedly. 13

apology, in relation to child abuse, means an 14
expression of sympathy or regret, or of a general 15
sense of benevolence or compassion, in 16
connection with the child abuse, whether or not 17
the apology admits or implies an admission of 18
liability in relation to the child abuse. 19

child abuse means any of the following 20
perpetrated in relation to an individual while the 21
individual is a child— 22

- (a) sexual abuse; 23
- (b) serious physical abuse; 24
- (c) any other abuse (**connected abuse**) 25
perpetrated in connection with sexual abuse 26
or serious physical abuse of the child, 27
whether or not the connected abuse was 28
perpetrated by the person who perpetrated 29
the sexual abuse or serious physical abuse. 30

inquiry means a Royal Commission, commission 31
or committee of inquiry, or a similar body. 32

institution means any of the following, however 33
described and whether or not incorporated— 34

- (a) a public or private body, agency, association, club, institution or organisation; 1
2
- (b) any other entity or group of entities. 3

Part 4 **Amendment of Limitation of** 4
Actions Act 1974 5

Clause 6 **Act amended** 6
This part amends the *Limitation of Actions Act 1974*. 7

Clause 7 **Amendment of s 5 (Interpretation)** 8
Section 5(1)— 9
insert— 10
child abuse means any of the following 11
perpetrated in relation to an individual while the 12
individual is a child— 13
(a) sexual abuse; 14
(b) serious physical abuse; 15
(c) any other abuse (*connected abuse*) 16
perpetrated in connection with sexual abuse 17
or serious physical abuse of the child, 18
whether or not the connected abuse was 19
perpetrated by the person who perpetrated 20
the sexual abuse or serious physical abuse. 21

Clause 8 **Amendment of s 8 (Provisions as to actions already** 22
barred and pending actions) 23
Section 8(1), after ‘sections’— 24
insert— 25
11(3A), 26

Clause 9	Amendment of s 11 (Actions in respect of personal injury)	1
	Section 11—	2
	<i>insert—</i>	3
	(3A) Also, a right of action relating to personal injury resulting from child abuse is not subject to a limitation period under an Act, law or rule of law.	4
		5
		6
		7
Clause 10	Insertion of new pt 5, div 1, hdg	8
	Part 5, before section 44—	9
	<i>insert—</i>	10
	Division 1	Transitional provision for
		Civil Liability (Dust
		Diseases) and Other
		Legislation Amendment
		Act 2005
		11
		12
		13
		14
		15
Clause 11	Insertion of new pt 5, div 2, hdg	16
	Part 5, before section 45—	17
	<i>insert—</i>	18
	Division 2	Transitional provision for
		Defamation Act 2005
		19
		20
Clause 12	Insertion of new pt 5, div 3, hdg	21
	Part 5, before section 46—	22
	<i>insert—</i>	23
	Division 3	Transitional provision for
		Corrective Services and
		24
		25

	Other Legislation	1	
	Amendment Act 2008	2	
Clause 13	Insertion of new pt 5, div 4, hdg	3	
	Part 5, before section 47—	4	
	<i>insert—</i>	5	
	Division 4	Transitional provision for	6
		Civil Liability and Other	7
		Legislation Amendment	8
		Act 2010	9
Clause 14	Insertion of new pt 5, div 5	10	
	Part 5—	11	
	<i>insert—</i>	12	
	Division 5	Transitional provisions for	13
		Limitation of Actions and	14
		Other Legislation (Child	15
		Abuse Civil Proceedings)	16
		Amendment Act 2016	17
	48 Definition for division	18	
	In this division—	19	
	<i>period of limitation</i> , for a right of action, means	20	
	the period of limitation applying to the right of	21	
	action, immediately before the commencement,	22	
	under—	23	
	(a) this Act; or	24	
	(b) another Act or a law or rule of law.	25	

49 Rights of action accruing before commencement	1 2
(1) Section 11(3A) applies to a right of action relating to personal injury resulting from child abuse whether the right of action accrued before or after the commencement.	3 4 5 6
(2) However, subsection (1) does not apply if—	7
(a) judgment has been given in the action other than on the ground that the period of limitation applying to the action had expired; or	8 9 10 11
(b) the action was settled or discontinued before the period of limitation for the action expired.	12 13 14
50 Judgments	15
(1) An action (the <i>new action</i>) on a barred right of action may be brought even though a judgment (the <i>existing judgment</i>) has been given—	16 17 18
(a) in relation to the barred right of action; and	19
(b) on the ground the period of limitation for the right of action has expired.	20 21
(2) The new action may be brought as if the action in relation to which the existing judgment was given had not been commenced.	22 23 24
(3) If a new action is brought under this section—	25
(a) the existing judgment is taken to have never been made; but	26 27
(b) a court hearing the new action may—	28
(i) when awarding damages in relation to the action—take into account any amounts paid or payable as damages under the existing judgment; or	29 30 31 32

- (ii) when awarding costs in relation to the action—take into account any amounts paid or payable as costs under the existing judgment. 1
2
3
4
- (4) In this section— 5
barred right of action means a right of action if— 6
- (a) the right of action relates to personal injury resulting from child abuse; and 7
8
- (b) immediately before the commencement, an action on the right of action could not be brought because of a period of limitation. 9
10
11
- 51 Settlement agreements relating to child abuse** 12
- (1) This section applies if— 13
- (a) a right of action relating to personal injury resulting from child abuse was settled; and 14
15
- (b) the agreement (the *settlement agreement*) effecting the settlement was executed after the period of limitation for the right of action expired but before the commencement. 16
17
18
19
20
- (2) The settlement agreement does not prevent a person from bringing an action, on the right of action, after the commencement. 21
22
23
- (3) If a person brings an action on the right of action, the settlement agreement is void despite any Act, law or rule of law. 24
25
26
- (4) A party to the voided settlement agreement may not seek to recover money paid by, or for, the party under the agreement. 27
28
29
- (5) However, a court hearing an action brought under this section may— 30
31
- (a) when awarding damages in relation to the action—take into account any amounts paid 32
33

	or payable as consideration under the voided settlement agreement; and	1 2
	(b) when awarding costs in relation to the action—take into account any amounts paid or payable as costs under the voided settlement agreement.	3 4 5 6
	(6) To remove any doubt, a collateral agreement between the parties to the settlement agreement, that is dependent on or is associated with the settlement agreement, forms part of the settlement agreement.	7 8 9 10 11
Part 5	Amendment of Personal Injuries Proceedings Act 2002	12 13
Clause 15	Act amended	14
	This part amends the <i>Personal Injuries Proceedings Act 2002</i> .	15
Clause 16	Amendment of s 9 (Notice of a claim)	16
	(1) Section 9—	17
	<i>insert—</i>	18
	(9C) Subsections (3), (5) and (6) do not apply to a claim relating to personal injury resulting from child abuse.	19 20 21
	(2) Section 9(10)—	22
	<i>insert—</i>	23
	child abuse means any of the following perpetrated in relation to an individual while the individual is a child—	24 25 26
	(a) sexual abuse;	27
	(b) serious physical abuse;	28

	(c) any other abuse (<i>connected abuse</i>)	1
	perpetrated in connection with sexual abuse	2
	or serious physical abuse of the child,	3
	whether or not the connected abuse was	4
	perpetrated by the person who perpetrated	5
	the sexual abuse or serious physical abuse.	6
Clause 17	Insertion of new ch 4, pt 7	7
	Chapter 4—	8
	<i>insert—</i>	9
	Part 7	
	Transitional provision	10
	for Limitation of	11
	Actions and Other	12
	Legislation (Child	13
	Abuse Civil	14
	Proceedings)	15
	Amendment Act 2016	16
	86 Claims arising before commencement	17
	Section 9(9C) applies to a claim mentioned in that	18
	subsection whether the claim arose before or after	19
	the commencement.	20
Part 6	Amendment of Personal	21
	Injuries Proceedings	22
	Regulation 2014	23
Clause 18	Regulation amended	24
	This part amends the <i>Personal Injuries Proceedings</i>	25
	<i>Regulation 2014</i> .	26

Clause 19	Amendment of s 7 (Claimant may add other respondents—Act, s 14)	1
		2
	Section 7(1)(a)—	3
	<i>omit, insert—</i>	4
	(a) for a claim to which section 9(3) or 9A(9)(b)	5
	of the Act applies—the day by which part 1	6
	of a notice of the claim must be given by the	7
	claimant under that section;	8