



New South Wales

Limitation Amendment (Child Abuse) Bill 2014

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Limitation Act 1969* (*the Act*) to remove any limitation period applying under the Act to an action on a cause of action for the recovery of damages for child abuse.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Limitation Act 1969 No 31

Schedule 1 [1] excludes an action on a cause of action to recover damages for *child abuse* (defined as conduct relating to sexual abuse or physical abuse, or both, of a minor) from the operation of the Act. Accordingly, the bringing of proceedings on such causes of action is not subject to any limitation period provided for in the Act. The *Interpretation Act 1987* defines *minor* to be an individual who is under the age of 18 years.

Schedule 1 [3] makes it clear that the exclusion of such actions from the limitation periods applying under the Act extends to existing causes of action, including cases where the relevant limitation period has already expired, an action has been commenced previously on the cause of action, or judgment on the cause of action has previously been given on the ground that the action

was statute barred. To this end, the item empowers a court to set aside a judgment based on the fact that an action was statute barred. **Schedule 1 [2]** makes a consequential amendment.



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New South Wales

Limitation Amendment (Child Abuse) Bill 2014

No. , 2014

A Bill for

An Act to amend the *Limitation Act 1969* to remove the limitation period for bringing civil proceedings in relation to child abuse.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Limitation Amendment (Child Abuse) Act 2014</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5

Schedule 1	Amendment of Limitation Act 1969 No 31	1
[1]	Section 6A	2
	Insert after section 6:	3
	6A Exclusion of actions for recovery of damages for child abuse	4
	(1) This Act, other than this section, does not apply to an action on a cause of action to recover damages for child abuse.	5 6
	(2) In this section:	7
	<i>child abuse</i> means conduct relating to sexual abuse or physical abuse (or both) of a minor.	8 9
[2]	Schedule 5, heading	10
	Omit “ Further transitional provisions ”.	11
	Insert instead “ Savings, transitional and other provisions ”.	12
[3]	Schedule 5, Part 3	13
	Insert after clause 7:	14
	Part 3 Provisions consequent on enactment of Limitation Amendment (Child Abuse) Act 2014	15 16
	8 Definitions	17
	(1) In this Part:	18
	<i>child abuse</i> has the same meaning as in section 6A.	19
	<i>legal professional negligence</i> and <i>limitation period</i> have the same meanings as in clause 1.	20 21
	(2) In this Part, a reference to a judgment given extends to a judgment entered and also to an agreement entered into before and in connection with any such judgment.	22 23 24
	9 Application of section 6A	25
	Section 6A applies:	26
	(a) whether or not any limitation period previously applying to the cause of action to recover damages for child abuse has expired, and	27 28
	(b) whether or not an action has been commenced previously on the cause of action, and	29 30
	(c) whether or not a judgment on the cause of action has, on the ground that a limitation period applying to the cause of action had expired, been given previously, and	31 32 33
	(d) whether or not a judgment in respect of legal professional negligence has, on the ground that a limitation period applying to the cause of action had expired, been given previously.	34 35 36

10 Pre-existing judgments and settlements	1
(1) An action on a previously barred cause of action may be brought even though:	2
(a) a judgment on the cause of action has, on the ground that a limitation period applying to the cause of action had expired, been given previously, or	3 4 5
(b) a judgment in respect of legal professional negligence has, on the ground that a limitation period applying to the cause of action had expired, been given previously,	6 7 8
or both.	9
(2) An action referred to in subclause (1) may be brought as if the action in which such a judgment was given had not itself been commenced.	10 11
(3) If an action referred to in subclause (1) is brought on or after the commencement of section 6A on such a previously barred cause of action, the court hearing the action may, if it decides that it is just and reasonable to do so, do any or all of the following:	12 13 14 15
(a) set aside any such judgment already given on or in relation to the cause of action,	16 17
(b) take into account any amounts paid or payable by way of damages under any such judgment,	18 19
(c) take into account any amounts paid or payable by way of costs in connection with any action in which any such judgment was given.	20 21
(4) The Supreme Court may, on application, exercise the power to set aside a judgment under subclause (3) (a) even though it is not hearing the action.	22 23
(5) A court (other than the Supreme Court) may not, under this clause, set aside a judgment of any other court.	24 25
(6) In this clause:	26
<i>previously barred cause of action</i> means a cause of action to recover damages for child abuse that was not maintainable immediately before the commencement of section 6A.	27 28 29