



New South Wales

# Limitation Amendment (Child Abuse) Bill 2015

## 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 damages that relate to death or personal injury resulting from 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 for damages that relate to death or personal injury resulting from child abuse 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 proposed provision is expressed not to limit any existing powers or jurisdiction of the courts (for example, the power or jurisdiction to stay or dismiss proceedings where a court determines that the lapse of time has a burdensome effect on the defendant that is so serious that a fair trial is not possible).

**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.



New South Wales

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New South Wales

# Limitation Amendment (Child Abuse) Bill 2015

No. , 2015

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## 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.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Limitation Amendment (Child Abuse) Act 2015</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5

<b>Schedule 1</b>	<b>Amendment of Limitation Act 1969 No 31</b>	1
<b>[1] Section 6A</b>		2
Insert after section 6:		3
<b>6A Exclusion of actions for recovery of damages for child abuse</b>		4
(1) This Act, other than this section, does not apply to an action on a cause of action:		5
(a) for damages that relate to the death of or personal injury to a person, regardless of whether the claim for damages is brought in tort, in contract, under statute or otherwise, and		6
(b) that is founded on the death or personal injury of a person resulting from:		7
(i) an act or omission in relation to the person when the person is a minor that is a physical abuse or sexual abuse, and		8
(ii) psychological abuse (if any) that arises out of that act or omission.		9
(2) A cause of action referred to in subsection (1) (a) extends to a cause of action:		10
(a) that arises under the <i>Compensation to Relatives Act 1897</i> , or		11
(b) that survives on the death of a person for the benefit of the person's estate under section 2 of the <i>Law Reform (Miscellaneous Provisions) Act 1944</i> .		12
(3) Nothing in this section limits:		13
(a) in the case of the Supreme Court, the court's inherent jurisdiction, implied jurisdiction or statutory jurisdiction, or		14
(b) in the case of a court other than the Supreme Court, the court's implied jurisdiction or statutory jurisdiction, or		15
(c) any other powers of a court arising or derived from the common law or under any other Act (including any Commonwealth Act), rule of court, practice note or practice direction.		16
<b>Note.</b> For example, this section does not limit a court's power to summarily dismiss or permanently stay proceedings where the lapse of time has a burdensome effect on the defendant that is so serious that a fair trial is not possible.		17
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<b>[2] Schedule 5, heading</b>		33
Omit " <b>Further transitional provisions</b> ".		34
Insert instead " <b>Savings, transitional and other provisions</b> ".		35
<b>[3] Schedule 5, Part 3</b>		36
Insert after clause 7:		37
<b>Part 3 Provisions consequent on enactment of Limitation Amendment (Child Abuse) Act 2015</b>		38
		39
<b>8 Definitions</b>		40
(1) In this Part:		41
<i>legal professional negligence</i> and <i>limitation period</i> have the same meanings as in clause 1.		42
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- (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. 1  
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- 9 Application of section 6A** 4
- Section 6A applies: 5
- (a) whether or not any limitation period previously applying to the cause of action to which section 6A applies has expired, and 6  
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- (b) whether or not an action has been commenced previously on the cause of action, and 8  
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- (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 10  
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- (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. 13  
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- 10 Pre-existing judgments and settlements** 16
- (1) An action on a previously barred cause of action may be brought even though: 17
- (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 18  
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- (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, 21  
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or both. 24
- (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. 25  
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- (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: 27  
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- (a) set aside any such judgment already given on or in relation to the cause of action, 31  
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- (b) take into account any amounts paid or payable by way of damages under any such judgment, 33  
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- (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. 35  
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- (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. 37  
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- (5) A court (other than the Supreme Court) may not, under this clause, set aside a judgment of any other court. 39  
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- (6) In this clause: 1  
*previously barred cause of action* means a cause of action to which section 6A 2  
applies that was not maintainable immediately before the commencement of 3  
that section. 4