New South Wales

Limitation Amendment (Child Abuse) Bill 2016

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 provide that there is to be no limitation period for an action for damages that relates to death or personal injury resulting from child abuse (a *child abuse action*).

The amendments define *child abuse* to mean abuse perpetrated against a person when the person is under 18 that is sexual abuse, serious physical abuse, or other abuse perpetrated in connection with sexual abuse or serious physical 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.

Schedule 1   Amendment of Limitation Act 1969 No 31

Schedule 1 [2] allows a child abuse action to be brought at any time without regard to any limitation period under the Act.

The amendments remove the existing time limitations on the commencement of child abuse actions but do not create any new cause of action or liability.

The amendments are not limited to actions against the perpetrator of child abuse and extend to any action that relates to death or personal injury resulting from child abuse (for example an action founded on the negligence or vicarious liability of a person other than the perpetrator).

The amendments will not limit any existing powers or jurisdiction of a court (for example, the power to stay or dismiss proceedings where a court determines that the lapse of time results in a fair trial not being possible).

Schedule 1 [4] provides that the amendments extend 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. This will not permit an action that has already been determined on the merits or settled to be re-litigated.

Schedule 1 [1] and [3] make consequential amendments.

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A Bill for

An Act to amend the *Limitation Act 1969* to permit an action for damages in relation to child abuse to be brought at any time.

The Legislature of New South Wales enacts:

1   Name of Act

This Act is the *Limitation Amendment (Child Abuse) Act 2016*.

2   Commencement

This Act commences on the date of assent to this Act.

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Schedule 1 Amendment of Limitation Act 1969 No 31

[1] Section 6 Transitional provisions

Omit "section 26" from section 6 (1). Insert instead "sections 6A and 26".

[2] Section 6A

Insert after section 6:

6A No limitation period for child abuse actions

(1) An action for damages that relates to the death of or personal injury to a person resulting from an act or omission that constitutes child abuse of the person may be brought at any time and is not subject to any limitation period under this Act despite any other provision of this Act.

(2) In this section, *child abuse* means any of the following perpetrated against a person when the person is under 18 years of age:

(a) sexual abuse,

(b) serious physical abuse,

(c) any other abuse (*connected abuse*) perpetrated in connection with sexual abuse or serious physical abuse of the person (whether or not the connected abuse was perpetrated by the person who perpetrated the sexual abuse or serious physical abuse).

(3) To remove doubt, connected abuse is child abuse only if both the connected abuse and the sexual abuse or serious physical abuse in connection with which it is perpetrated are perpetrated when the person is under 18 years of age.

(4) This section applies regardless of whether the claim for damages is brought in tort, in contract, under statute or otherwise.

(5) This section extends to the following causes of action:

(a) a cause of action that arises under the *Compensation to Relatives Act 1897*,

(b) a cause of action that survives on the death of a person for the benefit of the person's estate under section 2 of the *Law Reform (Miscellaneous Provisions) Act 1944*.

(6) This section does not limit:

(a) any inherent jurisdiction, implied jurisdiction or statutory jurisdiction of a court, or

(b) 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.

Note. 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.

[3] Schedule 5, heading

Omit "**Further transitional provisions**".

Insert instead "**Savings, transitional and other provisions**".

[4]   Schedule 5, Part 3

Insert after clause 7:

Part 3   Provisions consequent on enactment of Limitation Amendment (Child Abuse) Act 2016

8   Definitions

(1) In this Part:

legal professional negligence and *limitation period* have the same meanings as in clause 1.

(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.

9   Application of amendments

Section 6A extends to a cause of action that arose before the commencement of that section, and applies:

(a) whether or not any limitation period previously applying to the cause of action has expired, and

(b) whether or not an action has been commenced previously on the cause of action, and

(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

(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.

10   Pre-existing judgments

(1) An action on a previously barred cause of action may be brought even though:

(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

(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,

or both.

(2) An action on a previously barred cause of action may be brought as if the action in which such a judgment was given had not itself been commenced.

(3) If an action on a previously barred cause of action is brought on or after the commencement of section 6A, 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:

(a) set aside any such judgment already given on or in relation to the cause of action,

(b) take into account any amounts paid or payable by way of damages under any such judgment,

(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.

(4)   The Supreme Court may, on application, exercise the power under this clause to set aside a judgment even though it is not hearing the action.

(5)   A court (other than the Supreme Court) may not exercise the power under this clause to set aside a judgment of any other court.

(6)   In this clause:

previously barred cause of action means a cause of action to which section 6A applies that was not maintainable immediately before the commencement of that section.