



Queensland

Civil Liability and Other Legislation Amendment Act 2019

Act No. 34 of 2019

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

[Assented to 30 October 2019]



Queensland

Civil Liability and Other Legislation Amendment Act 2019

Contents

		Page
Part 1	Preliminary	
1	Short title	3
2	Commencement	3
Part 2	Amendment of Civil Liability Act 2003	
3	Act amended	3
4	Insertion of new ch 2, pt 2A	3
	Part 2A Liability of institutions for child abuse	
	Division 1 Preliminary	
	33A Definitions for part	4
	33B Meaning of associated trust	5
	33C When is a person associated with an institution	6
	Division 2 Duty of institutions	
	33D Duty to prevent child abuse	7
	33E Proof of whether duty was breached	7
	Division 3 Liability of particular institutions and office holders	
	33F Liability of incorporated institution that was unincorporated at time of abuse	8
	33G Liability of current office holder of unincorporated institution	9
	33H Claim against unincorporated institution and nomination of appropriate defendant	11
	33I Proceeding against nominee of unincorporated institution	13
	Division 4 Satisfaction of liability	
	33J Assets available to satisfy liability of institution	14
	33K Assets available to satisfy liability of nominee	14
	33L Assets available to satisfy liability of current office holder	14

Contents

	33M	Satisfaction of liability by trustee of associated trust .	15
	33MA	References to liability	15
	Division 5	Miscellaneous	
	33N	Entities may act despite other laws and duties	15
	33O	Continuity of institutions	16
	33P	Continuity of offices	18
	33Q	Corporations Act displacement	18
4A		Amendment of s 72A (Application of pt 1A)	18
5		Insertion of new ch 5, pt 8	19
	Part 8	Transitional provision for Civil Liability and Other Legislation Amendment Act 2019	
	86	Application of ch 2, pt 2A	19
6		Amendment of sch 2 (Dictionary)	19
Part 3		Amendment of Civil Proceedings Act 2011	
7		Act amended	20
8		Amendment of s 64 (Liability for a death)	20
9		Insertion of new pt 17	21
	Part 17	Transitional provision for Civil Liability and Other Legislation Amendment Act 2019	
	112	Application of amended s 64	21
Part 4		Amendment of Limitation of Actions Act 1974	
10		Act amended	21
11		Amendment of s 11A (No limitation period for actions for child sexual abuse)	21
12		Insertion of new s 49	22
	49	Transitional provision for Civil Liability and Other Legislation Amendment Act 2019	22
Part 5		Amendment of Personal Injuries Proceedings Act 2002	
13		Act amended	23
14		Amendment of s 9 (Notice of a claim)	23
15		Insertion of new ch 4, pt 8	23
	Part 8	Transitional provision for Civil Liability and Other Legislation Amendment Act 2019	
	87	Time for lodging notice for existing claims	23

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Civil Liability and Other Legislation Amendment Act 2019*.

2 Commencement

Parts 2, 4 and 5 commence on a day to be fixed by proclamation.

Part 2 Amendment of Civil Liability Act 2003

3 Act amended

This part amends the *Civil Liability Act 2003*.

4 Insertion of new ch 2, pt 2A

Chapter 2—

insert—

Part 2A Liability of institutions for child abuse

Division 1 Preliminary

33A Definitions for part

In this part—

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.

abuse claim means a claim arising from the abuse of a child by a person associated with an institution while the child was under the care, supervision, control or authority of the institution.

associated trust, of an institution, see section 33B.

associated with, an institution, see section 33C.

current office holder see section 33G(2).

head, of an institution, means the person who—

- (a) is acknowledged by the institution as its head; or
- (b) if paragraph (a) does not apply—has overall responsibility for the institution.

institution—

- (a) means an entity that provides an activity, program or service of a kind that gives an opportunity for a person to have contact with a child; and
- (b) includes a public sector unit that is an entity mentioned in paragraph (a); and

(c) does not include a family.

nominee, for an institution, means a person who is the institution's nominee because of a nomination or court order under section 33H.

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.

33B Meaning of *associated trust*

- (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—
 - (a) the institution has, directly or indirectly, any of the following powers—
 - (i) a power to control the application of income of the trust or the distribution of property of the trust;
 - (ii) a power to obtain the beneficial enjoyment of the property or income of the trust, with or without the consent of another entity;
 - (iii) a power to appoint or remove a trustee or beneficiary of the trust;
 - (iv) a power to determine the outcome of any other decision about the trust's operations; or
 - (b) a member or manager of the institution has, under the trust deed for the trust, a power mentioned in paragraph (a); or
 - (c) a trustee is accustomed to acting, or is under a formal or informal obligation to act,

[s 4]

according to the directions, instructions or wishes of the institution or a member or manager of the institution.

- (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).

33C When is a person *associated with an institution*

- (1) For this part, the persons *associated with* an institution include—
- (a) an officer, office holder, representative, leader, owner, member, employee, agent, volunteer or contractor of the institution; and
 - (b) for an institution that is a religious organisation—a minister of religion, religious leader or member of the personnel of the organisation; and
 - (c) if the institution has delegated the care, supervision, control or authority over a child to another entity (the *delegate*)—
 - (i) if the delegate is an individual—the delegate; and
 - (ii) a person who would be a person mentioned in paragraph (a) or (b) if the delegate were the delegating institution; and
 - (d) a person prescribed by regulation.
- (2) To remove any doubt, it is declared that a person is not a delegate mentioned in subsection (1)(c) only because a child protection order is made granting long-term guardianship of a child to the

person.

- (3) A person is not associated with an institution only because the person is associated with an entity that is funded or regulated by the institution.

Division 2 Duty of institutions

33D Duty to prevent child abuse

An institution has a duty to take all reasonable steps to prevent the abuse of a child by a person associated with the institution while the child is under the care, supervision, control or authority of the institution.

33E Proof of whether duty was breached

- (1) This section applies if a person associated with an institution abuses a child while the child is under the care, supervision, control or authority of the institution.
- (2) The institution is taken to have breached its duty under section 33D unless the institution proves it took all reasonable steps to prevent the abuse.
- (3) In deciding whether the institution took all reasonable steps to prevent the abuse, the matters that are relevant include—
 - (a) the nature of the institution; and
 - (b) the resources that were reasonably available to the institution; and
 - (c) the relationship between the institution and the child; and
 - (d) the position in which the institution placed the person in relation to the child, including

[s 4]

the extent to which the position gave the person—

- (i) authority, power or control over the child; or
- (ii) an ability to achieve intimacy with the child or gain the child's trust.

Division 3 Liability of particular institutions and office holders

33F Liability of incorporated institution that was unincorporated at time of abuse

- (1) This section applies if—
 - (a) a person (the *claimant*) suffered abuse as a child by a person associated with an institution (the *associated person*) while the claimant was under the care, supervision, control or authority of the institution; and
 - (b) the claimant has or had a cause of action against a person (the *former office holder*) who held an office of authority in the institution (the *relevant office*) when the cause of action accrued, founded on the former office holder's responsibility for the institution or for the associated person; and
 - (c) the institution was an unincorporated body when the cause of action accrued; and
 - (d) the institution is an incorporated body; and
 - (e) the claimant is able to maintain an action on the cause of action, or would be able to maintain an action on the cause of action if the former office holder still held the relevant office.

- (2) A proceeding for the claimant's cause of action may be started or continued against the institution.
- (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.

33G Liability of current office holder of unincorporated institution

- (1) This section applies if—
 - (a) a person (the *claimant*) suffered abuse as a child by a person associated with an institution (the *associated person*) while the claimant was under the care, supervision, control or authority of the institution; and

[s 4]

- (b) the claimant has or had a cause of action against a person (the *former office holder*) who held an office of authority in the institution (the *relevant office*) when the cause of action accrued, founded on the former office holder's responsibility for the institution or for the associated person; and
 - (c) the institution was an unincorporated body when the cause of action accrued; and
 - (d) the institution is an unincorporated body; and
 - (e) the former office holder no longer holds the relevant office; and
 - (f) the claimant would be able to maintain an action on the cause of action if the former office holder still held the relevant office.
- (2) A proceeding for the claimant's cause of action may be started or continued against the current holder of the relevant office (the *current office holder*) in the name of the office.
- (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.

33H Claim against unincorporated institution and nomination of appropriate defendant

- (1) This section applies in relation to an institution that is an unincorporated body.
- (2) A proceeding for an abuse claim may be started against the institution.
- (3) A notice of a claim required to be given to the institution under the *Personal Injuries Proceedings Act 2002*, section 9(1) must be given to the head of the institution.
- (4) The institution may nominate a person, with the person's consent, to be the appropriate defendant for the purposes of an abuse claim against the institution.
- (5) Subsection (6) applies if—
 - (a) at least 120 days have passed since a proceeding for an abuse claim was started against the institution; and
 - (b) either—
 - (i) there is no nominee for the institution; or
 - (ii) a court is satisfied the institution's nominee does not have sufficient assets to satisfy a liability that may be found under a decision on the abuse claim.

[s 4]

- (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).

33I Proceeding against nominee of unincorporated institution

The following apply if, under section 33H, there is a nominee for an institution—

- (a) a proceeding for an abuse claim may be started or continued against the nominee;
- (b) any liability of the institution under the court's decision on the abuse claim is incurred by the nominee;
- (c) anything done by the institution is taken to have been done by the nominee;
- (d) a duty or obligation of the institution in relation to the proceeding is a duty or obligation of the nominee;
- (e) the institution must continue to participate in the proceeding and a court may make an order or give a direction relating to the institution as if it were a person;
- (f) a court may make a substantive finding in the proceeding against the institution as if it were a person;
- (g) the nominee may rely on any defence or immunity that would be available to the institution as a defendant in the proceeding if the institution were a person;
- (h) any right of the institution to be indemnified (including under an insurance policy) in respect of damages awarded in an abuse claim extends to, and indemnifies, the nominee;

[s 4]

- (i) if there is more than 1 nominee, the nominees must file a single defence and proceed as a single defendant.

Division 4 Satisfaction of liability

33J Assets available to satisfy liability of institution

- (1) This section applies if an institution has a liability under a judgment in, or settlement of, an abuse claim.
- (2) The institution may satisfy the liability out of the assets of the institution and the assets of an associated trust of the institution.

33K Assets available to satisfy liability of nominee

- (1) This section applies if an institution's nominee has a liability under a judgment in, or settlement of, an abuse claim.
- (2) If the nominee is the trustee of an associated trust of the institution, the nominee may satisfy the liability out of the assets of the trust and the assets of the institution.
- (3) Otherwise, the nominee may satisfy the liability out of its assets and the assets of the institution.

33L Assets available to satisfy liability of current office holder

- (1) This section applies if, under section 33G(3), a current office holder has a liability under a judgment in, or settlement of, an abuse claim.
- (2) The current office holder is not personally liable but may satisfy the liability out of the assets of the

institution and the assets of an associated trust of the institution.

33M Satisfaction of liability by trustee of associated trust

- (1) This section applies in relation to a liability that, under section 33J, 33K or 33L, may be satisfied out of the assets of an associated trust of an institution.
- (2) The trustee of the associated trust may pay an amount in satisfaction of the liability and, for that purpose, may realise assets of the trust.
- (3) The satisfaction of the liability is a proper expense for which the trustee may be indemnified out of the trust property, irrespective of any limitation on any right of indemnity the trustee may have.
- (4) The liability of the trustee of the associated trust as the institution's nominee is limited to the value of the trust property.
- (5) The trustee is not liable for a breach of trust only because of doing anything authorised by this section.

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.

Division 5 Miscellaneous

33N Entities may act despite other laws and duties

An institution, an institution's nominee, a current

[s 4]

office holder or the trustee of an associated trust of an institution may act under division 4, and the trustee of an associated trust of an institution may consent to being the institution's nominee, despite—

- (a) another law; or
- (b) the terms of the associated trust (including a trust for a charitable purpose); or
- (c) a duty, whether as the current holder of an office in the institution or as trustee or otherwise.

330 Continuity of institutions

- (1) For this part, an institution (the *current institution*) is taken to be the same institution as the institution that breached its duty under section 33D or was an institution mentioned in section 33F(1)(a) or 33G(1)(a) (the *old institution*) if it is substantially the same as it was when the relevant cause of action accrued, even if—
 - (a) its name has changed; or
 - (b) its organisational structure has changed; or
 - (c) it has become incorporated; or
 - (d) its functions or activities are carried out at a different place.
- (2) Without limiting subsection (1), the current institution is taken to be substantially the same as it was when the relevant cause of action accrued if the type of member, and its primary purposes or functions, are substantially the same as they were at that time.
- (3) If there is no institution that is the same institution, or substantially the same institution, as the old institution, a relevant successor of the old

institution is taken to be the same institution as the old institution.

- (4) For subsection (3), an institution (also the *current institution*) is a relevant successor of the old institution if—
- (a) all or part of the old institution merged into the current institution; or
 - (b) all or part of the old institution merged with 1 or more other entities to form the current institution; or
 - (c) the current institution is the remainder of the old institution after part of the old institution ceased to be part of the old institution; or
 - (d) in a case in which there is at least 1 institution interposed, over time, between the old institution and the current institution—at least 1 of the following circumstances applies to each link in the chain between the old institution and the current institution—
 - (i) all or part of an earlier institution merged into another institution;
 - (ii) all or part of an earlier institution merged with 1 or more other entities to form another institution;
 - (iii) an institution is the remainder of an earlier institution after part of the earlier institution ceased to be part of the earlier institution;
 - (iv) an institution as it is at a particular time is substantially the same as it was at an earlier time; or
 - (e) the current institution is prescribed by regulation to be the relevant successor of the old institution.

[s 4A]

- (5) The Minister may recommend to the Governor in Council the making of a regulation under subsection (4)(e) only if satisfied that—
- (a) the current institution has a relevant connection to the old institution; or
 - (b) the head of the current institution has agreed to the current institution being the relevant successor of the old institution for this section.

33P Continuity of offices

- (1) This section applies for the purpose of section 33G.
- (2) It is sufficient that an office in the institution is substantially the same as it was when the relevant cause of action accrued.
- (3) If there is no current office in the institution that is the same or substantially the same as the relevant office mentioned in section 33G(1)(b), the current head of the institution is taken to be the current office holder.

33Q Corporations Act displacement

Sections 33I to 33N are declared to be Corporations legislation displacement provisions for the Corporations Act, section 5G in relation to the Corporations legislation generally.

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.

5 Insertion of new ch 5, pt 8

Chapter 5—

insert—

Part 8

Transitional provision for Civil Liability and Other Legislation Amendment Act 2019

86 Application of ch 2, pt 2A

Chapter 2, part 2A, other than division 2, applies in relation to a cause of action whether it arose before or after the commencement.

6 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

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

[s 7]

abuse claim, for chapter 2, part 2A, see section 33A.

associated trust, of an institution, for chapter 2, part 2A, see section 33B.

associated with, an institution, for chapter 2, part 2A, see section 33C.

child protection order means a child protection order under the *Child Protection Act 1999*.

current office holder, for chapter 2, part 2A, see section 33G(2).

head, of an institution, for chapter 2, part 2A, see section 33A.

institution, for chapter 2, part 2A, see section 33A.

nominee, for an institution, for chapter 2, part 2A, see section 33A.

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

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

7 **Act amended**

This part amends the *Civil Proceedings Act 2011*.

8 **Amendment of s 64 (Liability for a death)**

Section 64—

insert—

- (4) The amount of damages awarded to a person under a legal incapacity may include an amount for management fees relating to the amount

awarded to the person.

9 Insertion of new pt 17

After part 16—

insert—

**Part 17 Transitional provision
for Civil Liability and
Other Legislation
Amendment Act 2019**

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 2019*, 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.

[s 12]

(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 2019

(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 2019*, 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 2019

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

[s 15]

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 2019*, section 14.

© State of Queensland 2019