



Queensland

Civil Liability and Other Legislation Amendment Bill 2018



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2018

A Bill

for

An Act to amend the *Civil Liability Act 2003* and the *Civil Proceedings Act 2011* for particular purposes

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Civil Liability and Other
Legislation Amendment Act 2018*. 4
5

Clause 2 Commencement 6

Part 2 commences on a day to be fixed by proclamation. 7

**Part 2 Amendment of Civil Liability
Act 2003** 8
9

Clause 3 Act amended 10

This part amends the *Civil Liability Act 2003*. 11

Clause 4 Insertion of new ch 2, pt 2A 12

Chapter 2— 13

insert— 14

**Part 2A Liability of institutions
for child sexual abuse** 15
16

Division 1 Preliminary 17

33A Definitions for part 18

In this part— 19

-
- abuse claim*** means a claim arising from the sexual 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.

33B Meaning of *associated trust*

- For this part, a trust is an ***associated trust*** of an institution if—
- (a) the institution has, directly or indirectly, any of the following powers—

[s 4]

- (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, according to the directions, instructions or wishes of the institution or a member or manager of 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, representative, leader, member, employee, agent, volunteer or contractor of the institution; and
 - (b) for an institution that is a religious organisation—a minister of religion or religious leader 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 sexual abuse

An institution has a duty to take all reasonable steps to prevent the sexual 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 sexually 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.

[s 4]

(3)	In deciding whether the institution took all reasonable steps to prevent the abuse, the matters that are relevant include—	1 2 3
(a)	the nature of the institution; and	4
(b)	the resources that were reasonably available to the institution; and	5 6
(c)	the relationship between the institution and the child; and	7 8
(d)	the position in which the institution placed the person in relation to the child, including the extent to which the position gave the person—	9 10 11 12
(i)	authority, power or control over the child; or	13 14
(ii)	an ability to achieve intimacy with the child or gain the child’s trust.	15 16
Division 3	Liability of particular institutions and office holders	17 18 19
33F	Liability of incorporated institution that was unincorporated at time of abuse	20 21
(1)	This section applies if—	22
(a)	a person (the <i>claimant</i>) suffered sexual abuse as a child by a person associated with an institution (the <i>associated person</i>) while the claimant was under the care, supervision, control or authority of the institution; and	23 24 25 26 27 28
(b)	the claimant has or had a cause of action against a person (the <i>former office holder</i>) who held an office of authority in the	29 30 31

-
- 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) 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.

33G Liability of current office holder of unincorporated institution

- (1) This section applies if—
- (a) a person (the *claimant*) suffered sexual
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

[s 4]

- (c) the institution was an unincorporated body when the cause of action accrued; and 1
2
 - (d) the institution is an unincorporated body; and 3
4
 - (e) the former office holder no longer holds the relevant office; and 5
6
 - (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. 7
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- (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. 10
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 - (3) 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. 14
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- 33H Claim against unincorporated institution and nomination of appropriate defendant** 18
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- (1) This section applies in relation to an institution that is an unincorporated body. 20
21
 - (2) A proceeding for an abuse claim may be started against the institution. 22
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 - (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. 24
25
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 - (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. 28
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 - (5) Subsection (6) applies if— 32

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- (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.
- (6) On application by the claimant, a court may order that the trustee of an associated trust of the institution is the institution’s nominee if the court is satisfied the order would be appropriate.
- (7) A court may give the directions and make the orders it considers appropriate for the purpose of establishing—
- (a) whether a trust is an associated trust of the institution; or
- (b) 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
- (c) whether it would be appropriate to make an order in relation to an associated trust of the institution under subsection (6).

33I Proceeding against nominee of unincorporated institution

The following applies 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;

[s 4]

- (b) any liability of the institution under the court's decision on the abuse claim is incurred by the nominee; 1
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- (c) anything done by the institution is taken to have been done by the nominee; 4
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- (d) a duty or obligation of the institution in relation to the proceeding is a duty or obligation of the nominee; 6
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- (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; 9
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- (f) a court may make a substantive finding in the proceeding against the institution as if it were a person; 13
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- (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; 16
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- (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; 20
21
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- (i) if there is more than 1 nominee, the nominees must file a single defence and proceed as a single defendant. 25
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Division 4 Satisfaction of liability 28

33J Assets available to satisfy liability of institution 29 30

- (1) This section applies if an institution has a liability under a judgment in, or settlement of, an abuse 31
32

claim.	1
(2) The institution may satisfy the liability out of the assets of the institution and the assets of an associated trust that the institution uses to carry out its functions or activities.	2 3 4 5
33K Assets available to satisfy liability of nominee	6
(1) This section applies if an institution's nominee has a liability under a judgment in, or settlement of, an abuse claim.	7 8 9
(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.	10 11 12 13
(3) Otherwise, the nominee may satisfy the liability out of its assets and the assets of the institution.	14 15
33L Assets available to satisfy liability of current office holder	16 17
(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.	18 19 20
(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 that the institution uses to carry out its functions or activities.	21 22 23 24 25
33M Satisfaction of liability by trustee of associated trust	26 27
(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.	28 29 30 31

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| (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. | 1
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| (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
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7 |
| (4) | The liability of the trustee of the associated trust as the institution's nominee is limited to the value of the trust property. | 8
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Division 5 Miscellaneous 11

33N Entities may act despite other laws and duties 12

An institution, an institution's nominee, a current 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—

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|-----|---|----------------|
| (a) | another law; or | 19 |
| (b) | the terms of the associated trust (including a trust for a charitable purpose); or | 20
21 |
| (c) | a duty, whether as the current holder of an office in the institution or as trustee or otherwise. | 22
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33O Continuity of institutions 25

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|-----|---|----------------------------------|
| (1) | For this part, an institution (the <i>current institution</i>) 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 <i>old institution</i>) if it is substantially the same as it was when the relevant | 26
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- cause of action accrued, even if— 1
- (a) its name has changed; or 2
 - (b) its organisational structure has changed; or 3
 - (c) it has become incorporated; or 4
 - (d) its functions or activities are carried out at a 5
different place. 6
- (2) Without limiting subsection (1), the current 7
institution is taken to be substantially the same as 8
it was when the relevant cause of action accrued if 9
the type of member, and its primary purposes or 10
functions, are substantially the same as they were 11
at that time. 12
- (3) If there is no institution that is the same 13
institution, or substantially the same institution, as 14
the old institution, a relevant successor of the old 15
institution is taken to be the same institution as the 16
old institution. 17
- (4) For subsection (3), an institution (also the *current* 18
institution) is a relevant successor of the old 19
institution if— 20
- (a) all or part of the old institution merged into 21
the current institution; or 22
 - (b) all or part of the old institution merged with 23
1 or more other entities to form the current 24
institution; or 25
 - (c) the current institution is the remainder of the 26
old institution after part of the old institution 27
ceased to be part of the old institution; or 28
 - (d) in a case in which there is at least 1 29
institution interposed, over time, between 30
the old institution and the current 31
institution—at least 1 of the following 32
circumstances applies to each link in the 33
chain between the old institution and the 34
current institution— 35

[s 4]

- (i) all or part of an earlier institution merged into another institution; 1
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 - (ii) all or part of an earlier institution merged with 1 or more other entities to form another institution; 3
4
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 - (iii) an institution is the remainder of an earlier institution after part of the earlier institution ceased to be part of the earlier institution; 6
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 - (iv) an institution as it is at a particular time is substantially the same as it was at an earlier time; or 10
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 - (e) the current institution is prescribed by regulation to be the relevant successor of the old institution. 13
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- (5) The Minister may recommend to the Governor in Council the making of a regulation under subsection (4)(e) only if satisfied that— 16
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- (a) the current institution has a relevant connection to the old institution; or 19
20
 - (b) the head of the current institution has agreed to the current institution being the relevant successor of the old institution for this section. 21
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- 33P Continuity of offices** 25
- (1) This section applies for the purpose of section 33G. 26
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 - (2) It is sufficient that an office in the institution is substantially the same as it was when the relevant cause of action accrued. 28
29
30
 - (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), 31
32
33

	the current head of the institution is taken to be the current office holder.	1 2	
	33Q Corporations Act displacement	3	
	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.	4 5 6 7	
Clause 5	Insertion of new ch 5, pt 8	8	
	Chapter 5—	9	
	<i>insert—</i>	10	
	Part 8	Transitional provision for Civil Liability and Other Legislation Amendment Act 2018	11 12 13 14
	86 Application of ch 2, pt 2A	15	
	Chapter 2, part 2A, other than division 2, applies in relation to a cause of action whether it arose before or after the commencement.	16 17 18	
Clause 6	Amendment of sch 2 (Dictionary)	19	
	Schedule 2—	20	
	<i>insert—</i>	21	
	<i>abuse claim</i> , for chapter 2, part 2A, see section 33A.	22 23	
	<i>associated trust</i> , of an institution, for chapter 2, part 2A, see section 33B.	24 25	
	<i>associated with</i> , an institution, for chapter 2, part 2A, see section 33C.	26 27	

[s 7]

<i>child protection order</i> means a child protection order under the <i>Child Protection Act 1999</i> .	1 2
<i>current office holder</i> , for chapter 2, part 2A, see section 33G(2).	3 4
<i>head</i> , of an institution, for chapter 2, part 2A, see section 33A.	5 6
<i>institution</i> , for chapter 2, part 2A, see section 33A.	7 8
<i>nominee</i> , for an institution, for chapter 2, part 2A, see section 33A.	9 10

Part 3	Amendment of Civil Proceedings Act 2011	11 12
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Clause 7	Act amended	13
	This part amends the <i>Civil Proceedings Act 2011</i> .	14

Clause 8	Amendment of s 64 (Liability for a death)	15
	Section 64—	16
	<i>insert—</i>	17
	(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.	18 19 20 21