



Queensland

Civil Liability (Institutional Child Abuse) Amendment Bill 2017



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2017

A Bill

for

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

	The Parliament of Queensland enacts—	1	
Clause 1	Short title	2	
	This Act may be cited as the <i>Civil Liability (Institutional Child Abuse) Amendment Act 2017</i> .	3 4	
Clause 2	Act amended	5	
	This Act amends the <i>Civil Liability Act 2003</i> .	6	
Clause 3	Insertion of new ch 2, pt 6	7	
	Chapter 2—	8	
	<i>insert—</i>	9	
	Part 6	Liability of institutions for child abuse	10 11
	49C Definitions for part	12	
	In this part—	13	
	<i>child abuse</i> means any of the following perpetrated in relation to an individual while the individual is a child—	14 15 16	
	(a) sexual abuse;	17	
	(b) serious physical abuse;	18	
	(c) any other abuse (<i>connected abuse</i>) perpetrated in connection with sexual abuse or serious physical abuse of the child, whether or not the connected abuse was perpetrated by the person who perpetrated the sexual abuse or serious physical abuse.	19 20 21 22 23 24	
	<i>duty of care</i> means the duty of care imposed on an institution under section 49D(1).	25 26	

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- institution*** means an entity (whether existing or no longer existing, whether or not incorporated, and however described) that provides or provided activities, facilities, programs or services of any kind that gives or gave an opportunity for a person to have contact with a child.
- official***, of an institution, in relation to a relevant child, includes—
- (a) a representative (however described) of the institution or a related entity; and
 - (b) a member, officer, employee, associate, contractor or volunteer (however described) of the institution or a related entity; and
 - (c) a person who provides services to, or for, the institution or a related entity, including, for example, a member, officer, employee, associate, contractor or volunteer (however described) of an entity; and
 - (d) if the institution has delegated, by means of contract or otherwise, the care, supervision or authority over the relevant child to another institution (the ***other institution***)—an official of the other institution within the meaning of paragraph (a), (b) or (c); and
 - (e) if the institution has delegated, by means of contract or otherwise, the care, supervision or authority over the relevant child to an individual to whom paragraph (a) to (d) does not apply—that individual; and
 - (f) any other person who would be considered as, or should be treated as if the person were, an official of the institution.
- relevant child***, in relation to an institution, means a child who is—

[s 3]

- (a) involved in activities, facilities, programs or services of any kind provided by the institution; or 1
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- (b) otherwise in the care or supervision, or under the authority, of the institution. 4
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49D Duty of care for institutions 6

- (1) An institution must ensure that a relevant child does not suffer child abuse perpetrated by an official of the institution. 7
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- (2) It is a defence to an action for a breach of the institution's duty of care if the defendant proves the institution took reasonable precautions, and exercised due diligence, to prevent the relevant child from suffering the child abuse. 10
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- (3) Without limiting subsection (2), in determining whether an institution has taken reasonable precautions and exercised due diligence, a court may consider the following— 15
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 - (a) the resources that are reasonably available to the institution; 19
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 - (b) the relationship between the institution and the relevant child; 21
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 - (c) whether the institution has delegated the care, supervision or authority over the relevant child to another organisation; 23
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25
 - (d) the role, in the institution, of the official of the institution. 26
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49E Particular institutions must nominate defendant 28
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- (1) This section applies to an institution that is not capable in law of being sued. 30
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- (2) The institution must nominate an appropriate entity as the defendant for any claim for damages, 32
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- whether made before or after the nomination, for
a breach of the institution's duty of care. 1 2
- (3) Upon the making of a nomination under
subsection (2)— 3 4
- (a) the nominated appropriate entity is
responsible in law for any liability arising
out of the institution's breach of its duty of
care; and 5 6 7 8
- (b) if, when the nomination is made, there are
no current proceedings in relation to a claim
mentioned in subsection (2)—a proceeding
for damages for the breach may be brought
against the nominated appropriate entity;
and 9 10 11 12 13 14
- (c) if, when the nomination is made, there is a
current proceeding in relation to a claim
mentioned in subsection (2)—the plaintiff in
the current proceeding may join the
nominated appropriate entity as a defendant
in the proceeding. 15 16 17 18 19 20
- (4) In this section— 21
- appropriate entity*** means an entity that is— 22
- (a) capable in law of being sued; and 23
- (b) related to, or has an association with, the
institution; and 24 25
- (c) in a financial position to meet a claim for
damages for a breach of the institution's
duty of care. 26 27 28
- current proceeding*** means a legal proceeding
started but not finally dealt with. 29 30

**49F Judgments relating to child abuse may be
paid from trust funds** 31 32

- (1) This section applies if— 33

[s 4]

(a)	a person (the <i>creditor</i>) is owed an unpaid judgment debt in relation to a claim for damages for a breach of an institution's duty of care; and	1 2 3 4
(b)	the institution has not nominated an approved entity under section 49E; and	5 6
(c)	either—	7
(i)	another person holds property on trust for the institution; or	8 9
(ii)	the institution otherwise benefits from property held on trust by another person.	10 11 12
(2)	The other person is liable for the debt in the other person's capacity as trustee for the property.	13 14
(3)	The creditor may bring an action for the recovery of the debt against the other person in the other person's capacity as trustee for the property.	15 16 17
Clause 4	Amendment of sch 2 (Dictionary)	18
(1)	Schedule 2—	19
	<i>insert—</i>	20
	<i>child abuse</i> , for chapter 2, part 6, see section 49C.	21
	<i>institution</i> , for chapter 2, part 6, see section 49C.	22
	<i>official</i> , for chapter 2, part 6, see section 49C.	23
	<i>relevant child</i> , for chapter 2, part 6, see section 49C.	24 25
(2)	Schedule 2, definition <i>duty of care</i> —	26
	<i>omit, insert—</i>	27
	<i>duty of care</i> —	28
(a)	generally—means a duty to take reasonable care or to exercise reasonable skill (or both duties); and	29 30 31

(b) for chapter 2, part 6—see section 49C.

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