



Queensland

Civil Liability (Institutional Child Abuse) Amendment Bill 2018



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2018

A Bill

for

An Act to amend the *Civil Liability Act 2003*, the *Limitation of Actions Act 1974* and the *Personal Injuries Proceedings Act 2002* 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 (Institutional Child Abuse) Amendment Act 2018*. 4
5

Part 2 Amendment of Civil Liability Act 2003 6
7

Clause 2 Act amended 8

This part amends the *Civil Liability Act 2003*. 9

Clause 3 Insertion of new ch 2, pt 6 10

Chapter 2— 11

insert— 12

Part 6 Liability of institutions for child abuse 13
14

49C Definitions for part 15

In this part— 16

child abuse means any of the following 17
perpetrated in relation to an individual while the 18
individual is a child— 19

(a) sexual abuse; 20

(b) serious physical abuse; 21

-
- (c) any other abuse perpetrated in connection with sexual abuse or serious physical abuse of the child, whether or not the other abuse was perpetrated by the person who perpetrated the sexual abuse or serious physical abuse. 1
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- duty of care*** means the duty of care imposed on an institution under section 49D(1). 7
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- institution***— 9
- 1 An entity other than individual is an *institution* if the entity— 10
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- (a) has or had a child in its care, or under its supervision or authority; or 12
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- (b) provides or provided activities, facilities, programs or services of any kind that give or gave a person an opportunity to have contact with a child. 14
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- 2 For paragraph 1, the following are irrelevant— 19
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- (a) whether or not the entity currently exists; and 21
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- (b) whether or not the entity is incorporated; and 23
24
- (c) how the entity is described. 25
- official***, of an institution, in relation to a relevant child, includes— 26
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- (a) a representative, however described, of the institution or a related entity; and 28
29
- (b) a member, officer, employee, associate, contractor or volunteer, however described, of the institution or a related entity; and 30
31
32
- (c) if the institution has, in any way, delegated the care of, supervision of or authority over 33
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[s 3]

- the relevant child to another institution—an official of the other institution within the meaning of paragraph (a) or (b); and
- (d) if the institution has, in any way, delegated the care of, supervision of or authority over the relevant child to an individual to whom paragraphs (a) to (c) do not apply—that individual; and
- (e) any other person who would be considered, or should be treated as if the person were, an official of the institution.
- related entity***, of an institution, means—
- (a) an entity that provides or provided activities, facilities, programs or services of any kind for the institution; or
- (b) if the institution is or was a corporation—another corporation that is or was related to the institution within the meaning of the Corporations Act, section 50.
- relevant child***, in relation to an institution—
- (a) means a child who is—
- (i) involved in activities, facilities, programs or services of any kind provided by the institution; or
- (ii) otherwise in the care, or under the supervision or authority, of the institution; and
- (b) includes a child for whom the institution has, in any way, delegated care of, supervision of or authority over to another institution or an individual.

49D Duty of care of institutions

- (1) An institution must ensure that a relevant child

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- does not suffer child abuse perpetrated by an official of the institution. 1
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- (2) Subsection (1) applies to an institution whether the child abuse was perpetrated before or after the commencement. 3
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- (3) 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. 6
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- (4) Without limiting subsection (3), in determining whether an institution has taken reasonable precautions and exercised due diligence, a court may consider the following as at the time the child abuse was perpetrated— 11
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- (a) the resources that were reasonably available to the institution; 16
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- (b) the relationship between the institution and the relevant child; 18
19
- (c) whether the institution had delegated the care of, supervision of or authority over the relevant child to another institution or an individual; 20
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- (d) the role, in the institution or a related entity, of the official that perpetrated the child abuse. 24
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49E Particular institutions must nominate defendant 27
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- (1) This section applies to an institution that— 29
- (a) is not capable in law of being sued; or 30
- (b) otherwise, is not in a financial position to meet a current claim, or any future claim, for damages for a breach of the institution's duty of care. 31
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[s 3]

- (2) The institution must nominate an appropriate entity as the defendant for the current claim, or for any future claim, for damages for a breach of the institution's duty of care. 1
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- (3) If a nomination is made under subsection (2)— 5
- (a) the nominated appropriate entity is responsible in law for any liability arising out of the current claim, or for any future claim, for damages for a breach of the institution's duty of care, whether the breach happened before or after the nomination; and 6
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- (b) a proceeding for a claim mentioned in paragraph (a) may be brought against the nominated appropriate entity; and 13
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- (c) if there is a current proceeding for a claim mentioned in paragraph (a), the plaintiff in the proceeding may join the nominated appropriate entity as a defendant in the proceeding. 16
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- (4) In this section— 21
- appropriate entity*, for a claim for damages for a breach of the institution's duty of care, means an entity that is— 22
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- (a) capable in law of being sued; and 25
- (b) related to, or has an association with, the institution; and 26
27
- (c) in a financial position to meet the claim. 28
- 49F Particular trustees may be liable for breach of institution's duty of care** 29
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- (1) This section applies if— 31

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- (a) a person (the *trustee*) holds property (*trust property*) on trust for an institution mentioned in section 49E(1); or
- (b) an institution mentioned in section 49E(1) otherwise benefits from property (also *trust property*) held on trust by a person (also the *trustee*).
- (2) However, this section does not apply in relation to a claim for damages for a breach of the institution's duty of care if the institution has nominated an appropriate entity under section 49E(2) for the claim.
- (3) The trustee, in the trustee's capacity as trustee for the trust property, is responsible in law for any liability arising out of a breach of the institution's duty of care, whether the breach happened before or after the trustee became trustee of the trust property.
- (4) However, the liability of the trustee under this section, including liability for costs, is limited to the value of the trust property.
- (5) A proceeding for a claim for damages for a breach of the institution's duty of care may be brought against the trustee in the trustee's capacity as trustee for the trust property, whether the breach happened before or after the trustee became trustee of the trust property.
- (6) If there is a current proceeding for a claim for damages for a breach of the institution's duty of care, a plaintiff in the proceeding may join the trustee, in the trustee's capacity as trustee for the trust property, as a defendant in the proceeding.
- (7) Despite any law or instrument, including, for example, a trust deed—

[s 4]

	(a) the trustee may apply the trust property to satisfy any liability incurred by the trustee under this section; and	1 2 3
	<i>Example of liability a trustee may incur under this section—</i>	4 5
	an unpaid judgment debt	6
	(b) an application of the trust property under paragraph (a)—	7 8
	(i) is not a breach of trust by the trustee; and	9 10
	(ii) is a proper expense for which the trustee may be indemnified out of the trust property.	11 12 13
Clause 4	Amendment of sch 2 (Dictionary)	14
	(1) Schedule 2, definition <i>duty of care</i> —	15
	<i>omit.</i>	16
	(2) Schedule 2—	17
	<i>insert—</i>	18
	<i>child abuse</i> , for chapter 2, part 6, see section 49C.	19
	<i>current proceeding</i> means a legal proceeding started but not finally dealt with.	20 21
	<i>duty of care</i> —	22
	(a) generally—means a duty to take reasonable care or to exercise reasonable skill (or both duties); or	23 24 25
	(b) for chapter 2, part 6—see section 49C.	26
	<i>institution</i> , for chapter 2, part 6, see section 49C.	27
	<i>official</i> , for chapter 2, part 6, see section 49C.	28
	<i>related entity</i> , for chapter 2, part 6, see section 49C.	29 30

	<i>relevant child</i> , for chapter 2, part 6, see section 49C.	1 2
Part 3	Amendment of Limitation of Actions Act 1974	3 4
Clause 5	Act amended	5
	This part amends the <i>Limitation of Actions Act 1974</i> .	6
Clause 6	Amendment of s 11A (No limitation period for actions for child sexual abuse)	7 8
	(1) Section 11A, heading, ‘sexual’—	9
	<i>omit</i> .	10
	(2) Section 11A(1), ‘the sexual abuse of the person when the person was a child’—	11 12
	<i>omit, insert—</i>	13
	child abuse	14
	(3) Section 11A—	15
	<i>insert—</i>	16
	(6) In this section—	17
	<i>child abuse</i> means any of the following perpetrated in relation to an individual while the individual is a child—	18 19 20
	(a) sexual abuse;	21
	(b) serious physical abuse;	22
	(c) any other abuse perpetrated in connection with sexual abuse or serious physical abuse of the child, whether or not the other abuse was perpetrated by the person who perpetrated the sexual abuse or serious physical abuse.	23 24 25 26 27 28

[s 7]

Clause 7	Insertion of new s 49	1
	After section 48—	2
	<i>insert—</i>	3
	49 Transitional provision for Civil Liability (Institutional Child Abuse) Amendment Act 2018	4 5 6
	(1) Section 11A, as in force on the commencement, applies to a relevant action whether the right of action accrued before or after the commencement.	7 8 9
	(2) Section 48(2) to (5) applies to a previously barred right of action as if—	10 11
	(a) a reference to a previously barred right of action were a reference to a previously barred right of action as defined under this section; and	12 13 14 15
	(b) a reference to the commencement were a reference to the commencement of this section.	16 17 18
	(3) Section 48(5A) to (5C) applies to a previously settled right of action as if—	19 20
	(a) a reference to a previously settled right of action were a reference to a previously settled right of action as defined under this section; and	21 22 23 24
	(b) a reference to the commencement were a reference to the commencement of this section.	25 26 27
	(4) In this section—	28
	<i>previously barred right of action</i> means a right of action for a relevant action that was not maintainable immediately before the commencement because a limitation period applying to the right of action had expired.	29 30 31 32 33
	<i>previously settled right of action</i> means a right of	34

action for a relevant action that was settled before 1
the commencement but after a limitation period 2
applying to the right of action had expired. 3

relevant action means an action for damages that 4
section 11A— 5

(a) applies to on the commencement; but 6

(b) did not apply to immediately before the 7
commencement. 8

Part 4 Amendment of Personal Injuries Proceedings Act 2002 9 10

Clause 8 Act amended 11

This part amends the *Personal Injuries Proceedings Act 2002*. 12

Clause 9 Amendment of s 9 (Notice of a claim) 13

(1) Section 9(9C), ‘the sexual abuse of the person when the 14
person was a child’— 15

omit, insert— 16

child abuse 17

(2) Section 9(10)— 18

insert— 19

child abuse means any of the following 20
perpetrated in relation to an individual while the 21
individual is a child— 22

(a) sexual abuse; 23

(b) serious physical abuse; 24

(c) any other abuse perpetrated in connection 25
with sexual abuse or serious physical abuse 26
of the child, whether or not the other abuse 27
was perpetrated by the person who 28

[s 9]

perpetrated the sexual abuse or serious	1
physical abuse.	2