

Serial 16
Limitation Amendment (Child Abuse) Bill 2017
Ms Fyles

A Bill for an Act to amend the *Limitation Act*

NORTHERN TERRITORY OF AUSTRALIA

LIMITATION AMENDMENT (CHILD ABUSE) ACT 2017

Act No. [] of 2017

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2017

An Act to amend the *Limitation Act*

[Assented to [] 2017]
[Second reading [] 2017]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Limitation Amendment (Child Abuse) Act 2017*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Act amended

This Act amends the *Limitation Act*.

4 Section 5A inserted

After section 5

insert

5A No limitation period for child abuse actions

- (1) This section applies in relation to an action for damages for personal injury to a person arising from child abuse of the person.

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- (2) Despite any other provision of this Act, an action mentioned in subsection (1) may be brought at any time and is not subject to any limitation period under this Act.
- (3) This section applies whether the claim for damages is brought in tort, in contract, under statute or otherwise.
- (4) This section extends to the following causes of action:
- (a) a cause of action that arises under the *Compensation (Fatal Injuries) Act*;
 - (b) a cause of action that survives on the death of a person for the benefit of the person's estate under the *Law Reform (Miscellaneous Provisions) Act*.
- (5) 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 subsection (5)

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.

- (6) In this section:
- child abuse** means any of the following perpetrated against a person when the person is (or was) under 18 years of age:
- (a) sexual abuse;
 - (b) serious physical abuse;
 - (c) psychological abuse that arises from abuse mentioned in paragraph (a) or (b).

5 Section 9 amended

Section 9(1)

omit

section 24

insert

sections 5A and 24

6 Part V heading amended

Part V, heading

omit

for Defamation Act 2006

7 Part V, Division 1 heading inserted

Before section 52, in Part V

insert

Division 1 Transitional matters for Defamation Act 2006

8 Part V, Division 2 inserted

After section 52

insert

**Division 2 Transitional matters for Limitation Amendment
(Child Abuse) Act 2017**

53 Interpretation

(1) In this Division:

commencement means the commencement of the *Limitation Amendment (Child Abuse) Act 2017*.

legal professional negligence extends to the breach of any duty of professional care owed by an Australian legal practitioner, whether arising in tort, contract or otherwise.

limitation period means a limitation period fixed by an Act repealed by this Act or fixed by or under a provision of this Act (including a repealed provision of this Act).

- (2) In this Division, a reference to a judgment given includes a judgment entered, and also extends to an agreement entered into in relation to settlement of a matter of damages for personal injury to a person arising from child abuse of the person.

54 Pre-existing judgments

- (1) An action may be brought after the commencement on a cause of action even if, before the commencement, a judgment on the cause of action has been given on the ground that a limitation period applying to the cause of action had expired.
- (2) An action may be brought after the commencement on a cause of action even if, before the commencement, a judgment in respect of legal professional negligence has been given on the ground that a limitation period applying to the cause of action had expired.
- (3) However, an action cannot be brought after the commencement on a cause of action where, before the commencement, a court had given judgment in final determination of a matter on grounds other than that a limitation period applying to the cause of action had expired.
- (4) An action brought after the commencement, as mentioned in subsections (1) and (2), may be brought as if the action in which the previous judgment was given had not itself been commenced.
- (5) If an action is brought on or after the commencement, the court hearing the action may, if it considers it is just and reasonable to do so, do any or all of the following:
- (a) set aside any judgment as mentioned in subsection (1) or (2) 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 such a judgment;
 - (c) take into account any amounts paid or payable by way of costs in connection with any action in which such a judgment was given.
- (6) The Supreme Court may, on application, exercise the power under this section to set aside a judgment even though it is not hearing the action.

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

55 Proceedings begun before the commencement

- (1) This section applies in relation to an action brought before the commencement where:
- (a) before the commencement, a limitation period applied to the cause of action; and
 - (b) judgment had, at the commencement, not been given in the action.
- (2) Section 5A applies in relation to the action to remove the previously applying limitation period.

9 Expiry of Act

This Act expires on the day after it commences.