

Serial 48
Personal Injuries (Liabilities and Damages) Amendment Bill 2022
Ms Uibo

A Bill for an Act to amend the *Personal Injuries (Liabilities and Damages)*
Act 2003

NORTHERN TERRITORY OF AUSTRALIA

PERSONAL INJURIES (LIABILITIES AND DAMAGES) AMENDMENT
ACT 2022

Act No. [] of 2022

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2022

An Act to amend the *Personal Injuries (Liabilities and Damages) Act 2003*

[Assented to [] 2022]
[Introduced [] 2022]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Personal Injuries (Liabilities and Damages) Amendment Act 2022*.

2 Commencement

- (1) This Act, except Parts 3, 4 and 5, commences on the day after the day on which the Administrator's assent to this Act is declared.
- (2) Part 3 commences on 30 September 2022.
- (3) Subject to subsection (4), Parts 4 and 5 commence on the day fixed by the Administrator by *Gazette* notice.
- (4) If a provision of Part 4 or 5 does not commence before 22 March 2024, it commences on that day.

3 Act amended

This Act amends the *Personal Injuries (Liabilities and Damages) Act 2003*.

Part 2 **Amendments to Personal Injuries (Liabilities and Damages) Act 2003 related to damages awarded to offenders**

4 **Section 3 amended (Definitions)**

(1) Section 3, heading

omit

Definitions

insert

Interpretation

(2) Section 3, before "In this Act"

insert

(1)

(3) Section 3

insert

child means an individual who is under the age of 18 years.

child abuse means any of the following perpetrated against a child:

- (a) sexual abuse;
- (b) serious physical abuse;
- (c) psychological abuse that arises from abuse specified in paragraph (a) or (b) or both.

civil wrong, for Part 4A, see section 32A.

civil wrong settlement, for Part 4A, see section 32A.

offender, for Part 4A, see section 32A.

public entity defendant, for Part 4A, see section 32C.

Public Trustee means the Public Trustee appointed under section 8 of the *Public Trustee Act 1979*.

victim claim, for Part 4A, see section 32A.

(4) Section 3, at the end

insert

Note for subsection (1)

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

(2) For subsection (1), definition **child abuse**, paragraph (b), conduct that was lawful at the time it occurred is not child abuse.

5 New Part 4A inserted

After section 32

insert

Part 4A Damages awarded to offenders

Division 1 Preliminary matters

32A Definitions

In this Part:

civil wrong means an act or omission that gives rise to a claim by an individual, other than a claim for damages for a personal injury.

civil wrong settlement means an agreement between an individual and one or more public entity defendants requiring the public entity defendant to make a payment of monies to the individual for a civil wrong sustained when the individual was an offender.

offender means an individual to which section 32B applies.

public entity defendant, see section 32C.

victim claim means a claim by an individual for personal injury against an offender that arises out of an injury to the individual or death of the individual caused by the offender and the conduct causing the injury or death, on the balance of probabilities, constitutes an offence.

32B Application of Part

- (1) This Part applies to an award of damages or payment of monies in accordance with a civil wrong settlement to an individual for a civil wrong the individual sustains when the individual is:
 - (a) an offender within the meaning of section 5 of the *Correctional Services Act 2014*; or
 - (b) a detainee as defined in section 5(1) of the *Youth Justice Act 2005*.
- (2) Despite subsection (1) and without limiting section 4(3)(b), this Part does not apply to any claim for compensation as defined in section 3(1) of the *Return to Work Act 1986*:
 - (a) arising out of an injury, within the meaning of section 3A of that Act, sustained by an offender, or a death of an offender; and
 - (b) the offender was a worker, within the meaning of section 3B of that Act, at the time of the injury or death.

Note for subsection (2)

Section 3B(12) of the Return to Work Act 1986 provides for the circumstances when a person found guilty of an offence who is performing work under a court order is to be treated as a worker.

- (3) This Part applies to a civil liability incurred by a public entity defendant because of a civil wrong sustained by an offender that was caused by a person the public entity defendant is vicariously liable for.

32C Public entity defendant

A **public entity defendant** is any of the following:

- (a) the Crown in right of the Territory;
- (b) an Agency;
- (c) a public sector employee;
- (d) a health service within the meaning of the *Health Service Act 2021*;
- (e) a Government owned corporation within the meaning of the *Government Owned Corporations Act 2001*;

- (f) an entity that is controlled, within the meaning of the *Corporations Act 2001* (Cth), by an Agency or otherwise by the Territory;
- (g) a person or entity that has functions or powers under an Act or Regulations and is performing those functions or exercising those powers;
- (h) a person or entity that is performing any function for or on behalf of an entity specified in paragraph (a), (b), (d), (e), (f) or (g).

32D No effect on claim arising from child abuse

Nothing in this Part affects a claim for a civil wrong arising from child abuse perpetrated against an offender.

Note for section 32D

*See section 32A, definition **civil wrong**. A civil wrong is a claim other than a personal injury claim.*

Division 2 Limit to damages

32E Limit to liabilities for civil wrongs

- (1) Subject to subsection (2), the maximum amount of damages a court may award for a civil wrong to which this Part applies is the following amount for each civil wrong sustained by an offender:
 - (a) for a civil wrong giving rise to an action for assault:
 - (i) in the case of assault constituted by strip searching the offender without lawful reason – 5 000 monetary units; and
 - (ii) in the case of assault constituted by direct or indirect application of force to an offender without the offender's consent or with the offender's consent if the consent is obtained by force, menace, fear of harm, false and fraudulent representations as to the nature of the act or impersonation – 5 000 monetary units; and
 - (iii) in any other case of assault – 2 500 monetary units;
 - (b) for a civil wrong giving rise to an action for false imprisonment:
 - (i) in the case of false imprisonment of the offender for a period of 1 day or less – 2 000 monetary units; and

- (ii) in the case of false imprisonment of the offender for a period of more than 1 day and less than 30 days – 1000 monetary units for each day during which the false imprisonment continues; and
 - (iii) in the case of false imprisonment of the offender for a period of 30 days or more and less than 60 days – 500 monetary units for each day during which the false imprisonment continues; and
 - (iv) in the case of false imprisonment of the offender for a period of 60 days or more – 250 monetary units for each day during which the false imprisonment continues.
- (2) The maximum amount of damages a court may award to an offender for a civil wrong or series of related civil wrongs to which this Part applies is 15 000 monetary units.
- (3) To avoid doubt, this section does not apply to an individual in respect of a civil wrong if the individual sustains the civil wrong after the individual ceases to be an offender.
- (4) In this section:

series of related civil wrongs means 2 or more civil wrongs committed against an offender that:

- (a) occur at approximately the same time; or
- (b) occur over a period of time and are committed by the same person or group of persons.

32F No award of aggravated or exemplary damages

A court must not award aggravated damages or exemplary damages in respect of a civil wrong to which this Part applies.

Division 3 Application of damages to certain payments**32G Public entity defendant may withhold damages for specified payments**

- (1) A public entity defendant ordered by a court to pay damages to an offender for a civil wrong to which this Part applies may withhold an amount from the damages that the public entity defendant is required to pay to the offender for the satisfaction of the following:
 - (a) an amount the Territory may recover in accordance with an order made under section 56 of the *Victims of Crime Assistance Act 2006*;
 - (b) an outstanding fine imposed by a court under Part 3 of the *Fines and Penalties (Recovery) Act 2001* and enforcement costs under that Act for the fine;
 - (c) a penalty under an infringement notice, within the meaning of the *Fines and Penalties (Recovery) Act 2001*, issued under a law that was not paid within the time specified in the infringement notice, or in accordance with the requirements of that Act for the recovery of the penalty, and enforcement costs under that Act for the penalty.

- (2) Despite anything to the contrary in a civil wrong settlement, a public entity defendant paying monies under the civil wrong settlement may withhold an amount from the monies that the public entity defendant is required to pay to the offender for the satisfaction of the following:
 - (a) an amount the Territory may recover in accordance with an order made under section 56 of the *Victims of Crime Assistance Act 2006*;
 - (b) an outstanding fine imposed by a court under Part 3 of the *Fines and Penalties (Recovery) Act 2001* and enforcement costs under that Act for the fine;
 - (c) a penalty under an infringement notice, within the meaning of the *Fines and Penalties (Recovery) Act 2001*, issued under a law that was not paid within the time specified in the infringement notice, or in accordance with the requirements of that Act for the recovery of the penalty, and enforcement costs under that Act for the penalty.

- (3) To avoid doubt, an amount, outstanding fine or penalty specified in subsection (1) or (2) does not include any amount, outstanding fine or penalty that is cancelled, withdrawn, annulled or in any other way made no longer recoverable by the Territory.

6 Long title amended

Long title, after "**payments of damages for personal injuries,**"

insert

to introduce a scheme limiting payments to certain offenders,

**Part 3 Miscellaneous amendments to Personal
Injuries (Liabilities and Damages) Act 2003**

7 Section 27 amended (Damages for non-pecuniary loss)

- (1) Section 27(1)
omit, insert
- (1) The maximum amount of damages a court may award for non-pecuniary loss is 680 000 monetary units.
- (2) Section 27(3) and (4)
omit, insert
- (3) When awarding damages for non-pecuniary loss, a court must award the following amount:
- (a) if the court determines the degree of permanent impairment to be 85% or more of the whole person – 680 000 monetary units;
 - (b) if the court determines the degree of permanent impairment to be not less than 15% and not more than 84% of the whole person – the relevant percentage of 680 000 monetary units;

- (c) if the court determines the degree of permanent impairment to be a percentage of the whole person specified in column 1 of the Table – the amount specified in column 2 opposite the relevant percentage.

TABLE

Column 1	Column 2
Degree of permanent impairment as percentage of whole person	Amount of damages to be awarded
not less than 5% but less than 10%	13 600 monetary units
10%	20 400 monetary units
11%	27 200 monetary units
12%	40 800 monetary units
13%	54 400 monetary units
14%	81 600 monetary units

8 Section 28 repealed (Declaration of maximum amount of damages for non-pecuniary loss)

Section 28

repeal

Part 4 Amendments to Personal Injuries (Liabilities and Damages) Act 2003 related to institutional liability for child abuse

9 Section 3 amended (Interpretation)

Section 3(1)

insert

associated trust, for Part 3A, see section 17K(4).

contract includes subcontract and any further contract made under the subcontract.

delegation includes subdelegation and any further delegation made under the subdelegation.

individual associated with an institution, for Part 3A, see section 17C.

management member, for Part 3A, see section 17A.

proper respondent, for Part 3A, see section 17A.

unincorporated institution, for Part 3A, see section 17A.

10 New Part 3A inserted

After section 17

insert

Part 3A Institutional liability for child abuse

Division 1 Preliminary matters

17A Definitions

In this Part:

management member of an institution means:

- (a) a member of any management committee of the institution; or
- (b) if the institution does not have a management committee – a person who is concerned with, or takes part in, the management of the institution, regardless of the person's title or position.

proper respondent means an institution appointed as the proper respondent in a proceeding by a court under section 17J(1) or 17L(1).

unincorporated institution means an institution that is not incorporated.

Example for definition unincorporated institution

An unincorporated association providing community services that has a name, ABN, membership and constitutional arrangement for meetings of members and appointment of officers.

17B Application of Part

- (1) This Part applies to the following institutions while exercising care, supervision or authority over a child:
 - (a) a body;
 - (b) an entity;
 - (c) a body corporate;
 - (d) a group of persons;
 - (e) an association;
 - (f) an organisation.
- (2) An institution does not include a family or an individual.
- (3) This Part applies to an institution whether it is incorporated or not incorporated.
- (4) For this Part, it is not necessary for an institution to have:
 - (a) a written constitution or fixed membership; or
 - (b) any prescribed attribute.
- (5) Despite section 4(2), this Division and Divisions 4, 5 and 6 apply in relation to a cause of action whether it arose before or after the commencement of this Part.

17C Meaning of *individual associated with an institution*

- (1) An *individual associated with an institution* includes:
 - (a) an office holder, officer, owner, trustee, employee, volunteer or contractor of the institution; and
 - (b) if the institution is a religious institution – a religious leader or a member of the religious institution; and
 - (c) if the institution by any arrangement, contract or delegation made another institution responsible for exercising care, supervision or authority over a child – an individual specified in paragraph (a) or (b) in relation to that other institution; and
 - (d) if the institution by any arrangement, contract or delegation made an individual responsible for exercising care, supervision or authority over a child – that individual; and

- (e) any other prescribed individual.
- (2) Despite subsection (1), an individual is not an individual associated with an institution solely because the institution wholly or partly funds or regulates another institution that the individual is associated with.

Division 2 Liability of institutions

17D Duty to prevent child abuse

- (1) An institution exercising care, supervision or authority over a child has a duty to take all reasonable steps to prevent child abuse of the child by any individual associated with the institution while the child is under the care, supervision or authority of the institution.
- (2) An institution exercising care, supervision or authority over a child has a duty to take all reasonable steps to prevent child abuse of the child by another child in the care or under the supervision or authority of the institution while the children are under the care, supervision or authority of the institution.

17E Liability of institutions for child abuse by individual associated with institution

- (1) This section applies to a proceeding against an institution for personal injury to an individual arising from child abuse of the individual.
- (2) If the plaintiff proves on the balance of probabilities an individual associated with the institution perpetrated the child abuse while the individual abused was under the care, supervision or authority of the institution, the institution is taken to have breached the duty of care under section 17D(1), unless the institution proves on the balance of probabilities that it took all reasonable steps to prevent the child abuse.
- (3) In determining whether an institution took all reasonable steps to prevent child abuse, a court may take into account the following:
 - (a) the nature of the institution;
 - (b) the size and organisational capacity of the institution;
 - (c) the resources reasonably available to the institution to prevent child abuse;
 - (d) the relationship between the institution and the child;

- (e) the role in the institution of the individual associated with the institution who perpetrated the child abuse;
 - (f) whether the institution placed the individual associated with the institution who perpetrated the child abuse in a position or situation where that individual had:
 - (i) authority, power or control over the child; or
 - (ii) the trust of the child; or
 - (iii) the ability to achieve intimacy with the child;
 - (g) whether the institution delegated the care, supervision or authority over the child to another institution or person;
 - (h) whether the institution knew or ought to have known of the child abuse by the individual associated with the institution;
 - (i) the level of control the institution had over the individual associated with the institution who perpetrated the child abuse at the time the child abuse occurred;
 - (j) whether the institution complied with any standards applicable to child safety at the time the child abuse occurred;
 - (k) any other matter prescribed by regulation;
 - (l) any other matter the court considers relevant.
- (4) In a proceeding against 2 or more institutions subsection (2) applies to each institution equally.
- (5) If a court awards damages to an individual in respect of liability of an institution that is established in accordance with this section, the court must take into account any award of damages to the individual in respect of liability of the institution established in accordance with section 17G in determining the amount of damages the court awards for liability established under this section.

17F Liability of institutions for child abuse by another child under care, supervision or authority of institution

- (1) This section applies to a proceeding against an institution for personal injury to an individual arising from child abuse of the individual.
- (2) If the plaintiff proves on the balance of probabilities that another child in the care or under the supervision or authority of the

institution perpetrated the child abuse while the individual abused was under the care, supervision or authority of the institution, the institution is taken to have breached the duty of care under section 17D(2), unless the institution proves on the balance of probabilities that it took all reasonable steps to prevent the child abuse.

- (3) In determining whether an institution took all reasonable steps to prevent child abuse by another child (the **second child**) in the care or under the supervision or authority of the institution, a court may take into account the following:
- (a) the nature of the institution;
 - (b) the size and organisational capacity of the institution;
 - (c) the resources reasonably available to the institution to prevent child abuse;
 - (d) the relationship between the institution and the child;
 - (e) whether the institution delegated the care, supervision or authority over the child to another institution or person;
 - (f) whether the institution knew or ought to have known of the perpetration of child abuse by the second child;
 - (g) the level of control the institution had over the second child at the time the child abuse occurred;
 - (h) whether the institution took steps to identify and manage the risk of a child who is subject to child abuse, as a result of that child abuse, abusing other children in the care or under the supervision or authority of the institution;
 - (i) whether the institution complied with any standards applicable to child safety at the time the child abuse occurred;
 - (j) any other matter prescribed by regulation;
 - (k) any other matter the court considers relevant.
- (4) In a proceeding against 2 or more institutions subsection (2) applies to each institution equally.
- (5) In a proceeding referred to in subsection (2):
- (a) the second child that perpetrated the child abuse must not be named in any pleadings; and

- (b) if the second child that perpetrated the child abuse gives evidence – the court must be closed to the public while the evidence is given.
- (6) Despite subsection (5)(b), the court may grant leave for a person to attend the proceedings.
- (7) If a court awards damages to an individual in respect of liability of an institution that is established in accordance with this section, the court must take into account any award of damages to the individual in respect of liability of the institution established in accordance with section 17G in determining the amount of damages the court awards for liability established under this section.

Division 3 Vicarious liability of institutions for child abuse

17G Vicarious liability of institutions for child abuse

- (1) An institution is vicariously liable for personal injury arising from child abuse perpetrated by an employee of the institution or an individual akin to an employee if:
 - (a) the institution places the employee or individual akin to an employee in a position or situation that gives occasion for child abuse of the child; and
 - (b) the employee or individual akin to an employee uses that occasion to perpetrate child abuse of the child.
- (2) In determining whether the institution placed the employee or individual akin to an employee in a position or situation that gives occasion for the child abuse of the child, a court must take into account whether the institution placed the employee or individual akin to an employee in a position or situation where the employee or individual akin to an employee has:
 - (a) authority, power or control over the child; or
 - (b) the trust of the child; or
 - (c) the ability to achieve intimacy with the child.
- (3) This section does not affect, and is in addition to, the law of the Territory with respect to vicarious liability.
- (4) If a court awards damages to an individual in respect of liability of an institution that is established in accordance with this section, the court must take into account any award of damages to the

individual in respect of liability of the institution established in accordance with section 17E or 17F in determining the amount of damages the court awards for liability established under this section.

(5) In this section:

individual akin to an employee, in relation to an institution, is an individual who:

- (a) carries out an activity (whether a series of activities or a single act) that enables the institution to perform its functions, except for an activity:
 - (i) in accordance with a placement arrangement under section 78 of the *Care and Protection of Children Act 2007* in respect of a child; or
 - (ii) carried out under a contract for services by an individual or corporation that is independent from the institution; and
- (b) carries out that activity with the intention to benefit the institution.

Division 4 Nomination of proper respondent

17H Nomination of proper respondent

- (1) An institution that is a respondent in a proceeding for personal injury to an individual arising from child abuse of the individual may nominate another person or entity as the proper respondent in the proceeding.
- (2) A person or entity may be nominated as the proper respondent if the person or entity:
 - (a) has the financial capacity to pay the amount of damages that could reasonably be expected to be awarded if the proceeding were successful; and
 - (b) has the financial capacity to pay the amount of legal costs that could reasonably be expected to be awarded against the person or entity if the proceeding were successful; and
 - (c) consents to the nomination as the proper respondent; and
 - (d) is capable of being sued.

17J Appointment of nominated proper respondent

- (1) If a court is satisfied of the matters specified in section 17H(2), the court must appoint the nominated person or entity as the proper respondent in the proceeding.
- (2) A proper respondent appointed under subsection (1):
 - (a) assumes any liability of the institution against which the claim is brought for the personal injury of the claimant arising from child abuse of the claimant; and
 - (b) is joined as respondent in the proceeding; and
 - (c) for the purposes of conducting the proceeding is:
 - (i) taken to be the institution against which the claim is brought; and
 - (ii) responsible for conducting the proceeding as respondent; and
 - (iii) taken to have done any act by the institution against which the claim is brought; and
 - (d) has any duty or obligation that the institution against which the claim is brought has in relation to the proceeding; and
 - (e) without limiting paragraph (a), assumes any liability of the institution against which the claim is brought that arises from the proceeding (including for costs, charges and expenses); and
 - (f) may rely on any defence or immunity available to the institution against which the claim is brought in respect of the claim; and
 - (g) has any right the institution against which the claim is brought has to be indemnified in respect of the claim.
- (3) Despite subsection (2)(c), nothing in this section prevents the court making any order, direction or finding solely in respect of the institution against which the claim is brought.

17K Application to appoint institution's proper respondent

- (1) A claimant in a proceeding against an institution for personal injury of the claimant arising from child abuse of the claimant may apply to the court for the court to appoint an associated trust of the institution as the proper respondent in the proceeding if:
 - (a) the institution:
 - (i) did not nominate another person or entity as the proper respondent in the proceeding; or
 - (ii) nominated another person or entity as the proper respondent in the proceeding and that person or entity was not appointed by the court as the proper respondent in the proceeding; and
 - (b) at least 120 days from the day the proceeding was commenced have passed.
- (2) An associated trust may be appointed as the proper respondent if the associated trust:
 - (a) has the financial capacity to pay the amount of damages that could reasonably be expected to be awarded if the proceeding were successful; and
 - (b) has the financial capacity to pay the amount of legal costs that could reasonably be expected to be awarded against the person or entity if the proceeding were successful; and
 - (c) is capable of being sued.
- (3) Within 28 days from the day the application is made under subsection (1), the institution must identify for the court all associated trusts of the institution (if any) and provide information regarding the financial capacity of those associated trusts.
- (4) A trust is an **associated trust** of an institution in any of the following circumstances:
 - (a) the institution has, either directly or indirectly, the power to control the application of the income, or the distribution of the property, of the trust;
 - (b) the institution has the power to obtain the beneficial enjoyment of the property or income of the trust, with or without the consent of another entity;

- (c) the institution has, either directly or indirectly, the power to appoint or remove the trustee or trustees of the trust;
- (d) the institution has, either directly or indirectly, the power to appoint or remove beneficiaries of the trust;
- (e) the trustee of the trust is accustomed or under an obligation, whether formal or informal, to act according to the directions, instructions or wishes of the institution;
- (f) the institution has, either directly or indirectly, the power to determine the outcome of any other decisions about the trust's operations;
- (g) a member of the institution or a management member of the institution has, under the trust deed applicable to the trust, a power of a kind referred to in paragraph (a), (b), (c), (d) or (f).

17L Appointment of proper respondent on application

- (1) If a court is satisfied of the matters specified in section 17K(2), the court must appoint the associated trust as the proper respondent in the proceeding.
- (2) A proper respondent appointed under subsection (1):
 - (a) assumes any liability of the institution against which the claim is brought for the personal injury of the claimant arising from child abuse of the claimant; and
 - (b) is joined as respondent in the proceeding; and
 - (c) for the purposes of conducting the proceeding is:
 - (i) taken to be the institution against which the claim is brought; and
 - (ii) responsible for conducting the proceeding as respondent; and
 - (iii) taken to have done any act by the institution against which the claim is brought; and
 - (d) has any duty or obligation that the institution against which the claim is brought has in relation to the proceeding; and
 - (e) without limiting paragraph (a), assumes any liability of the institution against which the claim is brought that arises from the proceeding (including for costs, charges and expenses); and

- (f) may rely on any defence or immunity available to the institution against which the claim is brought in respect of the claim; and
 - (g) has any right the institution against which the claim is brought has to be indemnified in respect of the claim.
- (3) Despite subsection (2)(c), nothing in this section prevents the court making any order, direction or finding solely in respect of the institution against which the claim is brought.

17M Decisions available to trustees when associated trust appointed as proper respondent

- (1) Despite any other law of the Territory or other instrument (including any trust deed), the trustee of a trust that is a proper respondent or is to be appointed as a proper respondent may do any of the following in a proceeding, or as a result of a proceeding, under this Part:
- (a) consent to a nomination as a proper respondent;
 - (b) provide any information in relation to the trust that is relevant to the operation of this Division;
 - (c) apply any trust property to satisfy any liability incurred in the proceeding, or as a result of the proceeding, because of being appointed as a proper respondent under this Part.
- (2) The satisfaction of any liability of a trust that is incurred in the proceeding, or as a result of the proceeding, because of being appointed as a proper respondent under this Part is an expense for which the trustee may be indemnified out of the trust property, irrespective of any limitation on any right of indemnity a trustee may have.
- (3) Any liability of a trust that is a proper respondent is limited to the value of the trust property.
- (4) A trustee of a trust that is a proper respondent is not liable for a breach of trust solely because of doing anything authorised by this section.

17N Corporations Act 2001 (Cth) displacement provision

Section 17M is declared to be a Corporations legislation displacement provision for the purpose of section 5G of the *Corporations Act 2001* (Cth) in relation to the Corporations legislation.

Note for section 17N

Section 5G of the Corporations Act 2001 (Cth) allows a provision of a State or Territory Act to displace the operation of the provisions of the Corporations legislation of the Commonwealth if it is declared a Corporations legislation displacement provision. The declaration allows a State or Territory provision that would otherwise be inconsistent to have effect to the extent of the inconsistency.

Division 5 Continuity of institutions**17P Successor institutions**

- (1) This section applies to a claim that:
 - (a) an individual has against an institution, or had against an institution that no longer exists, for personal injury to the individual arising from child abuse of the individual; and
 - (b) the institution (the **former institution**) was succeeded by another institution (the **successor institution**).
- (2) A successor institution assumes the liability of the former institution for the claim if the successor institution is substantially the same as the former institution.
- (3) Without limiting subsection (2), a successor institution is substantially the same as the former institution in the following circumstances:
 - (a) the former institution or part of the former institution merged into the successor institution;
 - (b) the former institution or part of the former institution merged with one or more other institutions to form the successor institution;
 - (c) the successor institution is the remainder of the former institution after the former institution ceased to include another part of the former institution;
 - (d) if there is more than one other institution interposed in the relationship between the former institution and the successor institution by any of the circumstances of succession specified

in paragraphs (a), (b) and (c) – at least one of the circumstances specified in any of those paragraphs applies to each interposing institution and the institution it succeeds.

- (4) For the purposes of subsection (2), the following are not relevant to whether an institution is a successor institution to a former institution:
- (a) whether the name of the former institution changed;
 - (b) whether the organisational structure of the former institution changed;
 - (c) whether the former institution was not incorporated and became incorporated;
 - (d) whether the geographic area where members of the former institution carried out the purposes or work of the former institution changed.

Division 6 Proceedings against unincorporated institutions

17Q Proceedings against unincorporated institutions

- (1) Without limiting Division 4, a proceeding for personal injury to an individual arising from child abuse of the individual may be commenced or continued against an unincorporated institution in the name of the institution as if the institution were a legal person capable of being sued.
- (2) For the purposes of this Part, a function that may be exercised by an unincorporated institution may be exercised by a management member of the institution.
- (3) A court may make any orders, directions and findings in relation to an unincorporated institution against which a proceeding is commenced under this section as if the unincorporated association were a person.
- (4) A court may make any orders and directions the court considers necessary for the purposes of this section, including directing any management member of an unincorporated institution to exercise a specified function of the institution.

17R Liability of office holder of unincorporated institution

- (1) This section applies to a claimant if:
 - (a) the claimant was subject to child abuse by an individual associated with an institution while the claimant was a child under the care, supervision or authority of the institution; and
 - (b) the claimant has or had an accrued cause of action for personal injury arising from the child abuse against a person who held office as a management member of the institution at the time the cause of action accrued (the **former office holder**); and
 - (c) at the time of the accrual of the cause of action against the former office holder the institution was not incorporated; and
 - (d) the institution is not incorporated; and
 - (e) the former office holder no longer holds office as a management member of the institution; and
 - (f) the claimant would be able to maintain an action on the cause of action if the former office holder continued to hold office.
- (2) A proceeding for the claimant's cause of action for personal injury arising from the child abuse of the claimant by the individual associated with the institution may be commenced or continued against a current office holder in the name of the office of the former office holder.
- (3) In a proceeding commenced or continued under subsection (2):
 - (a) any liability of a former office holder of the institution in relation to the child abuse of the child is taken to be liability of a current office holder; and
 - (b) any act of a former office holder of the institution in relation to the child abuse of the child is taken to be an act of the current office holder; and
 - (c) any duty or obligation of a former office holder of the institution in respect of the child abuse of the child is taken to be a duty or obligation of the current office holder, exercised by the current officer holder at all times; and
 - (d) any duty or obligation that a former office holder of the institution would have in relation to the proceeding, if it were commenced at the time of the former office holder holding

office, is taken to be a duty or obligation (as the case requires) of the current office holder, exercised by the current officer holder at all times during proceedings; and

- (e) any right of a former office holder of the institution to be indemnified in respect of damages extends to the current office holder; and
 - (f) the current office holder may rely on any defence or immunity that would have been available to a former office holder of the institution in a proceeding commenced at the time of the former office holder holding office.
- (4) If an institution does not have an equivalent office to the office of the former office holder, the head of the institution (however described) is taken to be the former office holder for the purposes of this section and in this section any reference to the former office holder includes the head of the institution.
- (5) In this section:

current office holder, in relation to an institution, means a person who holds office as a management member of the institution.

Division 7 Court rules

17S Court rules

- (1) Without limiting section 71 of the *Supreme Court Act 1979*, the Supreme Court may make rules and practice directions in respect of any of the following:
- (a) the practice and procedure of the Supreme Court under this Part;
 - (b) any other matter under this Part.
- (2) Without limiting section 48 of the *Local Court Act 2015*, the Local Court may make rules and practice directions in respect of any of the following:
- (a) the practice and procedure of the Local Court under this Part;
 - (b) any other matter under this Part.

11 Long title amended

Long title, after "**limiting payments to certain offenders**,"

insert

to clarify liability of institutions for child abuse,

**Part 5 Further amendments to Personal Injuries
(Liabilities and Damages) Act 2003 related to
damages awarded to offenders**

12 Part 4A, Divisions 4 and 5 inserted

Before Part 5, heading

insert

Division 4 Damages made available for victim payments

32H Offender damages to be held on trust

- (1) Damages that are awarded by a court to an offender for a civil wrong to which this Part applies or monies payable to an offender under a civil wrong settlement must be paid to the Public Trustee.
- (2) Damages or monies paid to the Public Trustee under subsection (1) are held on trust by the Public Trustee for a period beginning on the day the court awards the damages or the civil wrong settlement is agreed to (as the case requires) and ending on the later of:
 - (a) the day 12 months after the day the court awards the damages or the civil wrong settlement is agreed to; or
 - (b) the day a court finally determines any victim claim that is commenced against the offender:
 - (i) before the day the court awards the damages or the civil wrong settlement is agreed to; or
 - (ii) within 12 months after the day the court awards the damages or the civil wrong settlement is agreed to.
- (3) The Public Trustee holds the amount paid under subsection (1) for the satisfaction of an order under section 32K(2).
- (4) This section does not apply to an amount of damages or monies withheld by a public entity defendant under section 32G.

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- (5) Despite subsection (1), this section does not affect any obligation of a public entity defendant under a law of the Territory or the Commonwealth to pay an amount to a person other than the offender.

32J Notification of money held on trust

- (1) As soon as practicable after the day a court orders a public entity defendant to pay damages to an offender for a civil wrong to which this Part applies or a civil wrong settlement is agreed to by a public entity defendant and an offender, the public entity defendant:
- (a) must notify, in writing, each victim (if any) of the offender of the money held on trust in accordance with section 32H; and
 - (b) may give public notice of the money held on trust in accordance with section 32H.
- (2) The public entity defendant may determine the manner in which the public notice under subsection (1)(b) is to be given.
- (3) A notification under subsection (1) must include the following:
- (a) the name of the offender;
 - (b) a statement that damages awarded by a court to the offender or monies to be paid to the offender under a civil wrong settlement are held on trust by the Public Trustee;
 - (c) the period during which damages or monies are held on trust;
 - (d) a statement that during the period the damages or monies are held on trust the court may make an order under section 32K(2) for damages to the victim to be satisfied out of damages or monies held on trust during that period.
- (4) A victim who is notified under subsection (1)(a) may, at any time during the period the damages or monies are held on trust, request the public entity defendant to provide:
- (a) details of the amount of damages or monies held on trust and the offence for which the offender has been found guilty; and
 - (b) the number of other victims notified under this section and whether any orders to satisfy damages out of the damages or monies held on trust were made under section 32K(2).

- (5) On a request under subsection (4), the public entity defendant must provide to the victim, within a period of 28 days from the request, the details requested.
- (6) For the purposes of notifying any victims of an offender of the damages or monies held on trust:
 - (a) the Commissioner of Police may provide to a public entity defendant information identifying individuals who may be victims; and
 - (b) if a public entity defendant is party to an agreement that restricts disclosure of any of the information specified in subsection (3) – the public entity defendant may disclose the information despite anything to the contrary in the agreement.
- (7) In this section:

victim, of an offender, is an individual who appears based on information reasonably available to the public entity defendant (including information provided under subsection (6)(a)) to have a victim claim against the offender.

32K Offender damages available for victim claims

- (1) This section applies to a victim claim if:
 - (a) an individual:
 - (i) is successful in a victim claim against an offender; or
 - (ii) makes an agreement to settle a victim claim against an offender; and
 - (b) damages awarded or monies to be paid to the offender in respect of a civil wrong are held on trust in accordance with section 32H.
- (2) If an individual is successful in a victim claim against an offender or settles a victim claim against an offender, the court may order the damages for the victim claim or monies to be paid under the settlement to be satisfied out of the amount held on trust in accordance with section 32H and for that purpose order an amount not exceeding the amount held on trust to be paid to the individual.

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- (3) An order under subsection (2) must not be made until all of the following are finally determined:
- (a) proceedings against the offender for a victim claim commenced before the period specified in section 32H(2);
 - (b) proceedings against the offender for a victim claim commenced during the period specified in section 32H(2).
- (4) In making an order under subsection (2), the court must ensure that the amount paid to the individual is fair and reasonable having regard to:
- (a) whether there are any proceedings against the offender for victim claims; and
 - (b) the amount of damages that is likely to be awarded in any other victim claim if the other victim claim is successful.
- (5) If the court orders an amount to be paid under subsection (2), the Public Trustee must release the amount specified in the order from the amount held on trust in accordance with section 32H.
- (6) The court must decide whether or not to make an order under subsection (2) without conducting a hearing, unless the court is satisfied that a hearing is necessary in the interest of justice.

32L Interest of money held on trust

- (1) Interest received by the Public Trustee for the investment of money held on trust in accordance with section 32H in respect of an offender is part of the amount of money held on trust in respect of that offender.
- (2) Fees and charges payable to the Public Trustee for the Public Trustee's functions under this Part of holding money on trust in accordance with section 32H in respect of an offender are payable out of the money held on trust in respect of that offender.

32M Release of money held on trust

On the expiry of the period during which damages or monies are held on trust in accordance with section 32H, the Public Trustee must release to the offender:

- (a) any remaining amount held on trust; or

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- (b) if no order is made under section 32K(2) – all of the damages awarded to the offender in the claim or monies to be paid to the offender under the civil wrong settlement.

32N Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function under this Division as any of the following:
- (a) an employee or agent of a public entity defendant;
- (b) the Public Trustee or an employee or agent of the Public Trustee.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

Division 5 Extension of limitation period for victims

32P Victim claims maintainable despite limitation period

- (1) Despite section 12(1) of the *Limitation Act 1981*, the limitation period under that section does not apply to an action founded on a tort that is a victim claim if there exists money held on trust in accordance with section 32H in respect of the defendant to the victim claim.
- (2) To avoid doubt, a cause of action that is not maintainable by operation of section 12(1) of the *Limitation Act 1981* is reinstated as maintainable for the purposes of:
- (a) commencing the victim claim; and
- (b) the court making an order under section 32K(2).

Part 6 Repeal of Act

13 Repeal of Act

This Act is repealed on the day after it commences.