

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

Limitation Amendment (Child Abuse) Bill 2017

SERIAL NO. 16

EXPLANATORY STATEMENT

GENERAL OUTLINE

The *Limitation Amendment (Child Abuse) Bill 2017* (the Bill) amends the *Limitation Act* to remove any limitation period applicable to an action for damages for personal injury resulting from child abuse. The Bill implements recommendations of the *Royal Commission into Institutional Responses to Child Sexual Abuse* in its 2015 Report on Redress and Civil Litigation.

NOTES ON CLAUSES

Clause 1. Short Title

This is a formal clause which provides for the citation of the Bill. The Bill, when passed, may be cited as the *Limitation Amendment (Child Abuse) Act 2017*.

Clause 2. Commencement

This is a formal clause which provides when the Act will commence. The Act will commence on a day fixed by the Administrator by Gazette notice.

Clause 3. Act Amended

This clause provides which Act is amended by the Bill, namely the *Limitation Act*.

Clause 4. Section 5A inserted

This clause inserts new section 5A into the *Limitation Act*. The new section 5A provides that an action for damages for personal injury arising from child abuse is not subject to any limitation period under the *Limitation Act*.

Child abuse means sexual abuse, serious physical abuse and psychological abuse arising out of a sexual or serious physical abuse against a person under the age of 18. What comprises these types of abuse is not defined and is a matter for the court to determine.

The clause also extends to a cause of action that arises under the *Compensation (Fatal Injuries) Act* because the person died as a result of the wrongful act. It also applies to a cause of action that survives on the death of a person for the benefit of that person's estate under the *Law Reform (Miscellaneous Provisions) Act*.

The clause does not affect the jurisdiction of a court to dismiss or stay proceedings. This means a court will continue to have powers to summarily dismiss or permanently stay proceedings for example where the passage of time has been so great that the unfairness to the defendant is so serious such that a fair trial will not be possible.

Clause 5. Section 9 amended

This clause amends section 9 of the *Limitation Act* to include section 5A as an exception to subsection (1).

Clause 6. Part V heading amended

This clause amends the Part V heading in the *Limitation Act*. Part V of *Limitation Act* will contain provisions relating to transitional matters for *Defamation Act 2006* and *Limitation Amendment (Child Abuse) Act 2017*.

Clause 7. Part V, Division 1 heading inserted

Clause 7 inserts Division 1 heading to reflect the change in Part V of the *Limitation Act*. Part V Division 1 will contain the transitional provisions for the *Defamation Act 2006*.

Clause 8. Part V, Division 2 inserted

Clause 8 inserts new Division 2 including new sections 53 to 55 into the *Limitation Act*. Those provisions relate to the transitional matters for the *Limitation Amendment (Child Abuse) Act 2017*.

The new section 53(1) provides an interpretation of the terms “legal professional negligence” and “limitation period” for the purpose of the Division.

Subsection (2) provides that a reference to a judgment given extends to a judgment entered, and also to an agreement entered into in relation to settlement. This means that a claimant may still make a claim where they had previously accepted a settlement on the ground that the limitation period on their claim had expired.

New section 54 provides that an action may be brought after the commencement on a cause of action even if before the commencement, a judgment had been given on the basis a limitation period applying to the cause of action had expired. This includes where judgment is given prior to the commencement in respect of legal professional negligence where a limitation period applying to the cause of action had expired. The provision makes clear that a claim cannot be brought after commencement where it was previously subject to a judgment in final determination of a matter on its merits. The Supreme Court has the power to set aside a previous judgment.

New section 55 provides a transitional arrangement where an action is brought before the commencement of the Amendment Act, where a limitation period applied to the cause of action and judgment had not yet been given to the action. In these circumstances, the limitation that previously applied to the cause of action is removed.

Clause 9. Expiry of Act

This is a standard clause which provides that the *Limitation Amendment (Child Abuse) Act 2017* expires the day after it commences. As this is an amending Act, there is no need to retain the Act on the statute book once all the amendments to the *Limitation Act* have been effected.