



New South Wales

Limitation and Civil Liability Amendment (Permanent Stays) Bill 2024

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Limitation Act 1969* as follows—

- (a) to acknowledge the reasons for removing limitation periods for child abuse claims,
- (b) to require courts to consider certain matters in determining whether to stay proceedings for child abuse claims,
- (c) to remove limitation periods for the appeal of decisions by courts to stay proceedings of claims for child abuse for decisions made on or after 17 March 2016.

The Bill also amends the *Civil Liability Act 2002* to provide additional circumstances in which a court may set aside an agreement preventing an action for child abuse.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Limitation Act 1969 No 31

Schedule 1[1] provides an acknowledgment of the reasons limitation periods for child abuse claims have been removed by the section.

Schedule 1[2] requires a court to consider certain matters when determining to stay proceedings for child abuse claims, including matters referred to by the High Court of Australia in *GLJ v The*

Trustees of the Roman Catholic Church for the Diocese of Lismore [2023] HCA 32. Schedule 1[2] also removes limitation periods for the appeal of decisions by courts to stay proceedings of claims for child abuse for decisions made on or after 17 March 2016, the commencement date of section 6A.

Schedule 1[3] makes a consequential amendment to define terms used.

Schedule 2 Amendment of Civil Liability Act 2002 No 22

Schedule 2[1] includes additional circumstances in which a court may set aside an agreement that occurred before the commencement of this proposed Act that prevents an action for child abuse.

Schedule 2[2] makes a consequential amendment to define terms used.



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This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Legislative Council

Clerk of the Parliaments



New South Wales

Limitation and Civil Liability Amendment (Permanent Stays) Bill 2024

No. _____, 2024

A Bill for

An Act to amend the *Limitation Act 1969* and the *Civil Liability Act 2002* to make further provision in relation to permanent stays in child abuse claims; and for related purposes.

The LEGISLATIVE ASSEMBLY has this day agreed to this Bill with/without amendment.

Legislative Assembly

Clerk of the Legislative Assembly

Tabling copy

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Limitation and Civil Liability Amendment (Permanent Stays) Act 2024*.

3

4

2 Commencement

5

This Act commences on the date of assent to this Act.

6

Schedule 1 Amendment of Limitation Act 1969 No 31

[1] Section 6A No limitation period for child abuse actions

Insert before section 6A(1)—

(1A) It is acknowledged that—

- (a) the life-long harm of child abuse can hinder or prevent a person from bringing a claim for damages for years or decades after, and
- (b) the loss of evidence is a common feature in a claim for damages for child abuse due to the passing of time, and
- (c) a claim for damages for child abuse is to be determined on its merits, and
- (d) the following reasons are insufficient to maintain a limitation period for a claim for damages for child abuse—
 - (i) the margin of error in human recollection after the passing of time,
 - (ii) the lack of opportunity for an institutional defendant to fully investigate the related circumstances of the pleadings in the proceedings on the claim, and
- (e) the potential prejudice and injustice to a perpetrator of child abuse, or to an institutional defendant to a claim for damages for child abuse, caused by the passing of time are to be presumed to not outweigh—
 - (i) the potential injustice to persons who have suffered from child abuse of not being able to bring a claim for damages, and
 - (ii) the undermining of public confidence in the administration of justice from the potential injustice referred to in subparagraph (i).

[2] Section 6A(5A) and (5B)

Insert after section 6A(5)—

- (5A) A court must consider the following in determining to stay proceedings in relation to a claim for damages for child abuse—
- (a) that a stay of proceedings is a remedy of last resort to protect the administration of justice through the operation of the adversarial system,
 - (b) that a stay of proceedings is only to be granted in an exceptional case,
 - (c) that one or more of the following circumstances are not exceptional circumstances to justify an order to stay proceedings on a claim against an institutional defendant—
 - (i) the passing of time,
 - (ii) the loss of evidence or the poor state of evidence, including from the passing of time, death, illness, legal incapacity, the loss or destruction of documents and the absence of witnesses,
 - (iii) the death, illness, legal incapacity of, or inability to identify, the perpetrator of the child abuse,
 - (iv) the inability for the institutional defendant to question the perpetrator about the child abuse pleaded in the claim,
 - (d) the acknowledgement under subsection (1A).

(5B)	The appeal of a decision by a court to stay proceedings of a claim of child abuse is not subject to a limitation period under this Act or another Act or law for a decision made on or after 17 March 2016.	1 2 3
[3] Section 6A(7)		4
	Insert after section 6A(6)—	5
(7)	In this section—	6
	<i>institutional defendant</i> , in relation to a claim for damages for child abuse, means a defendant that is an organisation.	7 8
	<i>organisation</i> means any organisation, whether incorporated or not, and includes a public sector body but does not include the State.	9 10

Schedule 2 Amendment of Civil Liability Act 2002 No 22

[1] Section 7C Meaning of “affected agreement”

Insert at the end of section 7C(1)(c)—

or,

- (d) before the commencement of the 2024 amendment Act, and a party to the agreement—
 - (i) made a representation to another party (the *second party*) to the agreement before the agreement was entered into that the party may seek a stay of proceedings for a claim brought by the second party for a cause of action to which the agreement relates, or
 - (ii) pleaded a stay of proceedings as a defence to a cause of action to which the agreement relates, or
 - (iii) applied for a stay of proceedings in relation to a cause of action to which the agreement relates, or
- (e) before the commencement of the 2024 amendment Act, and the agreement is not just and reasonable in the circumstances.

[2] Section 7C(3)

Insert after section 7C(2)—

- (3) In this section—

2024 amendment Act means the *Limitation and Civil Liability Amendment (Permanent Stays) Act 2024*.

representation includes an express or implied representation, whether oral or in writing.