



New South Wales

Civil Liability Amendment (Child Abuse) Bill 2021

Explanatory note

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

Overview of Bill

The objects of this Bill are—

- (a) to enable courts to set aside certain agreements that settled claims for child abuse where it is just and reasonable to do so in circumstances where there were certain legal barriers to the victim of the child abuse being fully compensated through a legal cause of action, and
- (b) to ensure Part 2A of the *Civil Liability Act 2002*, which deals with personal injury claims by offenders in custody, does not restrict awards of damages 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.

Schedule 1 Amendment of Civil Liability Act 2002 No 22

Schedule 1[2] inserts proposed Part 1C into the *Civil Liability Act 2002*. **Schedule 1[1]** makes a consequential amendment.

Proposed Part 1C comprises proposed sections 7A–7F.

Proposed section 7A includes definitions used in the proposed Part.

Proposed section 7B sets out the object of the proposed Part.

Proposed section 7C sets out which agreements are *affected agreements* for the purposes of the proposed Part. These are agreements that prevent the exercise of an action on a cause of action for child abuse if the agreement was entered into when a limitation period applying to the cause of action had expired or when an organisation that would have been liable for the child abuse was unincorporated.

Proposed section 7D permits a person who is prevented from exercising an action because of an affected agreement to commence the action and permits the court hearing the action to set aside the affected agreement if it is just and reasonable to do so.

Proposed section 7E permits the court to also set aside contracts, deeds or other agreements and judgments or orders of lower courts if these give effect to the affected agreement.

Proposed section 7F provides that anything set aside under the proposed Part is void but only to the extent that it relates to the person exercising the action. Consideration given under the void agreement is not recoverable but may be taken into account for determining damages in the new proceedings.

Schedule 1[3] makes it clear that Part 2A of the *Civil Liability Act 2002*, which deals with personal injury claims by offenders in custody, does not apply to, and is taken never to have applied to, an injury arising from child abuse. **Schedule 1[4]** makes a consequential amendment inserting definitions of *child* and *child abuse*. **Schedule 1[5]** enables a court to set aside earlier judgments or settlements of causes of action by persons who suffered child abuse at a time when the person was an offender in custody.