

# COMMENCEMENT OF FURTHER QLD GOVERNMENT LEGISLATIVE REFORMS FOR ABUSE VICTIMS

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Amendments to the *Civil Liability Act 2003* (Qld) (CLA), which commence on 2 March 2020, further extend the legislative framework for victims of child abuse put in place by the Queensland Government as a result of the Royal Commission into Institutional Responses to Child Sexual Abuse. These further changes were announced by the Queensland Government in October 2019.

Section 33D of the CLA imposes a new statutory duty on an institution to “...take all reasonable steps to prevent the abuse of a child by a person associated with the institution while the child is under the care, supervision, control or authority of the institution.” Section 33E prospectively reverses the onus of proof in circumstances where abuse occurs while a child is under the care of the institution, requiring the institution to establish, via stipulated criteria, that it took all reasonable steps to prevent the abuse. Criteria to be addressed includes the nature of the institution and its resources, the relationship between the institution and the child and the extent to which the institution gave the alleged abuser authority, power, control, or the opportunity to achieve intimacy or build trust with the child.

The explanatory notes confirm the reversal of the onus of proof is designed to relieve the victim of the burden of establishing liability, noting that institutions should be capable of outlining the systems and steps they took to prevent serious abuse. It is also thought the changes will lead to advancements in risk and document management and governance standards within institutions.

The amendments also make it easier for victims to commence claims against unincorporated institutions. Upon receipt of a part 1 *Personal Injuries Proceedings Act 2002* (Qld) (the PIPA) notice of claim, the institution may nominate a person to be the named defendant for the claim against the institution. If no nomination is made within 120 days, the court, upon application, may appoint a nominee. Provisions have also been included to overcome the issues in *Trustees of the Roman Catholic Church for the Archdiocese of Sydney v Ellis [2007] NSWCA 117*, allowing institutions, both incorporated and unincorporated, access to trusts associated with the institution to meet a settlement or judgment of an abuse claim.

Lastly, the amending Act also retrospectively alters the provisions of the *Limitation of Actions Act 1974* (Qld) and the PIPA, to remove limitation periods for civil personal injury claims for child abuse. The amendments also extend the definition of “abuse” of a child to mean sexual abuse, serious physical abuse, or psychological abuse perpetrated in connection with sexual

abuse or serious physical abuse. This gives victims of serious institutional physical abuse retrospective access to civil damages, in circumstances where the National Redress scheme is limited to redress payments for institutional child sexual abuse.

## GET IN TOUCH



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