



## Child sexual abuse and access to justice for civil claims: time to reform the Limitation of Actions Act 1974 (Qld)

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## The problems: the current situation, and why it needs to be changed

1. **The standard time limit** provided by the Qld LAA to bring a civil claim for personal injuries is 3 years after majority (i.e., **age 21**)

2. These laws were created for common personal injuries sustained by adults, e.g. slips, falls, accidents – they were created at a time when **CSA and its injuries were not known or recognised** by legal systems, and not accommodated by these laws

3. **Qualitatively different cases.** Survivors of **child sexual abuse** face unique challenges that make them **qualitatively different** from the kind of person for whom this law was made (e.g., adult claimant, clear injury, capacity, slips/falls/accidents).

4. **Impact of nondisclosure.** In particular, child sexual abuse is frequently not disclosed by the survivor for many years, *due to the very nature of the acts and the injuries they cause*:

- Typical psychological injuries (PTSD: cannot talk about it); depression, anxiety; complex trauma and dysfunction;
- Shame, embarrassment, misplaced guilt, threats and fear, disbelief; identity/power of the offender - often a massive power imbalance
- Average 22 yrs to disclose ICSEA (Royal Commission)

5. **Delayed knowledge and extent of injury.** As well, the injuries caused by sexual abuse are frequently not known by the survivor, or connected with the abuse, until decades after it occurred (depression, anxiety, PTSD)



6. The effect is that the time limit **expires**

7. **Active choice.** The defendant then **relies** on this expiry of time to block the survivor from accessing a civil court (the def makes this **active choice**). This causes further psychological trauma, and economic loss, to survivors and their families. In cases where CSA clearly occurred, **this is a particularly cruel intensification of the harm already suffered, and this situation is simply not tolerable.**

- In some cases, a survivor may seek an **extension** of time, but this is difficult and costly, and is frequently unsuccessful (often not granted by the court)

**All of this means survivors of CSA are typically blocked from access to civil courts to seek a remedy. This is a fundamental denial of justice that cannot be tolerated.**

8. **Fundamentally, this issue is about people's right of access to the justice system.** Changing the law to remove the time limit for these cases merely provides survivors with the **chance** to have their claim heard in court – it does **not** guarantee success. It is a fundamental tenet of a liberal democracy that people who suffer injury should be able to obtain access to the justice system to seek compensation for their injury and hold offenders accountable.



9. An impetus for reform: the Australian Government Royal Commission Into Institutional Responses to Child Sexual Abuse (2015). *Redress and Civil Litigation Report*.

September 2015

**Recommendations 85-89 (pp. 76-77) – Civil Litigation.**

State and territory governments should:

85. **Introduce legislation to remove any limitation period** that applies to a claim for damages where that claim is founded on personal injury resulting from ***sexual abuse in an institutional context when the person is or was a child.***

86. Ensure that the limitation period is removed **with retrospective effect** and regardless of whether or not a claim was subject to a limitation period in the past.

87. Expressly **preserve** the relevant courts' existing jurisdictions and powers so that any jurisdiction or **power to stay proceedings** is **not affected** by the removal of the limitation period.

88. **Implement these recommendations to remove limitation periods as soon as possible**, even if that requires that they be implemented before our recommendations in relation to the duty of institutions and identifying a proper defendant are implemented.



## 10. Solutions: Recent reforms in Australia: Victoria, NSW

**Victoria:** a tectonic shift in the Australian landscape (**bipartisan** support)

**2013:** *Betrayal of Trust Inquiry* (2013) recommends reform of *Limitation of Actions Act 1958* to **abolish the time limit for civil claims** for injuries in criminal child abuse cases (2013, Vol 2, p 542-3).

- ‘*There is no public policy justification for applying limitation periods to civil cases relating to criminal child abuse*’

**28 October 2014:** then Liberal Attorney-General Robert Clark prepares amending bill.

**23 February 2015:** new Labor Government introduces *Limitation of Actions Amendment (Child Abuse) Bill 2015* (Vic) (A-G Martin Pakula).

- **Abolition.** The Bill **removes the time limit** within which a plaintiff can bring a civil claim for injuries caused through **physical abuse or sexual abuse in childhood, and psychological abuse arising from those acts** (s 1; s 4, inserting new s 27O).
- **Retrospectivity.** This abolition of the time limit was also made retrospective (s 4, inserting new s 27P).
- **Fair trial rights.** The law retains necessary protections for defendants (Ct can issue stay of proceedings where fair trial not possible). Res judicata also applies (ie a finalised claim, or a settled claim, cannot be relitigated)
- Act passed - assent 21 April 2015 - **commenced 1 July 2015**



## New South Wales (bipartisan support)

Soon after, New South Wales followed Victoria.

Amends Limitation Amendment Act 1969 (NSW), inserting new s 6A and Part 3.

Government bill (A-G Gabrielle Upton) introduced 16 February 2016

(there had been 2 earlier private members' bills in 2015: independent and Labor MPs)

### **The new NSW laws are almost identical to the Victorian laws – the changes:**

- Remove the limitation period for claims for injury arising for CSA and serious PA, and for any other abuse connected perpetrated in connection with it.
- Are retrospective
- Preserve the defendant's right to a fair trial

Bill received assent 17 March 2016

**Commenced 17 March 2016**

**In sum:** there is a growing Australian consensus for reform (nb WA bill Nov 2015)

## 11. Similar positions in other countries

Eleven of Canada's thirteen provinces and territories have amended their limitation of action statutes to abolish or effectively abolish limitation periods for victims of child sexual abuse – see, e.g.

Province/territory	Legislative provision	Effect
Alberta	Limitations Act, RSA 2000, c L-12	Limitation period retained
British Columbia	Limitation Act, SBC 2012, c 13, s 3(1)(i)	No limitation period
Manitoba	The Limitation of Actions Act, CCSM c L 150, s 2.1(2)(a)	No limitation period
New Brunswick	Limitation of Actions Act, SNB, 2009, c L-8.5, s 14.1	No limitation period
Newfoundland and Labrador	Limitations Act, SNL 1995, c L-16.1, s 8(2)	No limitation period
Northwest Territories and Nunavut	Limitation of Actions Act, RSNWT 1988, c L-8, s 2.1(2)	No limitation period
Nova Scotia	Limitation of Actions Act, RSNS 1989, c 258, s 2(5)	No limitation period while plaintiff unaware of injuries and causal connection
Ontario	Limitations Act, 2002, SO 2002, c 24, s 16(1)(h.1)	No limitation period
Prince Edward Island	Statute of Limitations, RSPEI 1988, c S-7	Limitation period retained
Quebec	Civil Code of Quebec, LRQ, c C-1991, s 2926.1	30 years
Saskatchewan	The Limitation Act, SS 2004, c L-16.1, s 16(1)(a)	No limitation period
Yukon	Limitation of Actions Act, RSY 2002, c 139, s 2(3)	No limitation period



## 12. Practicability for the legal system

Even after reform, many survivors will still not bring a claim as it is costly, time-consuming, emotionally traumatic, and success is by no means guaranteed.

As well, many wrongdoers (especially individuals) are not worth suing as they are impecunious.

Many historic cases also involve defendants who have died, and or whose institutions have ceased to exist.

Many survivors of historical CSA will also choose to pursue other more readily accessible remedies eg via redress schemes.

It is extremely unlikely that the legal system will be overwhelmed by claims.

The experience in Canada has not revealed evidence of this.





## The solution for Queensland

It is time to amend the Limitation of Actions Act 1974.

- Science shows we **should** do it
- Ethics shows we **must** do it
- Law and practise shows we **can** do it

As a fundamental matter of social justice, we must remove the time limit in which survivors of child sexual abuse can bring a civil claim.