



Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2016 (No 2)

A2016-53

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Legislation amended 2
Part 2	Civil Law (Wrongs) Act 2002
4	Notice of claim Section 51 (1), note 1 3
5	Section 51 (3) 3
6	New section 51 (3A) 3
7	New section 51 (9) 4

J2016-387

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		Page
Part 3	Limitation Act 1985	
8	New division 2.2A	5
9	Special provision for injuries to children Section 30A (1) (c)	7
10	Special provision in relation to children—claims relating to health services Section 30B (1) (b)	7
Part 4	Supreme Court Act 1933	
11	Court may order retrial—category B offence Section 68N (6)	8
12	Court may order trial—administration of justice offence Section 68O (4)	8
Part 5	Victims of Crime Act 1994	
13	Imposition of victims services levy Section 24 (2)	9
14	Section 24 (2)	9



Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2016 (No 2)

A2016-53

An Act to amend legislation about justice and community safety

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2016 (No 2)*.

2 Commencement

- (1) This Act (other than part 4 and section 14) commences on the day after its notification day.
- (2) Part 4 (Supreme Court Act 1933) is taken to have commenced on the commencement of the *Supreme Court Amendment Act 2016*, section 3.
- (3) Section 14 commences on 1 July 2017.

3 Legislation amended

This Act amends the following legislation:

- *Civil Law (Wrongs) Act 2002*
- *Limitation Act 1985*
- *Supreme Court Act 1933*
- *Victims of Crime Act 1994*.

Part 2 Civil Law (Wrongs) Act 2002

4 Notice of claim Section 51 (1), note 1

substitute

Note 1 A proceeding must be brought before the end of the relevant limitation period (if any) under the [Limitation Act 1985](#).

Note 1A The [Limitation Act 1985](#) does not apply a limitation period to institutional child abuse claims (see that [Act](#), s 21C).

5 Section 51 (3)

omit

The notice must be given

substitute

For a proceeding not based on an institutional child abuse claim, the notice must be given

6 New section 51 (3A)

insert

(3A) For a proceeding based on an institutional child abuse claim, the notice must be given within a reasonable time before the claimant brings the proceeding against the respondent.

Note If the notice is not given as required under s (3A), the obligation to give the notice continues until it is given (see [Legislation Act](#), s 152).

7 New section 51 (9)

insert

(9) In this section:

institutional child abuse claim, by or on behalf of a person, means a claim in relation to a personal injury that arises from sexual abuse to which the person was subjected when the person was a child in an institutional context.

institutional context—see the [Limitation Act 1985](#), section 21C (4).

sexual abuse—see the [Limitation Act 1985](#), section 21C (4).

subjected, in relation to sexual abuse—see the [Limitation Act 1985](#), section 21C (4).

Part 3 Limitation Act 1985

8 New division 2.2A

insert

Division 2.2A No limitation period

21C Personal injury resulting from institutional sexual abuse of child

- (1) This section applies to an action on a cause of action for the death or personal injury of a person—
 - (a) if the cause of action substantially arises from sexual abuse to which the person was subjected when the person was a child in an institutional context; and
 - (b) whether liability for the death or personal injury arises in tort or contract or on another form of action (including breach of statutory duty); and
 - (c) whether the cause of action accrues before, on or after the commencement of the *Justice and Community Safety Legislation Amendment Act 2016 (No 2)*, section 3.
- (2) An action on the cause of action is maintainable at any time and is not subject to any limitation period under this Act, despite anything elsewhere in this Act or another territory law.
- (3) This section does not limit—
 - (a) the inherent jurisdiction, implied jurisdiction or statutory jurisdiction of a court; or

- (b) any other powers of a court under a law in force in the Territory, a rule of court, or any other practice of the court.

Example—par (b)

a court's power to summarily dismiss or permanently stay proceedings where the passage of time has a prejudicial effect on the defendant that is so serious that a fair trial is not possible

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (4) In this section:

institution—

- (a) means a public or private body, organisation or other entity of any kind (whether incorporated or unincorporated); and
- (b) includes, for example, an entity (including an entity that no longer exists) that provides or has provided activities, facilities, programs or services of any kind through which adults have contact with children, including through their families.

institutional context includes—

- (a) a place where an institution has premises or conducts activities; or
- (b) circumstances involving the actions of an institution's official where the institution has directly or indirectly created, facilitated, increased, or in any way contributed to (whether by act or omission), the risk of sexual abuse of a child or the circumstances or conditions giving rise to that risk; or
- (c) circumstances in which, on reasonable grounds, an institution is, or should be treated as being, responsible for adults having contact with children.

official, of an institution, includes the following:

- (a) a representative (however described) of the institution or an entity related to the institution;

- (b) a member, officer, employee, associate, contractor or volunteer (however described) of the institution or an entity related to the institution;
- (c) a person, body or other entity, or a member, officer, employee, associate, contractor or volunteer (however described) of the person, body or other entity, that provides services to or for the institution or an entity related to the institution;
- (d) any other person who would on reasonable grounds be considered an official of the institution.

sexual abuse includes the following:

- (a) an offence of a sexual nature;
- (b) misconduct of a sexual nature.

subjected, in relation to sexual abuse, includes witness.

**9 Special provision for injuries to children
Section 30A (1) (c)**

substitute

- (c) a limitation period applies to the claim under this Act; and
- (d) the limitation period does not end within the relevant period.

**10 Special provision in relation to children—claims relating to health services
Section 30B (1) (b)**

substitute

- (b) the claim—
 - (i) relates to the provision of a health service; but
 - (ii) is not a claim to which section 21C (Personal injury resulting from institutional sexual abuse of child) applies.

Part 4 Supreme Court Act 1933

11 Court may order retrial—category B offence Section 68N (6)

after

before

insert

, on

12 Court may order trial—administration of justice offence Section 68O (4)

after

before

insert

, on

Part 5 **Victims of Crime Act 1994****13** **Imposition of victims services levy**
Section 24 (2)*omit*

\$40

substitute

\$50

14 **Section 24 (2)***omit*

\$50

substitute

\$60

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2 August 2016.

2 Notification

Notified under the [Legislation Act](#) on 25 August 2016.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Justice and Community Safety Legislation Amendment Bill 2016 (No 2), which was passed by the Legislative Assembly on 9 August 2016.

Clerk of the Legislative Assembly

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