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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2022

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
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Attorney-General**

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2022

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

This explanatory statement relates to the *Justice and Community Safety Legislation Amendment Bill 2022* as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly. The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

OVERVIEW OF THE BILL

The Bill is an omnibus bill which amends a range of legislation, primarily in the Attorney-General's portfolio, including:

- *Agents Act 2003*
- *Civil Law (Wrongs) Act 2002*
- *COVID-19 Emergency Response Act 2020*
- *Gaming Machine Act 2004*
- *Land Titles Act 1925*
- *Limitation Act 1985*
- *Residential Tenancies Act 1997*

CONSULTATION ON THE PROPOSED APPROACH

A number of ACT Government Directorates and independent agencies were consulted on the amendments in the Bill.

The ACT Law Society and the ACT Bar Association were also consulted on the draft Bill. In relation to the amendments to the Civil Law (Wrongs) Act and Limitation Act, a targeted consultation process was undertaken.

As part of this targeted consultation process, advocacy group Beyond Abuse, and key stakeholders, including survivors, and legal service organisations and institutions, were consulted on the draft Bill. Stakeholders provided significant and valuable knowledge which informed the drafting of the Bill.

SUMMARY OF AMENDMENTS

Agents Act 2003

The Bill amends section 99 of the *Agents Act* to include reference to the sale of a business or professional practice in subsequent provisions relating to requirements of agency agreements.

The *Agents Regulation 2003* section 15 requires agency agreements to comply with requirements set out in certain schedules of the Regulation. Section 15(2)(e) of the *Agents Act* applies schedule 7 (Terms specific to agency agreements for the sale of business) to an agency agreement under which the agent will act for the seller on the sale of a business or professional practice. Section 100(1)(c) of the *Agents Act* provides that a licenced agent is not entitled to commission or expenses from a principal for services provided unless the agency agreement complies with the regulations.

Section 99 of the *Agents Act* applies Part 6 (Agency agreement) (in which section 100 sits) to services provided in relation to land and makes no mention to the same of a business or professional practice. As such, section 15 of the Regulation is outside the power provided by section 100(1)(c) of the *Agents Act* due to the application provision in section 99.

COVID-19 Emergency Response Act 2020

The Bill amends section 3 of the *COVID-19 Emergency Response Act* to clarify that reporting requirements do not apply where a COVID-19 measure is subsequently amended so that it operates on an ongoing basis or where a COVID-19 measure is repealed. The *COVID-19 Emergency Response Act* and the *COVID-19 Emergency Response Legislation Amendment Act 2020* introduced a range of temporary legislative measures to be used during the COVID-19 emergency to assist with operational requirements. This amendment ensures that the requirement for a responsible Minister to prepare a report for the Legislative Assembly on the application of a COVID-19 measure each reporting period does not apply to measures that are subsequently amended to allow for their ongoing operation outside of a COVID-19 emergency or are repealed.

Gaming Machine Act 2004

The Bill amends section 179A of the *Gaming Machine Act* to allow the Minister an additional year, to 30 November 2023, to review and table a report on the gaming machine tax rebate.

The *Gaming Machine Act* at section 162A entitles a gaming machine licensee a rebate of Gaming Machine Tax for the financial year if the licensee is a small or medium club or is part of a small or medium club group, for the year.

Due to the COVID-19 pandemic, Clubs have been closed due to lockdowns and have not paid standard rates of tax. Due to the inability to properly assess the operation of the gaming machine tax rebate a year extension is required.

Land Titles Act 1925

The Bill amends the note at section 48BD of the *Land Titles Act* to correct a reference to the electronic lodgement of documents in the *E-Conveyancing Law*. Section 48BD of the Land Titles Act outlines the signature and witnessing requirements for legal practitioners and mortgagee corporations. A note is included under section 48BD that provides that the ‘E-Conveyancing Law, pt 2, div 2 contains similar provisions for instruments lodged electronically.’ Pt 2, division 2 of this Law does not relate to electronic lodgement of documents. The correct reference is pt 2, div 1.

Residential Tenancies Act 1977

Amendment to section 12(4)

The Bill amends section 12(4) of the *Residential Tenancies Act* to correctly define ‘asbestos advice’ as per the *Dangerous Substances Act 2004* section 47M. The *Residential Tenancies Act* currently incorrectly refers to the *Dangerous Substances Act 2004*, section 47J for the definition of ‘asbestos advice’.

Amendment to section 35A(4)(b)

The Bill amends section 35A(4)(b) of the *Residential Tenancies Act* to correct a reference from section 35G(2)(a), which does not exist, to section 35G(2). Section 35A(1)(a) of the *Residential Tenancies Act* provides that a co-tenant may stop being a party to a residential tenancy agreement only with the consent of the lessor and each remaining co-tenant, or by order of the ACAT. Under section 35A(4)(b), the lessor and remaining co-tenant are taken to have consented if they do not apply to the ACAT within 21 days after receiving the consent application for an under section 35G(1)(b) or (2)(a) to refuse consent. Section 35G(2)(a) does not exist. The correct reference is section 35G(2).

Amendment to section 35B(6)

The Bill amends the note at section 35B(2) to correct a reference from section 83(c), which does not exist, to section 83(1)(c).

Section 35B(6) provides that a leaving co-tenant may apply to the ACAT for resolution of a dispute in relation to bond or rent even if the leaving co-tenant is no longer a party to the residential tenancy agreement. This section includes a note which provides that the ACAT may make orders requiring the payment of an amount to a person and directs the reader to section 83(c) – the correct provision is section 83(1)(c) which provides that the ACAT can make an order requiring the payment of an amount to the Territory or a person.

Amendment to schedule 1, clause 100

The Bill amends schedule 1, clause 100 of the standard residential tenancy terms to change the reference from ‘joint tenants’ to ‘co-tenants’. The phrase ‘joint tenants’ is not used elsewhere in the Residential Tenancies Act. The correct term is ‘co-tenants’.

Setting aside unjust institutional child abuse settlement agreements

The Bill amends the *Civil Law (Wrongs) Act* to insert new section 8A.3, that allows the court to set aside unjust institutional child abuse settlement agreements. It amends the definition of 'child abuse' in section 21C of the Limitation Act beyond 'sexual' abuse to also cover 'physical' abuse.

The ACT Government implemented reforms in the civil litigation and redress space following the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) which included removing limitation periods for child sexual abuse claims. Prior to these reforms many child abuse survivors entered into unfair settlement agreements. Most of these survivors are barred from seeking further compensation as their agreements generally released the institution from any further claims. While the ACT's reforms to date have removed significant barriers to civil litigation for survivors of institutional child abuse, they do not deal with the unjust products of the previous barriers, which led to survivors accepting inadequate settlements and releasing institutions from future liability.

The objective of the Bill is to provide an avenue for survivors to apply to the court to have their past settlement agreement set aside if at the time the agreement was made, there were legal barriers to the survivor being fully compensated through a legal cause of action. It is also intended to allow a survivor to have their agreement set aside if, when the agreement is sought to be set aside, the agreement is, in all the circumstances, not a just and reasonable agreement. The intention is to create equality for survivors by allowing them to receive compensation that is appropriate by today's standards.

The Bill ensures that survivors who entered into unjust or unreasonable settlement agreements can have those agreements set aside and bring a new claim for compensation that is adequate, just and equitable by today's expectations. It places on equal footing those survivors who entered into settlement agreements before the ACT's earlier reforms, with those who benefited from the reforms.

The legislation is intended to give survivors trapped in a past unjust settlement access to damages according to what they would be assessed as deserving by the standards of today. Considerations of equality must be at the forefront of the decision makers mind -that is, everyone deserves the equal right to access justice, and survivors trapped in a past settlement must have access to the same damages as a survivor bringing their action today. It is intended this legislation operate to the benefit of survivors of institutional child abuse.

The Bill's implementation should right the wrongs of the past to ensure survivors who carry the burden of the institutional abuse perpetrated on them as children by virtue of being trapped in unjust settlements, can access the civil justice they deserve, and be properly compensated for the mistreatment they suffered as children.

Types of agreements that can be set aside

This Bill builds on the ACT's previous reforms to civil litigation in the institutional child abuse space. The Bill provides that the types of agreements that can be set aside are agreements:

- a) that happened before the limitation period for the abuse was removed
- b) where there might have been the option to apply to the court to have the limitation period extended but the survivor did not do so; and
- c) happened before the JACS Bill 2022 is introduced where the agreement is not just and reasonable in the circumstances.

The latter subsection is important – allowing the court to set aside settlement agreements for claims settled before this Bill is introduced if the agreement is not just and reasonable, recognises that not all barriers faced by survivors that resulted in unjust settlements were legal barriers. This broad approach has been welcomed by survivors and their advocates and is intended to result in greater rights for survivors.

It is in the court's discretion to determine what is just and reasonable according to the circumstances of each case, allowing the court to apply broad principles and take into account any relevant factors. This may include, for example, the amount of the settlement (compared to what the survivor would receive today) and the bargaining power of the parties. It is not necessary that the existence of the limitation period be the predominant reason as to why the agreement was entered into. It might be the reason. It might be one of the reasons. But it does not need to be the only factor that permits the court to set aside the settlement.

Once the agreement is set aside, the survivor is then able to have their claim determined on its merits and receive reasonable and just compensation for the harm they have suffered.

The ACT Government has heard from survivors and advocates that circumstances that resulted in unjust settlements include but are not limited to:

- Expiry of a limitation period
- Inability to identify a proper defendant
- Deficiencies in the law of liability at the time (including lack of clear vicarious liability of institutions for intentional wrongs of an employee – or person akin to an employee)
- Misconduct of the institution (eg withholding evidence, making false statements, denying things which they knew were true, etc)
- Asymmetry of power between the parties
- Misconduct or weak conduct by the victims' own lawyer
- Inadequate understanding by the court of abuse and the effect of abuse

This Bill will provide the court with the power to consider settlements entered into because of any of these factors, or any combination of these factors, and to set them aside.

It is important that there is clarity around the types of injustices that are able to be set aside, for applicants, respondents and the court. This legislation should not be weaponised in such a way that re-victimises a survivor, and makes it more onerous than necessary, to give the survivor access to the justice they have denied for so long.

The court can commence its consideration of the application from a place of accepting that survivors, their advocates, and the Royal Commission, have unequivocally demonstrated that many past settlement agreements were unjust and unreasonable and accordingly there should be a low threshold for setting them aside.

Original settlement agreements should be viewed as tarnished by the unjust circumstances of their creation and not as final and unable to be set aside. This will not create a concerning precedent around the finality of agreements – because these agreements are intended to be set aside for this cohort, to remedy the mischief created by the unjust settlement.

Limitation Act 1985

The Bill expands the definition of child abuse in s 21C of the *Limitation Act* from 'sexual' abuse only to also include 'physical' abuse. This aligns it with the definition of child abuse in section 114A(1) of the *Civil Law (Wrongs) Act* which defines child abuse as including 'sexual' or 'physical' abuse.

This will allow all survivors of child abuse in the ACT the opportunity to receive equal treatment before the law, by enabling those who suffered abuse as children to bring claims for damages regardless of when the abuse occurred and type of abuse experienced. It will also ensure national consistency given the majority of jurisdictions including NSW have adopted a similarly broad definition of child abuse.

CONSISTENCY WITH HUMAN RIGHTS

The Royal Commission was established in January 2013 to investigate institutions that have failed to protect children or respond to allegations of child sexual abuse. The Royal Commission found that:

The impacts of child sexual abuse are different for each victim. For many victims, the abuse can have profound and lasting impacts. They experience deep, complex trauma, which can pervade all aspects of their lives, and cause a range of effects across their lifespans. Other victims do not perceive themselves to be profoundly harmed by the experience.

Some impacts on victims are immediate and temporary, while others can last throughout adulthood. Some emerge later in life; others abate only to re-emerge or manifest in response to triggers or events. As victims have new experiences or enter

new stages of development over their life courses, the consequences of abuse may manifest in different ways.¹

The issue of child abuse raises important human rights issues and engages many rights under the *Human Rights Act 2004* (HR Act). Child abuse violates children's most basic rights including the right to protection of family and children (s 11 HR Act).

Reforms to the Civil Law (Wrongs) Act

Rights engaged and supported

The reforms support the following HR Act rights:

- Section 11 – Protection of family and children; and
- Section 21 – Right to a fair trial.

Section 21 – the right to a fair trial

This Bill reflects that many survivors were denied the right to fair compensation for the institutional sexual abuse they suffered as children. This Bill intends to provide an avenue for survivors to apply to the court to have their past settlement agreement set aside if at the time the agreement was made, there were legal barriers to the survivor being fully compensated through a legal cause of action that have since been removed, or when the agreement is sought to be set aside, the agreement is, in all the circumstances, not a just and reasonable agreement. It is intended to create access to equality for survivors by allowing them to receive compensation that is appropriate by today's standards.

The Bill ensures that survivors who entered into unjust or unreasonable settlement agreements can have those agreements set aside and bring a new claim for compensation that is adequate, just and equitable by contemporary expectations. It places on equal footing those survivors who entered into settlement agreements before the ACT's earlier reforms, with those who benefited from the reforms.

Section 11 – protection of family and children

Section 11 acknowledges that children have special rights by virtue of their particular vulnerabilities. The addition of Part 8A.3 goes beyond Royal Commission recommendations and supports the rights of children subjected to institutional child abuse. The purpose of these amendments is to ensure that justice can be sought for, and by, survivors of institutional child abuse. The applications to set aside past unjust settlements, and the ensuing new claims, will promote greater understanding of the circumstances that led to the abuse and circumstances around the settlement, greater community awareness of institutional child abuse and unjust

¹ *Commonwealth, Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report, Volume 3, Impacts*, p. 9-11. Available at: <https://www.childabuseroyalcommission.gov.au/impacts>

settlements as social, moral and justice issues, help remove the stigma and encourage survivors to come forward to seek the justice to which they were originally entitled. The imposition of appropriate penalties by the standards of today on those institutions with responsibility for the child abuse will signal the community's strong repudiation of this abhorrent behaviour, act as general deterrent to this type of offending, and enable offending institutions to be appropriately sanctioned. In these ways, the amendments are intended to protect the rights of children.

Rights engaged and limited

The reforms to *the Civil Law (Wrongs) Act* relate to settlements entered into with institutions which do not have human rights.

However, it is foreseeable that as a result of an unjust settlement being set aside, there might be another judicial process, in which an individual from the offending institution could be named as a respondent, or otherwise be required to participate in the judicial process. Providing for the re-litigation of previously settled disputes and disturbing the finality of those settlements, might engage their right to a fair trial. However, the amendment in the Bill is limited to setting aside a settlement. Any judicial process that flows from the court's decision to set aside an agreement will ensure both parties will be equally entitled to the checks, balances and protections that already exist within the process, meaning this potential limitation is unlikely to be unreasonable or unjustified.

The voices of survivors have been closely considered and strongly influenced the Bill. The Bill does not allow an institution to bring an application to have an unjust settlement set aside – that right is expressly limited to the survivor. This is set out in the Objects section 114I – ‘The object of this part is to provide a way, for a person who is the subject of a child abuse claim because the person suffered child abuse, to seek to have an abuse settlement agreement set aside if –...’. This is further set out in section 114K(1) which implicitly limits this power to survivors by framing the court's power to set aside an unjust child abuse settlement as conditional on a ‘person (the applicant) [being] prevented from exercising an action on a cause of action because of an abuse settlement agreement’.

As such, it is not intended for there to be scope for any potential ‘benevolent’ institution to apply to the court to have an unjust settlement set aside. It is foreseeable that the act of doing so may have adverse and unintended consequences for survivors, particularly on their right to privacy, as they may be compelled to participate in further judicial processes without their consent, and with potentially re-traumatising effect.

Reforms to the Limitation Act

Rights engaged and supported

The preamble to the HR Act notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic

society. Section 28 (2) of the HR Act contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

International human rights law places obligations on governments to “respect, protect and fulfil” rights. The obligation to respect means a government must ensure its organs and agents do not commit violations themselves. The obligation to protect means governments must protect individuals and groups from having rights interfered with by third parties and punish perpetrators. The obligation to fulfil means governments must take positive action to facilitate the full enjoyment of rights.

The European Court of Human Rights (ECHR) has considered, in depth, the positive obligation of governments to uphold rights, noting government must put in place legislative and administrative frameworks to deter conduct that infringes rights, and to undertake operational measures to protect an individual who is at risk of rights infringement.¹

The ECHR has held that the positive obligation on States extends to imposing a duty to protect children from sexual abuse under Article 3 of the European Convention on Human Rights (the Convention) (the right to protection from torture and cruel, inhuman or degrading treatment). In particular, in the case of *E and Others v. the United Kingdom*¹, the ECHR found that prolonged sexual abuse meets the threshold of an Article 3 violation, and that “a failure to take reasonably available measures which could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the State”.

The Convention on the Rights of the Child (CRC), to which Australia is a signatory, further articulates States’ human rights obligations to protect children. Article 34 of the CRC states that:

States parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.

Article 19 of the CRC further states that:

(1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

(2) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

The Limitation Act supports the following HR Act rights:

- Section 11 – Protection of family and children; and
- Section 21 – Right to a fair trial.

Child abuse violates children’s most basic rights including the right to protection of family and children (s 11 HR Act). Allowing survivors to bring a claim for personal injury relating to the physical abuse they suffered as children, recognises that children should be protected from all types of abuse, not just sexual abuse. It provides those survivors with an avenue to seek justice.

The reforms to the Limitation Act that remove limitation periods for physical child abuse also limits the right to a fair trial (s 21 HR Act). These limitations are appropriate having regard to the human rights of children to safety, protection and justice. This is discussed in detail below.

Detailed human rights discussion

Rights engaged and limited by the Limitation Act

1. Nature of the right and the limitation (s28(a) and (c))

Previous legislative reform in the ACT removed the limitation period for survivors of child sexual abuse to bring personal injury claims. This Bill expands on these reforms by removing limitation periods on causes of action for personal injury resulting from child physical abuse. Limitation periods are often a significant barrier to survivors pursuing civil litigation.

The Bill engages the right to fair trial before a competent, independent and impartial court or tribunal under section 21 of the HR Act. The right to a fair trial is a basic human right. Article 10 of the Universal Declaration of Human Rights states:

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.

This right is also captured in the International Covenant on Civil and Political Rights which states at Article 14.1:

“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”.

This right includes the obligation that a matter be heard expeditiously within a reasonable period and without undue delay. What constitutes an unreasonable delay will depend on the circumstances of the case, including the nature, complexity and conduct of the parties.

The Bill may engage and limit this right primarily due to the delay in proceedings which might result for a respondent from the removal of limitation periods for causes of action relating to personal injury resulting from physical abuse of a child. Delay has a burdensome effect on respondents and can constitute prejudice to a respondent given the potential for a loss of records and unavailability of relevant witnesses, or other detractions from the efficient

administration of justice caused by a significant passage of time between the alleged offending behaviour, and the bringing of a personal injury claim.

However, section 28 of the HR Act provides that human rights may be subject to reasonable limits that can be demonstrably justified in a free and democratic society. In deciding whether a limit is reasonable, section 28 provides relevant factors to be considered including the importance of the purpose of the limitation and the nature and extent of the limitation.

2. *Legitimate purpose (s28(b))*

The Bill intends to remove the limitation period on personal injury causes of action caused by physical abuse as a child. The Bill recognises that all forms of abuse experienced by a child are deserving of appropriate access to justice and compensation through the legal system. The Bill further recognises that survivors of all forms of child abuse may take significant periods of time to understand, process and act upon the harm caused by their abuse, and that limitation periods have the practical effect of denying a survivor the opportunity to access the legal system. The amendments promote equity between survivors of child abuse by recognising that child physical abuse can, equally to child sexual abuse, cause significant personal injury and ongoing trauma for survivors of such abuse.

Survivors of all forms of child abuse should have equal access to civil litigation regardless of when such abuse occurred. The purpose of the Bill in this respect is sufficient to warrant the limitation of a right to a fair trial of a respondent, particularly where there are adequate safeguards to ensure that respondents do not face unfair prejudice in such matters arising from the removal of the limitation period.

3. *Rational connection between the limitation and the purpose (s28(d))*

The Bill will improve access to justice for survivors of child physical abuse by removing limitation periods to bring a cause of action for personal injury caused by such abuse. The Bill acknowledges that long-lasting trauma is experienced by children who suffered physical abuse as well as sexual abuse, regardless of when the abuse occurred. The Bill recognises that survivors of all child abuse may take very long periods of time to understand, process and act upon the harm caused by the abuse. By removing the limitation period for personal injury claims, survivors of child physical abuse will no longer be prevented from bringing an action because a prescribed period of time has passed.

4. *Proportionality (s28 (e))*

Limitation periods operate to bar a survivor from bringing a claim against a respondent if the limitation period has expired. In order to achieve the purpose of allowing survivors of child physical abuse to bring personal injury claims at any point after their abuse is suffered, the limitation period must be removed. Therefore, there are no other avenues by which the purpose may be achieved which are less restrictive.

The amendments represent a reasonable and justifiable limitation on the right to a fair trial, which needs to be balanced against the importance of improving access to civil litigation for all survivors of child abuse, regardless of the nature of the abuse. The right to a fair trial, whilst limited, is still protected by the preservation of the courts' jurisdiction and powers to stay proceedings where the passage of time has a prejudicial effect on the respondent that is so serious that a fair trial is not possible, and that any survivor will still be required to establish their cause of action through admissible evidence.

Justice and Community Safety Legislation Amendment Bill 2022
Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Justice and Community Safety Legislation Amendment Bill 2022**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the *Justice and Community Safety Legislation Amendment Act 2022*.

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act commences on the day after its notification day.

Clause 3 Legislation amended

This clause identifies the legislation that will be amended is the:

- *Agents Act 2003*
- *Civil Law (Wrongs) Act 2002*
- *COVID-19 Emergency Response Act 2020*
- *Gaming Machine Act 2004*
- *Land Titles Act 1925*
- *Limitation Act 1985*
- *Residential Tenancies Act 1997*

Part 2 Agents Act 2003

Clause 4 Application of pt 6

New section 99(c)

This clause inserts a new section 99(c) which inserts ‘a business or professional practice’ in provisions relating to requirements of agency agreements.

Part 3 Civil Law (Wrongs) Act 2002

Clause 5 Notice of claim

Section 51 (11)

This clause omits section 51(11) which defines ‘child abuse claim’, ‘sexual abuse’ and ‘subjected’. These terms are re-defined in other parts of the Bill to give effect to the amendments relating to setting aside unjust institutional child abuse settlements.

Clause 6 Section 114A

This clause inserts part 8A.1 and heading reflecting the definition and application of chapter 8A.

This clause substitutes new sections 114A and 114AA.

Section 114A defines 'child abuse claim' for the purposes of the entire *Civil Law (Wrongs) Act*. 'Child abuse claim' is defined as a claim by or on behalf of a person, means a claim in relation to a personal injury that arises from child abuse to which the person was subjected when the person was a child.

Section 114AA defines 'child abuse' for the purposes of chapter 8A of the *Civil Law (Wrongs) Act*. 'Child abuse' is defined as physical abuse or sexual abuse of a child. The provision provides a caveat that physical abuse does not include conduct that is justified or excused under a law applying in the Territory. The provision defines 'sexual abuse' of a child as including an offence or misconduct of a sexual nature involving the child.

Clause 7 New section 114BA and part 8A.2 heading

This clause inserts a new section 114BA – Time when child abuse etc happens. The clause inserts a new Part 8A.2 following new section 114BA.

Section 114BA applies Chapter 8A in relation to child abuse or alleged children abuse of a person who is subject of a child abuse claim, regardless of when the abuse or alleged abuse happened.

Following section 114BA, a new Part 8A.2 is inserted with the heading Institutional child abuse – proceedings against unincorporated bodies.

Clause 8 Sections 114C and 114G

This clause omits 'chapter' and replaces with 'part' in sections 114C and 114G.

Clause 9 New part 8A.3

This clause inserts a new Part 8A.3 – Institutional child abuse – setting aside abuse settlement agreements.

This clause inserts new section 114I which defines the objects of part 8A.3 as providing a way, for a person who is the subject of a child abuse claim because the person suffered child abuse, to seek to have an abuse settlement agreement set aside if:

- When the agreement was made there were legal barriers to the person being fully compensated through a legal cause of action; or
- When the agreement is sought to be set aside the agreement is, in all the circumstances, not a just and reasonable agreement.

New section 114J provides definitions for the purposes of new part 8A.3. This section defines abuse settlement agreement as an agreement that settles a child abuse claim and prevents the exercise of an action on a cause of action to which the Limitation Act, section 21C (Personal injury resulting from child abuse) applies and that happened before the commencement of the Limitation Act, section 21C, and at a time when a limitation period applying to the cause of action had ended, or happened before the commencement of this part, and the agreement is not just and reasonable in the circumstances. This section defines applicant as per section 114K(1), which defines a person as an applicant if a person is prevented from exercising an action on a cause of action because of an abuse settlement agreement.

This clause inserts new section 114K. This section gives the power to a court with jurisdiction to hear the proceeding the power to set aside abuse settlement agreements.

This clause inserts new section 114K(1) which outlines persons section 114K(1) applies to. Section 114K(1) applies if a person (the applicant) is prevented from exercising an action on a cause of action because of an abuse settlement agreement.

This clause inserts new section 114K(2) which enables the applicant to bring a proceeding on a cause of action in a court with jurisdictions to hear the proceeding, and apply to the court to set aside the agreement.

This clause inserts new section 114K(3) which gives the court the power to set aside the agreement if the court is satisfied that when the agreement was made there were legal barriers to the person being fully compensated through a legal cause of action, or when the application is made to set aside the agreement, the agreement is, in all the circumstances, not a just and reasonable agreement.

This clause inserts new section 114K(4) which outlines what the court may consider when deciding whether to set aside the agreement. These include;

- The amount paid to the applicant under the agreement
- The bargaining position of the parties to the agreement
- The conduct of the following people in relation to the agreement;
 - A party other than the applicant;
 - A legal representative of a party other than the applicant
- Any other matter the court considers relevant.

This clause inserts new section 114K(5) which provides that the *Evidence Act 2011*, section 131(1) (Exclusion of evidence of settlement negotiations) does not prevent such evidence being adduced in a proceeding under this section, even if the evidence would constitute evidence under section 131(1) of the Evidence Act, namely, evidence of a communication made, or a document prepared, in connection with an attempt to negotiate a settlement of the dispute to which the agreement relates.

This clause inserts new section 114L. Section 114L(1) provides that if the court decides to set aside an abuse settlement agreement, the court also has the power to also set aside any of the following that give effect to the agreement;

- A contract, deed or other agreement;
- An order or judgment of the court or of a lower court.

Section 114L(2) limits this power by preventing the court from setting aside the following;

- A deed of release signed by or on behalf of the applicant in acceptance of an offer under the national redress scheme and an agreement relating to a relevant prior payment that has been considered in the offer;
- An agreement to the extent to which;
 - The agreement settled a cross-claim between 2 or more defendants; or
 - One defendant indemnified another;
 - A contract of insurance.

The section defines the national redress scheme to mean the National Redress Scheme for institutional Child Sexual Abuse established under the National Redress Scheme for *Institutional Child Sexual Abuse Act 2018* (Cwlth), section 8.

This clause inserts new section 114M which outlines the effect of setting aside abuse settlement agreements.

Section 114M(1) provides that a court may set aside an abuse settlement agreement or anything else in accordance with this part only to the extent that it relates to the applicant. Section 114M(2) provides that an agreement and anything else set aside in accordance with this part is void only to the extent that it relates to the applicant.

Finally, section 114M(3) provides that an amount paid, including legal costs or disbursements, or other consideration given under the agreement is not recoverable despite an agreement being void, and may be taken into account by a court in deciding damages in a proceeding on a cause of action to which the agreement relates.

Clause 10 Dictionary, new definitions

This clause inserts the new definitions of ‘abuse settlement agreement’ as per section 114J and ‘applicant’, as per section 114K(1). ‘Abuse settlement agreement’ is defined in section 114J as an agreement that settles a child abuse claim and prevents the exercise of an action on a cause of action to which the Limitation Act, section 21C (Personal injury resulting from child abuse) applies and that happened before the commencement of the Limitation Act , section 21C, and at a time when a limitation period applying to the cause of action had ended, or happened before the commencement of this part, and the agreement is not just and reasonable in the circumstances.

'Applicant' is defined in section 114K(1) - a person is an applicant if a person is prevented from exercising an action on a cause of action because of an abuse settlement agreement.

Clause 11 Dictionary, definition of *child abuse* and *child abuse claim*

This clause substitutes definitions of 'child abuse' and 'child abuse claim' to reflect the new definitions. 'Child abuse' for chapter 8A (Institutional child abuse) is defined as per section 114AA. Section 114AA defines child abuse as physical abuse or sexual abuse of a child. Physical abuse does not include conduct that is justified or excused under a law applying in the Territory. 'Child abuse claim' is defined as per section 114A. Section 114A defines a 'child abuse claim', by or on behalf of a person, to mean a claim in relation to a personal injury that arises from child abuse to which the person was subjected when the person was a child.

Part 4 COVID-19 Emergency Response Act 2020

Clause 12 Reports for Legislative Assembly

New section 3 (1A) and (1B)

This clause inserts a new section 3(1A) and (1B) into the COVID-19 Emergency Response Act. Section 3 of the COVID-19 Emergency Response Act provides that, for each reporting period that a COVID-19 declaration is in force, the responsible Minister for a COVID-19 measure must prepare a report for the Legislative Assembly on the application of the measure. New section 3(1A) provides that section 3(1) does not apply in relation to a COVID-19 measure if the provisions or an ACT or regulation inserted or amended by the measure has been subsequently amended by another Act or regulation, and the effect of the subsequent amendment is to continue the operation of the measure to a time when a COVID-19 declaration is no longer in force.

New section 3(1B) provides that section 3(1) does not apply in relation to a COVID-19 measure if the provision of an Act or regulation inserted or amended by the measure has been repealed and not remade, the same in substance, in the Act or regulation or another law.

Clause 13 Section 3 (4)

New definition of *remade*

This clause inserts a new definition of remade into section 3(4) of the COVID-19 Emergency Response Act. 'Remade' is defined to include re-enacted.

Part 5 Gaming Machine Act 2004

Clause 14 Review of gaming machine tax rebate

Section 179A (1)

This clause omits '2022' and substitutes this with '2023' in section 179A(1). This allows the Minister an additional year to present and table a report to the Legislative Assembly on the review of the operation of section 162A (Gaming machine tax rebate – financial year).

Clause 15 Section 179A (2)

This clause substitutes section 179A(2) to insert that section 179 expires on 8 April 2024.

Part 6 Land Titles Act 1925

Clause 16 Signature and witnessing requirements—legal

practitioners and mortgagee corporations

Section 48BD (1), note

This clause omits 'div 2' and substitutes this with 'div 1'. This clause corrects an incorrect reference to part 2, div 2 of the E-Conveyancing Law.

Part 7 Limitation Act 1985

Clause 17 Section 21C heading

This clause substitutes the heading of section 21C of the Limitation Act with 'Personal injury resulting from child abuse'.

Clause 18 Section 21C (1) (a)

This clause omits 'sexual abuse' and substitutes with 'child abuse'. This clause gives effect to the new definition of child abuse to encompass physical or sexual abuse. This clause further has the effect (by virtue of section 21C(2)) of removing the limitation period for causes of action arising from physical abuse as a child.

Clause 19 Section 21C (4)

This clause substitutes a new section 21C(4) which provides that in the section (section 21C) 'child abuse' is defined as per the Civil Law (Wrongs) Act section 114AA(1), and defines 'subjected' in relation to child abuse, to include witness. Section 114AA(1) of the Civil Law (Wrongs) Act defines 'child abuse' as physical abuse or sexual abuse of a child. Physical abuse does not include conduct that is justified or excused under a law applying in the Territory.

This clause has the effect of removing limitation periods on causes of action arising from physical abuse as a child.

**Clause 20 Special provision in relation to child—claims relating
to health services**

Section 30B (1) (b) (ii)

This clause omits '(Personal injury resulting from sexual abuse of a child' and substitutes this with '(Personal injury resulting from child abuse)' to give effect to the new definition of child abuse to include physical or sexual abuse.

Part 8 Residential Tenancies Act 1997

Clause 21 Lessor's obligations

Section 12 (4), definition of asbestos advice

This clause substitutes the definition of asbestos advice to mean an advice notified under the *Dangerous Substances Act 2004*, section 47M. This clause corrects an error in the legislation that incorrectly referred to section 42J of the Dangerous Substances Act.

Clause 22 Co-tenant may leave residential tenancy agreement

Section 35A (4) (b)

This clause omits '(2)(a)' and substitutes this with '(2)' to reference section 35G(2) (rather than 35G(2)(a) which does not exist) in section 35A(4)(b). Section 35A relates to co-tenants leaving residential tenancy agreements, and section 35A(4) relates to when a lessor and remaining co-tenant consent to a co-tenant leaving a residential tenancy agreement. Section 35G(2) outlines that the ACAT may order that the lessor may refuse consent for a co-tenant to stop being a party to an agreement under section 35A(4)(b).

Clause 23 Repayment of bond to leaving co-tenant

Section 35B (6), note

This clause omits 's 83(c)' and substitutes with 's 83(1)(c)' in the note at 35B(6), which relates to the ability for a leaving co-tenant to apply to the ACAT for resolution of certain tenancy disputes even if the co-tenant has stopped being a party to the residential tenancy agreement. This clause corrects an error in the legislation which incorrectly references s 83(c), a provision which does not exist in the Residential Tenancies Act. The correct reference is section 83(1)(c) which outlines the orders the ACAT may make in relation to an application about a tenancy dispute or occupancy dispute, including an order requiring the payment of an amount to the Territory or a person.

Clause 24 Standard residential tenancy terms

Schedule 1, clause 100

This clause omits 'joint tenants' and substitutes this with 'co-tenants'. This clause reflects the changed wording usage when 2 or more tenants live in a tenancy at the same time, which was introduced by the *Residential Tenancies Amendment Act 2020 (No 2)*.