

just redemptive outcomes®



CORNEY & LIND
LAWYERS

Legislative Amendments Surrounding Institutional Child Sexual Abuse Claims in Queensland

Eduardo Cruz, Senior Associate
Alistair Macpherson, Director

31 January 2017, Brisbane

just redemptive outcomes®



CORNEY & LIND
LAWYERS

Introduction

Corney & Lind Lawyers Pty Ltd

➤ Mid size law firm – 18 lawyers + 30 staff

➤ Our focus areas

Schools & Education

Not for Profit & Charity

Commercial

Employment & Discrimination

Personal Injury

Commercial & Construction Litigation

Migration & Visas

Family Law

Criminal & Traffic

Estate & Elder Law

➤ Our lawyers travel to you if needed

➤ Specialist lawyers committed to delivering “*just redemptive outcomes®*” with care and integrity

➤ Based right next to the CBD opposite the RBWH transport hub



1. Overview

- The *Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislative Amendment Act 2016* ('the Act') was passed on 8 November 2016 and assented to on 11 November 2016;
- The Act was prompted by the Commission into Institutional Responses to Child Sexual Abuse ('the Commission') and its release of the *Redress and Civil Litigation Report* ('the Report').



2. The Royal Commission into Institutional Responses to Child Sexual Abuse

- The Commission's Report contains 99 recommendations on redress and civil litigation reform in the context of institutional child sexual abuse. So far, recommendations 85 -86 and 88 have been implemented.
- The Royal Commission judged that the limitation periods were **'inappropriate given the length of time that many survivors of child sexual abuse take to disclose their abuse'**.
- The Royal Commission considered that institutions interests are 'adequately protected by the need for a claimant to prove his or her case on admissible evidence and by the court's power to stay proceedings in the event that a fair trial is not possible.'



3. Legislation – Other Jurisdictions

- Victoria was the first state to implement changes to the limitation period to claims arising out of child sexual abuse. These were to sexual abuse, physical abuse and psychological abuse arising out of abuse to minors.
- In 2016 the New South Wales government also removed the limitation period for any death or injury caused by ‘child abuse’. Here ‘child abuse’ has a broad meaning. Child abuse includes: sexual abuse, serious physical abuse, any other abuse.



4. Queensland – How do we deal with these changes?

- a respondent must act quickly to seek legal advice so as to comply with his, her or its requirements under the PIP Act.
- Under section 10 of the Act, a respondent must give notice to the claimant within **1 month** of receiving the notice of claim. If the respondent fails to provide this notice, the notice of claim is deemed to be a complying notice of claim.
- The consequences of this are that the person or institution is deemed to be the proper respondent and, as such, incurs the legislative duties laid out in section 20(1) of the PIP Act. Here the respondent has 6 months to comply with his, her or its obligations under the Act.



5. Who is the Respondent?

- The law does not treat unincorporated associations as having a legal personality. As such, claimants are not able to sue the entity itself, and must locate a proper defendant to bring the proceedings against. Common examples of unincorporated associations include many churches and sporting clubs.
- Management committee at the time of the offending conduct or the current management committee?
- Case example: *Trustees of the Roman Catholic Church for the Archdiocese of Sydney v Ellis* [2007] NSWCA 117
- If the activity in which they exercised control gave rise to a contractual or tortious claim otherwise recognised by law, they are held liable as principals.
- Liability remains personal and not representative in nature.



6. Proper Respondents

- The Royal Commission recommended that State and territory governments should introduce legislation to provide that where a survivor wishes to sue an institution which has associated trust property, where no proper defendant is nominated, the survivor can sue the trust.
- This has not been introduced. Should legislation pass, where the institution accused of abuse is an unincorporated association, associated trusts may be targeted to compensate the victims of such abuse.
- Even without this legislation, it could be that an institution's associated trusts could already be targeted by claimants in institutional abuse cases.
- However, it is important to consider the *'Bathurst Case'*.
- *Current management committee held responsible for a contractual debt.*



7. Vicarious Liability

- *Prince Albert College Incorporated v ADC*
- The claimant was the victim of sexual abuse in 1962 at his school by his boarding master.
- Vicarious liability is imposed despite the employer not itself at fault.
- The courts struggle with a coherent basis for identifying circumstances in which an employer should be held liable for negligent acts of an employee.
- The relevant approach was held to be:
 1. Consider any special role the employer had assigned,
 2. Determine whether the performance of the role may be said to give the occasion for the wrongful act, in particular features such as, authority, power, trust, control and the ability to achieve intimacy with the victim.

just redemptive outcomes®



CORNEY & LIND
LAWYERS

8. Damages

- Victims of Abuse are eligible to claim all forms of damages. These include:
 - General Damages
 - Loss of Earnings
 - Future Loss
 - Special Damages
 - Redress Scheme

just redemptive outcomes®



CORNEY & LIND
LAWYERS

Contact



Name: Eduardo Cruz

Position: Senior Associate

Email: eduardo.cruz@corneyandlind.com.au



Name: Alistair Macpherson

Position: Director

Email: alistair.macpherson@corneyandlind.com.au

07 32520011

www.corneyandlind.com.au

just redemptive outcomes.[®]



CORNEY & LIND
LAWYERS

Upcoming...

FREE CPD: SCHOOL LAW WEBINAR SERIES



<https://www.youtube.com/watch?v=ncdn5boHeU0>