

# Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017

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Western Australia

LEGISLATIVE ASSEMBLY

*(As amended in Committee)*

**Civil Liability Legislation Amendment (Child  
Sexual Abuse Actions) Bill 2017**

**A Bill for**

**An Act to amend —**

- **the *Civil Liability Act 2002*; and**
- **the *Criminal Injuries Compensation Act 2003*; and**
- **the *Limitation Act 2005*.**

The Parliament of Western Australia enacts as follows:

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## **Part 1 — Preliminary**

### **1. Short title**

This is the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2017*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

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**Part 2 — Civil Liability Act 2002 amended**

**3. Act amended**

This Part amends the *Civil Liability Act 2002*.

**4. Section 8 amended**

In section 8 delete “Act” and insert:

Act, other than Part 2A,

**5. Part 2A inserted**

After Part 2 insert:

**Part 2A — Child sexual abuse actions**

**Division 1 — Preliminary**

**15A. Terms used**

In this Part —

**assets** means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description, and includes money and securities, choses in action and documents;

**child sexual abuse** has the meaning given in the *Limitation Act 2005* section 6A(1);

**child sexual abuse action** has the meaning given in the *Limitation Act 2005* section 6A(1);

**child sexual abuse cause of action** has the meaning given in the *Limitation Act 2005* section 6A(1);

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1                    ***institution*** means an entity (other than the Crown),  
2                    organised for some purpose or work, that exercises or  
3                    exercised care, supervision or authority over children,  
4                    whether as part of its primary functions or activities or  
5                    otherwise.

6                    **Division 2 — Liability of certain office holders and**  
7                    **institutions, and availability of assets**

8                    **15B. Liability of current office holder in unincorporated**  
9                    **institution**

- 10                    (1) Subsections (2) and (3) apply if —
- 11                            (a) a person was subjected to child sexual abuse by  
12                            a person associated with an institution; and
- 13                            (b) the person has or had a child sexual abuse cause  
14                            of action against the holder of an office of  
15                            authority in the institution (the ***office holder***)  
16                            founded on the responsibility of the office  
17                            holder for the associated person and for the  
18                            institution generally; and
- 19                            (c) at the time of the accrual of the cause of action,  
20                            the institution —
- 21                                    (i) exercised care, supervision or authority  
22                                    over children; and
- 23                                    (ii) was not incorporated;
- 24                            and
- 25                            (d) the institution is currently not incorporated; and
- 26                            (e) the office holder no longer holds the office; and
- 27                            (f) the person would be able to maintain an action  
28                            on the cause of action if the office holder  
29                            continued to hold the office.
- 30                    (2) An action on the cause of action referred to in  
31                    subsection (1)(b) may be commenced against the

- 1 current holder of the office (the *current office holder*)  
2 in the name of the office.
- 3 (3) Any liability that the office holder would have had in  
4 relation to the cause of action is taken to be held by the  
5 current office holder.
- 6 (4) This section applies —  
7 (a) regardless of when the act or omission that  
8 constitutes the child sexual abuse occurred; and  
9 (b) regardless of when the cause of action accrued.
- 10 (5) If the current office holder has a liability in relation to a  
11 cause of action in tort because of subsection (3), the  
12 current office holder is taken to be a tortfeasor, for the  
13 purposes of the *Law Reform (Contributory Negligence  
14 and Tortfeasors' Contribution) Act 1947* section 7, in  
15 respect of damage suffered as a result of the tort.

16 **15C. Assets available for judgments and settlements:**  
17 **office holders**

- 18 (1) This section applies if a holder of an office of authority  
19 in an institution has a liability under a judgment in or  
20 settlement of an action on a child sexual abuse cause of  
21 action of the type described in section 15B(1)(b).
- 22 (2) The holder of the office may satisfy the liability out of  
23 assets held by or for the office or the institution,  
24 including assets of a trust (whether or not a charitable  
25 trust).
- 26 (3) However, personal assets of the holder of the office  
27 cannot be used to satisfy the liability.
- 28 (4) For the purposes of subsection (2) —  
29 (a) the holder of the office may realise assets held  
30 by or for the office or the institution; and

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- 1 (b) a trustee of a trust may pay an amount in  
2 satisfaction of the liability and, for that purpose,  
3 realise assets of the trust.
- 4 (5) The holder of the office and a trustee may take the  
5 actions referred to in subsections (2) and (4) despite —
- 6 (a) any written or other law (including any law  
7 concerning trusts or the holding of property by  
8 or for the office or the institution); or
- 9 (b) the terms of any trust; or
- 10 (c) any duty whether as member of the institution,  
11 office holder, trustee or otherwise.
- 12 (6) Subsection (3) has effect despite any written or other  
13 law, including the *Civil Judgments Enforcement*  
14 *Act 2004*.
- 15 (7) This section does not apply in relation to a judgment in  
16 or settlement of a child sexual abuse action given or  
17 reached before the day on which the *Civil Liability*  
18 *Legislation Amendment (Child Sexual Abuse Actions)*  
19 *Act 2017* section 5 came into operation.
- 20 **15D. Liability of incorporated institution that was**  
21 **unincorporated at time of abuse**
- 22 (1) Subsections (2) and (3) apply if —
- 23 (a) a person was subjected to child sexual abuse by  
24 a person associated with an institution; and
- 25 (b) the person has or had a child sexual abuse cause  
26 of action against the holder of an office of  
27 authority in the institution (the *office holder*)  
28 founded on the responsibility of the office  
29 holder for the associated person and for the  
30 institution generally; and



- 1 (c) at the time of the accrual of the cause of action,  
2 the institution —
- 3 (i) exercised care, supervision or authority  
4 over children; and
- 5 (ii) was not incorporated;  
6 and
- 7 (d) the institution is currently incorporated; and
- 8 (e) the person is able to maintain an action on the  
9 cause of action or would be able to do so if the  
10 office holder continued to hold the office.
- 11 (2) An action on the cause of action referred to in  
12 subsection (1)(b) may be commenced against the  
13 institution.
- 14 (3) Any liability that the office holder would have had in  
15 relation to the cause of action is taken to be held by the  
16 institution.
- 17 (4) This section applies —
- 18 (a) regardless of when the act or omission that  
19 constitutes the child sexual abuse occurred; and
- 20 (b) regardless of when the cause of action accrued.
- 21 (5) If the institution has a liability in relation to a cause of  
22 action in tort because of subsection (3), the institution  
23 is taken to be a tortfeasor, for the purposes of the *Law*  
24 *Reform (Contributory Negligence and Tortfeasors'*  
25 *Contribution) Act 1947* section 7, in respect of damage  
26 suffered as a result of the tort.

27 **15E. Assets available for judgments and settlements:**  
28 **institutions**

- 29 (1) This section applies if an institution has a liability  
30 under a judgment in or settlement of a child sexual  
31 abuse action.

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- 1 (2) The institution may satisfy the liability out of assets  
2 held by or for the institution, including assets of a trust  
3 (whether or not a charitable trust).
- 4 (3) For the purposes of subsection (2) —  
5 (a) the institution may realise assets held by or for  
6 the institution; and  
7 (b) a trustee of a trust may pay an amount in  
8 satisfaction of the liability and, for that purpose,  
9 realise assets of the trust.
- 10 (4) The institution or a trustee may take the actions  
11 referred to in subsections (2) and (3) despite —  
12 (a) any written or other law (including any law  
13 concerning trusts or the holding of property by  
14 or for the office or the institution); or  
15 (b) the terms of any trust; or  
16 (c) any duty whether as member of the institution,  
17 office holder, trustee or otherwise.
- 18 (5) This section does not apply in relation to a judgment in  
19 or settlement of a child sexual abuse action given or  
20 reached before the day on which the *Civil Liability*  
21 *Legislation Amendment (Child Sexual Abuse Actions)*  
22 *Act 2017* section 5 came into operation.

23 **15F. Continuity of institutions: institution substantially**  
24 **the same**

- 25 (1) For the purposes of sections 15B, 15D and 15H(4)(a),  
26 it is sufficient that an institution (as it is currently) is  
27 substantially the same as it was at the time when the  
28 cause of action accrued (the *relevant time*).
- 29 (2) Without limiting the generality of subsection (1), an  
30 institution (as it is currently) is substantially the same  
31 as it was at the relevant time if the class or type of  
32 member and the primary purposes or work of the

- 1 institution (as it is currently) are substantially the same  
2 as they were at the relevant time.
- 3 (3) Subsections (1) and (2) have effect regardless of  
4 whether, after the relevant time —
- 5 (a) the name of the institution changed;  
6 (b) the organisational structure of the institution  
7 changed;  
8 (c) the institution became incorporated;  
9 (d) the geographic area in which the members of  
10 the institution carried out the purposes or work  
11 of the institution changed.

12 **15G. Continuity of institutions: no institution the same or**  
13 **substantially the same**

- 14 (1) If, for the purposes of section 15B or 15D, there is no  
15 current institution that is the same or substantially the  
16 same as the institution referred to in section 15B(1)(a)  
17 or 15D(1)(a) (the *earlier institution*), the current  
18 institution that is, under this section, the relevant  
19 successor of the earlier institution is taken to be the  
20 same institution as the earlier institution for the  
21 purposes of this Division.
- 22 (2) A current institution is the relevant successor of an  
23 earlier institution if —
- 24 (a) 1 of the circumstances in subsection (3) applies  
25 to the institution and the earlier institution; or  
26 (b) in the case where there is at least 1 institution  
27 interposed, over time, between the institution  
28 and the earlier institution — at least 1 of the  
29 circumstances in subsection (4) applies to each  
30 link in the chain between the institution and the  
31 earlier institution.

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- 1 (3) For the purposes of subsection (2)(a), the  
2 circumstances are —
- 3 (a) some or all of the earlier institution merged into  
4 the institution;
- 5 (b) some or all of the earlier institution merged  
6 with 1 or more other entities to form the  
7 institution;
- 8 (c) the institution is the remainder of the earlier  
9 institution after some of the earlier institution  
10 ceased to be part of the earlier institution.
- 11 (4) For the purposes of subsection (2)(b), the  
12 circumstances are —
- 13 (a) some or all of an earlier institution merged into  
14 an institution;
- 15 (b) some or all of an earlier institution merged with  
16 1 or more other entities to form an institution;
- 17 (c) an institution is the remainder of an earlier  
18 institution after some of the earlier institution  
19 ceased to be part of the earlier institution;
- 20 (d) an institution as it is at a particular time is  
21 substantially the same as it was at an earlier  
22 time (and section 15F(2) and (3) apply, with all  
23 necessary modifications, in determining what is  
24 substantially the same).
- 25 (5) The Governor may, on the recommendation of the  
26 Minister, make regulations providing that, for the  
27 purposes of subsection (1), a specified current  
28 institution is the relevant successor of a specified  
29 earlier institution.
- 30 (6) The Minister cannot make a recommendation for the  
31 purposes of subsection (5) unless satisfied that —
- 32 (a) the current institution has some relevant  
33 connection to the earlier institution; or

- 1 (b) the head of the current institution, as worked  
2 out under section 15H(3), has agreed to the  
3 current institution being the relevant successor  
4 of the earlier institution.
- 5 (7) Regulations made for the purposes of subsection (5) —  
6 (a) prevail over subsections (2) to (4) to the extent  
7 of any inconsistency; and  
8 (b) may have effect from a day that is before the  
9 day on which they are published in the *Gazette*,  
10 but not before the day on which the *Civil*  
11 *Liability Legislation Amendment (Child Sexual*  
12 *Abuse Actions) Act 2017* section 5 came into  
13 operation.

14 **15H. Continuity of offices**

- 15 (1) For the purposes of section 15B, it is sufficient that an  
16 office (as it is currently) is substantially the same as it  
17 was at the time when the cause of action accrued.
- 18 (2) However, if there is no current office that is the same  
19 or substantially the same as the office referred to in  
20 section 15B(1)(b) but there is continuity of the  
21 institution, the current head of the institution is taken to  
22 be the current office holder for the purposes of this  
23 Division.
- 24 (3) The head of an institution is the individual or body who  
25 or which, as a member or part of the institution —  
26 (a) is acknowledged by the institution as the head  
27 of the institution; or  
28 (b) in the absence of such an individual, body or  
29 acknowledgment — has overall responsibility  
30 for the institution.

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- 1 (4) For the purposes of subsection (2), there is continuity  
2 of the institution if the institution (as it is currently) —  
3 (a) is the same as it was at the time when the cause  
4 of action accrued; or  
5 (b) is the same institution, under section 15G, as  
6 the institution referred to in section 15B(1)(a).

7 **15I. Accrual of certain child sexual abuse causes of**  
8 **action**

9 For the purposes of this Division, if a child sexual  
10 abuse cause of action does not accrue at the time of the  
11 act or omission giving rise to the cause of action, the  
12 cause of action is taken to have accrued at the time of  
13 the act or omission, despite any written or other law.

14 **15J. Displacement of Corporations legislation**

15 Sections 15C and 15E are declared to be Corporations  
16 legislation displacement provisions for the purposes of  
17 the *Corporations Act 2001* (Commonwealth)  
18 section 5G in relation to the Corporations legislation  
19 generally.

20 **Division 3 — Prior compensation payments**

21 **15K. Prior compensation payments taken into account**

- 22 (1) In this section —  
23 **compensation payment**, made in respect of a person —  
24 (a) means a payment made in respect of the person  
25 by way of compensation or redress (including  
26 an ex gratia payment) for child sexual abuse of  
27 the person; but  
28 (b) does not include an amount paid under a  
29 judgment in or settlement of a child sexual  
30 abuse action.

- 1 (2) A court, in making an award of damages in a child  
2 sexual abuse action in respect of a person, must deduct  
3 an amount equal to the amount of any compensation  
4 payment made in respect of the person for the child  
5 sexual abuse the subject of the action.
- 6 (3) The court must do so only to the extent to which the  
7 compensation payment is for that child sexual abuse.
- 8 (4) If the court is not satisfied as to the extent to which the  
9 compensation payment is for that child sexual abuse,  
10 the court must deduct an amount equal to 50% of the  
11 payment.
- 12 (5) This section does not limit a court's power, in making  
13 an award of damages in a child sexual abuse action in  
14 respect of a person, to take into account an amount paid  
15 under a judgment in or settlement of a previous child  
16 sexual abuse action in respect of the person.

17 **Division 4 — Caps on legal fees**

18 **15L. Caps on legal fees**

- 19 (1) In this section —  
20 *costs determination* has the meaning given in the *Legal*  
21 *Profession Act 2008* section 252;  
22 *law practice* has the meaning given in the *Legal*  
23 *Profession Act 2008* section 3.
- 24 (2) An agreement must not be made for a law practice to  
25 receive, for appearing for or acting on behalf of a  
26 person in a child sexual abuse action, any greater  
27 reward than is provided for by any costs determination  
28 that is in force.

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- 1 (3) An agreement is void, and any money paid under the  
2 agreement is recoverable by the person who paid the  
3 money, if the agreement —  
4 (a) is made contrary to this section; or  
5 (b) would have been contrary to this section if it  
6 had been made after the commencement of the  
7 *Civil Liability Legislation Amendment (Child*  
8 *Sexual Abuse Actions) Act 2017* section 5.
- 9 (4) Subsection (3) does not affect the operation of an  
10 agreement so far as it relates to services provided  
11 before the commencement of the *Civil Liability*  
12 *Legislation Amendment (Child Sexual Abuse Actions)*  
13 *Act 2017* section 5 and does not apply in relation to any  
14 money paid or payable in respect of services so  
15 provided.

16 **Division 5 — Review of Part 2A**

17 **15M. Review of Part**

- 18 (1) The Minister must carry out a review of the operation  
19 and effectiveness of this Part as soon as is practicable  
20 after the 3<sup>rd</sup> anniversary of the day on which the *Civil*  
21 *Liability Legislation Amendment (Child Sexual Abuse*  
22 *Actions) Act 2017* section 5 comes into operation.
- 23 (2) The Minister must prepare a report based on the review  
24 and, as soon as is practicable after the report is  
25 prepared, cause it to be laid before each House of  
26 Parliament.  
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**Part 3 — *Criminal Injuries Compensation Act 2003* amended**

**6. Act amended**

This Part amends the *Criminal Injuries Compensation Act 2003*.

**7. Section 68 amended**

After section 68(1) insert:

- (1A) Subsection (1) does not apply if the amount referred to in subsection (1)(b) was reduced to take into account the compensation award referred to in subsection (1)(a).

1                    **Part 4 — *Limitation Act 2005* amended**

2    **8. Act amended**

3                    This Part amends the *Limitation Act 2005*.

4    **9. Section 5 amended**

5                    In section 5(2) delete “section 6.” and insert:

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7                    sections 6 and 6A.

8

9    **10. Section 6A inserted**

10                    After section 6 insert:

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12                    **6A. Special provisions for child sexual abuse actions: no**  
13                    **limitation period**

14                    (1) In this section —

15                    *child* means a person under 18 years of age;

16                    *child sexual abuse*, of a person, means an act or  
17                    omission in relation to the person, when the person is a  
18                    child, that is sexual abuse;

19                    *child sexual abuse action* means an action on a child  
20                    sexual abuse cause of action;

21                    *child sexual abuse cause of action* means a cause of  
22                    action that relates, directly or indirectly, to a personal  
23                    injury of the person to whom the cause of action  
24                    accrues, where the injury results from child sexual  
25                    abuse of the person.

26                    (2) Despite anything in this or any other Act, no limitation  
27                    period applies in respect of a child sexual abuse action.

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- 1 (3) The following provisions do not apply in respect of a  
2 child sexual abuse action —
- 3 (a) the *Crown Suits Act 1947* section 6 (as applying  
4 under the *Limitation Legislation Amendment  
5 and Repeal Act 2005* section 8);
- 6 (b) the *Limitation Act 1935* section 47A (as  
7 applying under the *Limitation Legislation  
8 Amendment and Repeal Act 2005* section 4);
- 9 (c) section 5 of this Act.
- 10 (4) This section applies regardless of whether the action is  
11 brought in tort (including trespass), in contract, under  
12 statute or otherwise.
- 13 (5) This section does not limit —
- 14 (a) any inherent, implied or statutory jurisdiction of  
15 a court; or
- 16 (b) any other powers of a court arising or derived  
17 from the common law or under any other Act  
18 (including any Commonwealth Act), rule of  
19 court, practice note or practice direction.
- 20 Note for this subsection:
- 21 For example, this section is not intended to limit a court's  
22 power to summarily dismiss or permanently stay  
23 proceedings where the lapse of time has a burdensome  
24 effect on the defendant that is so serious that a fair trial is  
25 not possible.
- 26 (6) A cause of action referred to in the definition of ***child  
27 sexual abuse cause of action*** does not include a cause  
28 of action, action on which could not be maintained but  
29 for the *Fatal Accidents Act 1959* or the *Law Reform  
30 (Miscellaneous Provisions) Act 1941*.
- 31 (7) The Minister must carry out a review of the operation  
32 and effectiveness of this section and Part 7 as soon as is  
33 practicable after the 3<sup>rd</sup> anniversary of the day on  
34 which the *Civil Liability Legislation Amendment (Child*

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1                    *Sexual Abuse Actions) Act 2017* section 10 comes into  
2                    operation.

3                    (8) The Minister must prepare a report based on the review  
4                    and, as soon as is practicable after the report is  
5                    prepared, cause it to be laid before each House of  
6                    Parliament.  
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8                    **11. Section 9 amended**

9                    In section 9(1) delete “section 28(3) and (5)” and insert:  
10  
11                    sections 6A and 28(3) and (5)  
12

13                    **12. Part 7 inserted**

14                    After Part 6 insert:  
15

16                    **Part 7 — Transitional provisions**

17                    **Division 1 — Provisions for *Civil Liability Legislation***  
18                    ***Amendment (Child Sexual Abuse Actions) Act 2017***

19                    **89. Terms used**

20                    In this Division —

21                    ***child sexual abuse*** has the meaning given in  
22                    section 6A(1);

23                    ***child sexual abuse action*** has the meaning given in  
24                    section 6A(1);

25                    ***child sexual abuse cause of action*** has the meaning  
26                    given in section 6A(1);

27                    ***commencement day*** means the day on which the *Civil*  
28                    *Liability Legislation Amendment (Child Sexual Abuse*  
29                    *Actions) Act 2017* section 12 comes into operation;

1                    *previously barred cause of action* means a child sexual  
2                    abuse cause of action that was statute barred  
3                    immediately before commencement day;

4                    *previously settled cause of action* means a child sexual  
5                    abuse cause of action that was settled after it was  
6                    statute barred but before commencement day;

7                    *statute barred*, in relation to a child sexual abuse cause  
8                    of action, means that action on the cause of action  
9                    cannot be maintained —

- 10                    (a) under one of the provisions referred to in  
11                    section 6A(3); or  
12                    (b) because a limitation period applicable to the  
13                    action under this or any other Act has expired.

14                    **90. Application of section 6A**

15                    Section 6A applies in relation to a child sexual abuse  
16                    action regardless of when the act or omission  
17                    constituting child sexual abuse occurred.

18                    **91. Previously barred causes of action**

19                    (1) An action on a previously barred cause of action may  
20                    be commenced even though one or more of the  
21                    following apply —

- 22                    (a) the action was statute barred before  
23                    commencement day;  
24                    (b) an action on the cause of action had  
25                    commenced but was discontinued or not  
26                    finalised before commencement day;  
27                    (c) a judgment was given before commencement  
28                    day in relation to the cause of action on the  
29                    ground that the action was statute barred;  
30                    (d) an action on the cause of action was dismissed  
31                    before commencement day on the ground that  
32                    the action was statute barred.

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- 1                      (2) Application may be made to a court with jurisdiction to  
2                      deal with the action to set aside a judgment referred to  
3                      in subsection (1)(c) or (d) (the *previous judgment*). An  
4                      application may be made prior to the commencement  
5                      of the action.
- 6                      (3) The court may, if satisfied that it is just and reasonable  
7                      to do so, set aside the previous judgment to the extent  
8                      to which it relates to the action.
- 9                      (4) If the previous judgment is wholly or partly set aside, a  
10                     person who paid an amount under the judgment cannot  
11                     seek to recover that amount on the basis of the  
12                     judgment having been set aside to that extent.
- 13                    (5) If an action on a previously barred cause of action is  
14                    commenced, the court dealing with the action may, if  
15                    satisfied that it is just and reasonable to do so, take into  
16                    account any amount paid under a previous judgment  
17                    relating to the cause of action.
- 18                    (6) A court, other than the Supreme Court, may not set  
19                    aside a previous judgment of another court.

20                    **92.            Previously settled causes of action**

- 21                    (1) This section applies in relation to a proposed action on  
22                    a previously settled cause of action and to the  
23                    agreement effecting the settlement (the *settlement*  
24                    *agreement*).
- 25                    (2) Application may be made to a court that would have  
26                    jurisdiction to deal with the action, but for the  
27                    settlement agreement, for leave to commence the  
28                    action.
- 29                    (3) The court may, if satisfied that it is just and reasonable  
30                    to do so —
- 31                              (a) grant leave to commence the action, subject to  
32                              conditions; and

- 1 (b) to the extent necessary for that, set aside the  
2 settlement agreement and any judgment giving  
3 effect to the settlement.
- 4 (4) If an action on the previously settled cause of action is  
5 commenced, the settlement agreement and each  
6 agreement relating to the settlement, other than a  
7 contract of insurance, is, despite any written or other  
8 law, void to the extent to which it relates to the child  
9 sexual abuse the subject of the cause of action.
- 10 (5) A party to an agreement that is wholly or partly void  
11 under subsection (4) cannot seek to recover an amount  
12 paid by or for the party under the agreement on the  
13 basis that the agreement is void to that extent.
- 14 (6) The court dealing with the action may, if satisfied that  
15 it is just and reasonable to do so, take into account any  
16 amount paid under an agreement that is wholly or  
17 partly void under this section, to the extent to which the  
18 amount relates to the child sexual abuse the subject of  
19 the cause of action.
- 20 (7) For the purposes of subsection (6), amounts paid under  
21 an agreement are taken to relate to the child sexual  
22 abuse the subject of the cause of action to the extent of  
23 50% if the agreement —
- 24 (a) does not relate solely to that child sexual abuse;  
25 and
- 26 (b) does not expressly deal with the extent to which  
27 the agreement and amounts paid under it relate  
28 to that child sexual abuse.  
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