

2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Civil Law (Wrongs) (Child Abuse Claims Against Unincorporated Bodies) Amendment Bill 2018

A Bill for

An Act to amend the *Civil Law (Wrongs) Act 2002*

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

- 1 **1 Name of Act**
- 2 This Act is the *Civil Law (Wrongs) (Child Abuse Claims Against*
3 *Unincorporated Bodies) Amendment Act 2018*.
- 4 **2 Commencement**
- 5 This Act commences on the day after its notification day.
- 6 *Note* The naming and commencement provisions automatically commence on
7 the notification day (see [Legislation Act](#), s 75 (1)).
- 8 **3 Legislation amended**
- 9 This Act amends the *Civil Law (Wrongs) Act 2002*.
- 10 **4 New chapter 8A**
- 11 *insert*

12 Chapter 8A Institutional child abuse

13 114A Meaning of *child abuse* and *child abuse claim*—ch 8A

- 14 (1) In this chapter:
- 15 *child abuse* means physical or sexual abuse of a child.
- 16 *child abuse claim*, by or on behalf of a person, means a claim in
17 relation to a personal injury that arises from child abuse to which the
18 person was subjected when the person was a child.
- 19 (2) In this section:
- 20 *physical abuse* does not include conduct that is justified or excused
21 under a law applying in the Territory.
- 22 *sexual abuse* includes—
- 23 (a) an offence of a sexual nature; and

- 1 (b) misconduct of a sexual nature.
- 2 (3) For this chapter, it does not matter when the child abuse, or alleged
3 child abuse, of the subject of a child abuse claim happened.

4 **114B Meaning of *related trust*—ch 8A**

- 5 (1) In this chapter:
- 6 *related trust*, in relation to an unincorporated body, means a trust
7 controlled by the unincorporated body which the body uses to
8 conduct the body's activities.
- 9 (2) For this section, a related trust is *controlled* by an unincorporated
10 body if—
- 11 (a) the body has direct or indirect power to control the application
12 of income, or the distribution of the property, of the trust; or
- 13 (b) the body has direct or indirect power to obtain the beneficial
14 enjoyment of the property or income of the trust, with or without
15 the consent of any other entity; or
- 16 (c) the body has direct or indirect power to appoint or remove a
17 trustee of the trust; or
- 18 (d) the body has direct or indirect power to appoint or remove
19 beneficiaries of the trust; or
- 20 (e) the trustee of the trust is accustomed or under an obligation,
21 whether formal or informal, to act according to the directions,
22 instructions or wishes of the body; or
- 23 (f) the body has direct or indirect power to decide the outcome of
24 any other decision about the trust's operations; or
- 25 (g) a member of the body has, under the trust deed for the trust, a
26 power mentioned in paragraphs (a) to (f).

1 **114C Unincorporated bodies**

2 (1) This chapter applies to an unincorporated body regardless of whether
3 the body has—

4 (a) a written constitution or fixed membership; or

5 (b) any other particular attribute.

6 (2) Anything an unincorporated body may do, or is required to do, under
7 this chapter may be done by any management member of the body.

8 (3) In this section:

9 *management member*, of an unincorporated body, means—

10 (a) a member of the body's management committee (however
11 described); or

12 (b) if the body does not have a management committee—a person
13 who takes part in, or who could take part in or exercise control
14 over, the management of the body, regardless of the person's
15 title or position.

16 **114D Unincorporated body may nominate defendant**

17 (1) This section applies if—

18 (a) a person brings, or wishes to bring, a child abuse claim against
19 an unincorporated body; and

20 (b) but for being unincorporated, the unincorporated body would be
21 capable of being sued.

22 (2) The unincorporated body may, with the nominee's consent, nominate
23 an entity that is capable of being sued to act as the defendant for the
24 unincorporated body in a proceeding for the child abuse claim.

- 1 (3) If a proceeding for the child abuse claim has started before the
2 unincorporated body has made a nomination, unless the court
3 otherwise orders, a nomination may be made no later than 120 days
4 after the day the proceeding started.
- 5 (4) If an unincorporated body makes a nomination under
6 subsection (2)—
- 7 (a) the child abuse claim may be brought against the nominee; and
8 (b) the nominee is taken to be the defendant for the body in the
9 proceeding for the claim for all purposes; and
10 (c) the court may find the nominee liable, on behalf of the body, for
11 any amount that the body would have been liable for if the body
12 were incorporated and capable of being sued.

13 **114E Court may appoint related trust as defendant**

- 14 (1) This section applies if—
- 15 (a) a proceeding for a child abuse claim against an unincorporated
16 body has started and the body has not made a nomination under
17 section 114D (2) within 120 days after the day the proceeding
18 started; or
- 19 (b) an unincorporated body nominates an entity under
20 section 114D (2) in relation to a child abuse claim and the
21 nominated entity—
- 22 (i) is not capable of being sued; or
23 (ii) does not have sufficient assets or property to meet any
24 judgment or order that may be made against it in relation
25 to the claim.
- 26 (2) The plaintiff in a proceeding for the child abuse claim may apply to
27 the court for an order that a related trust be appointed as the defendant
28 for the unincorporated body in the proceeding.

- 1 (3) If the plaintiff makes an application under subsection (2), the
2 unincorporated body must, within 28 days of the application being
3 made, notify the court about—
- 4 (a) any related trusts in relation to the body; and
5 (b) the financial capacity of each trust.
- 6 (4) The court may appoint 1 or more related trusts notified under
7 subsection (3), or other related trusts in relation to the unincorporated
8 body, as the defendant for the body in the proceeding.
- 9 (5) If the court makes an appointment under subsection (4)—
- 10 (a) the child abuse claim may be brought or continued against the
11 appointee; and
- 12 (b) the appointee is taken to be the defendant for the unincorporated
13 body in the proceeding for the claim for all purposes; and
- 14 (c) anything done by the unincorporated body is taken to have been
15 done by the appointee; and
- 16 (d) any duty or obligation of the unincorporated body in relation to
17 the proceeding is a duty or obligation owed by the appointee;
18 and
- 19 (e) the court may find the appointee liable, on behalf of the
20 unincorporated body, for any amount that the body would have
21 been liable for if the body were incorporated and capable of
22 being sued.

23 **114F Proceedings may be commenced before nomination or**
24 **appointment**

- 25 (1) A proceeding for a child abuse claim may be commenced or
26 continued against an unincorporated body in the name of the body
27 before—
- 28 (a) a nomination under section 114D (2) is made; or

- 1 (b) an appointment is made under section 114E (4).
- 2 (2) If a proceeding is commenced or continued under subsection (1)
- 3 against the unincorporated body, the court may make any
- 4 interlocutory orders it considers appropriate against the body as if it
- 5 were incorporated and capable of being sued.
- 6 (3) The nomination or appointment of an entity as a defendant for the
- 7 unincorporated body in a proceeding for a child abuse claim does not
- 8 relieve the body, or any member of the body, from any obligation
- 9 under an order under subsection (2).

10 **114G Liability of trustee if nominated or appointed as**

11 **defendant**

- 12 (1) This section applies if a related trust is nominated or appointed under
- 13 this chapter as the defendant for an unincorporated body in a
- 14 proceeding for a child abuse claim.
- 15 (2) Despite any territory law or anything in the trust deed, the trustee of
- 16 the related trust may—
- 17 (a) accept liability in relation to the child abuse claim; and
- 18 (b) if nominated as defendant—consent to the nomination; and
- 19 (c) give the court any information about the trust that may be
- 20 required for this chapter including information about the trust’s
- 21 financial capacity; and
- 22 (d) if the trust is found liable, or the trustee accepts liability, in
- 23 relation to the claim—
- 24 (i) apply trust property to pay the liability; and
- 25 (ii) be indemnified out of the trust property of the trust in
- 26 relation to the payment of the liability regardless of any
- 27 limitation on any right of indemnity the trustee may have.

- 1 (3) A trustee of a related trust is not liable under this chapter—
2 (a) for an amount more than the total value of the trust property; or
3 (b) for breach of trust only because of exercising a power under this
4 chapter or complying with this chapter.

- 5 (4) This section is declared to be a corporations legislation displacement
6 provision for the [Corporations Act](#), section 5G (Avoiding direct
7 inconsistency arising between the Corporations legislation and State
8 and Territory laws).

9 *Note* Subsection (4) ensures that any provision of the [Corporations Act](#) or the
10 [Australian Securities and Investments Commission Act 2001](#) (Cwlth)
11 with which this section would otherwise be inconsistent does not apply
12 to the extent necessary to avoid the inconsistency.

- 13 (5) In this section:

14 *liability*, in relation to a child abuse claim, includes—

- 15 (a) any unpaid judgment debt arising from the proceeding for the
16 claim; and
17 (b) any amount paid in settlement of the proceeding; and
18 (c) any costs associated with the proceeding.

19 *trustee*, of a related trust, if the trustee is a corporation, includes any
20 corporator, member or director of the corporation.

21 **114H Defendant may rely on defences and immunities etc**

- 22 (1) In a proceeding for a child abuse claim, a defendant for an
23 unincorporated body nominated under section 114D (2), or appointed
24 under section 114E (4)—
25 (a) may rely on any defence or immunity the body would have been
26 able to rely on had the body been incorporated and capable of
27 being sued; and

1 (b) is entitled to be indemnified under any policy of insurance in
2 relation to the claim that the body would have been indemnified
3 under had the body been incorporated and capable of being sued.

4 (2) Nothing in subsection (1) (b) excludes an unincorporated body from
5 any coverage or indemnity of the body under an insurance policy in
6 relation to a child abuse claim.

7 **5 Dictionary, note 2**

8 *insert*

- 9 • body
10 • child
11 • corporation

12 **6 Dictionary, new definitions**

13 *insert*

14 *child abuse*, for chapter 8A (Institutional child abuse)—see
15 section 114A (1).

16 *child abuse claim*, by or on behalf of a person, for chapter 8A
17 (Institutional child abuse)—see section 114A (1).

18 *related trust*, in relation to an unincorporated body, for chapter 8A
19 (Institutional child abuse)—see section 114B.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 16 August 2018.

2 Notification

Notified under the [Legislation Act](#) on 2018.

3 Republications of amended laws

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

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