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Child sexual abuse claims no longer subject to limitation periods in Victoria

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Victoria has now abolished limitation periods within which to sue for injury arising out of child abuse.

These amendments resulted from a recommendation from the Betrayal of Trust inquiry in Victoria that the Limitations of Action Act be amended to exclude child abuse from the operation of the limitation periods under that Act. The changes commenced on 1 July 2015.

There will now be no time limit within which to sue if an action is founded on the death or personal injury of a person resulting from:

acts or omissions that is physical abuse or sexual abuse against the person when he or she was a minor; and

psychological abuse that arises out of the abuse.

A court will determine what is “physical abuse”, “sexual abuse” and “psychological abuse” by reference to the ordinary meaning of those words. “Psychological abuse” has been included to avoid doubt and allows claims to be made without limitation times in relation to psychological elements of physical or sexual abuse (an example given in the explanatory memorandum is where a child is erroneously made to feel complicit in physical or sexual abuse that has occurred).

These amendments mean that an action may now be brought at any time after the date on which the act or omission alleged to have resulted in the death or personal injury occurred. This is irrespective of the date of the relevant act or omission and irrespective of whether or not the action was subject to a limitation period at any time in the past.

The effect of these amendments is that a person who was the subject of sexual or physical abuse when a minor will not have to seek an extension of time within which to sue if the limitation periods for bringing such claims would have otherwise expired.

However, the abolition of limitation periods within which claims may be made does not limit a court’s power to summarily dismiss or permanently stay proceedings where the lapse of time has a burdensome effect on the defendant that is so serious that a fair trial is not possible. An example would be where crucial evidence has deteriorated or been lost over time.

Reference: Limitation of Actions Amendment (Child Abuse) Act 2015 (Vic), assented to on 21 April 2015, proclaimed to commence operation on 1 July 2015.

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