

Fact Sheet

Civil Liability (Institutional Child Abuse Liability) Amendment Act 2021

This fact sheet sets out the implications of the *Civil Liability (Institutional Child Abuse Liability) Amendment Act 2021*, which amended the *Civil Liability Act 1936* following recommendations made by the Royal Commission into Institutional Response to Child Sexual Abuse.

Summary

The *Civil Liability (Institutional Child Abuse Liability) Amendment Act 2021* amended the *Civil Liability Act 1936*. It concerns child sexual abuse, serious physical abuse, and related psychological abuse.

The amended Act reverses the onus of proof in negligence cases. Previously, if a survivor of child abuse wished to seek compensation from an institution (for example a hospital, school, church, etc) under whose care the abuse occurred, they would be required to establish that the institution failed in its duty to provide reasonable care.

Under the amended Act, the institution's duty to prevent abuse will automatically be considered to have been breached unless it can prove it took all reasonable steps to prevent the abuse from occurring.

There is therefore an increased onus on SA Health agencies to establish policies and procedures for the prevention of abuse and to keep accurate and up-to-date records to ensure it can meet the obligations arising from the reversed onus of proof. This includes measures such as:

- Ensuring staff are appropriately trained on how to keep children safe
- Ensuring staff are provided with information on their legal obligations to keep children safe, as well as all relevant policies, procedures and work practices
- Ensuring staff have up-to-date Working With Children Checks where required
- Maintaining accurate and up-to-date records to be able to demonstrate compliance with all requirements by all business units

In addition, the amended Act sets out a broad, non-exhaustive list of persons considered part of an institution, meaning the institution is deemed liable for their actions. This includes (but is not limited to) officers, employees, volunteers, contractors and any entity or individual to whom the institution has delegated the care and supervision of a child.

The amended Act also enables courts to set aside previous settlements paid to victims of child abuse.

There have not yet been any Court decisions about what the amendment to the Act means in any given case. It is likely that any future Court decisions will depend on the particular facts of each case.

Relevant sections of the legislation

The relevant provisions setting out the responsibilities of institutions to prevent child abuse occurring to children who are under the institutions' care are set out in 'Part 7A – Child abuse – liability of institutions' of the amended [Civil Liability Act 1936](#).





For more information

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