# Children Legislation Amendment Bill 2019

## Introduction Print

### EXPLANATORY MEMORANDUM

#### Clause Notes

#### Part 1—Preliminary

Clause 1 outlines the purposes of the Bill. The main purposes of the Bill are—

- to amend the **Children, Youth and Families Act 2005** to include persons in religious ministry as mandatory reporters under that Act and to clarify that mandatory reporters are not exempt from the reporting requirement if the information would be privileged under the religious confession privilege in the **Evidence Act 2008**; and
- to amend the **Crimes Act 1958** to provide that information that would be privileged under the religious confession privilege in the **Evidence Act 2008** is no longer exempt for the purposes of section 327 of that Act; and
- to amend the **Evidence Act 2008** to provide that the religious confession privilege does not apply in proceedings for an offence against section 184 of the **Children, Youth and Families Act 2005** or section 327(2) of the **Crimes Act 1958**.

The other purposes of the Bill are—

- to make various amendments to the **Children, Youth and Families Act 2005** including to confer powers on the Secretary to make authorisations in relation to

non-Aboriginal children in certain circumstances, to amend powers to share information between the Secretary and community-based child and family services and between those services, to clarify that routine medical care includes immunisation in certain circumstances, to clarify the persons who are protected when disclosing information in good faith and to make other minor amendments; and

- to amend the **Children Legislation Amendment (Information Sharing) Act 2018** in relation to the amendment of a definition in the **Children, Youth and Families Act 2005**; and
- to amend the **Privacy and Data Protection Act 2014** to clarify an exemption in relation to information sharing under the **Child Wellbeing and Safety Act 2005**; and
- to amend the **Working with Children Act 2005** to clarify and limit the grounds on which a person who has been given a negative notice on a Category A application or a Category A re-assessment may apply to VCAT for review of the negative notice or for an assessment notice to be given to the person, to amend Schedule 1 to that Act to clarify the offences specified in Category A offences and to make minor miscellaneous amendments to that Act; and
- to amend the **Limitation of Actions Act 1958** to allow for certain actions in relation to death or personal injury arising from child abuse to be brought despite being dismissed due to the expiry of a limitation period or settled prior to the removal of limitation periods on 1 July 2015 and to provide for certain judgments and settlement agreements to be set aside.

Clause 2 is the commencement provision. The Act (except sections 3(2), 9 and 10 and Parts 4, 5 and 7) will commence on the day after the day on which it receives Royal Assent.

Sections 3(2), 9 and 10 and Parts 4, 5, 7 will commence on a day or days to be proclaimed, with a default commencement date of 1 September 2020.

## Part 2—Amendment of Children, Youth and Families Act 2005

Clause 3 inserts and amends definitions in section 3(1) of the **Children, Youth and Families Act 2005**.

A definition for ***pharmacist*** is inserted to mean a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession as a pharmacist (other than as a student).

An amendment is made to the definition of ***major long-term issue*** in relation to a child's health. The amendment clarifies that routine medical care including immunisation on the recommendation of a registered medical practitioner, nurse, midwife or pharmacist in the lawful practice of their profession is not a major long-term issue.

The amendment clarifying that routine medical care is not a major long-term issue in relation to a child's health is not intended any way to imply that other issues about the child's health are necessarily of a long-term nature. Day to day treatment of a child who suffers from a chronic or serious health condition, as included in the examples at section 175A of the **Children, Youth and Families Act 2005**, is an example of another issue that would not constitute a major long-term issue.

The terms ***person in religious ministry*** and ***religious institution*** are also defined.

***Person in religious ministry*** means a person appointed, ordained or otherwise recognised as a religious or spiritual leader in a religious institution. Examples are provided under this definition. They include all of the examples given in the Royal Commission into Institutional Responses to Child Sexual Abuse definition and additional similar examples to represent the wide range of faiths in the Victorian community.

***Religious institution*** means an entity that operates under the auspices of any faith and provides activities, facilities, programs or services of any kind through which adults interact with children.

The definitions of ***person in religious ministry*** and ***religious institution*** reflect the definitions used by the Royal Commission into Institutional Responses to Child Abuse and take into account

feedback from Victorian religious groups regarding the definition of ***minister of religion*** in the **Working with Children Act 2005**.

Examples of ***religious institution*** are not provided in the Bill. However, examples may include dioceses, mosques, parishes, synagogues, local religious congregations, schools, post-secondary institutions and religious institutes that may provide activities, facilities, programs or services such as chaplaincy services, early childhood services, outreach support or care services or residential facilities. These examples are provided to clarify the breadth of entities and the activities, facilities, programs or services they provide under the auspices of religious denominations or faiths in the Victorian community, through which adults interact with children. They include all the examples given in the definition used by the Royal Commission into Institutional Responses to Child Sexual Abuse and additional similar examples relevant to the Victorian community.

Clause 4 amends section 18 of the **Children, Youth and Families Act 2005**. Subclause (1) substitutes section 18(1) of the Act. This amendment permits the Secretary to the Department of Health and Human Services to also authorise the principal officer of an Aboriginal agency to exercise specified functions and powers of the Secretary in relation to a non-Aboriginal child who is the sibling of an Aboriginal child authorised under the provision.

Subclause (2) inserts new section 18(8) in the **Children, Youth and Families Act 2005**. New section 18(8) clarifies that despite the revocation of an authorisation in respect of an Aboriginal child or if a protection order in respect of that child is no longer in force, an authorisation is respect of a non-Aboriginal child who is a sibling of the Aboriginal child continues to have effect unless revoked or until a protection order in respect of the non-Aboriginal child is no longer in force.

Clause 5 replaces the words "the Aboriginal child" with "a child" in section 18A(2) of the **Children, Youth and Families Act 2005**. This amendment is consequential to the amendment permitting authorisation of a non-Aboriginal child who is the sibling of an Aboriginal child subject to an authorisation.

Clause 6 replaces the words "the Aboriginal child" with "a child" in section 18C(4) of the **Children, Youth and Families Act 2005**. This amendment is also consequential to the amendment

permitting authorisation of a non-Aboriginal child who is the sibling of an Aboriginal child subject to an authorisation.

Clause 7 amends section 41 of the **Children, Youth and Families Act 2005**, which provides for the confidentiality of the identity of reporters to the Secretary to the Department of Health and Human Services and referrers to community-based child and family services.

The amendments clarify that reporter and referrer identity information can be shared between the Secretary and any community-based child and family service and vice versa as well as by a community-based child and family service with any other community-based child family service.

Subclause (4) inserts new section 41(3) to clarify what the amendments to subsections (1), (1A) and (2) are intended to achieve, for the avoidance of doubt.

Clause 8 amends an example at the foot of section 175A(1) of the **Children, Youth and Families Act 2005**. Section 175A(1) enables the Secretary to the Department of Health and Human Services to specify issues relating to a child in out-of-home care about which a carer may be authorised to make decisions. One example given is routine medical care. The amendment clarifies that immunisation of a child on the recommendation of a registered medical practitioner, nurse, midwife or pharmacist in the lawful practice of their profession constitutes routine medical care, noting that none of the examples given constitute a major long-term issue.

Clause 9 amends section 182(1) of the **Children, Youth and Families Act 2005** to include a person in religious ministry as a mandatory reporter.

Clause 10 amends section 184 of the **Children, Youth and Families Act 2005**. Subclause (1) inserts a new subsection (2A). It is not clear whether the religious confession privilege in 127 of the **Evidence Act 2008** applies to mandatory reporting under the **Children, Youth and Families Act 2005**. However, the amendment is intended to make it clear that a person in religious ministry is not exempt from the requirement to make a mandatory report on the basis that the information was received in the context of a religious confession.

Subclause (2) inserts a new subsection (3A) to provide that the requirement to make a report under section 184(1) of the **Children, Youth and Families Act 2005** will apply to a person in religious ministry if the person's belief was first formed before commencement of new section 182(1)(ea) provided that the person continues to hold that reasonable belief post commencement.

Clause 11 amends section 192(3)(c) of the **Children, Youth and Families Act 2005** to reinstate references to provisions in the **Health Services Act 1998** and the **Mental Health Act 2014** that provide protection from liability for people who disclose information under section 192 of the **Children, Youth and Families Act 2005**. These references were inadvertently omitted when consequential amendments were made to the Act.

Clause 12 makes consequential amendments to section 331(3) of the **Children, Youth and Families Act 2005** to replace the reference to "an Aboriginal child" with "a child". The amendment clarifies that the internal review procedures of the Secretary to the Department of Health and Human Services do not apply to an authorisation under section 18(1) of that Act, irrespective of whether the child is an Aboriginal child or the non-Aboriginal sibling of an Aboriginal child.

Clause 13 makes consequential amendments to section 332(1) of the **Children, Youth and Families Act 2005** to replace the reference to "an Aboriginal child" with "a child". The amendment clarifies that the internal review procedures of an Aboriginal agency apply to an authorisation under section 18(1) of that Act, irrespective of whether the child is an Aboriginal child or the non-Aboriginal sibling of an Aboriginal child.

Clause 14 makes minor and technical amendments to section 597(4) of the **Children, Youth and Families Act 2005**. The amendments are intended to confirm that the Secretary to the Department of Human and Health Services has the power to consent to medical treatment for a child under an interim accommodation order placed in secure welfare service.

## Part 3—Amendment of Children Legislation Amendment (Information Sharing) Act 2018

Clause 15 amends section 16 of the **Children Legislation Amendment (Information Sharing) Act 2018** to clarify that courts and tribunals are excluded from the definition of ***information holder*** in the **Children, Youth and Families Act 2005**.

## Part 4—Amendment of Crimes Act 1958

Clause 16 amends section 327(7)(b) of the **Crimes Act 1958** (Failure to disclose sexual offence committed against child under the age of 16 years) to exclude section 127 of the **Evidence Act 2008** from the reference to Part 3.10 of Chapter 3 of that Act.

Under section 327(2), a person of or over 18 years of age who has information that leads them to form a reasonable belief that a sexual offence has been committed against a child under 16 years of age by another person of or over 18 years of age must disclose that information to police as soon as it is practicable to do so, unless the person has a reasonable excuse for not doing so.

Section 327(7) currently provides that a person does not contravene section 327(2) if the information would be privileged under Part 3.10 of Chapter 3 of the **Evidence Act 2008**. Part 3.10 includes section 127, which provides that information obtained in a religious confession is privileged unless the communication was made for a criminal purpose.

This amendment will require a relevant person who obtains information during a religious confession, and who forms the reasonable belief relating to child sexual abuse required under section 327(2), to disclose that information (unless they have a reasonable excuse for not doing so, or another specified exemption in section 327 applies).

The intention of this amendment is to ensure that relevant information is disclosed to police, even if that information is obtained during a religious confession. Accordingly, the fact that information was received during a religious confession should not be considered a "reasonable excuse" for failing to comply with section 327(2).

This clause implements recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse, and reflects that the safety and protection of children is paramount.

Other privileges in Part 3.10 of the **Evidence Act 2008** (such as client legal privilege) are not affected by this amendment.

Clause 17 inserts a transitional provision into Part 7 of the **Crimes Act 1958**. New section 636(1) provides that the amendment to section 327 of the **Crimes Act 1958** made by section 16 of the **Children Legislation Amendment Act 2019** applies to an offence alleged to have been committed on or after the commencement of that section of that Act.

The effect of this provision is that the amendment to section 327(7) will only apply prospectively. In other words, the offence will not apply to information received or a reasonable belief formed prior to commencement of the reforms.

New section 636(2) provides that, for the purposes of subsection (1), if any of the conduct constituting the offence set out in section 327(2) is alleged to have occurred between 2 dates, one before and one on or after the commencement of section 16 of the **Children Legislation Amendment Act 2019**, all of the conduct constituting the offence is taken to have occurred before that commencement.

## Part 5—Amendment of Evidence Act 2008

Clause 18 substitutes section 127(2) of the **Evidence Act 2008**. New subsection (2)(a) provides that subsection (1) does not apply if the communication involved in the religious confession was made for a criminal purpose. This replicates the contents of existing section 127(2).

New subsection (2)(b) provides that subsection (1) does not apply in a proceeding for an offence against section 184 of the **Children, Youth and Families Act 2005**. The effect of this amendment is that the religious confession privilege will not apply to court proceedings for the mandatory reporting offence.

New subsection (2)(c) provides that subsection (1) does not apply in a proceeding for an offence against section 327(2) of the **Crimes Act 1958**. The effect of this amendment is that the

religious confession privilege will not apply to court proceedings for the failure to disclose offence.

This reform will not compel a religious minister to give evidence of information obtained in confession in a proceeding against that minister for the failure to disclose offence. This is because the minister would be the accused in the proceeding, and therefore could not be compelled to give evidence (under the privilege against self-incrimination).

However, if a minister decides to give evidence, this reform will ensure that the minister cannot invoke the religious confession privilege in court. This ensures consistency with the removal of the exemption for religious confessions from the failure to disclose offence (clause 16).

This provision does not affect the availability of the religious confession privilege in proceedings for offences other than those under section 184 of the **Children, Youth and Families Act 2005** and section 327(2) of the **Crimes Act 1958**. For instance, if the perpetrator of child sexual abuse discloses that abuse to a minister during religious confession, the minister may still rely on the religious confession privilege in sexual offence proceedings initiated against the perpetrator.

## Part 6—Amendment of Privacy and Data Protection Act 2014

Clause 19 amends section 15B(5) of the **Privacy and Data Protection Act 2014** to clarify that the consent of a person to whom personal or sensitive information relates is not required if the information is being collected, used or disclosed for information sharing under Part 6A or Part 7A of the **Child Wellbeing and Safety Act 2005**.

## Part 7—Amendment of Working with Children Act 2005

Clause 20 amends section 17(4)(b) of the **Working with Children Act 2005** to provide that when the Secretary gives a negative notice to an applicant, the Secretary must give to the applicant a written notice that, amongst other things, informs the applicant, in the case of a category A application, that he or she may now only apply, in limited circumstances, to have VCAT consider whether an assessment notice is to be given.

This clarifies that appeal rights for category A applicants are now limited. The only circumstances under which a category A applicant may apply to VCAT for an assessment notice is if they were aged under 18 years at the time of the commission of the offence or if they were not, in fact, charged with, convicted or found guilty of the category A offence.

Clause 21 inserts new section 21AB(1)(ca) into section 21AB(1) of the **Working with Children Act 2005** to clarify that a re-assessment is a category A re-assessment if a person becomes subject to an emergency detention order within the meaning of the **Serious Offenders Act 2018**.

Clause 22 amends section 21C(3)(b) of the **Working with Children Act 2005** to provide that if the Secretary gives a negative notice under section 21C(2), the Secretary must give to the holder a written notice that, amongst other things, informs the holder, in the case of a category A re-assessment, that he or she may now only apply, in limited circumstances, to have VCAT consider whether an assessment notice is to be given.

This clarifies that appeal rights for a person who has had their assessment notice revoked following a category A re-assessment are now limited. The only circumstances under which a person may apply to VCAT if they have had their assessment notice revoked following a category A re-assessment are if they were aged under 18 years at the time of the commission of the offence or if they were not, in fact, charged with, convicted or found guilty of the category A offence.

Clause 23 inserts new section 25(2)(db) into section 25(2) of the **Working with Children Act 2005** to clarify that a person who has had their assessment notice revoked because they became subject to an emergency detention order within the meaning of the **Serious Offenders Act 2018**, may re-apply for an assessment notice if they are no longer subject to an emergency detention order.

Clause 24 amends section 26 of the **Working with Children Act 2005** to clarify the operation of the provisions relating to the general jurisdiction of VCAT.

Subclause (1) amends section 26(1)(a) of the **Working with Children Act 2005** to clarify that, subject to section 26(2) of that Act, a person who has been given a negative notice on a category A application because they are subject to an emergency detention

order within the meaning of the **Serious Offenders Act 2018**, may apply to VCAT for a review of the decision to give the negative notice. Under section 26(2) of the **Working with Children Act 2005**, a person subject to an emergency detention order may only apply for a review on the grounds that he or she is not such a person.

Subclause (1) also amends section 26(1)(c) of the **Working with Children Act 2005** to clarify that, subject to section 26(3) of that Act, a person who has had their assessment notice revoked following a category A re-assessment because they became subject to an emergency detention order within the meaning of the **Serious Offenders Act 2018**, may apply to VCAT for a review of a decision of the Secretary to revoke an assessment notice. Under section 26(3) of the **Working with Children Act 2005**, a person who becomes subject to an emergency detention order may only apply to VCAT on the grounds that they did not become subject to such an order.

Subclause (2) amends section 26(3) of the **Working with Children Act 2005** to clarify that a person who is given a negative notice in the circumstances described in section 26(1)(c) of that Act, which now includes becoming subject to an emergency detention order within the meaning of the **Serious Offenders Act 2018**, may only apply to VCAT for a review of a decision to give that person a negative notice on that ground that they did not become subject to such an order.

Clause 25 amends section 26A of the **Working with Children Act 2005** to clarify the operation of the provisions relating to the original jurisdiction of VCAT in respect of category A applications and re-assessments.

Subclause (1)(a) amends section 26A(1) of the **Working with Children Act 2005** to insert a reference to new subsection (1A) of section 26A, inserted by clause 25(2). This clarifies that a person who has been given a negative notice may only apply to VCAT for an assessment notice to be given to him or her subject to the requirements of new subsection (1A), inserted by clause 25(2).

Subclause (1)(b) amends section 26A(1)(a) of the **Working with Children Act 2005** to clarify that a person who has been given a negative notice on a category A application because they are subject to an emergency detention order within the meaning of

the **Serious Offenders Act 2018**, may not apply to VCAT for an assessment notice to be given to him or her.

Subclause (1)(b) also amends section 26A(1)(b) of the **Working with Children Act 2005** to clarify that a person who has had their assessment notice revoked following a category A re-assessment because they became subject to an emergency detention order within the meaning of the **Serious Offenders Act 2018**, may not apply to VCAT for an assessment notice to be given to him or her.

Subclause (2) inserts new section 26A(1A) into section 26A of the **Working with Children Act 2005** to provide that, despite section 26A(1), a person who has been given a negative notice referred to in that subsection may not apply to VCAT for an assessment notice to be given to the person if the person has at any time been charged with or convicted or found guilty of a category A offence and the person was an adult at the time of the commission of the offence.

New section 26A(1A) gives effect to a recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse by limiting the VCAT appeal rights of certain individuals. This recognises a key finding of the Royal Commission that some individuals will always pose a risk to children.

Subclause (2) also inserts new section 26A(1B) into section 26A of the **Working with Children Act 2005** to clarify that, in relation to a person's offending, where an offence occurs over a period of time, rather than on a specific date, and the person is a child at the beginning of the offending and is an adult at the conclusion of the offending, the person is to be taken to be an adult for the purposes of the limitation of appeal rights in respect of a category A application or re-assessment. New section 26A(1B) reflects other similar sections throughout the **Working with Children Act 2005** which assist in establishing the age of the offender for the purposes of an assessment under that Act.

Clause 26 amends section 39A of the **Working with Children Act 2005** to clarify that a person subject to an emergency detention order within the meaning of the **Serious Offenders Act 2018** must not apply for a working with children check.

Subclause (1) amends the heading of section 39A of the **Working with Children Act 2005** to include a reference to "serious offenders", as the individuals who are prohibited from

applying for a working with children check include those who are subject to both serious offender orders as well as sex offender orders and obligations.

Subclause (2) inserts new section 39A(d) into section 39A of the **Working with Children Act 2005**, which provides that a person subject to an emergency detention order within the meaning of the **Serious Offenders Act 2018** must not apply for a working with children check. The penalties associated with section 39A are up to 240 penalty units or imprisonment for 2 years.

Clause 27 inserts new section 56 into the **Working with Children Act 2005**, which provides for transitional provisions in respect of applications before VCAT in respect of a category A applicant or category A re-assessment.

Subclause (1) provides that section 26A of the **Working with Children Act 2005**, as amended by section 25(1)(a) and (2) of the **Children Legislation Amendment Act 2019**, applies to an application to VCAT made after the commencement of section 25(1)(a) and (2) of that Act. This means that upon commencement of these provisions a person who has been given a negative notice referred to in section 26A(1) of the **Working with Children Act 2005** may not apply to VCAT for an assessment notice to be given to the person if the person has at any time been charged with or convicted or found guilty of a category A offence and the person was an adult at the time of the commission of the offence.

Subclause (2) provides that section 26A of the **Working with Children Act 2005**, as in force immediately before the commencement of section 25(1)(a) and (2) of the **Children Legislation Amendment Act 2019** continues to apply to an application to VCAT that was made but not finally determined before that commencement. This means that the amendments made by the **Children Legislation Amendment Act 2019** do not apply to a person who had been given a negative notice referred to in section 26A(1) of the **Working with Children Act 2005** and had applied to VCAT for an assessment notice to be given to him or her but VCAT had not finally determined the application. This is to ensure that the new provisions do not affect applications part heard on commencement of these amendments and that applications currently before VCAT continue on foot in

accordance with the law at the time the proceedings were initiated.

Clause 28 amends Schedule 1 to the **Working with Children Act 2005**, which contains the list of category A offences.

Clause 25(a)(i) removes references to clause 9 and 10 from clause 1 of Schedule 1 to the **Working with Children Act 2005**. This amendment works in conjunction with the amendment made by clause 25(b), which inserts a reference to clause 1 into clauses 9 and 10 of Schedule 1 to the **Working with Children Act 2005**. This is to ensure that an offence of attempting to commit an offence specified in clause 1, as well as the equivalent interstate offence to the offences listed in clause 1, can be considered for the purposes of the offences listed in clauses 3 to 8 of Schedule 1.

Clause 25(a)(ii) inserts a reference to the offence of bestiality into clause 1 of Schedule 1 to the **Working with Children Act 2005**. This is to ensure that the offence of bestiality can be considered for the purposes of offences listed in Schedule 1, and specifically, that it is to be assessed as a category A application or re-assessment if the offender is an adult at the time of the commission of the offence or as a category B application or re-assessment if the offender is a child at the time of the commission of the offence.

Clause 25(b) inserts a reference to clause 1 of Schedule 1 to the **Working with Children Act 2005** into clauses 9 and 10 of Schedule 1 to that Act. This amendment works in conjunction with the amendment made by clause 25(a)(i), which removes references to clause 9 and 10 from clause 1 of Schedule 1 to the **Working with Children Act 2005**. This is to ensure that an offence of attempting to commit an offence specified in clause 1, as well as the equivalent interstate offence to the offences listed in clause 1, can be considered for the purposes of offences listed in Schedule 1.

Clause 29 inserts a reference to an emergency detention order within the meaning of the **Serious Offenders Act 2018** into clause 1 of Schedule 3 to the **Working with Children Act 2005**. This amendment has the effect of clarifying the operation of certain provisions in the body of the Act.

Clause 30 is a statute law revision amendment to reflect the change in name of the Department of Justice and Regulation to the Department of Justice and Community Safety. Clause 27 amends the definition of ***Secretary*** in section 3(1) of the **Working with Children Act 2005** to ensure that any reference to Secretary in that Act means Secretary to the Department of Justice and Community Safety.

## Part 8—Amendment of Limitation of Actions Act 1958

Clause 31 inserts a new section 27OA into the **Limitation of Actions Act 1958** to define the following terms—***previous judgment***, ***previously barred cause of action***, ***previously settled cause of action***, and ***settlement agreement***.

***Previous judgment*** means a judgment or an order in a previously barred cause of action.

***Previously barred cause of action*** means a cause of action founded on the death or personal injury of a person resulting from child abuse, for which any applicable limitation period expired before 1 July 2015. That is the date from which limitation periods that applied to actions in respect of causes of action that relate to death or personal injury resulting from child abuse were removed.

***Previously settled cause of action*** means a cause of action founded on the death or personal injury of a person resulting from child abuse that was settled and given effect by a settlement agreement entered into prior to 1 July 2015. The definition refers to settlement agreements made before 1 July 2015 to ensure that it captures settlement agreements entered into prior to the removal of limitation periods that applied to actions in respect of causes of action that relate to death or personal injury resulting from child abuse. Noting that the Royal Commission into Institutional Responses to Child Sexual Abuse found that survivors of child sexual abuse take an average of around 22 years to report abuse, this definition captures historical settlement agreements that were concluded when limitation periods applied. It is intended to avoid potential associated evidentiary difficulties in establishing whether a limitation period had in fact expired at the time a claim was settled.

***Settlement agreement*** means an agreement giving effect to the settlement of a cause of action founded on the death or personal injury of a person resulting from child abuse.

Clause 32 inserts new sections 27QA to 27QF after section 27Q of the **Limitation of Actions Act 1958**.

New section 27QA(1) provides that an action may be brought on a previously barred cause of action even if an action on the cause of action was dismissed by the court on the ground that the action was brought after the expiry of an applicable limitation period or by refusing to extend an applicable limitation period.

New section 27QA(2) provides that an action may be brought on a previously settled cause of action. This refers to settlement agreements made before 1 July 2015 to ensure that it captures settlement agreements entered into prior to the removal of limitation periods that applied to actions in respect of causes of action that relate to death or personal injury resulting from child abuse.

New section 27QA(3) provides that section 27QA does not apply to a deed of release or accepted offer of redress under the National Redress Scheme for Institutional Child Sexual Abuse Act 2018 of the Commonwealth or any prior settlement taken into account in such a deed or accepted offer. This limitation prevents a person who has entered into a deed of release as part of accepting an offer of redress under the National Redress Scheme for Institutional Child Sexual Abuse Act 2018 of the Commonwealth from bringing an action on a previously barred cause of action or previously settled cause of action. A person who accepts an offer of redress releases every relevant institution or official from civil liability for abuse that is within the scope of the National Redress Scheme and cannot bring or continue civil proceedings against any released institution or official in relation to that abuse.

New section 27QB provides that in an action brought on a previously barred cause of action, application may be made to the court for a judgment or an order in the previously barred cause of action to be set aside. Only the Supreme Court may set aside a judgment or an order of another court.

New section 27QC(1) empowers the court, if it is satisfied that it is just and reasonable to do so, to set aside a previous judgment, whether wholly or in part, and make any other order it considers

appropriate. The court may do so on an application for a previous judgment to be set aside under section 27QB, or otherwise in a proceeding on an action referred to in section 27QA(1), in order to provide flexibility for when an application may be made. It is in the court's discretion to determine what is just and reasonable according to the circumstances of each case, allowing the court to apply broad principles and take account of any relevant factors.

New section 27QC(2) provides that the court, if satisfied that it is just and reasonable to do so when awarding damages or costs in relation to an action on a cause of action founded on the death or personal injury of a person resulting from child abuse in which there is a previous judgment that has been set aside, may take into account any amounts paid or payable under the previous judgment.

New section 27QD provides that in an action brought on a previously settled cause of action, application may be made to the court for the settlement agreement and any judgment or order giving effect to the settlement to be set aside. Only the Supreme Court may set aside a judgment or an order of another court.

New section 27QE(1) empowers the court, if it is satisfied that it is just and reasonable to do so, to set aside a previous settlement agreement and any judgment or order giving effect to the settlement of the previously settled cause of action, whether wholly or in part, and make any other order it considers appropriate. The court may do so on an application for a previously settled cause of action to be set aside under section 27QD, or otherwise in a proceeding on an action referred to in section 27QA(2), in order to provide flexibility for when an application may be made. It is in the court's discretion to determine what is just and reasonable according to the circumstances of each case, allowing the court to apply broad principles and take account of any relevant factors. This may include, for example, the relative strengths of the parties' bargaining positions, the conduct of the parties and the amount of the settlement.

New section 27QE(2) provides that the court, if satisfied that it is just and reasonable to do so when awarding damages in relation to an action on a cause of action founded on the death or personal injury of a person resulting from child abuse on a previously settled cause of action, may take into account any consideration

(whether monetary or non-monetary) paid, payable or given or to be given under a settlement agreement that has been set aside or any other agreement related to the settlement agreement that has been set aside. When awarding costs in relation to such an action on a previously settled cause of action, the court may take into account any amounts paid or payable as costs under a settlement agreement that has been set aside or any other agreement related to the settlement agreement that has been set aside.

New section 27QF(1) provides that if the court makes an order setting aside a previous judgment, whether wholly or in part, any person or entity who paid an amount under that judgment is not entitled to seek to recover the amount on the basis that the previous judgment has been set aside. This will prevent the recovery of money from victims of child abuse, and also prevent the recovery of money from persons or institutions that was paid by insurers.

New section 27QF(2) provides that if the court makes an order setting aside a settlement agreement, whether wholly or in part, the settlement agreement and any other agreement related to the settlement (other than a contract of insurance) ceases to have effect to the extent specified in that order. This is to ensure the court can consider the extent to which a settlement agreement, and any related agreement, ceases to have effect. It also ensures that contracts of insurance are not affected by such an order. If the court makes such an order setting aside a settlement agreement, a party to that settlement agreement and any other agreement related to the settlement (other than a contract of insurance) is not entitled to seek to recover any money paid by or for that party under the settlement agreement or other agreement. This will prevent the recovery of money from victims of child abuse, and also prevent the recovery of money from persons or institutions that was paid by insurers.

Clause 33 inserts new section 35(2) at the end of section 35 of the **Limitation of Actions Act 1958**, to provide that section 35(1) does not apply to an action to which sections 27QA to 27QF apply.

Clause 34 inserts new section 38C after section 38B of the **Limitation of Actions Act 1958**, to provide that the Governor in Council may make regulations for or with respect to any matter or thing required to be prescribed by the Act or necessary to be prescribed

to give effect to the Act. The regulations may be of general or limited application and may differ according to differences in time, place or circumstance.

## Part 9—Repeal of this Act

Clause 35 provides for the automatic repeal of this Amendment Act on 1 September 2021. The repeal of this Act does not affect the continuing operation of the amendments made by this Act (see section 15(1) of the **Interpretation of Legislation Act 1984**).