

Case Note

High Court of Australia grants application for special leave to appeal a decision to permanently stay proceedings involving historical child sexual abuse

Warning: This Case Note discusses serious sexual and physical abuse.

We recently published a Case Note about the Queensland Supreme Court decision of *Willmot v State of Queensland* [2022] QSC 167, which outlined when a permanent stay should be granted in a case involving allegations of historical sexual and physical abuse that were said to have occurred between 1957 and 1967. Bowskill CJ held that a permanent stay was warranted given the effects of the passage of time (60 years) since the events alleged in the action. Her Honour concluded that a fair trial was not possible due to the lack of available witnesses. [Read our Case Note in full here.](#)

Courts in Australia have acknowledged that a permanent stay of proceedings should only be ordered in exceptional circumstances, particularly where it would not be possible for the defendant to obtain a fair trial. Historical abuse claims are often characterised by a considerable passage of time since the alleged events. If the consequences of that passage of time make it unfair for the action against the defendant to proceed (for example, through a lack of documentary evidence and unavailability of witnesses), the court may grant a permanent stay.

The recent New South Wales Court of Appeal decision of *The Trustees of the Roman Catholic Church for the Diocese of Lismore v GLJ* [2022] NSWCA 78 dealt with this issue. The court granted a permanent stay of proceedings, despite the existence of ‘tendency evidence’ (other offending) and other documents which supported the plaintiff’s allegations. It was satisfied that the defendant could not obtain a fair trial, as the alleged perpetrator in that case had died and did not have an opportunity to provide instructions to defend the claim. The Court held that the availability of witnesses who may have seen interactions between the plaintiff and alleged perpetrator was not enough to overcome the challenges the defendant faced.

In an interesting turn of events, on Friday, 18 November 2022 the High Court of Australia granted the plaintiff’s application for special leave to appeal the New South Wales Court of Appeal’s decision to stay the proceeding. We expect the appeal will be heard next year. We will keep a watching brief on the next instalment in the evolution of the law in this area and provide further updates.

More to come...

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