

Queensland Supreme Court grants another permanent stay of proceedings in historical sexual abuse case

ADA v State of Queensland
[2023] QSC 159

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At a glance

- + On 24 July 2023, the Queensland Supreme Court granted a permanent stay of proceedings for alleged sexual abuse suffered in the 1960s and 1970s.
- + The plaintiff made two separate allegations against the State of Queensland but was unable to identify the two offenders.
- + As the second historical abuse stay decision in Queensland, this case is likely to be widely relied on, particularly where claimants are unable to identify the alleged offender.



Background

The plaintiff made a claim against the State of Queensland (**State**) alleging she was the victim of sexual abuse on two occasions.

The first alleged occasion was in 1968 around the plaintiff's 11th birthday. The plaintiff alleges that she was called to the principal's office at a school operated by the State. An older male student (whom the plaintiff was unable to identify) allegedly sexually assaulted her whilst she waited for the principal. The plaintiff's claim against the State was based on a failure by the State to properly monitor and supervise students at the school.

The second alleged occasion was in 1973 when the plaintiff was 15 years old. The plaintiff alleges that when she was walking from a residence (where she performed domestic work) to the orphanage where she resided under the care and protection of the State, she was sexually assaulted by

an unidentified truck driver. The plaintiff alleges the State breached its duty of care by failing to provide transport for her to and from work to protect her from the risk of assault.

The plaintiff first informed the State of the alleged sexual assaults in April 2021 when she served a Notice of Claim under the *Personal Injuries Proceedings Act 2002*.

Following the removal of limitation periods for historical sexual abuse claims, the Queensland Supreme Court retained an inherent power to permanently stay a proceeding on the basis that a fair trial is not possible. The State made an application for a permanent stay of the proceedings under s11A of the *Limitation of Actions Act 1974* (Qld).

Application for permanent stay

The State did not admit either allegation of abuse. The State pleaded that the allegations could not be admitted because:

- there were no contemporaneous complaints about either alleged instance of abuse, including to the State, the school, the orphanage or the police
- there were no records of either assault
- the plaintiff did not seek any treatment for the alleged psychological consequences of the alleged assaults, and
- neither of the alleged offenders were identified.

The State argued that any trial would not be fair because it had no way of investigating or ascertaining whether the alleged assaults occurred. The alleged perpetrators had not been identified and there were no witnesses to either event. Further, there were no documents that addressed the allegations.



The lapse of time also meant that the State was unable to address the allegations that it breached its duty to the plaintiff. The lack of medical treatment meant that the State was unable to investigate how and when the claimant's injuries commenced and developed, or the potential causes of any conditions.

In defending the application, the plaintiff criticised the nature and extent of the investigations undertaken by the State regarding her allegations.

Judgement

The Court accepted that the State had no way of investigating whether the alleged assaults occurred and no ability to contradict the plaintiff's version of events. The Court found that in circumstances where the perpetrators were not identified and where there were no other witnesses or documents, the State was "utterly in the dark" on critical issues, adopting the wording from the NSW Court of Appeal decision of *Moubarak by his tutor Coorey v Holt* [2019] NSWCA 102.

The Court also found that the State's inability to investigate the allegations constrained its ability to effectively cross-examine the plaintiff on her allegations. In this regard, the Court relied on the fallibility of human recollection, as previously set out by the High Court of Australia in *Longman v The Queen* (1989) 168 CLR 79, as another factor of unfairness against the State if the claim was allowed to proceed.

The Court accepted that, on the evidence available, the State was significantly prejudiced in its ability to address the claim.



The Court addressed each allegation of abuse, noting that regarding:

- the first alleged assault, the State was unable to determine:
 - + what arrangements applied when students were sent to the principal's office
 - + the circumstances in which the plaintiff and an older male student came to be left in the office alone, and
 - + any relevant witnesses, as they were either dead (the principal) or unidentified (the principal's assistant and the person who sent the plaintiff to the principal's office).
- the second alleged assault, the State was unable to identify who permitted the plaintiff to walk to and from work and there were no relevant witnesses.

The Court noted that the lack of contemporaneous reports significantly prejudiced the State's ability to respond to the allegations. The lapse of time was found to have meant that the State was prejudiced from attempting to disentangle the causative effect of the alleged assaults from other subsequent life stressors experienced by the plaintiff.

The plaintiff was ordered to pay the defendant's costs of the stay application and of the proceeding.



Implications

This decision will be widely relied on in claims where the claimant is unable to identify (with any particularity) the alleged offender. It also provides weight to the argument that the lack of contemporaneous reporting and/or subsequent treatment for conditions arising out of alleged assaults impacts a respondent's ability to investigate the allegations.

The decision also provides guidance on the difficulties of disentangling the causative effect of alleged abuse where the claimant has been the subject of other significant life stressors. This is an issue often encountered in medical evidence in the historical abuse space, with some doctors more willing than others to comment on the apportionment of a claimant's medical presentation.

The decision relied heavily on the only other previous stay decision in Queensland of *Willmot v State of Queensland* [2022] QSC 167, which was approved on appeal in [2023] QCA 102. It also drew widely from other relevant NSW decisions in the abuse/stay arena.

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