



HIGH COURT OF AUSTRALIA

13 November 2024

WILLMOT v THE STATE OF QUEENSLAND [2024] HCA 42

Today, the High Court allowed an appeal in part from a decision of the Court of Appeal of the Supreme Court of Queensland, which dismissed an appeal against a decision of the Supreme Court of Queensland granting a permanent stay of proceedings commenced by the appellant ("Ms Willmot") against the State of Queensland ("the State") seeking damages for child sexual abuse and serious physical abuse alleged to have occurred more than 50 years ago.

Ms Willmot was born in 1954. As an infant, she was placed in a dormitory operated by the State. Between 1957 and 1959, she was placed in foster care, before returning to the dormitory. In the proceedings, Ms Willmot made four allegations. First, her foster father sexually abused her on a weekly to fortnightly basis between 1957 and 1959 and both foster parents regularly beat her. Second, when resident in the dormitory, she was subjected to severe physical abuse. Third, when given permission to leave the dormitory to visit her grandmother's house at about the age of six, she was sexually assaulted by an uncle "NW". Fourth, during a similar visit at about the age of 13, she was sexually assaulted by her cousin or great uncle, known as "Uncle Pickering". Ms Willmot pleaded that the State owed her a non-delegable duty which gave rise to liability in respect of each allegation.

By s 11A(1) of the *Limitation of Actions Act 1974* (Qld), which came into force in March 2017, an action for damages relating to personal injury resulting from sexual abuse or serious physical abuse of a person when they were a child may be brought at any time and is not subject to a limitation period. In that context, the key issue in the High Court was whether, in light of the burdensome effect of the passage of time, the trial of the allegations would be necessarily unfair.

The High Court held that the onus of proving that a permanent stay should be granted lies on the defendant and a stay should only be ordered in exceptional circumstances. The right to a fair trial is a deeply rooted common law right and was not changed by the introduction of s 11A. Section 11A created a new legal context in the following ways. First, there is no longer a time bar on claims for personal injury from child sexual abuse. Second, the plaintiff is not required to explain the delay in bringing proceedings. Third, inevitably, proceedings would be commenced long after the events in question. Fourth, the mere passing of time, in and of itself, does not enliven the power to stay proceedings for abuse of process.

The High Court held by majority that the allegations concerning sexual abuse by the foster father should not be stayed, but that the allegations of physical abuse by the foster parents should be stayed.

The High Court unanimously held that the allegations of physical abuse at the dormitory and the allegations concerning NW should not be stayed, but that the allegations of sexual abuse by Uncle Pickering should be stayed.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.