Tabled by Mr Rob Pyne
14.9.16

Opening Statement of Mr Rob Pyne MP

Legal Affairs and Community Safety Committee

14 September 2016

Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016

Thank you Chair, Deputy Chair and Members for the opportunity to brief you on this Private Member's Bill, the *Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016,* a bill which is intended to end decades of injustice for all victims of child abuse in Queensland.

1. In my Opening Statement I will begin by saying a few words on why there are two Bills, and on the development of the Policy Objectives of this Private Member's Bill.

2. I will then speak on the Policy Objectives of the Private Member's Bill, items which are missing from both the Government's Bill and "Issues Paper"

    a. Definition of abuse
    b. Revoking past settlements
    c. Stay of proceedings
    d. Juries for civil trials

3. I will then address and dispel some key "myths" surrounding civil litigation or financial compensation for child abuse, myths that are currently barriers to effective law reform

    a. Law reforms are not an attack on institutions
    b. All costs must be proven
    c. Money is required to pay for health care
    d. The victim is not to blame for litigating
    e. No "floodgate" of litigation
    f. A right of action does not remove the burden of proof

4. Then I will speak to questions of the potential cost of implementing these Policy Objectives

    a. Majority of victims will prefer redress to litigation
    b. Participation in redress or litigation should be the survivor's choice
    c. Most cases likely to still be settled out of court – just more fairly
    d. Relaxing barriers to litigation will not result in a cost blow-out from a rise in vexatious claims
    e. Insurance premiums should not rise uncontrolled *ad infinitum*

That will mark the conclusion of the Opening Statement at which time I welcome the opportunity for direct questions on the Private Member's Bill.

1. Why there are two Bills

Why a Private Member's Bill?

The development of policy objectives as a Private Member's Bill arose out of concerns held by survivors and survivor advocates that the Government appeared not to be consulting widely enough in the development of the policy objectives of its Bill with the associated concerns that the Government Bill would not adequately address the needs of victims of child abuse or not adequately address the issues raised before the Royal Commission.

Sadly, an examination of the Government Bill would now seem to validate those concerns and justify the action of developing an alternative Bill to put before the House.

In the genuine spirit of collaboration in the interest of producing best quality law reform in this area of significant social need, we are still happy for the Government to choose to adopt this Bill as its own, or even key elements within the Bill as its own.

Background to the development of the Policy Objectives

The policy objectives in this Bill arise from the Recommendations of the *Royal Commission into Institutional Responses to Child Sexual Abuse*, including the 2015 *Redress and Civil Litigation Report* as well as the many other publications and reports of the Royal Commission.

Policy objectives also arise from the identification of much needed reforms from consultation with survivors, prominent survivor advocacy NGOs and legal NGOs, law firms and legal academics based on their decades of research and practical experience in this field.

The Royal Commission was limited by its Terms of Reference to only reporting and recommending on matters of *institutional* abuse and of *sexual* abuse.

The Parliament is not so restricted. The Parliament is free to consider all information before it and act accordingly to address the broader needs of all Queensland victims of child abuse.

The Parliament has the capacity to acknowledge the obvious truth that what is just and proper law reform for victims of institutional and sexual abuse, is also much needed law reform for victims of non-institutional and non-sexual child abuse.

There is no need for further consultation on this question: the Royal Commission has heard 4 years of evidence, and both Victoria and New South Wales have conducted extensive consultation and arrived at the conclusion that extending rights to all victims of child abuse is the right thing to do.

What further consultation is possibly needed to confirm what it already well known: that all victims of abuse should be afforded the same equal right to access the court and have their evidence tested?

Other reforms needed – to be addressed at a later date

The Private Member's Bill intentionally restricts its focus on Recommendations 85-88 of the *Redress and Civil Litigation Report* noting that other equally pertinent areas of law reform are required of this House in the near future namely to comply with Recommendations 89 – 99.

The Government has adopted a similar approach and I commend the Government's "Issues Paper" for listing these reform items (recommendations 89-99) and look forward to the Government's proposed solution being put before the House without undue delay.

2. Policy Objectives of the Private Member's Bill (and deficiencies with the Government Bill and "Issues Paper"

Definition of abuse belongs in the Bill, not in the Issues Paper

Having praised that aspect of the "Issues Paper" I now must criticise certainly failings of the Issues Paper.

The *definition of child abuse*, should include non-institutional abuse and include serious physical abuse.

The betrayal of a person by their care givers in an institutional setting is comparable with the betrayal of a person by their care givers in a family or other setting.

It may well be that victims of abuse in a family or other settings may make a personal choice against exercising the right to litigation for many reasons (such as the lack of means of the perpetrator, or complex family dynamics).

However this should be the choice of the individual victim of abuse, to be made with full autonomy in the setting of otherwise having the right to litigate should they choose.

This is very different from being denied the right, based purely on the arbitrary detail of who perpetrated the abuse.

There is great evidence that serious physical abuse against a child, particularly when perpetrated in a culture of the constant threat of violence, has equally traumatic sequelae as sexual abuse.

Similar elements of loss of autonomy, loss of a person's rights or dignity, chronic loss of sense of safety, betrayal by primary caregivers, are the causal roots of trauma injury and are common elements across both physical and sexual abuse.

This is not controversial.

It's so obvious and so well proven interstate that it doesn't belong in an Issues Paper; just put it in the Bill and let the House vote.

Revoking past "settlements"

There are certain policy objectives that are neither in the Government's Bill nor on the Government's Issues Paper.

The most significant oversight is the lack of any legislative framework to revoke past "settlements" to allow all victims subjected to unfair settlements under the time limits legislation to retry their cases.

Institutions chose to actively invoke the time limits defence (remember they could have chosen not to).

At that moment the victim lost their right of action.

Usually, the institution then offered a small 'ex-gratia' payment to the victim, which was conditional upon the signing of a "deed of release" – releasing the institution from any future litigation.

The institution may also have threatened the victim with a bill for costs if the victim does not accept the ex-gratia "settlement".

Often the victims own lawyer recommended that the victim settle, with the institution settlement offer including payment of the lawyer's fees.

Victims who sought to reject the 'settlement' offer found themselves without representation and with a legal bill.

These settlement were consistently in the region of 10% or less of true proven damages, losses and health care costs arising from the abuse.

These deeds were obtained under duress and may in fact be unlawful. But legal advice is that there is great uncertainty as to how the court would hear an application to tear up such a deed, let alone the possible ruling a court may make.

Good law is not unpredictable.

There are also grave concerns of the broader legal consequences of seeking a court to revoke such deeds (for example the unknown impact on the integrity of deed law more broadly).

The solution is to provide a sensible legislative framework to guide the courts, to clearly spell out that these deeds may be revoked, and to clearly set limits to the application of this law.

The imprimatur for removing these past settlements comes from the recommendation of the Royal Commission – 85 and 86 – which clearly state to remove ALL time limits.

For a victim trapped in the perpetual limbo of an unjust settlement, they are forever subject to the time limit imposed at the time of their litigation proceedings.

We will have failed to remove the time limits for this cohort of victims if we don't address unjust settlements.

The Government's Bill does nothing to assist these victims in what can only be described as a breach of the recommendations of the Royal Commission.

In fact it is also a betrayal of the very people that the Premier has publicly stated are her motivation to implement reform.

Mr Chair, and Members – on no less than 4 occasions since August, the Premier has chosen to publicly cite a meeting she had in December 2015 with survivors of abuse, namely members of the group known as the "Brisbane Grammar Network" as being deeply personally moving and her motivation to implement effective reforms.

- Press release published in The Australian Newspaper on 2 August 2016;
- Press conference announcing the Government's Bill later that same day;
- In her Introductory Speech to the Bill on 16 August 2016;
- To public attendees at the Premier's lunch later same day.

At the press conference and the lunch the Premier recounted the story of a particular survivor who had brought his son to the meeting stating that his plight in particular was a deep personal motivation for to pursue law reform.

Mr Chair, why is it then, that the Government's Bill does not help these very same members of the Brisbane Grammar Network – who are subjected to unjust settlements as they had had the time limits defence invoked against them?

Why is that the Government's Bill does not help the specific people who the Premier has cited publicly on no less than four occasions as being her motivation for law reform?

The Government Bill does not help the survivor who brought his son to the December meeting. What explanation does the Premier or the Government offer to the "Brisbane Grammar Network" and to this person in particular, for this apparent betrayal?

Mr Chair, and Members, my Private Member's Bill resolves the whole issue and provides the necessary framework to revoke past deeds and protects the wider law in the process.

I strongly urge the Government to adopt this policy objective.

Stay of proceedings

I refer the Committee to my *Supplementary Submission* to this Opening Statement which details the complexities of this issue, the proposed solution as offered by my Private Member's Bill and the safeguards of this solution.

There is a major issue pending of institutions who, once time limits are removed, will simply and automatically seek a stay of proceedings on every action brought against them, claiming such grounds as 'passage of time', 'unavailability of a witness' or 'loss of evidence'.

Such a course of action is a predictable occurrence – it is anticipated by lawyers that this will occur.

To know this and to do nothing about it, will be to permit a 'time limit by proxy' to act as just another barrier preventing victims from accessing the court to present their evidence and have it properly tested.

The Royal Commission reports extensively on the importance of removing inappropriate *barriers* to litigation and redress – not just the statutory time limits.

On this basis, it would appear to be the duty of this Parliament to take some action to seek to address this issue.

My Private Member's Bill puts forward one such solution.

I welcome all robust constructive critique of this solution; but any party who opposes the solution outright is challenged to propose a superior alternative. To do nothing is not a viable option for the Parliament and would be a dereliction of duty.

Juries for civil trial (for personal injury from child abuse)

Another issue, which is a policy objective of my Private Member's Bill, but which does not appear in the Government Bill or on the Government's Issue Paper, is the return of juries to trials for civil litigation for injury arising from child abuse.

It is well recognised in our legal system that a jury is an essential component of the checks and balances of any trial process.

Before 2003 civil trials in Queensland had the right to a jury.

Victims of personal injury, including victims of child abuse, were deprived of an important element of fairness in the proceedings available to them.

In the moves to limit damages for personal injury, namely adults in motor vehicle accidents, or adults subjected to medical negligence, victims of child abuse were unwittingly caught up in the legal changes.

The laws were never intended to apply to children subjected to acts of criminal sexual or physical abuse.

This has been an 'unintended consequence'.

It is now time to repair that mistake. This is not a controversial policy objective.

An estimation of the cost of implementing this policy objective can be based on a review of the pre-2003 costs of running civil trials with a jury.

3. Dispelling some common myths about financial compensation for child abuse

In considering matters of financial compensation for child abuse, it is vital that the Committee properly understand the role that financial compensation plays. I will now dispel some common myths and misconceptions about financial compensation.

Law reforms are not an attack on the institutions

Laws which permit appropriate compensation for child abuse are not an attack on the important institutions of our society – such as churches, schools, certain community groups.

The laws are an attack on the specific misbehavior of key offenders and those in leadership who knowingly protected the offender.

It is not victims of abuse who are responsible for tarnishing the reputation of these institutions when they properly report crimes or bring a legal action.

It is the offenders and the senior people within the institution who covered up those crimes for so long who chose the course of action that would ultimately bring the institution into disrepute.

These leaders could have chosen to earn a good reputation for the institution by acting ethically, such as by reporting an offender to police and offering care to victims of abuse. Trust in the institution would have been maintained.

Instead, institutional leaders chose to seek to maintain a façade of a good reputation by concealing the truth of any misconduct. They compounded criminal sexual assaults with lies and concealing evidence. They implicated themselves and their institution in the assault of children as aiding and abetting co-offender.

It is not proposed law reform that threatens the reputation of these important institutions in whom we place so much trust – it is their own conduct.

The Private Member's Bill, targets the misconduct, creates consequence for misbehavior, to drive institutions towards better behavior with the ultimate effect of gradually rebuilding community trust in institutions.

All costs must be proven – there are no arbitrary quantums

Civil litigation for child abuse is never about *arbitrary* quantums of compensation.

Under Queensland law, quantums of damages must be proven and only *actual, provable* financial losses *arising from the abuse* may be claimed.

There are very tight controls.

Costs claimed include:

- Health care treatment arising from the abuse
- Past economic losses/future economic losses
- General damages (small component)

There is a small component for general damages, or 'pain and suffering' which is very tightly capped in statute, with Queensland having the lowest cap.

The important point for the Committee is that allowing a victim to have a proper right of access to justice is not the writing of some blank cheque – it is merely allowing the victim the right to sue for the *true and provable* financial losses which the child abuse has caused them to suffer.

Financial compensation cannot undo the abuse – but money is required to pay for health care

Financial compensation cannot undo the abuse that has been inflicted, but financial compensation pays for health care and helps provide essential social stability that the abuse has removed.

Appropriate health care can assist the transition from victim to survivor and may commonly include:

- a General Practitioner
- a treating Psychiatrist
- a psychologist
- medication
- Periods of focused inpatient treatment may be required

If a victim of abuse has turned to alcohol or other drugs out of desperation to self medicate their mental injuries, then treatment becomes more complex.

All of this costs money.

Much of the treatment described is only available privately, with public mental health services being unable to address the complex care needs of people who essentially have a trauma caused 'mental injury' not a 'mental illness'.

Due to work load, public health services tend to be limited to acute crisis response rather than preventative or maintenance care.

It is not appropriate for victims of child abuse to be treated as an inpatient on a general public mental health ward alongside seriously mentally ill patients and even potentially dangerous forensic mental health patients.

Such experiences have been reported to me as being traumatising, not healing, and therefore completely counterproductive to treatment goals (not to mention unacceptable to community expectations of care).

Health care is an investment not a cost.

As I have said these are people who were otherwise well children before they were abused and who carry a *mental injury* NOT a mental illness, meaning that the investment of suitable health care can potentially result in the person's recovery to a pre-morbid state and a return to productive adult life.

Financial compensation is an essential component of redress and recovery from child abuse – money does not undo the fact that the assaults occurred, but money is required to pay for the treatment that can begin to unravel the trauma.

<u>The victim is not to blame for bringing a litigation – the offender and the institution are to blame</u>

There is sadly a pervasive culture of blaming the victim who brings an action for civil damages against an institution.

Victims are too often labelled as 'trouble makers' for threatening the institution's reputation or finances. In fact, it is the child molester and their protectors who have undermined the institution's reputation.

The victim of abuse who litigates is doing the job of reporting crimes and holding misbehaving institutions to account.

All elements of the community should line up behind the victim to support them in this task, not persist in places barriers in front of the victim.

It makes no sense to blame the victim *for coming forward and reporting the abuse* when they finally do.

Mr Chair, I am today here to say for the record:

> The quantum of damages is not created by the victim of abuse.
>
> The quantum of damages is not created at the commencement of the litigation.
>
> The quantum of damages was created by the offender and their protectors, and was created *at the time of the abuse*.

The cost of the abuse (health care, lost earnings, general damages) is created by *the act of the abuse* and then often exacerbated by delays in appropriate intervention and treatment or aggravated by actions of the institution such as concealing evidence, labelling the victim a liar, and protecting the offender (who then continues the assaults).

The quantum of damages is directly reflective of the injury. Like the injury, damages have been present from the commencement of the abuse; it is simply that until the commencement of litigation, the costs have been *hidden and carried by the victim.*

The victim has, up until that point, carried the burden of the cost of their health care, and has carried the burden of the cost of their unemployment or underemployment. Victim's families have similarly suffered.

The act of litigation seeks nothing more than to take the *already existing cost* and remove it from the shoulders of the victim, where it does not belong, and to place it at the feet of the negligent institution or abuser where it most certainly does belong.

Any system of laws that prohibits a victim from doing this (such as time limits, or inappropriate stays of proceedings, or locked-in past settlements) is tacitly condoning that victims of child abuse should continue to carry the financial burden of the abuse inflicted upon them.

Under my Private Member's Bill, all victims of abuse have equal right of access to transfer the cost of the abuse onto the guilty party.

<u>Law reform is not opening the "floodgate" of litigation</u>

Mr Chair, another myth I would like to address is that law reform allowing victims to have proper rights of redress will "open a floodgate of litigation".

People who put forward a supposed "flood of litigation" as a reason against law reform, are essentially saying: "Because we've abused so many children, we can't afford to now properly help them". It is a shameful and ugly argument.

The argument is a tacit admission to having abused many children!

The "floodgates" theory is unsupported; *there is no evidence*.

It is worth looking at the experience of other jurisdictions, such as Canada, who passed retrospective reforms a decade ago and so offer us ten years of evidence to review. Jurisdictions closer to home include Victoria and New South Wales, however their legislation is of course much newer.

I recommend the Committee consider the reports of Professor Ben Mathews, who has investigated the Canadian laws and subsequent experience and whose research confirms there was no "flood of litigation" caused by the retrospective laws in that jurisdiction. The Canadian economy did not collapse.

It is only one year since the passing of the Victorian legislation, but there is yet to be any "flood" of litigation in that state.

A right of action does not remove the burden of proof

Giving victims of abuse the right to present their evidence to the court does not somehow fast-track the legal process or bypass the important checks and balances of the trial process.

The Private Member's Bill simply provides all victims of child abuse with the equal right to present their case to a court and have their evidence properly tested.

The responsibility then still lays with the claimant to prove elements of their case, such as that the abuse occurred, that the abuse resulted in an injury, that the injury resulted in a loss, and that the abuse was known or foreseeable by the defendant. The rules of evidence still apply.

There is currently no better system of justice and fairness than the proper testing of evidence in court, where both parties are represented, where the rule of law is applied by a judge and where the veracity of facts are assessed by a jury.

4. Costs of implementing the Policy Objectives

I note the Committee's pertinent questions to the Attorney-General's staff last session, which elicited an absence of any modelling having been conducted on their part.

I acknowledge the difficulty the Department would face with modelling as there are many broad variables.

It is my understanding that the cost of any pending litigation is well within the means of most institutional defendants (state government, private churches or schools).

My belief is formed from evidence provided to me directly by survivors of abuse, by survivor advocates, by prominent survivor and legal NGOs and also the modelling by the Royal Commission such as that provided in the *Redress and Civil Litigation Report*.

Majority of victims prefer redress to litigation

And the evidence provided to me is this:

> If legislation is passed that provides all survivors of child abuse with the right to litigate for damages for injuries arising from that abuse, it is not the case that all, or even most, will avail themselves of that right. In fact the overwhelming majority of victims will opt to not litigate, *if provided with the alternative of a fair and adequate redress scheme.*

In other words, the Parliament could safely give every victim of abuse the right to access justice and litigate their abuser and there will not be a "flood" of litigation before the courts.

Why is this so? Reasons include:

- Many survivors will not have the emotional strength to face the stress of litigation
- Many survivors, particularly survivors of abuse more long ago, will simply lack the required documentary or witness evidence to prove a case in court (as documents have been destroyed, witnessed died, etc)
- Many survivors have developed a deep mistrust of litigation

By contrast, a redress scheme is less adversarial and so survivors still suffering significant mental anguish can better survive participation in a redress scheme.

As well, a redress scheme has a lower standard of proof, so that victims of abuse who may lack corroborating evidence of the abuse that occurred so long ago, will likely still be able to participate.

Accordingly, hand in hand with lower standards of proof, quantums of damages are significantly lower with a redress scheme than with litigation.

So there is a natural tendency for the majority (in other words at least greater than half) of survivors to prefer a redress scheme, provided it is fair and reasonable.

This is an immediate and obvious natural ceiling to the potential cost liability for compensating victims of abuse.

There are still victims who will seek redress through litigation not through a redress scheme, it is simply that they are just not the majority of victims.

These victims will have just cause for choosing this path of action and deserve a legislative framework that supports them.

It will likely be survivors who regard the quantum of damages offered via a redress scheme to be inadequate to the injuries inflicted upon them and losses caused by those injuries.

These will more likely be survivors with strong evidence of the abuse and strong evidence of the negligence of an institution.

They are likely to be younger in age and may feel they are at a time in life where there is still opportunity to change their situation, to heal their injury and to have a second chance to become healthy and productive and to reclaim the second half of their life.

Also, key persons involved in the abuse of these victims, both the offenders and protectors of the offenders are more likely to still be alive and possibly even still occupying positions of leadership and power with the institution creating a tangible sense of injustice and a desire to expose the truth and to punish the guilty.

As well, it happens that these will more likely be survivors of abuse in *private* institutions not in *government* institutions.

So while it is my position that every victim deserves the right of equal access to litigate, it is also the reality that the large majority of victims will likely not exercise that right.

This should reassure the Committee and others as to the potential financial impact of these policy objectives. It may lead the Committee to ask: if the majority of victims won't exercise a right of action, why is it a priority to give survivors a right of action?

The simply answer is: for the remaining victims of abuse who DO want to exercise a right of action.

The longer answer is: Because it affords dignity to all survivors to be given the choice as opposed to perpetuating the power imbalance of unilaterally deciding that all victims MUST go through a redress scheme.

Also, because looking forward to the future, victims having a full right of litigation is an important deterrent against ongoing misbehavior by institutions and an important incentive for institutions to invest in child protection and abuse prevention as well as early reporting of offenders and early health care intervention for victims.

Participation in Redress or Litigation should be the survivor's choice

The statement of the Attorney-General on 4 August 2016:

> *"For **deeds** where time limits were a factor that may have affected the quantum of damages, the options available under a **national redress scheme** may provide a more appropriate mechanism for survivors to seek just compensation from institutions than would be found through legislative means.*
>
> *Any legislative attempt to remove past deeds entered into with private institutions has the potential to have far-reaching and unintended consequences."*

The current stated Government policy position (both in public press release on 2 August and in a briefing to the Queensland Law Society) is based on the concept of funneling ALL *survivors of abuse in state institutions* (eg those under the Forde Inquiry) through a round of redress without any true empowerment or the right to tear up old deeds or to re-litigate.

No plan at all is provided for *survivors of abuse from private institutions* in Queensland. They are offered neither the right to litigate nor the right to receive further redress.

This is not a plan; it is the absence of a plan.

In the case of the Government's plan for responding to survivors of abuse in state institutions, I believe the Government has significantly over-reached, taking the fact that the majority of survivors would likely choose a redress scheme, and inappropriately using that as an excuse to force ALL survivors through a redress scheme.

It must be remembered that for victims of state abuse, it is the government who is the abuser of these children in times past; it is the government who has been the architect of unjust time limits legislation; it is the government who has been the defendant and has used time limits to block victims from litigation; it has been the government who has perpetrated unjust redress settlement quantums upon these victims.

Many believe that it is grossly inappropriate for the government to now be the decider as to 'what all victims want'.

Its just a little bit too convenient that the same government responsible for all of these actions and decisions against these people now conveniently determines that it is in the victims' best interests to not have a right to litigate the government!

It should NOT be the role of Government to decide what is in the best interests of each individual victim of abuse.

The role of the Government should be none other than to give ALL victims equally the maximum right of access to justice and then to allow each victim the dignity to make their own choice as to preferred path for redress.

If the evidence provided to me and to the Government is correct, then the majority *will voluntarily opt for a redress scheme*, but under my Private Member's Bill will do so with the dignity of self determination.

I also have grave concerns that the Government Bill is fundamentally limited (ie, does not provide a framework for revoking past settlements) on the basis that these survivors should all just participate in a "national redress scheme" – as per the Attorney-General's statement of 4 August.

However, at the time of making this statement the Attorney-General and the Premier are well aware that the current Federal Government has said "NO" to a national redress scheme.

So it would appear that the Government knows it has no effective plan in place for this cohort of survivors.

Mr Chair, there is an important role played in providing victims with the right to litigate – it is a great motivator to negligent institutions to offer genuine, fair and reasonable redress scheme, to avoid costly litigation.

My Private Member's Bill offers this by empowering victims to put their evidence before a court.

Most cases likely to still be settled out of court – just more fairly

Any litigation lawyer will be able to tell you that the majority of litigation is settled 'out of court' ahead of formal trial proceedings.

In Queensland the *Personal Injuries Proceedings Act 2003* lays down certain defined procedures for pre-court negotiation or mediation that parties must participate in before attending court.

My Private Member's Bill removes the time limits in the *Personal Injuries Proceedings Act 2003* (to comply with the Royal Commission to remove all time limits) but does not remove these mediation proceedings.

So there is ample opportunity for a claimant to present their evidence of the abuse, their evidence of injury and their evidence of negligence, along with their claim for damages and equal ample opportunity for the defendant to respond appropriately, such as proper scrutiny of the evidence, apology and fair settlement of damages.

The true practical power of legislation that gives the victim the right to litigate, is that the offending party must take seriously the victim's right to litigate and must therefore come to pre-court mediation proceedings treating the victim and their damages claim with respect and dignity.

The victim must have a genuine right of action against the offender or institution for the institution to be prompted to participate properly in the mediation process.

Therefore, it is still expected that most cases should continue to be settled out of court, but this will now be for fairer settlement quantums because the defendant will have properly analysed the evidence against it, concluded there is a strong case for damages and will have been held to account by the victim's right to litigate.

Relaxing barriers to litigation will not result in a cost blow-out from a rise in vexatious claims

The prevalence of vexatious claims is grossly overestimated. Possibility does not translate to probability.

Estimations of prevalence of such conduct can be obtained by examining fraud rates in the general community or fraudulent claims against government relief schemes (eg the Victorian bush fire scheme, or Queensland Premier's Flood relief scheme).

The lessons learnt include:

- Rates of fraud are in fact very low
- Fraud is easily detected – false claims tend to stand out or do not withstand proper scrutiny

The overall good of providing a system that meets the genuine need of the *many* (a right to litigate), even though it may invite the improper conduct of a minor *few*, far outweighs the alternative, which is to prevent fraud by *any*, by denying justice to *all*.

The bottom line is: *the greatest protection against vexatious litigation is allowing the matter to proceed to court and to be properly tested.*

Insurance premiums should not rise uncontrolled *ad infinitum*

There should not be a rise in costs associated with a rise in insurance premiums if victims are allowed to litigate their abusers.

Claims of uncontrolled premium rises are not based on sound evidence or modelling or do not take into account the following considerations:

Certainly in the short term, as the current generation of victims of abuse try their cases, there will be a transient rise in the number of claims.

However, as we have identified previously, the majority of victims will prefer to have their claims dealt with via a redress scheme, not litigation, limiting the quantums and insurance liability of these claims.

The current generation of claimants come under already existing policies – why then would future premiums rise?

There is also an issue of many institutions breaching their policies by concealing abuse even from their insurer – breaching disclosure clauses. Why would premiums rise when many insurers will carry no or limited liability for such breaches?

Ultimately, the impact of the policy objectives – making institutions and defendants more accountable for child abuse – should result in changes to the operational practice of institutions such that they adopt better child protection measures.

This in turn will REDUCE risk of liability by reducing incidents of child abuse, as well as reducing the negligence of institutions.

As risk reduces, and as incidents of child abuse decline, so too should insurance premiums similarly decline.

Put more bluntly: the greatest protection against being sued for abusing children is to stop abusing children

An undiscussed dimension of litigation – the human element

A dimension to civil litigation that is rarely acknowledged is the inherent healing that comes from reclaiming autonomy, rebalancing power, and experiencing justice for the first time.

Any policy approach to law reform in this area has to take this into account, but rarely does.

We are not dealing with every day civil litigation.

When a victim of child abuse litigates their abuser or a negligent institution, this is a vastly different dynamic than a commercial litigation between two corporate entities over some sort of trade dispute.

Civil litigation by a victim of child abuse is deeply personal and emotional, and if done well, has the potential to form part of a re-empowering experience that is therapeutic. The civil action – holding the guilty or negligent parties to account – is a very tangible as well as symbolic act facilitating the transition from victim to survivor.

Criminal prosecution of the offender plays a similar role, but is only part of the story. Many survivors report that after criminal prosecution of the offender, there is an enormous sense of empowerment and healing, coupled with a palpable sense of 'unfinished business', namely when there is a knowingly negligent institution involved who remains unpunished. This feeling is easily understood, as essentially the institution is a co-offender and is yet to be punished.

This concords with a common sense understanding of the human sense of justice and fairness; namely that there should consequences for bad behavior.

For a victim of abuse, an early life lesson as a child is that they are powerless, and that adults can do whatever they like without consequence no matter how bad or hurtful.

So when litigation is barred, such as by statute, the Parliament is in fact depriving the victim of the opportunity to participate in a process of overturning the injustice of their abuse. In fact the current laws of this House are reinforcing the victim's learnt experience from the abuse that they are a victim and are powerless. That there are no consequences for the bad behaviour of these adults.

It is this dynamic that has led to the experience of so many victims of abuse in Queensland to feel like they are being abused all over again, when they have bravely attempted to hold institutions to account but found themselves subject to unfair time limits legislation, passed in this House.

If the laws of this Parliament continue to deny a victim the right to access justice – ie deny the right to have evidence heard and properly tested in court – then we as Members of Parliament, through our laws, and through the predictable consequence of these laws, are reinforcing the victim's experience of powerlessness.

When the Committee truly understands the powerlessness that is projected onto a child when they are abused, and how this powerlessness becomes incorporated into the child's identity, particularly in the

setting of recurring inescapable abuse, then the Committee will understand how any situation of powerlessness immediately replicates the abuse feelings for a victim.

Hopefully then, the Committee will understand how something as crucial as laws for civil litigation for child abuse must be the very last thing that replicates the powerlessness of victims and must, in fact, begin to empower victims.

Conclusion

It is the formal finding of the Royal Commission that for too long now, the laws of this House have had the effect of protecting offending institutions.

For too long, victims, the most powerless and vulnerable parties in the equation, have been left to try to hold institutions and individuals to account for their crimes without the support of adequate legislation.

The truth of this has long been available to us, well before the Royal Commission.

The Royal Commission has received overwhelming evidence of decades of letters, personal representations, well documented submissions, from victims, NGOs and others, reporting on the existence and extent of the problem of systemic child abuse and the need for law reform, addressed to successive Queensland Premiers, Attorneys-General, and local Members of both sides of this House across numerous Parliaments, to both Government Members and to Opposition Members, identifying the injustices of the legislation and the hurdles victims face.

Neither Party can escape the criticism of having been told of the problem, and of having done nothing effective to resolve the problem up to this point.

It is a shame upon this House and the broader community that for so many years we have all stood by, informed of the culture of abuse within institutions and informed of the inadequacy of the legislation and we have done nothing. We have allowed victims of abuse to shoulder the burden of trying to stamp out systemic corruption within our most trusted institutions. How could they ever be successful under these circumstances?

It is therefore long overdue – many decades overdue in fact – for this House to now provide the appropriate legislation to support victims.

The Royal Commission tells us that the current existing time limits legislation denies access to justice for victims of abuse.

The Government's proposed legislation provides rights for only a small cohort of victims of abuse, creating arbitrary discrimination between victims, and entrenching the powerlessness of the vast majority of victims.

By contrast, my Private Member's Bill gives *equal rights* of access to justice to *all* victims, without discrimination.

Mr Chair, I have searched my conscience and as a Member of this House I do not wish to perpetuate a system that predictably continues to fail the children of this state.

I cannot support the Government's Bill in its current form.

Instead, I choose to be part of the solution to create legislation that is fair and balanced and protects children, empowers survivors and holds guilty parties properly to account.

That is why I put forward my Bill in its current form. I urge the Government to adopt its reforms.

That concludes my Opening Statement and I now invite questions from the Committee.