LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr ML Furner MP (Chair)
Mr MJ Crandon MP
Mr DJ Brown MP
Mr R Molhoek MP
Ms JE Pease MP
Mrs JA Stuckey MP

Staff present:

Ms E Booth (Acting Research Director)
Ms K Longworth (Principal Research Officer)
Mr G Thomson (Principal Research Officer)

PUBLIC HEARING—INQUIRY INTO LIMITATION OF ACTIONS (INSTITUTIONAL CHILD SEXUAL ABUSE) AND OTHER LEGISLATION AMENDMENT BILL AND LIMITATION OF ACTIONS AND OTHER LEGISLATION (CHILD ABUSE CIVIL PROCEEDINGS) AMENDMENT BILL

TRANSCRIPT OF PROCEEDINGS

MONDAY, 26 SEPTEMBER 2016

Brisbane

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Committee met at 9.01 am

CHAIR: Good morning. I declare open this public hearing on the Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016 and the Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016. Thank you for your attendance. My name is Mark Furner. Other committee members present are Mr Crandon, Mr Brown, Ms Pease, Mrs Stuckey and Mr Molhoek, who is substituting for the member for Beaudesert, Jon Krause.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. The proceedings are being recorded by Hansard and broadcast live over the parliamentary internet site. The committee intends to publish the transcript of this hearing. Media may be present and will be subject to the chair's direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you may be filmed or photographed during the proceedings. I ask everyone to please turn off your mobiles or at least turn them to silent.

Only the committee and invited witnesses may participate in the proceedings. As parliamentary proceedings, under the standing orders any person may be excluded from the hearing at the discretion of the chair or by order of the committee. The Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016 was introduced by the Premier on 16 August 2016 and on 18 August the member for Cairns introduced the Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016 as a private member's bill. Both bills have been referred to this committee to consider them together. The purpose of today is to assist the committee with its examination of the bills. A number of stakeholders have been invited and provided written submissions to our inquiry and invited to participate in the hearing. The program for today has been published on the committee's web page.

DEANE, Mr Tony, Chair, Litigation Rules Committee, Queensland Law Society

POTTS, Mr Bill, President, Queensland Law Society

CHAIR: I welcome Mr Bill Potts and Mr Tony Deane. Thank you for attending today. We will allow you five minutes for an opening statement and then we will have some questions for you.

Mr Potts: May I say to begin what a great pleasure it is to appear before a committee that has such a very strong Gold Coast representation. As we all know, those people from the Gold Coast are known for their fairness and balance. Firstly, I thank the committee for inviting the Queensland Law Society to appear at this public hearing with respect to the Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016 as well as the Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016. This committee should have two written submissions from the Queensland Law Society: one dated 16 September 2016 and a slightly more fulsome and directed submission dated 21 September 2016.

For those of you who know me, I am a humble criminal lawyer. Mr Tony Deane, who bears the remarkable position of Chair of the Litigation Rules Committee, will be better able, I believe, to assist the committee in its technical deliberations, but I would wish to make the following brief statement. Firstly the society is pleased to appear before this committee today to speak about the initiatives of the government bill as well as what I will refer to as, I hope with respect, the Pyne bill and the serious issues that they address. The society applauds the government's commitment to action on the issues of institutional child sexual abuse and child abuse and initiatives being undertaken to reduce the impact of this scourge on our community. The public record will reflect that the Queensland Law Society has been tireless, and I suspect somewhat annoying, in its repeated calls for this legislation, but of course the devil will be in the detail, so we are very strongly in favour of legislation which addresses this scourge on our community.

The society is the peak professional body for the state's legal practitioners—over 9,000 of whom we represent, educate and support. In carrying out its central ethos of advocating for good law and good lawyers, the society proffers views which are truly representative of its member practitioners. The society—and I always say this at these committees—is an independent, absolutely apolitical representative body upon which both government and parliament can rely to provide advice which promotes good evidence based law and policy.

The society broadly supports law reform in response to recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. In particular, as I have stressed, the society has called for people who have suffered from institutional child abuse to have access to justice. We note of course that there are two proposed amendment bills before the Queensland parliament: firstly, as the member for Ferny Grove has indicated, the bill introduced by the Hon. Annastacia Palaszczuk on 16 August 2016, which must be considered in light of the issues paper released by the government to deal with further matters associated with the recommendations of the committee; and, secondly, the Pyne bill, which I have referred to, which was introduced on 18 August 2016 by the member for Cairns as a private member's bill.

We say that there are three major or three key issues which are of relevance to this deliberating committee, and they are as follows in sequence: one, the removing of limitations but the retaining of court discretions; two, with respect to the government bill, the question of retrospectivity; and, third, with respect to the Pyne bill, matters relating to settlement agreements. We cautiously support the removal or the substantial extension of limitation periods, acknowledging that there are very legitimate reasons why it may take many years—in fact, some would suggest up to 22 years being the average length of time—for a survivor to disclose abuse and we think obviously that those circumstances will significantly vary from case to case.

The commission which looked at these matters recommended that the removal of limitation periods should be balanced by expressly preserving the relevant courts' existing jurisdictions and powers to stay proceedings where it would be unfair to the defendant to proceed. The society is of the view that the explicit continuation of this power of the court is a necessary counterbalance to the removal of the limitation periods in these claims so as, firstly, not to fetter the discretion and jurisdiction of the court to deal with the individual factor or matrix in any claim and, secondly, to ensure that claims can appropriately meet the standard of proof required in civil law matters as a safeguard against the initiation of what may be seen as highly speculative claims. This is commonly known in the legal business as the floodgate argument, but it has a significant effect. It is a balancing of procedure and it is something which we think should be looked at very carefully.

There is a degree of retrospectivity, and those who have heard me before will understand that it is the Law Society's general view that retrospectivity should not be part of government legislation unless—and there is always an 'unless'—there is a significant benefit to individuals. In this case, we accept that there is a significant benefit to groups of individuals and an acknowledgement that there is in fact an appropriate form of redress in the civil system of the issues of past child abuse in institutions.

Finally, I want to address—without hopefully stretching the patience of the committee much further—the question of settlement agreements, which is referred to specifically in the Pyne bill. It proposes prior settlement agreements and collateral agreements are automatically voided upon commencement of a new action after the removal of the relevant limitation period. Whilst this is not a feature of the government bill, the recently released whole-of-government guidelines for Queensland government agencies provide that a release or discharge from liability under a deed of release pursuant to a redress scheme following the Forde inquiry should ordinarily not be relied upon.

Under this proposed provision, institutions may find that a claim made following the voiding of a settlement agreement is uninsurable. If the insurer were a party to the original settlement arrangement, such a matter should be well considered in extending the operation of the amendments proposed in the government bill, but this proposed amendment is instructive in the case of settlement agreements formed on the basis of the operation of a limitation period having expired. In this situation, the enforcement of such a settlement agreement may prove to be a de facto limitation on actions and may reasonably be an agreement that the victim would not have entered into but for the operation of the limitation at the time. In this context, we submit it would be preferable if the courts could consider and decide whether to set aside the settlement agreement in the totality of the circumstances rather than the agreement itself being deemed void as per the Pyne bill's drafted proposal. We welcome any questions this committee may have.

CHAIR: Thank you, Mr Potts, and I will direct my questions to Mr Deane if that is appropriate. Firstly I want to ask some questions around your definition of the Pyne bill, and I have asked this question before this committee—that is, recommendation 87 of the royal commission did not extend its jurisdiction and powers to that of staying of proceedings. In the case of this particular provision in the Pyne bill being successful, what would happen to an arrangement of a person who has entered into a deed of purely assistance through counselling or other forms of mental health provisions? What would happen to that provision if an example of what is sought in the Pyne bill was successful?

Mr Deane: Assuming that the deed is effectively a nullity—that is, it is completely rendered void—then it would be falling back purely to the operation of the stay. It would have no forthright effect. The difficulty becomes addressing the myriad permeation of circumstances, if you like. It is rare that you are going to have a single form of remedy dealt with in a deed of discharge or something like that. The other thing is the assumption I think is being made that those deal with bilateral deeds. There may well be multiparty deeds and varying rights across a number of different perspectives.

CHAIR: Thank you. Also in your submission—and thank you for identifying a number of issues—you do not endorse the re-establishment of juries. Juries existed prior to these changes. Why is it the case your organisation opposes the reintroduction of juries?

Mr Deane: Perhaps both Bill and I can speak to that in the sense that, having done away with juries in the context of civil proceedings, if you like the entire civil remedy system is now based on judge-only remedies. We would be creating a very myopic exception. The infrastructure of accommodating juries and the processes for juries I think would create an unnecessary burden. There is a clear division between criminal and civil contexts in terms of the burdens of proof. Certainly having had circumstances of civil trials with juries as well as judge-only trials, in the context of these types of actions, particularly with a long lead time, I fail to see how a jury can achieve something that a judge alone could not achieve.

Mr Potts: Simplifying that, it is expensive and it is unnecessary. Judges are able to do just as good a job fact-finding as a jury. I appreciate that when juries were removed every lawyer in sight threw his hands in the air and said, 'Oh, horror!' but it has actually worked. The final point that I would make is that with these types of matters clearly there is a high degree of emotion and, with no disrespect to juries, where there is fact-finding and what may be referred to broadly as an appeal to prejudice there is just simply no argument that says that one is better than another to find what, in essence, is going to be a fact-finding circumstance rather than what may be referred to as an emotive, though completely understandable, response to quite often very difficult allegations.

CHAIR: With regard to your comment about expense, who would bear the costs of a jury?

Mr Potts: The state does, and that is the problem with these things. We as a community say that the provision of justice is one of the hallmarks of a free, democratic society, and because of that we recognise that the expense of that is one which is borne by the state. If it is unnecessary, then why go to that expense?

Mr CRANDON: In relation to that comment that you made about the totality of circumstances, have either of you seen any evidence of an imbalance in negotiations? We are thinking about institutions versus victims. If that is the case, would that be part of what you would consider as being the totality of the circumstances?

Mr Deane: You pre-empted something I was going to add to the comments that were raised by the chair. That is, in terms of asking questions about a jury and a trial you have to remember—and I am not speaking with any instant figures in front of me—that 90 per cent of civil matters do not see the inside of a trial. They are resolved between the parties because the parties are informed by lawyers and they can sit down and resolve solutions. I would think maybe five to 10 per cent of civil matters see the inside of a trial. It is a very small part. The laws are well defined and where you have clearly defined rights, with both sides being well advised, who is going to incur the costs of a trial needlessly?

In terms of disadvantage, yes, that is certainly something that concerns most lawyers. I am in fact with a larger law firm. Our law firm has a requirement for something like 50 hours pro bono for every member of staff every year—that is vastly exceeded—as one way of trying to balance any redress that is needed. In this context, and specifically looking at support for these types of people through organisations, there is a substantial group of lawyers as well as other bodies that can facilitate some redressing of that imbalance, but it is certainly something which is a justifiable concern.

Mr Potts: In the past there has been an imbalance of arms, if I can put it that way, with very large—without naming them—institutions armed with the limitation of actions and a suggestion that sometimes people who were in their employ were not in their employ, and often people who were

suffering from the disadvantage of shame and the silence that is concomitant with that found that they were unable to properly deal with these things. Can I say that there has been a change not merely through the inquiries but there has been a greater public awareness of the scourge of this, and I suspect particularly within the legal community. I think there is a greater desire, whether through pro bono or other arrangements—class actions and the like—to address that inequality of arms which has been the case in the past.

Ms PEASE: I wanted to pick up on one of the comments you made, Mr Potts, about when there used to be a jury system and lawyers all threw up their arms in dismay.

Mr Potts: Lawyers have a habit of doing that.

Ms PEASE: Could you perhaps elaborate on that for me? Why was there concern by the legal fraternity?

Mr Potts: The theory that lawyers comfort themselves with when they go to bed at night is that jurors embody the common sense and the wisdom of the community, and we as a hallmark—and I am a criminal lawyer—regard that, particularly in criminal matters, as being effectively a bastion of freedom from effectively the excess of prosecuting authorities or sometimes the government. The history of that I suspect I could go on about for ages. In terms of civil lawyers, obviously there is a different standard of proof and obviously a different result. We are not talking about the liberty of the individual but rather quite often just compensation for injury done.

We had juries particularly in matters relating to defamation, and the reason is that it was felt that perhaps defamation juries could put themselves better in the place of an aggrieved party rather than a somewhat cynical judicial figure. I think what has happened is that history has taught us two things. One is that it was an expensive process. Secondly, there was no evidence to suggest that the decisions made by juries were in fact any better or more reliable than those of a judicial figure. Sometimes we saw awards, particularly in defamation matters, which were outside the norm essentially because of a jury making findings of fact which went beyond—because of normal human sympathy—what these types of matters would excite.

Ms PEASE: I would also like to just pick up on the concerns that you have with regard to justices of the peace operating and looking after minor disputes, particularly non-legally trained JPs. Would you be able to elaborate on that for me?

Mr Potts: I should say that it is a general whinge rather than a specifically targeted matter. My view is that we currently are paying justices of the peace at the rate of about $100 a day. I think they are often not trained properly and they are certainly risibly paid. The Law Society is a union; we support lawyers. My personal view is that there ought to be legally trained people dealing with it. The counterargument, of course, is that the scheme has been successful and it has saved money, but we are dealing with small claims less than $5,000 and there are no appeals. In terms of saving money, it has been a rip-roaring success. In terms of justice, my personal view is that trained lawyers are far better to do it rather than necessarily untrained JPs, however enthusiastic they may be.

Mrs STUCKEY: My question is about fairness. The bill before the House is historical, and we understand there is a second bill. This bill deals with the sexual abuse of children. I have been reading some cases where the physical abuse was absolutely horrific and where young people were forced to watch sexual abuse taking place. In the opinion of the Law Society, does this bill go far enough and how will those people feel about being left out of this description?

Mr Deane: We cannot wind back time. Nobody can wind back time. Damage is done to people regardless of just existing. Everybody here is confronted with a set of circumstances. The civil compensation process alone does not fix that aspect of things. To try and cure every unfortunate ill that flows from that set of consequences in this will not work. What we are talking about here is innocent civil compensation between parties. In other words, government is excluded. This is party to party. It is a blunt instrument, and to try and take it further to redress social requirements I do not think is appropriate. I suspect that, like every solution, there are many layers to the solution and this is one that is to provide a mechanism for civil remedies. Of course, that is not the start or finish of it; that is just one aspect of it. To try and in some way take things further, my concern is that it has unintended third-party impacts. In other words, something may go through as law with all the good intentions in the world, but because it is such a broad-brush approach there may be innocent third parties who in fact suffer a detriment unnecessarily.

Mr Potts: If I could just add, it is obviously about sexual abuse. There can be all sorts of abuse which does not involve sexual touching but can nevertheless involve significant psychological damage. Again, in all matters you talk about fairness, and that is a very, very important process. It is fairness to

people who are injured and whose lives may well have been ruined but it is also fairness to, I suspect, a process. I posit this: we have to be careful that we do not allow someone 40 years later to come along and say, 'Something may have happened. My life has been ruined. No-one exists anymore to say that it did not happen and I would like some form of compensation.' There also has to be some balance of fairness to the institution, the lack of witnesses, and there is a balance which must be struck. As to whether this act, the government bill, will succeed in that of course is the moot point which this committee has to, I suspect, decide. Yes, I accept what you are saying. I understand that the Australian Lawyers Alliance is in fact submitting strongly to this committee that it should in fact be expanded to fit the circumstances which you posit.

Mr BROWN: With regard to evidence and the concern around the length of time it may take for a jury trial to begin if the bill goes through, do you have experience or lack of confidence in the judge to be able to direct a jury with regard to the evidence, or do you have experience in criminal trials that, even with directions from a judge, the jury does get it wrong?

Mr Potts: I am a great believer in juries. I have observed them. I have not always agreed in a partisan way because I defend people, but my experience is that in fact juries do get it right. The issue is not—and I say this with great respect—about juries being better or worse; it is just that there is no evidence that in a civil case, where it is on the balance of probabilities, they in fact perform a better role than an experienced civil litigating judge can do. Even in criminal matters there are matters which involve such an appeal to prejudice that in fact people have been able to argue and have been allowed to have judge-only trials in criminal matters. It is particularly so in Western Australia. The issue is not about the directions or the capacity of the jury to understand; it really becomes a use-of-resource question and whether there is any advantage or disadvantage, and expense is always a disadvantage in going back to a scheme that predated 2003.

Mr Deane: It is very important to bear in mind that what we are addressing here is a civil issue that is between two parties, not between the Crown and a member of society. The adjudication of rights between individuals is something that I think judges for a long time in Western jurisdictions have displayed their ability to adequately resolve. Yes, they get it wrong from time to time, but that is why you have appeal courts, which are equally as efficient.

CHAIR: Mr Potts and Mr Deane, as there are no further questions, thank you for your attendance today and for your submissions. We will see you at our next hearing.

HILLARD, Ms Kylie, Spokesperson, Soroptimist International South Queensland

CHAIR: Thank you for attending today. We will allow you, as we have other witnesses, five minutes to make an opening statement and then we will open it up for committee members to ask questions.

Ms Hillard: My name is Kylie Hillard. I am the spokesperson for Soroptimist International South Queensland, which is essentially the Brisbane metro area all the way up to approximately Rockhampton. Our submission is with respect to the Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill, the government bill rather than the private member's bill. I anticipate there will be some questions around that when it comes to question time.

Soroptimist International is primarily concerned with the advocacy for, and the rights of, women and girls globally and within our own communities across Australia. In our submission we support the bill in its present form and the removal of limitation periods, but we also recommended that there be information disseminated to the public about the initiation of proceedings. I notice that some of the submissions that have been provided, particularly the one from Legal Aid Queensland, addresses the need for advice about the impact of previous payments victims may have received. In our submission we also include services and support needed for victims pursuing an action.

One of the private individuals who I understand will be giving evidence this morning spoke at length about the impact upon him of this kind of abuse, and in his submission he spoke about the inadequacy of the 10 counselling sessions that he had available to him. I appreciate that this is a Medicare issue and not necessarily a state government controlled issue, but we submit that there should be adequate services and support for victims who pursue an action which may well include and extend that counselling.

CHAIR: Thank you, Ms Hillard, and thank you for the good work that your organisation does in the community. I am very familiar with the work that they do. With respect to the extension beyond pure abuse to a child, I would be happy to hear your thoughts about extending that to cases of other forms of abuse.

Ms Hillard: A lot of submissions have been put forward to the committee about the extension of physical abuse to include child maltreatment. I think they are the words which are most often used. Obviously the bill arises in circumstances where there has been a commission of inquiry into sexual abuse, and that is why it has been framed and drafted in those terms. Frequently there is other associated abuse, as has been widely recognised. From the perspective of Soroptimist International Australia and our region, anything which assists victims and girls—or any other victims who have been subjected to abuse—and their access to justice would be desirable. I also note, however, the limitations around what this bill was designed to create. As to whether it should be extended to include the mistreatment aspect, I understand that the University of New South Wales is scoping the extent of the abuse and the extent of other explanations or definitions of what the surveys involve and what other physical abuse may or may not be considered. In principle I expect it would be supported by our organisation.

CHAIR: No doubt your organisation has bodies in New South Wales and Victoria and you are aware that their scope has extended beyond what the Queensland government's bill is. What has been your experience from those interstate organisations in terms of the outcomes of their inquiries and legislation?

Ms Hillard: I have not had the opportunity to speak to our other regional cohorts in other states in relation to this, but I can certainly make those inquiries if the committee would like. We can endeavour to file something further perhaps by Wednesday of this week. As is stated in our submission, we have an involvement with the United Nations, and the rights of the child and elimination of violence and all of those aspects of the international conventions are generally widely supported. With regard to the success of the individual extensions for physical abuse, I am not able to address that but I can make those inquiries if the committee would like.

CHAIR: Yes, if you can please provide that information on notice.

Mr CRANDON: Halfway between the two bills, if you like, the concept of physical abuse is clearly in the private member's bill but there is also the issue of sexual abuse in that bill. You do not seem to support that aspect of that bill. It is possible to support part of something and not all of something. You are for young girls and women and their future and justice for women. If seems that your submission is excluding one aspect of that.

Ms Hillard: In our submission we primarily looked at the government bill rather than the private member's bill, so we did not make submissions around the private member's bill. Having said that, it would appear compatible with the interests of women and girls to have the consideration of physical abuse and sexual abuse, and we can address those issues in the further submissions on notice which we will provide.

Mr CRANDON: Yes, if you would. Thank you very much, I will leave it at that. I am conscious of the time.

Mr BROWN: Ms Hillard, were you contacted in an email by Amanda Gearing?

Ms Hillard: I cannot recall the name. I was certainly contacted by a lady, yes.

Mr BROWN: To change your submission; is that correct?

Ms Hillard: I would not say to change the submission, but she asked me to consider the private member's bill and whether we would amend our existing submission.

Mr BROWN: Just amend, or amend to support?

Ms Hillard: Amend to support, would be more correctly descriptive of that.

Mrs STUCKEY: If this bill is passed, I am keen to hear what you envisage as the future role of Soroptimist International in terms of support and assistance. You have mentioned a lack of counselling or insufficient counselling. Does Soroptimist International see themselves supporting these victims in some way?

Ms Hillard: We have a number of clubs across Australia and all across Queensland. The individual clubs run a number of different projects and activities. It may well be that some of those individual clubs choose to take up supporting a counselling service, fundraising for counselling services or linking in at a local level. It is difficult for me to say what we could do at a regional or state level without actually talking to my superiors in that regard. Historically they are things that our clubs look towards helping, and it is certainly something that we could disseminate should the bill be approved.

Ms PEASE: Thank you for coming in today and thank you for your submission. The member for Currumbin asked the question that I was going to ask. I know we have already discussed the issue that your submission relates to the government bill, but I wonder if you have any comment or position with regard to trial by jury.

Ms Hillard: As some of you may know, I am also a barrister and I practise in criminal law so I say this in that context rather than as a representative of Soroptimist International, which is not a legal entity. Criminal trials obviously have to be by jury in the District and Supreme courts. In my experience, trials by jury are slower, longer and far more expensive than if they are judge-only, and that has to do with the way that the evidence is produced. It has to be produced in a way that a jury can digest and facilitate. Judges who hear matters alone will often hear evidence-in-chief by way of affidavit and simply do the cross-examination and the presentation of issues. It is very expensive in terms of running a trial and having a jury trial available. They are longer. It could potentially slow down the process as well, and it makes it potentially cost prohibitive because a jury trial has flow-on effects as well for people who intend to apply under this legislation. I can probably say that Soroptimist International through their submission very clearly supports access to justice and very clearly supports accessibility to the court process, and my concern would be that a jury trial process would slow that down and hinder that quite significantly.

Mr MOLHOEK: Ms Hillard, you mentioned the amount of counselling that is made available through Medicare, and I think you said it was 10 sessions.

Ms Hillard: That is what one of the other witnesses has indicated in his submission.

Mr MOLHOEK: Does Soroptimist International have any view about what sort of counselling and support should be offered?

Ms Hillard: It is a difficult thing when you say how much counselling is needed for someone who is traumatised. How long is a piece of string? Many of these people who are victims of sexual abuse, child maltreatment or physical abuse, particularly as a child, will experience the ramifications of that throughout their entire lives. It is difficult to say 'this is how much it should be' or 'this is how much it should not be', because how vulnerable an individual is into adulthood depends on the individual and how they function in other ways. It would be nice to say that it should be accessible and available as is needed, but obviously budgets do not necessarily allow for that. It seems that if a person is subjected to—if I can use the phrase—institutional sexual abuse or physical abuse as a child, that has lasting ramifications, and by the time they come to terms with disclosing it and then having to work through the issues 10 sessions certainly does not seem to be adequate. It would be nice to have an open

chequebook perhaps and have it as needed or as required, at least to support the victims through the court process and perhaps for a period of time after the process. Of course, any payout figure would include ongoing counselling needs and ongoing counselling requirements, so that is part of the consideration of damages as well.

Mr MOLHOEK: I note that in your submission you refer to the Australian Bureau of Statistics Personal Safety Survey. Was there any other evidence or information beyond abuse that was perpetrated by a male relative? You referred to institutional abuse, but I wonder where the other 54 per cent occurred. You say that 43.7 per cent was committed by family members or relatives.

Ms Hillard: I do not have those facts and figures in front of me, but I am fairly confident it would be in the ABS report. We can certainly have a look at that and look at that breakdown. I suppose the significance of something like that is that it causes a desensitisation to a complainant as to what is normal behaviour and what is not, and that can open the door to ongoing violence generally throughout their lives. Of course, there are other submissions about whether or not it should be limited to an institutional context or include other contexts.

Ms PEASE: As we have already discussed, in your submission you mention the instance of abuse by male relatives. Do you have a position with regard to non-institutionalised abuse?

Ms Hillard: I would have to confer with my regional superiors because I am obviously not the president of the region, so it is difficult for me to say. I do note that a number of submissions do speak about other areas and extending it through. If you had a situation, for example, where a person is a plaintiff in a proceeding and they have had institutional abuse because they were in an institutional setting within the act for only a year but then they go into foster care and they also have abuse yet they do not disclose both of those until they turn 25 years of age—past what is now the statutory period—one of those would be statute barred but the other would not. One wonders about the sense of justice that would exist in relation to that. I am certainly happy to take some further instructions. If I am putting in some other matters on notice, I am happy to address that as well.

Ms PEASE: Thank you, Ms Hillard. That would be lovely. Going back to my question earlier about a jury situation, what would happen in the case of a hung jury and what would the expectation be on the plaintiff?

Ms Hillard: In a hung jury situation, obviously there is an opportunity to go again. You can have 10 hung juries and continue going to trial every time. Under the criminal proceedings process, if there is a hung jury or a jury miscarries for some reason, you can usually apply to the Appeal Costs Fund to get funds back. Whether that would be adequate in this case if there were subsequent hung juries, I am not sure. From a practical sense, you would expect that it would in fact result in a plaintiff feeling pressured to settle as well. A jury process is difficult. It is hard to sit there in front of a room full of individuals whom you do not know and talk about abuse that has occurred. While there might be closed court proceedings, closed-circuit TV proceedings and support people present, it is very difficult, I think, for a person to go through that process once much less subsequent times. I obviously have not talked about majority verdicts either, but that is a separate issue.

Mr CRANDON: Whilst you are putting more material together for us on the views of Soroptimist, one of the questions the committee posed to the member for Cairns—because of the extension of his bill to non-institutional abuse, both sexual abuse and physical abuse—was, if you like, the pound of flesh scenario where someone just wants to go through the process with a view to getting justice for their circumstances. In an institutional setting, we have a situation where there are perhaps several witnesses to circumstances and, if you like, a period of time where various people have been abused, whereas in a stand-alone or individual case it would be more difficult perhaps to prove. Unless someone has been found guilty in the past and served prison time and what have you, it would be potentially difficult to prove that anything occurred. The question the committee posed to the member was what would his view be—and what would your view be—on circumstances around the psychological effect that might have, where someone has fallen short of the proof, if you like, so they have not got the justice they wanted? Could you give us your thoughts on that?

Ms Hillard: It is a difficult process. As legal people, we obviously have to tell people all the time whether or not they are going to be successful, their prospects of success. Even though an individual may have a very strong sense of seeking justice, they may not be believed. That is a reality whether it is a criminal matter or a civil matter. That is a decision that only an individual can make as to whether they go through the process. Whether or not it is with a jury or whether or not it is with a judge only, it still is a difficult process for these people frequently having to relive the trauma of their experience by articulating in affidavit or in verbal evidence what they have actually gone through. It is a difficult process no matter what, whichever way you go. Whether or not a person is believed, that is something

they have to accept as they are going into the process. We cannot make the process easier because it has to be fair for both sides. Historic sex offences in a criminal context are not uncommon. You can have prosecutions for things that happened 20 or 30 years ago, and those sorts of things happen relatively frequently throughout the system. It is really just one of those things. It is up to the individual to decide if they can navigate that process and if they have the personal constitution to be able to do it. That is one of the reasons support is perhaps very important as well for victims.

CHAIR: There being no further questions, thank you, Ms Hillard, for your evidence today and also for your submission. You have some questions on notice and information to provide to the committee. Thank you.

McDANIEL, Mr Terry, Private capacity

CHAIR: Good morning and welcome, Mr McDaniel. Thank you for attending today. We have allowed five minutes for you to make an opening statement. Then we will hand over to the committee members to ask some questions of you.

Mr McDaniel: First, I would like to extend my gratitude to the committee members for allowing me this opportunity today. I would also like to acknowledge the state member for Pumicestone, Mr Rick Williams. Since 2012 he not only has been a tremendous help to me personally but also has continued to help other victims since becoming a state member. I would also like to thank those survivors who are here today. I stand here today to fulfil a promise made to a fallen brother and his family who sadly was taken by suicide that those responsible will hear his story and know his name. Thanks for the ride and rest in peace, [redacted].

CHAIR: Sorry, Mr McDaniel, for the sake of confidence, if you would not mention people, particularly children, by their name, please.

Mr McDaniel: All right. My name is Terry McDaniel. I am 44 years of age and I am a survivor of physical and sexual abuse at the hands of the Queensland government's past flawed system. I was abandoned by my birth mother at the age of three, and at the age of seven I was made a ward of the state. The state was my legal guardian up until the age of 18. Along with many other survivors, the state was ultimately responsible for our wellbeing and safety, which was clearly outlined in the Children's Services Act 1965.

BoysTown was a privately run care facility with its own secondary school overseen by the Queensland government. In 1985 I was placed at BoysTown Beaudesert for a three-year period. I was 12 at the time. I arrived on Friday, 8 February 1985 and my number was 1046. Just like many other victims that were sent there by the state, in my three years at BoysTown I was subject to countless physical and sexual assaults and strip searches, supplied with cigarettes, locked up inside an illegal jail cell and forced to watch inhumane acts with animals and tortured, along with other stuff. I was promised an education with a junior certificate upon being released, which is well documented in my Children's Services files. Instead of a promised education, we did 10 to 12 weeks of limited schooling and the rest of the time we were used as slave labour. The state government and social workers turned a blind eye to these things. The state robbed me and other generations of boys of a promised education. I have something that I would like to table.

CHAIR: Is leave granted? Leave is granted.

Mr McDaniel: The statistics of incarcerations between the years 1982 and 1988 are dumbfounding, and that is not including the deaths or suicide. These statistics alone are proof that something major was wrong and that our state government knew it. It is an all too familiar story. Even today we hear about the tragic deaths of children whilst they have been in the state's care, but for decades there have been deaths of children in the state's care, and even back then our state stood by and did nothing about it. Where is the justice for those victims and their families?

The law stated that I had three years from the age of 18 to come forth and make a complaint about these heinous acts of abuse. In fact, from the age of 18 to 21 I was still trying to deal with what had happened to me. It has taken me 30-plus years to even come forward, let alone open up and talk about what had happened. I did not even know what the statute of limitations meant at the age of 21 and, even if I did, who the hell would have believed me? You did not go to the police. Even if we did, they would not have believed us.

Back in my day the Queensland police and politicians were highly corrupt as at the time the state was under the reign of Sir Joh Bjelke-Petersen. That is why we had the Fitzgerald inquiry. Sadly, corruption still flourishes today. Back in 2012, after the airing of the *60 Minutes* program 'Breaking the Silence', the Newman government called for an inquiry into BoysTown and launched Operation Kilo Lariat. A police officer from that task force tipped off the Catholic Church about the records that they had weeks before the police went down there to search the premises. Once again, we got shafted by the Queensland government.

The state did not care about me when I complained to my social workers at the time, and the state certainly does not care now. I had a personal meeting at Parliament House on 24 May this year with the current Minister for Communities, Shannon Fentiman, who was shown proof of what had gone on in the eighties along with evidence of a corrupt police investigation, only to be responded to via letter with nothing more than excuses. Each year government departments attend Child Protection Week and each year waffle a bunch of crap about how sorry they are about the stolen generation, the

forgotten Australians and the bad crap that happened in institutions, but as soon as they walk out the door they hide behind the limitations act when a historical victim comes forward—and we have the hide to call ourselves the Smart State!

The current act of limitations of 1974 is flawed and it only protects the perpetrators and the Queensland government, so why are we still protecting these people in 2016? This is what the Queensland government has been up to. The former government and the current Palaszczuk government's Attorney-General's office have been secretly co-signing on victims' deeds of releases and no doubt knew of the details surrounding these deeds, and this has been done without the victims' knowledge. Even if the statute of limitations does get amended and passed, our state has done this to ensure that these victims can never sue the state for damages in the future. The victims that this has happened to have never received one cent from the state's redress schemes that came out of the Forde inquiry. To make things worse, the mongrels do not contribute one damn cent to the victims' civil claims given that these victims made a claim against the church and not the state. Past and current Queensland governments have been stitching up victims just to slow the damn boat.

When amending these bills we must consider all abuse, not just sexual abuse. We must also extend this bill to cover physical and psychological abuse. On top of that, victims should be granted access to more than just 10 free counselling sessions per year. An act of sexual abuse could be just as small as an inappropriate touch to being raped. These types of crimes are deemed as heinous, especially when it comes to children. The same can be said about physical abuse. No matter how small or how large it may be to a victim, those psychological scars and memories will also haunt you for the rest of your life, and trust me when I say that because I am a victim of both.

Please just do not throw another bandaid over this flawed system because bandaids do not work. The Queensland government do not give a damn about us historical victims and have done nothing but continually hide behind the statute of limitations and act like cowards. It is about time the Queensland government stood up to the plate and got their crap together to right the wrongs so that victims can receive at least some sort of justice that is well overdue. At the end of the day, nobody else but us victims has had to pay the ultimate price for the state's negligence and cowardice, and in a lot of cases that price that a lot of victims pay is with their lives. If we do not make the change, we will be sitting in this room 30 years from now talking about the same stuff. You, the committee, have the authority and the power to recommend these changes, so do not be like those bloody cowards before you and make the damn change.

CHAIR: Thank you, Mr McDaniel, for your attendance here today and telling the committee your story. I know it is difficult and we cannot at any stage understand what you have gone through, but we do appreciate the time that you have allowed to come in to speak to the committee.

Mr McDaniel: Thank you for that acknowledgement.

CHAIR: On behalf of the committee I also acknowledge the member for Pumicestone for his interest and involvement in this hearing as well.

Mr McDaniel: Thank you.

CHAIR: I take you to your submission, and you did cover in your opening statement the 10 free counselling sessions. Was that an arrangement that was met with BoysTown in a deed as such to make sure that you—

Mr McDaniel: No. When I talk about those 10 free sessions, I can go to my GP and I get 10 free counselling sessions per year through Medicare and that works out to one counselling session every 36 days. I have been seeing the same counsellor since 2012, and let me tell you: I need more than 10 sessions and somebody needs to be able to foot the bill for that. Ten sessions just does not cut it.

CHAIR: Ten is a figure subject no doubt to Medicare requirements?

Mr McDaniel: Yes.

CHAIR: Obviously it is assisting you but not assisting you enough?

Mr McDaniel: That is correct.

CHAIR: What would be an ideal number in your case?

Mr McDaniel: As many as I need to go to. We have upcoming trials next year. Even just for day-to-day stuff I need counselling, and if I do not go to a counsellor it just does my head in. I personally need to be able to have access to my counsellor and I cannot afford to go through those 10 sessions and then get bumped off to somewhere else because then I am going to have to sit there and go

through everything again. I am not making any progress, so if I have a counsellor I should be able to have access to that counsellor for as many sessions as I need, whether that is fortnightly, monthly or whatever the case may be.

CHAIR: You do understand, Mr McDaniel, that both the government bill and the private member's bill seek to do away with the statute of limitations, don't you?

Mr McDaniel: I understand that. The Attorney-General got up outside with the Premier and said that for anybody who received anything out of the redress of the Forde inquiry their deeds of release will be considered as null and void, so that gives those victims an opportunity to come and see the state. What the state and Yvette D'Ath's office have done and the previous Newman government's Attorney-General's office has done has secretly been a co-signee on the deeds of release. They have done that to save themselves a damn buck. Even if these laws do get passed and they do get amended, we are still stuck with the state government being a co-signee on our deeds. She is prepared to lift the deeds from anybody out of the Forde inquiry but will not lift the deeds when it comes to anybody that the state government has simply co-signed their deeds behind their backs when victims have gone for a civil claim against a church and not the state. They were co-signees on our deeds of release, yet they were not part of the PIPA 1s and they were not part of the PIPA 2s. They never contributed one damn cent to any of the civil claims. They were not part of the mediation process, so we are still behind the eight ball even if these laws do get changed. They are going to stand on the fact that they are a co-signee on the deeds of release. The victims that that has happened to have never received one damn cent out of the state government or out of any redress scheme, and I do not see how that is fair.

Mr CRANDON: Thanks, Terry, for coming in. First of all, with this material that you have presented to us, is this a document that is available publicly or is this something that you have—

Mr McDaniel: Not as yet. I have not made that public. I never submitted that because of the size of it. That is a list of boys from 1961 through until BoysTown closed in 2000.

Mr CRANDON: Where did you get it from? Where did this come from? Freedom of information or—

Mr McDaniel: No. That was supplied in-house through information from when we first became public.

Mr CRANDON: In the second column where it talks about jail, you have 'July 01' on many of them. Can you explain what that means for me?

Mr McDaniel: The person who actually put that list together at the time just put 'July 01', which meant on that section there they had actually done some sort of jail time.

Mr CRANDON: Up until that point?

Mr McDaniel: Obviously. I am not 100 per cent sure.

Mr CRANDON: No, that is good.

Mr McDaniel: We have just added to that. As we have gotten to contact other victims, we found out that, yes, we have asked the question, 'Were you incarcerated?,' so it is very heavily—

Mr CRANDON: Thanks for that. There is a lot of them, isn't there, that have gone to jail?

Mr McDaniel: Yes. Something was obviously wrong for that amount of boys within those years. Something was wrong with the system and our government knew about it and our social workers knew about it.

Mr CRANDON: You were there from 1982—

Mr McDaniel: No, I was there from '85 to '87.

Mr CRANDON: Okay, '85 to '87. In that period of time are you aware of any actions by the people at BoysTown making boys available to other perpetrators?

Mr McDaniel: You are talking about Russ Hinze?

Mr CRANDON: No, I am not talking about Russ Hinze. I am simply asking if you are aware—

Mr McDaniel: Yes, I am aware.

Mr CRANDON: You are aware of—

Mr McDaniel: Boys being pawned out for sexual activity to people outside BoysTown, yes.

Mr CRANDON: Thank you. Over that period of time you observed—

Mr McDaniel: It was common knowledge.

Mr CRANDON: With regard to ex-members of the BoysTown fraternity, how many of them do you now associate with?

Mr McDaniel: I only associate with a handful of boys and some of those boys are here in this room here today.

Mr CRANDON: Are they from your time or from previous times?

Mr McDaniel: Some boys are and some boys are not.

Mr CRANDON: Thanks, Chair.

Ms PEASE: Thank you, Mr McDaniel, for coming in. Like the chair and all committee members have said, we acknowledge the pain that you have gone through and are sorry that that has happened to you. I want to ask you a question, but you may or may not be aware. If you have had a look through the two bills—the government bill and the private member's bill by Mr Pyne—Mr Pyne's bill says that if any matters go to court they are heard by a jury. Have you given that any consideration at all?

Mr McDaniel: Why, so the state government can tie us up for six or seven years while it goes through a process? That is what they will do.

Ms PEASE: You think the jury system would slow the process down?

Mr McDaniel: Put it this way: with regard to the three De La Salle brothers and a librarian who have been formally charged by Operation Kilo Lariat, those trials are still continuing yet they were charged back in 2012. We do not have a lot of faith in the justice system because it just currently gets dragged out and that is not fair to us as victims.

Ms PEASE: Certainly. Thank you.

Mrs STUCKEY: Terry, I read your submission and I found it deeply confronting and deeply upsetting. As you have heard from the committee, we think you are very brave coming forward and sharing all of this information.

Mr McDaniel: Thank you.

Mrs STUCKEY: I am interested in what triggered you to come forward for the documentary you did in 2012. Was that the first time you had been able to face the demons, so to speak, or been able to talk about this?

Mr McDaniel: Just before that airing of the *60 Minutes* program—if we go back probably six months, I met up with two boys, and one of those boys is in this room here today. I met up with him and another boy that were from my era. After meeting up with them and just catching up, I realised that some of the stuff that happened to me also happened to other victims and I walked—and I have no problems in saying this—back to my car and I sat in my car and I cried. From then I vowed that somebody needs to step up to the plate. I vowed there and then that I would track down as many boys as I possibly could to find out whether or not they were in the same position, whether or not they were from the same era as me or other eras. What I discovered was the abuse was just not centred in those three years that I was there; the abuse was spread right across-the-board. That is when I decided to contact *60 Minutes* and we did a story. We only allowed them to do the story on the condition that not one person was paid one damn cent because we did not want the finger pointed at us to say, 'You just said that because you were paid.'

Mrs STUCKEY: Yes, I read that. Is there anything you would like to see added to the bill—the government bill or the private member's bill? In your heart of hearts, how do you hope this bill will assist these victims?

Mr McDaniel: The biggest thing I would like to see, not only for myself but for victims in the same position as me, is the Attorney-General's office lift the deeds that they co-signed when it came to our civil claim against the church. That is first and foremost, because we would not feel as if an apology was justified if we were jibbed in that part, if that makes sense. If the government came out and formally apologised publicly, it would mean absolutely nothing to us because they are not prepared to lift their part on the deed. If they do not, they are not taking responsibility for their crimes and their actions and their negligence. That is first and foremost what I would like to see happen with this bill.

Second of all, it has to include physical and emotional abuse because, believe it or not, that physical and emotional abuse is just as bad as being sexually abused. As much as sexual abuse is such a heinous crime, it still carries the same scars and hurt and psychological effect as it does if a person is raped. I can stand here today and say that I know what it is like because I experienced both. That needs to be a part of the bill—no ifs, ands or buts. I would like to see that as part of the bill and I would like to be able to have these things done because we will never stamp out paedophilia or child

abuse at all. We would be idiots if we stood here and said, 'We've got a system in place that is 100 per cent proof.' We are never going to do that, but we need to have a system in place for when victims decide to come forward. At the age of 21 I did not even know what statute of limitations meant. I was not ready to come forward. Whether it takes a person from the age of 18 to 21 to come forward or whether it takes them 20 or 30 years, there has to be something in place where if people have done the wrong thing in the past they have an opportunity where they can come forth and have justice served, and it is right for them to be able to do that. That is what needs to happen.

Mrs STUCKEY: Thank you.

CHAIR: As there are no further questions, Mr McDaniel, thanks so much again on behalf of the committee for your evidence here today.

Mr McDaniel: Thank you.

Proceedings suspended from 10.17 am to 10.50 am

WALSH, Ms Karyn, Chief Executive Officer, Micah Projects

CHAIR: Ms Walsh, thank you for your attendance today and your submission to the committee. We will allow you five minutes for an opening statement and then the committee will have some questions of you.

Ms Walsh: Thank you for the opportunity to discuss this with you. Micah Projects has been engaged with people who have experienced historical physical, sexual and emotional abuse since before the Forde inquiry in 1999. These issues have been on the agenda with many inquiries at a Commonwealth and state level, so we really welcome the opportunity to address the issue of time limitations because it is one that has been advocated for for a long time. However, because so many inquiries, redress, out-of-court settlements and issues have occurred over that time, it makes it a bit complex. We acknowledge the complexity of it but we think all of the issues that need to be considered need to be done so to stop the secrecy that has surrounded payments, the inequity of payments and the lack of fairness. In that light, we think how we proceed with this legislation is really important and some of the complexities around deeds of release need to have further consideration.

CHAIR: In your submission you make the comment that physical abuse can be just as devastating. Just before we recessed the committee heard evidence from a victim. Can you expand on that for the committee, please, so that we have some understanding of how devastating that sort of abuse is?

Ms Walsh: As you heard prior to the recess, that is multiplied by the thousands of Queenslanders who have been in out-of-home care or who have experienced childhood sexual abuse and physical abuse in their families. I think it is really important to note that the separation and delineation between the harm that is done from the trauma of physical, sexual and emotional abuse does more harm to victims by having to dissect what harm is attributed to which experience. We have seen that, even though it was an unintended consequence of the royal commission which focused on child sexual abuse. Many people have felt that the consequences and the lifelong impacts of significant psychological trauma associated with being in institutions where psychological abuse was used to control and was used to the extent that it was an abuse of power by those who had fiduciary responsibility to nurture and protect children are as significant as the acts of sexual abuse that people experienced.

In saying that, we should not minimise any one form of abuse as being more harmful than another. We have to take it on the experience of each individual, the context in which the abuse occurred and how the offences took place. Many people were groomed for sexual abuse, which causes enormous psychological harm. They have suffered the consequences of that in their relationships, in their identities and in their ability to have fulfilling lives and education. The lack of the ability to concentrate has been significant. It has not only had a significant impact on them in terms of the overrepresentation of people who have suicided, who have addictions and who have been in prison but it has had a significant consequence to the state with the cost of that trauma and the adverse effects of childhood abuse, which are well documented.

CHAIR: As I understand it, Micah Projects is a national organisation; is that correct?

Ms Walsh: No, we are based in Brisbane, and Lotus Place supports people in Rockhampton. We are a statewide response for people who have experienced abuse in an institutional setting.

CHAIR: However, you do make representations to—

Ms Walsh: To the Australian government, yes. We have been involved in all of the inquiries and Senate committees.

CHAIR: That is probably where I was a little confused, because I know they have appeared before—

Ms Walsh: We applaud the courage of survivors who constantly participate in these inquiries. The limitations of each inquiry were unintended because of the terms of reference and which government has responsibility for people who have experienced abuse. It is about themselves as citizens of Australia and residents of Queensland who want justice from the state, the government and the churches or non-government institutions.

CHAIR: Ms Walsh, are you privy to any feedback coming out of New South Wales or Victoria on their extension to recognise physical and psychological abuse?

Ms Walsh: We see that as best practice. Certainly for the numbers of people we have consulted over a number of years, we feel that is an important inclusion in the bill and should be considered as an amendment to the government's bill. For many reasons it can do more harm to try and dissect out

what consequence, impact or harm came from which form of abuse. They all do need to be seen together. Clearly, when the crime of sexual abuse has occurred that needs to be acknowledged for what it is, as does physical assault if the physical abuse was to that extent.

CHAIR: The committee also heard evidence this morning about problems associated with reintroducing juries into the system to hear cases. Do you have a position on that at all?

Ms Walsh: There is a mixed response to juries. We did not address it in our submission because we needed more time. There are many survivors who feel that a jury is intimidating, and there are others who feel that it is appropriate, that it is a community and it makes it public, not just something between a judge and themselves. I think the option for a jury has merit, but we certainly did not have the time to arrive at a definite position and it is not our area of expertise. Certainly people want their day in court. Some people find juries a bit more intimidating and others feel that a judge would suffice or vice versa.

Mr CRANDON: Thank you for coming in. I think you were in the room and heard Terry McDaniel?

Ms Walsh: Yes.

Mr CRANDON: He provided the committee with a document and I questioned him on a particular aspect of it. A cursory look at it suggests that a significant number of those who were in institutional care—we will use that term loosely—found themselves in the prison system. He talked about the specifics of BoysTown. A moment ago you mentioned jail, drug abuse and so forth. Do you have anything to support that document in a broader sense?

Ms Walsh: There are research papers we could look up for you. It has been well documented in many inquiries that the pathway from out-of-home care has seen many people end up in the justice system and in prison; however, in saying that, a very broad population of people were in out-of-home care and there are many people who are passionate that they do not want to be labelled, as that was seen as the trajectory of all people who experienced abuse in out-of-home care. Certainly a significant number of people in Queensland prisons have a history of institutional care and sexual abuse. Many have had addictions, many have suicided early and many are in the course of pursuing justice. They have found the whole process of going through the courts and trying to get recognition from churches and the state very difficult. I think this legislation needs to make sure that we have a goal of transparency, openness, fairness and equity for people. These secret settlements do no-one justice, and that is why being in the courts and removing the time limitation is so important, because we need to remove the secrecy of settlements that we have had.

Mr CRANDON: I understand what you are saying. Chair, is it appropriate for Karyn to get those papers to us to give us an indication?

CHAIR: Yes.

Mr CRANDON: Earlier you mentioned grooming, and I asked Terry whether he has any evidence or if he witnessed anyone being 'made available' to people outside of the institutional environment. Do you have any comment on that aspect?

Ms Walsh: There are many accounts of situations like that, both in Brisbane and on the Gold Coast—anywhere you hear people talk about their experience. There was a lack of regulation compared to what we know today. Adults accessing institutions and taking children out was completely unmonitored, particularly if people had positions of power, like clergy, or were significant leaders in the community. Obviously proving those matters is very difficult, but if you were looking at a trend and the consistency of those experiences there is no doubt in my mind that they occurred. Whether you can prove it in a court is a very different issue, particularly because of the time and the institutions. He mentioned the Fitzgerald inquiry, so you are talking about significant collusion between institutions like police, the churches and government—

Mr CRANDON: Individuals as well, by the sound of it.

Ms Walsh:—and individuals who had access. The accountability lies with those institutions which had the power.

Mr CRANDON: Just to follow up on a question that the chair asked you a short while ago regarding an extension to physical and psychological abuse, you mentioned best practice. There is another aspect to that bill—and this is the private member's bill—beyond the physical and psychological aspect of it, and that is to non-institutional—

Ms Walsh: Yes, we support that. The recommendation from this bill grew out of the royal commission. The terms of reference were the limitations of what the royal commission could recommend. In terms of the Queensland justice system, we believe it should be equitable for all citizens who experience sexual abuse at the hands of another person. Whether it is in a family setting or an institution should not be the determining feature, so we support an amendment to the bill to include other settings.

Mr BROWN: Thanks for coming in this morning, Ms Walsh. You talk about a 'day in court'. Do you mean with regard to civil matters being able to go to court and negotiate a mediated outcome, which occurs 90 to 95 per cent of the time, or are you talking about the people you deal with who want to go all the way to trial?

Ms Walsh: Clearly, that is the process that people enter into. There are many people who do want their day in court and who would be able to do so through this legislation, but that is not everybody. This is only opening the doors for people who have the evidence and fit the criteria. Obviously alongside this is the call for a national redress scheme. We support a national redress scheme so that there is an equitable response to people across Australia, because people live in Queensland who were in care in other states but they are still citizens here. We also support a national redress scheme for national consistency that all institutions contribute to. The churches did not contribute to the redress scheme Queensland had; it was only the state government. The limitations of that scheme are well recognised. The amount of money was what was available at the time. Some people chose not to disclose their full experience of abuse because they felt that the outcome was not worth it. The court process is a process that people believe is about justice.

One of the things we would like you to give more consideration to is deeds of release and whether or not out-of-court settlements should be registered with the court, ensuring that people have privacy. We do have to stop the secret nature of out-of-court settlements if there is going to be a sense of equity and justice for all people going forward. Whilst people say that they want their day in court, sometimes the length of that process and the cost of it will determine whether they settle out of court or not. I think there is merit in considering whether those processes should be registered with the court and not secret, both by the state and by church institutions or NGOs.

Mr BROWN: With regard to your submission, were you contacted by Amanda Gearing via email?

Ms Walsh: No. We had previous conversations with many people about the nature of the two bills and about our position. These issues have been discussed for a long time.

Mrs STUCKEY: I have two questions. The first one leads on from the deeds of release, which I note you have commented on in your submission. It says that Micah Projects supports that money already awarded through historical settlements for any party be taken into account in proceedings. Could you just expand on that a bit further?

Ms Walsh: That was about the money itself, which is different to the deeds of release. Any money people have received would obviously be considered when determining the settlement according to the regulations of personal injury and harm. There is such inequity in what different people have received. Whilst people may have gone through the redress scheme, other people missed out. People received other settlements through private institutions or churches, so there needs to be an equitable response to this, taking into account some of the issues that have occurred in the absence of an equitable and just response.

Mrs STUCKEY: The second question was around counselling. Having the wealth of experience that you have over so many years in dealing with these areas of not just disadvantage but also socio-economic areas, should counselling be prescriptive? Obviously the support each victim requires varies. Should it be prescriptive or should it be more at the discretion of health professionals?

Ms Walsh: We think it should be negotiated between a health professional and the person seeking the counselling. We supported the royal commission's recommendation around Medicare changing and recognising the long-term impact of childhood abuse and childhood sexual abuse in particular, that there should not be limits and that that should be something that Medicare addresses, because people may need to change the nature of their counselling throughout their life and what sort of counselling is going to be most effective. It is not one-size-fits-all. Some people at different points may need counselling around addictions, but those people need to understand that addictions come from a history of childhood trauma and how that impacts on people. We certainly support the recommendations that the royal commission has put forward regarding the Australian government expanding Medicare to cover everybody.

Ms PEASE: Thank you, Ms Walsh, for coming in. Thank you very much to Micah Projects for all of the great work that you do in the community. I know what an outstanding job you do, so thank you. With regard to your submission, did you put that out to the community for their response?

Ms Walsh: Yes, we had a workshop of about 50 people, but we also have all the documentation we have had from previous workshops over the last 20 years. There are a mix of views. There is no one view in terms of people's understanding or positioning, but there were clear views about the issues that we put forward: extending it to families and looking at psychological and emotional and sexual abuse.

Ms PEASE: In your opening statement you mentioned that a deed of settlement or a deed of release, as you called it, needs to be better handled. I think you have spoken a little bit about that with regard to responding to the member for Capalaba's queries. Could you elaborate on that a bit more? The government's bill states that it is up to the court to determine whether the deed of release or deed of settlement will be reopened. Do you have a position on that at all?

Ms Walsh: We would like a bit more time on this issue, because we have been trying to get more education around it because it is so complex. Deeds of release have been dealt with in secrecy a bit, and we think there really should be more comment through the issues paper on the complexity of it and whether it should be legislated or up to the court. I think we would favour that it is not just up to the court and that it is the clear direction of the court that deeds of release—

Ms PEASE: You are still contributing to the issues paper at this point?

Ms Walsh: Yes.

Ms PEASE: At this point you do not have a definite position with regard to—

Ms Walsh: No, I think we favour anything that errs on the side of consistency and fairness. Understanding it and getting points of view about it is something we have been in the process of doing, and since we put this in we have even thought a bit more about it.

Ms PEASE: Going back to the people that you have had feedback from for your submission, were these clients of yours or other working groups?

Ms Walsh: They are people who have experienced historical abuse, but we also have supported people who have experienced sexual abuse or extreme psychological and physical abuse in their family. We do not think there is anything to be gained by the state leaving a population of people out. It is a criminal and significant trauma; no matter where you experienced that abuse, the right to justice should be equitable. We understand why the bill is the way it is and how it came out of the recommendation of the royal commission, but we think the task of the Queensland parliament is not limited by the terms of reference of the royal commission.

Mr MOLHOEK: In respect of the deeds of release and some of the private settlements that have occurred in the past, would it be fair to say that some of them were perhaps generous because the perpetrators were seeking to absolve themselves of future prosecution and therefore people have been—

Ms Walsh: I think there are a mix of issues regarding deeds of release. That could possibly be the motivation for some. The motivation for others has been the voice of the victim and whether they were going to the media or whether they had the potential to influence the public more or harm the reputation of the particular institution. That is why I think it is so important that we get it right and break the secrecy around this. What is really important is that there is transparency. Going to court is the whole process of negotiation, and if it is going to cost less and still have the negotiation and not have your day in court, I think there is merit for us to consider how people register these settlements with the court and ensure some privacy. Looking at the privacy issues, we would like to do a bit more thinking on that and put forward more information to you on that.

Mr MOLHOEK: In discussing privacy, I completely understand the need to protect the privacy of the victims but not the offender.

Ms Walsh: No, not the offender. The justice system should be making sure there is accountability for offenders. I think the way it is, privacy for the offenders in this secret court and the secrecy that surrounds this is not acceptable as a pathway to justice.

Mr MOLHOEK: Are you suggesting that if all deeds of release were registered with the court—

Ms Walsh: All out-of-court settlements.

Mr MOLHOEK: Yes.

Ms Walsh: I do not know why you need a deed of release.

Mr MOLHOEK: Normally you would sign it to say you will not take any further action.

Ms Walsh: I think they are the things that we should think about. In moving forward, is that what we need or not? We are doing some more work on that. It is not actually in the issues paper but I think it should be. The more you hear, and you heard prior to the recess, every institution—there are the deeds of release from the Forde inquiry that the state government is saying will be lifted, but what about the deeds of release that were not part of the Forde inquiry?

Mr MOLHOEK: For all the private arrangements.

Ms Walsh: For all the private arrangements. No-one really knows fully what those arrangements have been over the years. That is the same with the churches and the same with any non-government organisation. I think we really need to discuss with lawyers a bit more because it is complicated. You do not want to have any unintended consequences. The time frame for this has been pretty quick. We understand why. We applaud the government and the opposition for supporting that it is time to do something about the time limitations, but I think we have to make sure that we get it right around these issues of deeds of release, making sure there is openness and transparency.

CHAIR: Ms Walsh, thanks for your attendance here today and for your submission. You do have some matters on notice.

Ms Walsh: Yes. Can we give you more information about deeds of release as a part of that process?

CHAIR: Yes, thank you.

STRANGE, Mr Warren, Executive Officer, knowmore

CHAIR: Thank you, Mr Strange, for attending here today. We will allow you five minutes to make an opening statement. Then the committee will have some questions of you.

Mr Strange: I thank the committee for the opportunity both to make the submission and to appear today. By way of opening remarks I will be very brief. I simply wanted to point out that, when we are talking about limitation periods and reform, enacting the recommendations made by the royal commission, we are not talking about giving plaintiffs or survivors a new cause of action. We are simply talking about procedural reform that enables them to actually bring an existing cause of action and to have the opportunity to have that cause of action determined on its merits. That is an opportunity that has been denied them under the current limitation laws.

Secondly, I just wanted to flag the point of consistency, which we have addressed in our submission. That is an issue which has plagued redress arrangements for survivors for decades. We have some institutions that have redress schemes. We have some that have simply refused ever to contemplate redress outside the boundaries of a formal civil suit. We have a situation where survivors around Australia have had gross inequities in their rights. People who have been abused in some institutions in some states have had access to institutional schemes or a state government scheme like the Forde inquiry redress scheme. Others who experienced the same type of maltreatment have had no rights that they have been able to act on at all. That is a huge issue for survivors and it is one which underpins our service's support for a national redress scheme. In the current context, it is very relevant with the reforms that have happened in New South Wales and Victoria, particularly around the scope of the reforming legislation that the Queensland parliament might enact. I would simply urge the committee to arrive at a position where Queenslanders do not have lesser rights than survivors in those other two states.

CHAIR: Just on that subject, you do in your submission address the preference of extending the definition of 'abuse' in terms of psychological or physical. You select the New South Wales definition as being preferred. Can you explain briefly why that is the case?

Mr Strange: There is probably little practical difference in the Victorian and the New South Wales positions. New South Wales has put a threshold of 'serious' physical abuse. I think the reality is that claims that did not meet that threshold would be weeded out by the legal and financial realities of the legal process. It takes time and energy and money to bring a claim. It is simply not going to happen for claims that do not reach that threshold of seriousness. I think the New South Wales position of referring to 'connected abuse' is perhaps the better way of dealing with the issue rather than just simply talking about psychological abuse. I think that was perhaps a cautious approach in drafting from Victoria to ensure that a court, in determining a claim for physical or sexual abuse, had regard to the psychological aspects. They go hand in glove, obviously, with the experience of sexual or serious physical abuse.

CHAIR: Also, your submission concentrates on recommendation 87 of the royal commission in respect of preservation of courts' powers. You refer to the unintended consequences of the private member's bill, should that be successful. Can you elaborate on that beyond what you have in your submission, please?

Mr Strange: We have tried to address that in as much detail as we can. The provisions in Mr Pyne's bill, as I have said in our submission, are clearly well intentioned, but I think the risk of trying to be overly prescriptive in this area is that there may be unintended consequences which may operate to the potential detriment of plaintiffs. A stay of proceedings, particularly in the civil jurisdiction, is quite an exceptional remedy. It will rarely be granted by a court other than in circumstances in order to prevent an abuse of process or where circumstances and other procedural steps and directions cannot overcome prejudice to the extent that the defendant would not be able to have a fair trial. It is quite an exceptional remedy. All of the factors that were listed in the private member's bill are ones that would be live issues in a stay argument if those factors existed. The parties would make submissions and they would be taken into account in the normal course of argument and decision around any type of application of that nature.

CHAIR: The committee has heard from other law advocates today in respect of concerns about reintroducing a jury system. I note that your submission neither supports nor opposes such an introduction. Can you possibly outline to the committee your preference in that particular area?

Mr Strange: We are very much an organisation that respects choices that our clients wish to make. There are a number of survivors who do wish to see jury trials reinstated. On the other hand, and as Ms Walsh noted, there are many who do not. I think we flagged in our submission that for some the prospect of relating their story, their experience, to a jury would be another layer of challenge for

them. There are obviously significant costs around conducting jury trials and logistical issues that would impact on any decision in that regard. It is probably worth noting that the majority of these cases, I think, would not go to trial. I am not sure of the exact figures at the moment. I would expect that probably under 10 per cent of civil cases that are filed would actually go through to a contested hearing. The majority are resolved through settlement negotiations and mediation.

Mr CRANDON: I see in your submission that you have seen in a very short period of years, really, in the whole scheme of things, 5,000 or thereabouts individual clients. It goes on to outline that the majority of those clients are survivors of institutional child sexual abuse—24 per cent live in Queensland and 20 per cent identify as Aboriginal and/or Torres Strait Islanders. You have done some research there. In keeping with my questions to previous witnesses, I am wondering if you have done any deeper research on what the outcome of this abuse has been for those individuals that you have dealt with and assisted from the perspective of jail, drug addiction and so forth. Can you elaborate on that for us?

Mr Strange: I can perhaps give the committee some practical insight into that in the Queensland context. At the moment and for some time, the royal commission has been engaging with prisons. It has visited or intends to visit every prison in Australia to hear the experiences of prisoners who come within the terms of reference as survivors of institutional child sexual abuse. Prisoners are obviously disadvantaged in terms of their access to support services, so our service has worked closely with the royal commission to provide assistance to relevant prisoners who want to seek legal assistance. We are currently assisting or have recently assisted over 400 prisoners in the Queensland context following on from the Queensland prison engagement. That number is significantly higher than any other jurisdiction. They have engaged in Victoria and New South Wales and are just completing in Western Australia. The reasons for that are perhaps complex.

The typical path of many of those prisoner survivors was out-of-home care and juvenile detention. There were some juvenile detention centres in Queensland but if people were in them at particular times then it is almost inevitable that they experienced severe physical and sexual abuse. We are now seeing, as I said, over 400 clients coming forward. I think that is slightly above one in 20 of the current Queensland prison population. We know there will be many more there who have chosen not to engage with us or the royal commission.

Mr CRANDON: It is about 30 per cent of the number in Queensland in total terms, isn't it? You have seen around 5,000 individual clients—24 per cent of those in Queensland.

Mr Strange: Some of the 400 who have come forward we are yet to record as clients. It is not quite a match-up, so that number will increase.

Mr CRANDON: It is quite a significant figure, though. Again, just following on from the questions I have asked previous witnesses, have you seen anything where individuals have been used, if you like, or have been given out to perpetrators in the community? I am trying to get a feel for—

Mr Strange: That certainly happened in many institutions. There were very lax processes around visiting and access to the institution. We have heard many, many stories of people who suffered abuse at the hands of perpetrators that they understood to be somehow loosely associated with an official at the institution—the friend of the gardener or something like that.

Ms PEASE: I want to comment with regard to page 11 of your submission, with regard to the preservation of courts' powers. Further, I would like you to elaborate on your comments regarding clause 5 of the Limitations of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill. On page 12 you discuss issues that relate to insurance and the potential for adversarial responses. Perhaps you could give an example and elaborate on the unintended consequences of that?

Mr Strange: The royal commission has written in its redress report around the importance of what it has termed a 'direct personal response' for survivors. For many survivors, part of the reason for coming forward is to be acknowledged, to be believed, to be listened to and to have the institution consider itself accountable for what happened to them. How they are dealt with by the institution when they first come forward is vital. Many of them came forward as children and were disbelieved and punished at times by brutal physical punishment. At other times they were victimised and offended against sexually because they had identified themselves as victims of sexual abuse.

You want to look at ways of encouraging institutions to acknowledge the experiences of people and to deal with them sympathetically. That is not immediately placing the matter in the hands of lawyers who are going to adopt an adversarial response. If that is what institutions are compelled to do then, as I said in our submission, we think that will have a chilling effect on the making of any apology

or any expression of regret. At the moment the civil liability legislation places those sorts of actions outside the context of liability. You can make an apology or an expression of regret that is not admissible against you in a subsequent claim. If you start to change that regime or do anything that discourages that initial response in a sympathetic, understanding and empathetic way then, as I said, simply the shutters will come down and it will be an adversarial exercise.

Ms PEASE: If I can take it a bit further, you mention here that institutions may have relevant insurance coverage and therefore they might be less inclined or disinclined to make any admissions.

Mr Strange: That is simply how the world of professional liability insurance works. As a lawyer I can think of a past example when I was in another position where if you needed to notify your professional indemnity insurer of a possible claim that notification process then involved the insurer wanting to see any communication you had with the person who was the complainant—the potential claimant—so they would want to vet any letter. Any expression of concern or regret about what had happened would need to go through the professional indemnity insurer's lawyers. That will take time. They will go through a draft letter with a red pen and take out anything that might in any way be interpreted as any concession or admission of liability, and that is your obligation under your insurance contract. You have to give timely notification and you have to comply with all of the directions of the insurer or you might void your insurance.

Mrs STUCKEY: Good morning, Mr Strange. My question relates to institutions that no longer operate or perhaps have changed in their form and their services. Of that cohort that are coming forward to you, are the representations there? Does that mean the end of the road for those people? Where do they go?

Mr Strange: It means the end of the road at the moment, and that is why a national redress scheme with a funder of last resort is a key outcome that we have recommended and that the royal commission has made recommendations around as well. It is very difficult for those people to be told that there is nowhere to go at the moment. For any claim that they may have had there is no redress scheme, there is no institution and there are no assets to have access to for any potential claim. Unless they come within the narrow framework of a statutory victims of crime claim, which again has time issues, they simply have nowhere to go and that is absolutely devastating for those people. Again, it comes back to that point of consistency that I made before.

Mrs STUCKEY: Have you seen a number of people who relate that way? It would be very difficult to put a percentage on it, but I am just wondering what sort of—

Mr Strange: A not insignificant number, yes.

Mrs STUCKEY: Thank you.

Mr Strange: Bearing in mind, as I think I have put in there, the figure around the age of our clients. Many are aged middle age and elderly and were in institutions as children decades ago, so this has inevitably happened.

Mr BROWN: In your submission you talk about trial by jury. It states—

... the option of a jury trial will add to the cost and length of any trial, for the parties, but more so for our courts.

You also talk about how your clients do want public affirmation in that regard. Can you also see as a consequence of that an inflated number going to trial because of that public affirmation?

Mr Strange: No, I do not think that necessarily culminates in wanting to have a trial. People want an acknowledgement of the mistreatment and the abuse that they experienced. For many people there are grave concerns around identifying themselves as survivors. We have spoken to clients who simply could never undertake a civil claim because that might mean that they are named and identified and they do not want to do that, so they want to look at redress arrangements that can respect their privacy. If or when limitation periods are reformed to enable people to bring claims, I would think there are still many reasons that would compel people towards resolution compromise of those claims by way of settlement. With regard to wanting to have a day in court, so to speak, it is about much more than actually having a trial and appearing. It is about holding the institution to account and being able to use the legal system to obtain justice. It is not so much about a public day in court.

Mr MOLHOEK: Mr Strange, you mentioned the concept of a funder of last resort. How would that fund occur?

Mr Strange: It is addressed at length in the royal commission's report. They have made very comprehensive recommendations around the establishment of a national redress scheme, but it is around recognising that for some people there is no longer an institution. Sorry, but I will start again: one of the fundamental points around the royal commission's recommendations is that institutions

should pay for the harm that they have caused. That is an issue obviously where there is no longer an institution or it has no assets, and there does need to be a situation where governments can ensure that those people are not disadvantaged by that set of circumstances beyond their control. They have done quite extensive work around how that would function and how it would be funded, and that report is accompanied by actuarial calculations around all of that.

Mr MOLHOEK: Is the source of those funds in part from some of the institutions that have been prolific in the institutions that they have run in the past or is it a combination of that and government funding?

Mr Strange: I would probably have to revisit the report to answer that entirely accurately. I think the predominant view was that institutions should be responsible for their own cases and should contribute to the administration of the scheme. I would have to check whether that extended to contributing to those last-resort cases or whether it was recommended that that is ultimately the responsibility of government.

Mr MOLHOEK: You talk about the cost to trial. Is there any sort of indication of how many people, as in survivors, would be likely to want to take a matter to trial? What would the typical costs be to get to that stage and how lengthy is that process?

Mr Strange: It is very much a case-by-case basis. The royal commission again did a lot of study around potential numbers of people who might come forward for redress schemes. I think one of the effects of removing limitation periods will be that institutions are compelled to make genuine attempts to settle matters and to accept responsibility, and we are starting to hear that that is now the position in New South Wales and Victoria where reforms have happened—that is, institutions are seriously sitting down with plaintiffs and their lawyers to try and resolve claims and to reduce the costs and the time. There is no set answer at the moment. There are some people who have endured years in undertaking proceedings, and in large part that has been about trying to get over the interlocutory hurdle of the limitation period. It depends very much on the case and whether liability is admitted by the defendant or not.

Mr MOLHOEK: The liability question is an interesting one, isn't it?

Mr Strange: Yes, and there are a lot of layers around that with institutions. The clearest case is to bring an action—a tort claim—for battery against the perpetrator, but they often do not have the assets to satisfy a judgement in any meaningful way. In terms of institutional accountability, simply removing the limitation period enables you to bring an action but you still must prove that action and there are difficulties around how the law currently stands. There are still barriers for people.

Mr MOLHOEK: Does this apply also to non-institutional abuse? We heard from Soroptimist International earlier today that, I think, 43 per cent of survivors were abused by a family member. Are we going to see civil cases against family members?

Mr Strange: Potentially. I cannot see what downside there would be in extending this across abuse in any context. We know that the majority of cases of child abuse do not happen within institutions now—they happen outside that—and we very strongly feel that as a policy position any survivor should have a right of action against the person who has abused them, and that would be a right of action against a perpetrator. As I have said, often they will not have assets but sometimes they will and we have seen celebrated cases in Australia and overseas in recent times that I am sure everyone is aware of where offenders would have had assets to meet a judgement. At the moment that cost comes back. For many of these survivors, the state is bearing that cost because they are not able to work and they require extensive medical treatment and support to deal with the trauma that has resulted. That cost should in part, where relevant, be shifted to the defendant—the perpetrator—if they have the capacity to bear it.

CHAIR: Mr Strange, unfortunately we are out of time. I thank you for your attendance here this morning.

Mr Strange: Thank you and I thank the committee.

PHILLIPS, Dr Emma, Assistant Advocate, Queensland Advocacy Incorporated

CHAIR: Good morning. Thank you for attending this morning and for your submission. We will allow you five minutes to make an opening statement and then we will hand over to committee members for questions.

Dr Phillips: Thank you very much for the opportunity to be here today and to put in a written submission to this important inquiry. Queensland Advocacy Incorporated, or QAI, is an independent community based systems and individual advocacy organisation and the community legal service for people with disability. Our mission is to promote, protect and defend, through systems and individual advocacy, the fundamental needs, rights and lives of the most vulnerable people with disability in Queensland and we welcome the introduction of these two bills.

We consider that the removal of the time limitation on the bringing of civil actions in this jurisdiction is important for two reasons. Firstly, we want to ensure that people who have experienced this type of trauma are given the chance to be properly heard. Our primary concern with these laws in their present form is that people who are denied an opportunity to be heard and to be compensated for the pain and damage they experienced during their childhood cannot begin to heal. This is not exclusive to children; however, it obviously has a longer impact when a person lives with this experience from childhood and when they experienced it before they reached emotional maturity. It has far-reaching implications for their families and potentially for their own children.

Secondly, we considered that a threat of legal liability which has the prospect of being exercised and enforced is a far more effective deterrent to protect against further types of abuses in the future. As an advocacy organisation which is concerned with protecting and defending the rights and lives of the most vulnerable people with disability in Queensland, our core focus is obviously on people with disability. We hold significant concerns about unknown and unreported cases of sexual abuse of people with disability. While exact figures are not known and are difficult, if not impossible, to obtain, we do know that people with disability are disproportionately overrepresented to an alarming extent amongst those who experience sexual violence and abuse.

Some scholars have provided us with estimates of the types of figures we are talking about: Sobsey estimates that up to 80 per cent of people with disability are sexually abused; Muccigrosso suggests that the incidence of sexual assault against people with an intellectual disability is at least four times higher than in the general population. This is particularly concerning when we consider that people with disability in Australia are a highly vulnerable and marginalised group who experience higher rates of unemployment, homelessness, neglect, imprisonment, substandard education and inadequate health care when compared with people without disability. Across-the-board, people with disability experience significantly higher rates of violence, abuse and neglect, which is particularly concerning in light of the vulnerabilities I have just mentioned. That fact that this violence and abuse is often perpetrated by those in positions of authority who are charged with the responsibility of their care and protection is particularly devastating.

To address and protect people from these types of horrors we must have better investigations, greater scrutiny and robust, independent advocacy to give voice to those who cannot speak for themselves or who need help to speak for themselves. This is particularly concerning to us, given that in Queensland we have traditionally taken a reactive rather than proactive or preventative approach to cases of violence, neglect and abuse against vulnerable people, including people with disability and children. It is also of great concern given that congregate settings which have the responsibility of caring for people with disability are not scrutinised or open and transparent in their practices. This, coupled with the communication difficulties faced by many people with disability, makes people with disability prime targets for abusive treatment by service providers, among others. Children with disability in care are a particularly vulnerable group.

In short, we need to ensure that we remove all of the barriers to justice we possibly can for people who have experienced serious physical or sexual abuse as a child. It is in the interests of the government and the community to ensure that redress is made to victims of child abuse not only in order to heal wounds but also to work towards the prevention of the proliferation of abuse. The health and wealth of a community is measured by the quality and happiness of the lives of the individuals and families within it, and this can only begin to flourish when we address the root cause of damage that inevitably affects us all.

CHAIR: At item 7 on page 4 of your submission you point out that people with cognitive impairment are not accorded credibility by police and are considered unreliable witnesses. I can appreciate that, but it does not deny the fact that they should be heard. The private member's bill seeks to reintroduce the establishment of juries. Does your organisation have a view about that?

Dr Phillips: We do. Under subheading 3 on page 7 of our written submission we address the question of the reintroduction of the right to trial by jury. It is something that our organisation does support. As you mention, there are certainly difficulties for people with disability who come into contact with the law in any capacity. This is a topic that my organisation has been particularly passionately interested in. In 2007 we put out a publication called *Disabled justice: the barriers to justice for persons with disability in Queensland*. Last year we released an update called *Disabled justice: reforms to justice for people with disability in Queensland*. They are quite lengthy volumes, but I would be happy to provide copies to the committee if that is helpful.

There are some safeguards in our laws—such as in our Evidence Act—which do attempt to address some of the difficulties and particular vulnerabilities that people with disability can face when giving evidence, whether as a victim or an alleged offender. The law also only goes so far at the moment, and there are a number of additional safeguards that we consider would be helpful in that regard. Insofar as the issue of trial by jury goes, traditionally that has always been a way in which we keep the community involved in justice issues. We do not think there should be a separate standard applied to people with disability, so we support the jury system for all matters whether they involve people with disability or not.

Looking at that as a whole issue for all people who want to make a claim as a victim of a sexual offence, we think it is important that there is the right to a trial by jury because it is a sufficiently serious offence. It is a way of engaging the community and helping to keep a check and balance or a fetter on power in this area, so that is something that QAI supports.

Mr BROWN: Does your organisation support the government's bill with regard to leaving the power with the courts to open up settlements?

Dr Phillips: Yes, we also do support that. It again comes down to access to justice and to allow people to feel that they have been able to fairly negotiate a just outcome for themselves. As the explanatory notes to the bill state, I think it was Rob Pyne, the member for Cairns, who recognised the power imbalances that can be attendant in reaching a settlement where the time limitation has hung heavily over people's heads, so we do support that in these specific circumstances.

Mr BROWN: Are you against Rob Pyne's bill with regard to deeds of settlement?

Dr Phillips: We are supportive of Mr Pyne's sentiments in that regard.

Mr BROWN: Taking away the power of the court?

Dr Phillips: I am not quite sure I follow you.

Mr BROWN: With regard to the deeds of settlement, leaving the power with the court only instead of one party being able to unilaterally cancel their deed of settlement.

Dr Phillips: We support the court having involvement in that area.

Mrs STUCKEY: Without any doubt, the hurdles that are faced by people with disabilities are in many cases more significant and higher than for those without disabilities; I am not downgrading the seriousness of the topic that we are discussing as far as abuse goes. There must be many people with disabilities who have been abused and who are completely incapable of communicating that abuse. There are others you have already identified who would find just trying to communicate clearly very difficult. What can be done from your perspective to assist those people to come forward? Do you have any suggestions for the government?

Dr Phillips: I think that is a very important topic to raise. The removal of a time limitation is a very important step in the right direction because, like all survivors of any trauma, I think the expectation that people would be in a position to make a complaint within three years of reaching maturity is unrealistic and does not properly appreciate the impact of trauma on people. Professor Ben Mathews was in the room earlier, and his research shows that it takes about 22 years, on average, for people to get to that point where they may be able to make a complaint.

For people with disability in this context and more broadly, support is very, very important. I think that is particularly important in the context of any proceedings, whether they are civil or criminal in nature. Having a support person they are comfortable with and who understands when we are talking about people with intellectual or cognitive impairment, particularly who understands the way they communicate and they feel supported by and safe to communicate with, is critical. Access to independent advocacy is obviously something that we feel strongly about, but we really believe that that is something that really is very important for people to be able to get to the point where they feel comfortable and able to make a claim and to share their experiences.

Ms PEASE: Dr Phillips, thank you very much for coming in and for your submission. On page 9, in your conclusion, you mention that the reforms from either of the bills before us today will not open the floodgates to litigation. I wonder why you have that opinion and what you base that on.

Dr Phillips: Are you talking about the second-last paragraph that commences, 'It is highly unlikely that these reforms'?

Ms PEASE: Yes.

Dr Phillips: We strongly consider that it is very unlikely there will be floods of litigation. It certainly has not been the experience in Victoria and New South Wales when they have amended their time limitation restrictions. There are practical reasons or personal reasons that many survivors of sexual abuse will never seek to make or prosecute a claim. You would no doubt be as well informed or more informed than I am about this, but for many people it is not a path they want to go down. Many people do not have the support they need to engage in legal proceedings. Many people are not able to access the legal assistance they need or do not have the personal finances to do that. There are also other practical reasons. Often there may be legal advice that a defendant is not worth suing, that they are no longer alive or they are bankrupt. There are other practical reasons which might preclude people from bringing a claim. I think in reality the number of claims that we are likely to see is going to be quite low.

Ms PEASE: You go on to say, 'Other victims will choose to seek a more accessible remedy.' What do you mean by that statement?

Dr Phillips: What we find with a lot of the people we support is that they do not ultimately want monetary compensation or a verdict in their favour; they want an acknowledgment of the trauma they have experienced and a way to move forward from that. For people who fall within that category, a more accessible remedy would be some support and some counselling or something to move forward in that regard. A more informal remedy is probably a better way to put it.

Ms PEASE: Further to that, can you tell us what your organisation's position is with regard to changes in class actions in the government's bill?

Dr Phillips: We support that proposed change because we think that the people we are talking about, the survivors of childhood sexual abuse or physical abuse, are highly vulnerable, disempowered and marginalised people. When we speak about people with disability, as a general statement we are talking about an even more vulnerable group. They are often people with multiple vulnerabilities, so the ability to have some collective support is one way of helping to right the power imbalance which is a significant issue in this area, so we support that as an option for people should they wish to pursue that.

Ms PEASE: I understand that with the government's bill there would be an opportunity for people to lodge a claim against an institution if the victim has passed away. Do you have a position on that at all?

Dr Phillips: That is not something that we have addressed. I would have to get back to you on that. I would need to consider that further because that is not something we have delved into.

Mr CRANDON: The references that you have used are quite old—1991 and 1994. That is very relevant because we are talking about long-term cases. Is there any research to suggest that there has been some improvement in these statistics after we went away from the institutional concept? Many people with disabilities now continue to live in the community as opposed to in institutions—most, I would suggest. Is there anything more recent that you could refer to to see whether there is an improvement, to see whether there is some benefit from what we have done, coming from where we were to where we are today?

Dr Phillips: Unfortunately, the statistical quantitative evidence is very light on in this area, for understandable reasons. It is something that we have struggled with. Getting statistics that are relevant to Queensland particularly is even more difficult. Often we do have to try to get some indication by looking at other jurisdictions or looking back a little bit in time. As you say, this is obviously an historical issue.

I apologise that I have not attended the whole of the public hearing because I have been at another consultation this morning looking into domestic violence against people with disability. The overwhelming consensus at that consultation was about how the situation for people with disability has not improved as a result of the deinstitutionalisation movement in Queensland. Certainly the public perception has been that there have been improvements. I am not going to say that there have not been any. There is still in Queensland a significant number of people with disability who are living in congregate care settings which are not arrangements that are chosen by them and are often arrangements that they have actively resisted.

We have been putting quite lengthy submissions into a couple of the Commonwealth Senate inquiries into violence, abuse and neglect of people with disability and the indefinite detention of people with disability which have touched on similar issues. Unfortunately, there are not indications at the moment that there has been much improvement in that area. While there are certainly fewer people living in institutions—and we have seen in Queensland the closure of large institutions for people with disability—we are still seeing similar institutional type living arrangements for many people with disability.

Mr CRANDON: Are you referring to where there might be three or four people with different types of disability living in a community housing arrangement or a share house arrangement?

Dr Phillips: Yes, that is one example of that type of situation. That is a very common form of living arrangement. Just recently, with the introduction of the NDIS, the building of new 10-bed residentials has been proposed. That is something that the minister has recently announced, that there will be 10-bed units to house people with disability with higher support needs.

Mr CRANDON: Whether we are talking about a 10-bed type facility or a four-bed type facility, is there evidence around continued sexual abuse, physical abuse and what have you in that context that equates to this huge percentage that we talked about here going back in time?

Dr Phillips: In terms of comparing percentages, that is not something I could give you a definitive answer on. Our community legal centre runs three individual advocacy services. We do a lot of legal advocacy for people who have experienced, among other things, some infringement of their rights including violence or abuse. We work in collaboration with a number of organisations including SUFY, Speaking Up For You. There are a number of case studies and we certainly have a lot of anecdotal evidence of the continuing violence and abuse and disrespect of people with disabilities, but I am afraid I cannot give you—

Mr CRANDON: Does that go back a little bit in time as well—back to 2000 to 2010? Is it happening now?

Dr Phillips: There are a number of examples of it happening now that we are aware of. There are a number of cases which advocates are currently working on.

Mr CRANDON: Are there some that are dated as well because they have taken some time to come out and talk about?

Dr Phillips: Certainly. My strong feeling—and, again, this is my opinion and it is not based on anything more than anecdotal evidence and the sort of information that is imparted to us and information that we are anecdotally aware of or from our own cases—is that I do not believe there was any point where there was a cessation or a break. The frequency or the incidence of it is not something I can give you a figure on, but I certainly believe it has continued and is continuing at the moment.

Mr MOLHOEK: I wanted to ask some questions along the same lines—about the age of the data—but the member for Coomera has done that. A question that is running through my mind is: is there a cut-off between child abuse and the abuse of vulnerable people? When a child turns 18 we say, 'They are capable of making their own decisions.' What is the sort of thinking around people with disability? Does it depend on the extent of the disability? How do you make that determination?

Dr Phillips: Certainly people with disability do experience serious physical and sexual abuse as children and as adults. I do not think there is a single answer to that because for some people with disability and for some people with mental illness their capacity is not at all impaired. For some people with a serious intellectual or cognitive impairment there can be serious issues with their capacity. For some people with a mental health impairment their capacity can fluctuate at different points in times based on episodic conditions. One of the reasons we do support the removal of the time limitation period is that it is somewhat of an artificial imposition that fails to acknowledge the nuances of people and of situations. The point at which one person may be in a position, be supported, be able to for all different reasons come to terms with and be in a position to start a civil action is going to be very different to someone else, even someone in quite a similar situation.

I think for people with disability there is a very popular tendency to infantilise them, which we certainly do not agree with. That, in this area, is another reason there have been some problems. Often the education, particularly sex education, has not been appropriate for people to be aware of when their rights are being infringed, particularly for people who have been institutionalised and have experienced a lifetime of being abused or being treated in an inappropriate way. Certainly support is really, really important—having appropriate support for people who can help to build their capacity to a point where they are able to and are confident to make a claim and where they are able to follow through with that process.

Mr MOLHOEK: Does this proposed legislation in your view provide for vulnerable people to make future claims? Does there need to be a framework to assess whether the person was vulnerable in terms of their intellect or some other disability? How does that actually work? Is that up to the court to decide?

Dr Phillips: In terms of establishing a framework for people to make a claim, the legislation does not do that. What it does, in my opinion, is remove one of the barriers to accessing justice that people are facing at the moment. There are other provisions in legislation, particularly in the Evidence Act, that do seek to address the particular vulnerabilities that some people may have in coming into contact with the criminal justice system, providing special procedures for people. Obviously we have a special provision where people are deemed to lack capacity where it is considered that proceeding through the usual course of the criminal justice system is not going to be appropriate. I do not see this as creating a framework for that, but I do see it as the removal of a barrier.

Mr MOLHOEK: Going back to the member for Coomera's earlier point around the evidence base or the age of some of the evidence, given that there are a lot more duty-of-care provisions these days around the care and protection of vulnerable people, is there any indication that things have improved or that the current system needs further improvement?

Dr Phillips: There certainly have been some improvements. There is a greater public awareness of these issues than there was if we go back some decades, but I think we still have a way to go. When we are talking about people with disability, I think we still tolerate a much higher degree of violence, abuse and neglect than we do for people without a disability. I think we have quite different standards in terms of what we are prepared to accept and also what people themselves are conditioned to accepting. I think we still have a long way to go in this area for people with disability.

CHAIR: Did QAI make any submission to the royal commission into child sexual abuse?

Dr Phillips: No, we did not. We have obviously made a submission to this inquiry. The work we are funded to do and our core focus is not specifically work with children as such, although obviously adult survivors are. No, to my knowledge anyway, it was not something that we did.

CHAIR: Was there any particular reason why not?

Dr Phillips: Sorry, I cannot answer that. In terms of our resourcing and our ability, we have a small systems advocacy team of three. We have three independent legal services and we are constantly trying to keep up with demand. We do try to get submissions in and to be involved in as many different inquiries and royal commissions as we can, but there is a limit on our resourcing. It also is to some degree informed by what we are hearing from people that we are supporting.

CHAIR: There being no further questions, thank you for your attendance here today. That brings the hearing to a close. The hearing time has expired. I thank you for your assistance. The committee secretariat will provide you and others who have appeared before the hearing today with a draft transcript once it is available to make any corrections if necessary. If there are any questions on notice that have been taken, your responses will be required by 5 pm on Tuesday, 4 October 2016.

Committee adjourned at 12.12 pm