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Indooroopilly QLD 4068

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The Research Director

Legal Affairs and Community Safety Committee
Parliament House
Brisbane QLD 4000

Email: **lacsc@parliament.qld.gov.au**

Dear [redacted]

Inquiry into 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

I have considered the:

- Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016 (**Government Bill**); and
- Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016 (**Private Members Bill**).

I address each Bill below. In summary, I submit the Committee should recommend the Government Bill be generally passed, with changes, and that the Private Members Bill be defeated.

1 Government Bill

I wish to make a number of comments in relation to the Government Bill.

First, I am in favour of the amendments to the *Civil Proceedings Act* and submit that the Committee should recommend the passage of those amendments. A prime example of the deficiency of current Queensland representative laws is the moving of the Queensland floods class action to New South Wales.

Second, I am also in favour of the amendments to the *Legal Profession Act* and submit that the Committee should recommend the passage of those amendments.

I object to the spelling error in line 4 page 13 of the Government Bill

In line 4 on page 13 there is no space between the section number and the title of the section. This should be removed.

Third, I wish to make a number of submissions regarding the proposed amendments to retrospectively abolish the limitation period which currently applies to personal injury damages where such a claim results from sexual abuse in an institutional context:

I object to the proposed wording of 11A(2)(c)

It states that sexual abuse happens in an institutional context if the sexual abuse happens in any other circumstances in which an institution is, *or should be* treated as being, responsible for persons having contact with children. In my view, the inclusion of this entire subparagraph gives undue interpretational width to the Courts and will not enable institutions to be certain about when they will be taken to be responsible for the conduct of persons in the institution. I would suggest either enumerating all instances in which the Committee think it appropriate to make institutions responsible, and removing the 'catch-all'.

Given there is no time limited, certainty is paramount.

I object to proceedings being able to be brought 'at any time' in the current form

In my view, allowing proceedings to be brought against an institution 'at any time' no matter when the cause of action accrued, and even allowing a persons estate to be able to commence proceedings, goes too far.

For example, a child born in 1990 would have, assuming the person lives until they are 100, until 2090 to bring proceedings.

I understand the Court has inherent jurisdiction to stay proceedings.

However, I note that practically, what this may mean is that even though it may be likely that the Court may stay proceedings brought after an extremely long time, this would not prevent legal practitioners from sending demand letters to institutions. It may be accepted that most institutions would be legally represented, however, the wide definition may include those which are unable to afford or obtain legal advice.

In my view, the Committee should either:

- Recommend that the limitation period only be extended until, for example, 22 years after a person turns 18; or
- Recommend that legal aid be given to institutions which have gross revenue under a certain cap, for example, $500,000 if proceedings are threatened against them.

I note that 22 years may be an appropriate time period, as it was mentioned by the Royal Commission as being the maximum average time a person may take to reveal abuse (see page 4, explanatory memoranda).

Consideration of available evidence in proceedings

Given that the passage of time may present certain unforeseen issue in relation to the evidence that may be available in proving such allegations, I submit the Committee should recommend that further consideration be given to:

- Whether persons can be given a subpoena which requires them to disclose a spent conviction;
- Whether the Court may take into account in assessing the victims claim, the passage of time.

I recommend that consideration be given by the Committee to including an amendment to the *Civil Proceedings Act* terms substantially similar to section 119(1)(h) of the *Veterans Entitlements Act* (Cth), which provides:

In considering, hearing or determining and in making a decision in relation to [a claim], the Commission:

(h) … shall take into account any difficulties that, for any reason, lie in the way of ascertaining the existence of any fact, matter, cause or circumstance, including any reason attributable to:

(i) the effects of the passage of time, including the effect of the passage of time on the availability of witnesses; and

(ii) the absence of, or a deficiency in, relevant official records ….

In my view, inclusion of a provision in similar terms, whilst clarifying that the Plaintiff still has the burden of proof, would be appropriate and give recognition to the fact that the passage of time may have had an impact on the evidence.

Moreover, persons convicted of sexual offences in relation to institutional abuse may have spent convictions relevant to proceedings. Consideration of this is required.

2 Private Members Bill

I wish to make a number of submission in respect of this Bill.

I object to the entirety of this Bill and submit that the Committee should recommend that this Bill be defeated.

First, I completely object to allowing jury trials for personal injury arising from child abuse. It is a truth universally acknowledged that ordinary untrained decision makers are extremely sympathetic to alleged victims of child abuse and would in all likelihood take this into account in reaching their views. Such an allowance would bring to Australia the outrageous levels of damage reached in the United States, where damage awards exceed the actual quantifiable loss to the victim.

Moreover, the author of the explanatory memoranda and the Bill has made an error of reasoning. The author sets out comments made in relation to a trial by jury, in the context of the *criminal justice system*.

The way juries operate in that system is fundamentally different to how juries do or would operate in civil jurisdiction. For example, juries are conscious of the gravity of a person being accused of a crime. However, where the award is merely monetary, the comments cited do not aptly apply, contrary to the authors views.

Accordingly, it is more appropriate for the Court sitting judge alone to determine such claims as they may do so independently, impartially, and according to law.

Second, I utterly object to not allowing the Court the power to stay proceedings based on the passage of time, or where a trial brought after such long delay would be unjust. The Court takes into account a wide variety of factors in reaching such decisions, and preventing institutions from obtaining a stay where the delay is such that they would not obtain a fair trial is an inherent feature of our justice system and should not be abolished.

In my view, the entirety of this Bill should be rejected.

Yours sincerely

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My views are not necessarily those of my employer