

Your Ref: [REDACTED]
Our Ref: PD:cm
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Telephone: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]

The Research Director
Legal Affairs and Community Safety Committee
Queensland Parliamentary Service
Parliament House
Cnr George and Alice Streets
Brisbane Qld 4000

LACSC@parliament.qld.gov.au

Dear Research Director

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

Thank you for providing Legal Aid Queensland with an opportunity to make a submission regarding the Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016 (the Government Bill) and the Limitation of Actions (Child Abuse Civil Proceedings) Amendment Bill 2016 (the Private Member's Bill).

Legal Aid Queensland provides input into government policy development and law reform processes to advance its organisational objectives, seeking to offer policy input that is constructive and based on the experience of its lawyers in the day to day application of the law in courts and tribunals.

As Legal Aid Queensland does not provide advice or representation for civil actions for personal injury, it is not able to comment in relation to the specific provisions of either the Government Bill or the Private Member's Bill in this regard although in general terms Legal Aid Queensland supports the policy objective of the Government Bill of creating a more accessible civil litigation system for survivors of child sexual abuse where the abuse has occurred in an institutional context.

However, prior to the commencement of the *Victims of Crime Assistance Act 2009* (VCA), Legal Aid Queensland provided extensive advice and legal representation in relation to criminal injuries compensation under Chapter 65A of the *Criminal Code* (the Code) and the *Criminal Offence Victims Act 1995* (COVA) and would like to provide comment on a specific and discrete issue concerning the potential impact of the Bills on people who have previously received ex gratia payments from the State under the Code or the COVA or who have received/will receive financial assistance from the State under the VCA.

Under section 663E of the Code, section 38 of the COVA and section 106 of the VCA, where a person receives payments from the State for compensation for criminal injuries or financial assistance as a victim of crime, the following conditions apply:

- I. the State is subrogated to the rights of the person against the perpetrator to the extent of the payment made by the State;
- II. the person is required to inform the State if they subsequently receive an amount by way of court order for damages or compromise of an action in respect of the injury;
- III. if the person subsequently receives an amount by way of court order for damages or compromise of an action in respect of the injury, the person is obligated to refund to the State the amount of criminal injuries compensation or financial assistance paid by the State;
- IV. the State has a first charge against the court order for damages or settlement amount to the extent of the payment previously made by the State.

A similar position may exist with respect to payments received by people under the Administrative Redress Scheme introduced by the Queensland Government in May 2007 in response to the recommendations of the Commission of inquiry into Abuse of Children in Queensland Institutions (Forde Inquiry). This scheme provided ex-gratia payments to victims of abuse and neglect as children in Queensland institutions. This scheme was finalised in 2010.

If the limitation period is abolished for claims for damages for personal injuries from sexual abuse occurring when a person was a child, the effect of the sections referred to above will be that if a person is successful with a personal injuries action and that person had previously received compensation or financial assistance from the State, the person will need to refund the amount of compensation or financial assistance to the State.

While the amounts of compensation paid under the COVA were often comparatively low when compared to damages awarded in personal injuries actions, the COVA allowed for payments up to \$75,000 and payments under the Code were sometimes greater. This together with legal costs of running a personal injuries action may account for a substantial portion of any award for damages or settlement amount received in respect of the personal injuries action.

The compensation regimes under the Code and the COVA existed for a number of decades and people who received payments of compensation may not/no longer be aware that they will be required to refund payments to the State if they receive an amount by way of court order for damages or compromise of an action in respect of a personal injuries action.

Accordingly, persons who have previously received payments under the Code, the COVA or the VCA or who may become future claimants under the VCA, will need to be clearly advised about the impact on any personal injury claim.

Legal Aid Queensland recommends that:

- Consideration be given to the impacts which the proposed changes to the limitation of actions for child sexual abuse will have on people who have received ex gratia payments of criminal injuries compensation under the COVA and the Code and financial assistance under the VCA;
- The Queensland Government consider whether it is appropriate to introduce legislation allowing the State to not require a refund of compensation payments or financial assistance previously paid in these circumstances;
- That a mechanism/process be established to advise people who have received ex gratia payments or financial assistance from the State:
 - of their obligations to refund such payments in the event that they are successful with personal injuries actions that are commenced subsequent to enactment of the proposed Bills and that they:
 - be informed of these obligations prior to commencing proceedings; and

- be informed of the impact of a refund on the award they are likely to receive under the personal injuries action;
- that a lawyer representing a person in such a personal injuries action be required to provide a certificate confirming that such advice has been given.

If you have any inquiries, please contact Craig May, Senior Policy Officer, Legal Aid Queensland on [REDACTED]

Yours sincerely

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Paul Davey
Acting Chief Executive Officer
Legal Aid Queensland