



Submission No. 016

16 September 2016

Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane QLD 4000

Attention: The Research Director

Via email transmission: lacsc@parliament.qld.gov.au

ATSILS' (Qld) Ltd. Submission to LACSC on Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016 and Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016

The Aboriginal and Torres Strait Islander Legal Services (QLD) Ltd ("ATSILS") welcomes and appreciates the opportunity to make a submission on the Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016 ("Bill 1") and Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016 ("Bill 2").

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Our primary role is to provide criminal, civil and family law representation. We are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education; and Early Intervention and Prevention initiative (which includes related law reform activities and monitoring Indigenous Australian deaths in custody). As an organisation which, for over four decades, has practised at the coalface of the justice arena, we believe we are well placed to provide meaningful comment. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

ATSILS' COMMENT ON BILL 1

ATSILS provides legal assistance to Aboriginal and Torres Strait Islander Queenslanders, who are survivors of child sexual institutional abuse. Aboriginal and Torres Strait Islander people are the most institutionalised people in Australia, historically and currently, suggesting Aboriginal and Torres Strait Islander children, are possibly more exposed to institutional abuse. Some of the underlying causes for over-representation of Aboriginal and Torres Strait Islander children in child protection and out-of-home care, include: 'past policies of forced removal and cultural assimilation; intergenerational effect of forced removals; and cultural differences in child-rearing practices'¹. Measures to bring justice to survivors are necessary to rectify unresolved trauma and grief, for communities and individuals, affected by child sexual institutional abuse.

In addressing current and future victims of child sexual institutional abuse, the proposed amendment to *Limitation of Actions Act 1974*, retrospectively abolishing limitation periods (including periods applying to surviving actions) from causes of action, based on child sexual institutional abuse, would assist to:

- minimise trauma to plaintiffs, as there would be no need for plaintiffs to provide proof of their psychological injury at an interlocutory stage;
- avoid legal costs incurred on contested limitation period defences; and
- allow time for the victim of abuse to disclose their experiences or act on them, when they are able and ready.

We are in strong support of the proposed amendments to the extent that they assist victims, described above.

ATSILS' COMMENT ON BILL 2

Whilst we support the Bill 1 proposed amendments, which address current and future victims of child sexual institutional abuse, the proposed amendments do not address certain past child sexual institutional abuse claims. Where cases were settled for modest sums (for example victims in effect being held over a barrel, due to perceived limitation period obstacles), or where no compensation was

¹ Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997)

received, due to probability or fact of not being able to meet the limitation periods to progress their cause of action in the court, then we would submit that the Bill should also provide for the option of re - litigation (perhaps with a quantum threshold or some screening mechanism, built in to obviate against matters, that were settled on fair terms being revisited). Such aside, we are in full support of the proposed amendments to create a legal framework to remove past unjust settlements.

ATSILS thanks the committee for this opportunity to provide feedback and wishes it every success with its deliberations.

Yours faithfully,

Shane Duffy

Chief Executive Officer