



Submission No. 020

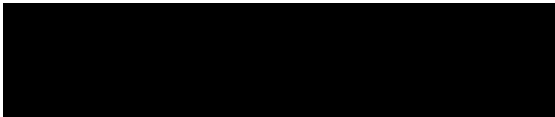
Micah Projects and the Historical Abuse Network

Response to the Legal Affairs and Community Safety Committee
on Limitation of Actions (Institutional Child Sexual Abuse)
and Other Legislation Amendment Bill and the Limitation of
Actions and Other Legislation of Actions and Other Legislation
(Child Abuse Civil Proceedings) Amendment Bill 2016

*Response to the Legal Affairs and Community Safety Committee on
Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation
Amendment Bill and the Limitation of Actions and Other Legislation of
Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment
Bill 2016*

September 2016

Thank you for considering our submission. I am happy to appear at any
public hearings the Legal Affairs and Community Safety Committee require.



CEO

MICAH PROJECTS

Dear Colleagues

Thank you for the opportunity to respond to the Legal Affairs and Community Safety Committee's Limitations 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 and the Committee's Inquiry into whether it is appropriate to legislate for the removal of time limits on child sexual abuse in Queensland.

About Micah Projects

Micah Projects has worked for twenty years with individuals, families, and adults who, as children were abused in out of home care, state and faith institutions for twenty years. In that time, the organisation has developed a growing understanding of the experience of what their needs are. In collaboration with families, and adults who, as children were abused in out of home care, state and faith institutions a range of services aimed at supporting their efforts in seeking redress from church and state institutions has been established.

Micah Projects has been working supporting people with the Royal Commission into Institutional Responses to Child Sexual Abuse since its inception in 2013. We have had 58, 313 contacts since 2013. This translates to 2,065 people that have support or contact with Micah Projects through Lotus Place.

Key Points

Broadening the scope of abuse in the *Limitation of Actions (institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016*

Broadening the definition of institution in the *Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016*

Deeds of Release

Micah Projects has provided the Queensland Government with a *Framework for Justice* (attached) recognizing the recommendations to date and ongoing from the Royal Commission impacting on access to justice.

Micah Projects supports the *Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016* introduced by the Premier and Minister for the Arts, the Hon Annastacia Palaszczuk MP, on August 16. This submission only addresses the *Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016*.

The Bill proposes to

- Abolish limitation periods for institutional child sexual abuse: Create a more accessible civil litigation system for survivors of child sexual abuse where that abuse has occurred in an institutional context, by retrospectively abolishing the limitation periods that apply to claims for damages arising from such abuse

Micah Projects supports abolishing limitation periods for child abuse. Create a more accessible civil litigation system for survivors of child abuse following model litigant principles, where that abuse has occurred, by retrospectively abolishing the limitation periods that apply to claims for damages arising from such abuse

The Bill is based on the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, specifically, the recommendations regarding limitation periods from its report in 2015, *Redress and Civil Litigation*. Because of this, the Bill is constrained by the terms of reference of the Royal Commission, which compel it to include “institutional abuse” and “sexual abuse” only. Whilst the Royal Commission was limited to make recommendations in line with its terms of reference the role of legislation in Queensland is to provide fair and equal access to justice for any person who has experienced childhood physical, sexual or psychological abuse

Broadening the scope of abuse in the Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016

11A (1) No Limitation period for actions for child sexual abuse happening in institutional context

Micah Projects recommends no limitation period for actions for child abuse in all its forms, physical, sexual and psychological injury

Micah Projects supports a no limitation period for actions for child abuse *in all its forms* sexual, physical and psychological injury regardless of the relevant act or omission and argues for a broader definition of abuse in the scope of the Bill and retrospectively abolishing the limitation periods that apply to claims for damages in line with the precedent set by NSW and Victoria..

Excluding psychological abuse creates a hierarchy of childhood abuse, which does further harm rather than creating a just response

Psychological abuse should be included with reference to sexual and physical abuse by reference to the ordinary meaning of the word. It should be included to avoid doubt and allow claims be made without limitation times in relation to the psychological elements of both physical abuse and sexual abuse where a child is made feel complicit in the abuse that has occurred

In 14.6 of the Redress and Civil Litigation Report, the Australian Lawyers Alliance is quoted as commenting that separating out sexual and physical injury would be wholly inappropriate..., as would any attempt to exclude the psychological consequences of either sexual and physical abuse.(Royal Commission into Institutional Responses to Child Sexual Abuse, 2015, p451)

Psychological abuse “can be just as devastating as physical abuse. Psychological abuse can affect your inner thoughts and feelings as well as exert control over your life. You may feel uncertain of the world around you and unsafe in your own home. Psychological abuse can destroy intimate relationships, friendships and even your

own relationship with yourself (Beyond Blue cited on 14th September 2016.
<https://www.beyondblue.org.au/the-facts/anxiety/signs-and-symptoms>)

Broadening the definition of Institution in the Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016

11A (2) No Limitation period for actions for child sexual abuse happening in institutional context (P7)

Micah Projects recommends the Bill include child abuse in any setting.

Micah Projects supports replacing institutional contexts in their entirety and should include abuse in any setting. This is consistent with the Victorian *Limitations of Actions Amendment (Child Abuse) Act 2015*. The Royal Commission into Institutional Responses to Child Sexual Abuse recommends national consistency in this area of law. To this end Victoria and NSW offer valuable examples in not restricting their legislation to institutions.

Deeds of Release

Micah Projects advocates that the matter of Deeds of Release needs to be within legislation preventing any parties from blocking civil actions due to historical settlements through past signed Deeds of Release. However, Micah Projects supports that money already awarded through historical settlements for any party be taken into account in proceedings

While whole-of-Government Guidelines for responding to child sexual abuse claims propose that payments made under the Forde Enquiry Redress Scheme will not prevent claimants pursuing a claim now, the Issues Paper does not identify the need to consider the position of claimants who have, potentially, under-settled their claims because of existing statutory limitation periods. (Welcome Reforms for Victims of Childhood Sexual Abuse. Steve Herd).

Many people Micah Projects have advocated for settled for inadequate sums of compensation believing if they did not settle they would receive no money. This is still the case and will continue to be so unless reform is implemented in this area. Deeds of release have usually been signed preventing further claims against an institution (ALA Submission).

POLICY AND LAW REFORM

That the Queensland Government ensure legal reform to:

Civil litigation laws by removing from the Limitations of Action Act 1974 limitation periods in respect of sexual abuse in any civil court, as per Victoria's leadership in this area, and ensure that it is retrospective in its amendment by the Queensland Parliament

Ensure that all survivors of historic childhood institutional abuse are released from all paid Deeds of Release by church and state to participate in either civil litigation or Queensland's redress scheme

Impose absolute liability on institutions in relation to child sexual abuse and ensure that sexual abuse is a breach of fiduciary duty owed by institutions to children in their care

Provide funding to community legal centres for advice and support to:

- Individuals eligible for redress and provide advice on legal options
- Representation for all legal process
- Provide mediation with church authorities in the absence of redress

Ensure institutions adopt 'model litigant' guidelines for responding to claims for compensation in relation to allegations of child sexual abuse

Develop a legal framework for a state-based redress scheme that provides present and future requirements for a public record of abuse where the survivor consents

Review fiduciary law to ensure accountability of churches, government, NGOs – imposing absolute liability on institutions for child sexual abuse committed by employees unless they took reasonable steps to prevent the abuse

Establish a centralised and specialist Historical Abuse Unit within the Queensland Police Service to ensure a skilled response is provided to individuals reporting historical child sex abuse

Review all historical abuse cases that were accepted to committal hearings with the Office of the Director of Public Prosecutions, specifically i) the way they were managed, ii) improve these processes within relevant departments when managing cases of historical child sexual abuse through the legal system

Prioritise early intervention and prevention programs in ongoing reforms of the child protection system

Implement best practice guidelines for Right to Information to access records which will enable survivor/victims maximum information to their history, family, identity and details of their time in care

Develop a human rights act in line with Victoria's Charter of Rights and Responsibilities.

www.micahprojects.org.au
www.lotusplace.org.au

UNFINISHED BUSINESS

The Historical Abuse Network calls on the Queensland Government to respond to the recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse Consultation Paper on Redress

THE QLD GOVERNMENT ESTABLISH A TRUTH, HEALING AND RECONCILIATION TASKFORCE

The purpose of the taskforce is to implement the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and all forms of abuse in out-of-home care.

Proposed membership of the Taskforce

Membership would comprise adults who have experienced sexual abuse in institutional settings; adults who as children lived in out-of-home care; government representatives; churches; academics and other professionals with experience in this area

The Taskforce would:

Oversee Queensland's response to the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse

Review previous approaches to redress schemes in Queensland

Review and refocus the Forde Foundation as an independent statutory body similar to the approach of the Redress Board in Ireland with the establishment of Caranua

Establish mechanisms within the community to provide education and awareness of the legacy of childhood sexual abuse and other forms of abuse, the history and legacy of the Queensland child protection system

Continue ongoing commitment to Remembrance Day in Child Protection week to remember and acknowledge the courage and determination of adults who as children were in out-of-home care and have been advocates of change

Fund a community ambassador program to improve community and professional awareness

Review and ensure local memorials are established at sites or communities where abuse has occurred

Fund a permanent community based museum that demonstrates the public record and legacy of child protection policy and historical institutional abuse in Queensland. It would reflect the interconnected policy objectives between Aboriginal, Torres Strait Islander, and immigration and children in out-of-home care at that time

Review the existing Queensland Government and Church apologies in the light of the evidence coming from the Royal Commission into Institutional Responses to Child Sexual Abuse.

ACCESS TO MAINSTREAM SERVICES

That the State Government advocate to the Commonwealth Government:

To include a separate Medical Benefits Schedule item number in the Medicare data set to be allocated to enable people who as children, lived in out-of-home care, to seek counselling and psychological support

For the Federal Health Minister to make psychological and counselling services available throughout a survivor's life

To establish purpose built 'trauma informed' designed aged care facilities, ensuring size and services are appropriate to the needs of people who are survivors of historical institutional abuse

To provide enhanced, targeted in-home aged care provision that is independent of churches and state

For the Home and Community Care Program to better recognise the urgent needs of this ageing population

That the Queensland Government:

Recognise the needs for priority access to Queensland's health and hospital services

Provide access to appropriate supportive housing by increasing supply, ensuring safety in design and connectedness to community

Advocate to specialist higher education authorities that courses are available for training health professionals in areas related to the effects of institutional abuse and trauma informed care.

FINANCIAL PAYMENT

That the Queensland Government create a Redress Scheme to:

- administer and implement the independent national scheme proposed, or
- establish an independent state based scheme on behalf of government, churches and other relevant bodies

Create an independent statutory fund with oversight by a skilled board and appropriate administrative support to meet its objectives

Determine the Queensland Government's contribution to the proposed statutory fund

Develop a legislative framework for:

- ▤ The receipt of financial contributions from churches and other non-government organisations
- ▤ The distribution of funds to victim/survivors in line with the Royal Commission's recommendation of \$328 million
- ▤ Using the matrix outlined by the Royal Commission in relation to sexual abuse and, for physical and emotional abuse, the matrix as implemented under the Queensland Redress Scheme

Establish eligibility for:

- ▤ Individuals who experienced physical, sexual and emotional abuse in Queensland institutions or out-of-home care
- ▤ Individuals who did not receive payments under the Queensland Redress Scheme 2007
- ▤ Individuals who experienced childhood sexual abuse and did not receive an adequate institutional response as per Royal Commission into Institutional Responses
- ▤ Funds within the Forde Foundation to be distributed as grants to people who were in out-of-home care, foster care and detention centres to pay for services, medical consultations, education activities, home improvements for aged care and counselling which is available and ongoing

Ensure that people who did not receive payments under the Queensland Redress Scheme are eligible to apply under the same specifications as when the scheme was administered

Recognise that assessment of monetary payments be able to accept 'plausibility' or 'reasonable likelihood' as the basis for financial payment as many people cannot articulate as well as others the impact abuse has had on them. Establish a specific category and corresponding matrix recognising the circumstances of the abuse and the accountability expected of the child protection system

Ensure the duration of redress is ongoing

Guarantee no Deed of Release is to be made on financial payments.

SPECIALIST SUPPORT SERVICES

That the Queensland Government commit to continued investment into specialist services for people who have experienced abuse in an institutional context by:

Continued investment into services appropriate to the level of need across the State

Developing a clear policy framework for services and outcomes to restore individuals and community as a commitment to restorative justice, and to complement the financial redress scheme

Developing a shared investment framework with the Commonwealth through COAG to establish national consistency in policy and practice (building on the work of Find and Connect services) so that individuals can access services of a consistent standard from state-based services in the state in which they currently reside

Aligning the services of the proposed statutory redress fund and supporting the implementation of a redress fund through integrated case management for those who require it

Aligning the outcomes from the proposed Truth and Reconciliation Taskforce with specialist services

Ensuring the needs of people who have experienced abuse in institutional settings are integrated into workforce planning to improve access to—and understanding of—the outcomes of inquiries and the Royal Commission by professionals

Funding specialist legal services to assist individuals who choose to access the civil justice system and require advice to decide which option (redress or civil litigation) is most appropriate for their circumstances

Recognising the aged care needs of Forgotten Australians and Former Child Migrants as an ageing group in the population who require assistance in accessing aged care of choice

Enabling specialist services to undertake community education in partnership with Forgotten Australians about their needs in health, especially in aged care, mental health, suicide prevention and drug and alcohol prevention.

REDRESS

JUSTICE