




Speech By  
**Mark Furner**

**MEMBER FOR FERNY GROVE**

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**LIMITATIONS OF ACTIONS (INSTITUTIONAL CHILD SEXUAL ABUSE) AND  
OTHER LEGISLATION AMENDMENT BILL; LIMITATION OF ACTIONS AND  
OTHER LEGISLATION (CHILD ABUSE CIVIL PROCEEDINGS) AMENDMENT  
BILL**

 **Mr FURNER** (Ferny Grove—ALP) (3.12 pm): I rise to make a contribution to this cognate debate 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. As chair of the committee, I thank those persons who lodged written submissions on these bills and those witnesses, particularly the victims of child sexual abuse, who appeared before the committee. I also thank the Queensland Department of Justice and Attorney-General and the member for Cairns for their assistance during the inquiry. I thank all members of the committee for their work and thorough examination of the issues raised in this inquiry. Additionally, I wish to express my appreciation to the committee staff and the Queensland Parliamentary Library for the support they provided in our deliberations.

The committee has unanimously endorsed the report and recommended that the government's bill be passed while deciding that the private member's bill not be passed. The committee received 23 submissions and an oral briefing on the government bill from the Department of Justice and Attorney-General on 31 August 2016. The committee also received an oral briefing on the private member's bill from the member for Cairns. On 26 September 2016 in Brisbane, the committee held public and private hearings on the bills.

The emotions expressed by not only the witnesses but also some members of the audience in the public hearing brought back distinct memories of my time as a member of the community affairs committee in the Senate when hearing from victims during the Senate committee's Inquiry into the Implementation of the Recommendations of the Lost Innocents and Forgotten Australians Reports. The emotions and hurt of those innocent victims that the Senate committee heard were real and concerning and they never left those victims. It is the case for these victims who appeared as witnesses before the Legal Affairs and Community Safety Committee. I respect these victims for their bravery in providing their stories of the terrible circumstances of their experiences. I have never understood how a human being could steal the innocence of a child—a child who has fallen victim at the hands of someone they generally place their trust in. These people who prey upon innocent children deserve to be challenged and will be held to account for their actions.

This bill will provide the opportunities for victims of child sexual abuse to go back in time beyond the usual statute of limitations and seek settlements for the wrongs that have been perpetrated against them. The bill shall remove statutory limitation periods for child sexual abuse that occurred in institutions.

On 14 September 2015, the Royal Commission into Institutional Responses to Child Sexual Abuse released its *Redress and civil litigation report*, with recommendations to provide justice to survivors. Recommendation 85 of that report is that state and territory governments should introduce legislation to remove any limitation period that applies to a claim for damages brought by a person based on personal injury of the person resulting from sexual abuse in an institutional context. We are doing this.

Recommendation 86 of the report states—

State and territory governments should ensure that the limitation period is removed with retrospective effect and regardless of whether or not a claim was subject to a limitation period in the past.

We are doing this. Recommendation 87 of the report states—

State and territory governments should expressly preserve the relevant courts' existing jurisdictions and powers so that any jurisdiction or power to stay proceedings is not affected by the removal of the limitation period.

We are doing this. In addition to the introduction of the government bill, the government released an issues paper and commenced a public consultation process on how to respond to the royal commission's civil litigation period recommendations in the *Redress and civil litigation report*. The issues paper sought detail on a range of civil litigation reforms, including whether the removal of the limitation period should be widened to apply to all forms of child abuse rather than only child sexual abuse, whether it should apply more broadly than to abuse suffered in institutions and include other settings, and whether the current scope of damages is sufficient.

Although the non-government members supported the report and the government's bill, those members put forward two recommendations. Recommendation No. 1 states—

That the government Bill be amended to include the right to claim to sexual abuse victims, in circumstances other than an institutional sexual abuse setting.

I thank the Attorney-General for her consideration and for accepting this amendment. Recommendation No. 2 states—

That the government Bill be amended to provide the courts, at their discretion, the right to re-open Deeds of Settlement which have been entered into, with respect to time barred sexual abuse claims.

Although the royal commission recommended extending the limitation period, in recommendation 87 it stated specifically—

State and territory governments should expressly preserve the relevant courts' existing jurisdictions and powers so that any jurisdiction or power to stay proceedings is not affected by the removal of the limitation period.

The Queensland Law Society in its submission suggested a more cautious approach and noted some of the disadvantages of this proposed reform. It stated—

The Pyne Bill proposes section 51 of the Limitation of Actions Act 1974, which voids a prior settlement agreement and collateral agreements upon commencement of a new action.

The Queensland Law Society in its submission stated further—

As previously stated, institutions may find that any such claim is uninsurable, if the insurer were a party to the original settlement arrangement. It may also bring associated problems for unincorporated associations.

Therefore, we are not in a position to support non-government recommendation No. 2. On the subject of the reintroduction of jury trials for civil actions for physical injury arising out of child abuse as contained in the private member's bill, the majority of witnesses opposed this move. Submission No. 23 stated—

Facing a single judge (a person who represents authority and establishment) is far more stressful to a survivor of child abuse than having a body of ordinary people, a group of peers who are not necessarily part of the establishment and who can bring common sense into their deliberations..

Knowmore indicated to the committee that some, but not all, survivors may choose to have their case heard by a jury. Their submission states—

However, we make two observations on this proposal. First, not all survivors contemplating civil proceedings would wish to have their matter determined by a jury, given the very personal nature of their experience of abuse and the difficulties many encounter in any context where they are required to disclose their story. This concern is likely to be magnified in regional areas where potential juror pools are drawn from the local population. If restored, the right to trial by jury in a case of child abuse should not be exercisable at the election of a defendant alone.

Secondly, 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..

In addition, the Queensland Law Society raised its objection to the proposal of introducing juries on the following grounds—

The Society has complete confidence in the Queensland judiciary to apply the law and find facts to the highest standard.

Furthermore, the removal of limitation periods is likely to affect the nature of evidence which can be produced to the court and will require careful consideration of the legal weight to be attached to many and varied materials.

Ms Hillard, the spokesperson from Soroptimist International South Queensland, made the following comments based on her experience as a barrister. She said—

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.

Therefore, on the overall balance of evidence presented to the committee we say the introduction of juries would place unnecessary burden on litigants and the judicial process.

In respect to class actions, the government bill amends the Civil Proceedings Act 2011 to introduce a comprehensive statutory regime to facilitate the effective conduct and management of representative proceedings. Representative proceedings are brought by one person on behalf of a number of people whose claims arise from the same, similar or related circumstances and which give rise to a substantial common issue of law or fact. This will greatly assist victims' confidence when proceeding with a case. The Queensland Law Society summed up the advantage of this amendment to the committee—

Vulnerable and disempowered people, which survivors of child sexual abuse and serious physical abuse certainly are, can face many additional barriers to initiating and progressing a civil claim. For most non-lawyers, the prospect of initiating a court case is a daunting one. This is compounded when the subject matter of the claim is considered, and the likelihood of continuing damage experienced by the person as a consequence of the abuse. The old adage that there is 'safety in numbers' is apt here. The ability to be part of a class action brings with it comfort that the person is not alone in their journey. For some individuals or collectives, the outcome could well provide the means to redress ongoing trauma from the abuse.

I commend the Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016 to the House.