

**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**

Report No. 41, 55th Parliament
Legal Affairs and Community Safety Committee
November 2016

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Proceedings) Amendment Bill 2016**

Report No. 41, 55th Parliament

Legal Affairs and Community Safety Committee

November 2016

Legal Affairs and Community Safety Committee

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Abbreviations

ALA	Australian Lawyers Alliance
Bar Association of Queensland	The Bar Association
Bills	The government Bill and the private member's Bill
Civil Liability Act	<i>Civil Liability Act 2003</i>
Civil Proceedings Act	<i>Civil Proceedings At 2011</i>
Committee	The Legal Affairs and Community Safety Committee
DJAG	Department of Justice and Attorney-General
FLPs	Fundamental legislative principles
GCCASV	Gold Coast Centre Against Sexual Violence
Government Bill	The Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016
Government Issues Paper	The Issues Paper issued by the Government in August 2016 which deals with the civil litigation recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse: Redress and Civil Litigation Report – understanding the Queensland context
JPs	Justices of the Peace
Legal Profession Act	<i>Legal Profession Act 2007</i>
Limitation of Actions Act	<i>Limitation of Actions Act 1974</i>
Legislative Standards Act	<i>Legislative Standards Act 1982</i>
LPITAF	Legal Practitioner Interest on Trust Accounts Fund
PACT	Protect All Children Today Inc
Personal Injuries Proceedings Act	<i>Personal Injuries Proceedings Act 2002</i>
Private member's Bill	The Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016
QAI	Queensland Advocacy Incorporated
QCAT	Queensland Civil and Administrative Tribunal
QCAT Act	<i>Queensland Civil and Administrative Tribunal Act 2009</i>
QLS	Queensland Law Society

Chair's foreword

This report details the examination by the Legal Affairs and Community Safety Committee of two Bills being 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 (the Bills).

In considering the Bills, the committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bills had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament in accordance with section 4 of the *Legislative Standards Act 1991*.

The committee recommends that the government Bill be passed and that the private member's Bill not be passed.

On behalf of the committee, I thank those who lodged written submissions on these Bills or appeared before the committee. I also thank the Queensland Department of Justice and Attorney-General and the Member for Cairns, Mr Rob Pyne MP, for their assistance during the inquiry.

I thank all members of the committee for their work on the inquiry. Additionally, I wish to express my appreciation to the committee's staff and the Queensland Parliamentary Library for the support they have provided.

I commend this report to the House.



Mark Furner MP

Chair

Recommendations

Recommendation 1 **5**

The committee recommends the Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016 (government Bill) be passed.

Recommendation 2 **5**

The committee recommends the Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016 (private member's Bill) not be passed.

1. Introduction

1.1 Role of the committee

The Legal Affairs and Community Safety Committee (the committee) is a portfolio committee of the Legislative Assembly.¹ The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Police Service
- Fire and Emergency Services
- Training and Skills.

A portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:²

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- for subordinate legislation – its lawfulness.

1.2 Inquiry process

1.2.1 Referral

The Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016 (government Bill) was introduced by the Premier and Minister for Arts, the Hon Anastacia Palaszczuk MP, on 16 August 2016. The bill was referred to the committee for detailed consideration, with the committee to report by 1 November 2016.

The Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016 (private member's Bill) was introduced by the Member for Cairns, Mr Rob Pyne MP on 18 August 2016.

By motion of the Legislative Assembly on 18 August 2016, the committee is required to consider and report to the Parliament on both bills together.

1.2.2 Consultation

The committee invited submissions from the public and from identified stakeholders to be received by 16 September 2016. The committee received 23 submissions (see Appendix A for a list of submitters).³

The committee received an oral briefing on the government Bill from the Department of Justice and Attorney-General (DJAG) on 31 August 2016, and also received a written advice from DJAG on issues raised in the submissions. The committee received an oral briefing on the private member's Bill from Mr Pyne MP on 14 September 2016. See Appendix B for a list of witnesses that gave evidence at the public briefings.

The committee held public and private hearings on the Bills on 26 September 2016. See Appendix B for details of these hearings.

Transcripts, responses to questions taken on notice and other relevant correspondence received during the committee's examination of the Bills are published on the committee's webpage.

¹ *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

² *Parliament of Queensland Act 2001*, s 93(1).

³ View submissions at:

www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/current-inquiries/22-LimitationActions

1.3 Policy objectives of the Bills

Both Bills, amongst other things, remove statutory limitation periods for child sexual abuse that occurred in institutions. Variations between the objectives of the government and private member's Bills are described in section 1.3.1 and 1.3.2 of this report.

The period of time in which a person can commence legal proceedings for an action - such as child sexual abuse - is referred to as a 'limitation of action'. Limitations vary according to the action and jurisdiction.⁴ In Queensland, the basic time limitation period for a personal injury claim is three years from when the action accrued. Child abuse comes under this basic time limitation, except that the limitation period is extended to three years from when the person turns 18 years of age (i.e. 21 years old).⁵

The purpose of limitation periods are described in the explanatory notes as bringing fairness and certainty to civil litigation matters by:

*... removing the threat of open-ended liability (for both potential defendants and third parties); ensuring that a defendant is not unfairly prejudiced in proceedings through inability to access documents to defend the claim, that due to the passage of time have been lost, deteriorated or destroyed, trace witnesses or sufficiently recall events; and ensuring disputes are resolved as quickly as possible.*⁶

1.3.1 Government Bill

The government Bill seeks to achieve its policy objectives through amending a number of different Acts. It proposes to amend:

- the *Limitation of Actions Act 1974* (Limitation of Actions Act) and the *Personal Injuries Proceedings Act 2002* (Personal Injuries Proceedings Act) to 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,
- the *Civil Proceedings Act 2011* (Civil Proceedings Act) to introduce a comprehensive statutory regime to facilitate the effective conduct and management of representative proceedings, known as 'class actions', in Queensland,
- the *Legal Profession Act 2007* (Legal Profession Act) to replace current funding arrangements under the Legal Practitioner Interest on Trust Accounts Fund with funding through the Consolidated Fund and improving solicitors' trust accounts administration generally, and
- the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) to permanently embed the arrangement whereby Justices of the Peace (JPs) hear certain minor civil dispute matters in the Queensland Civil and Administrative Tribunal (QCAT).

1.3.2 Private member's Bill

The policy objectives of the private member's Bill are to:

- reintroduce the right to trial by jury for civil actions for personal injury arising from child abuse.
- remove civil statutory time limits and procedural time limits for personal injury actions arising from child abuse, with the following features:

⁴ Encyclopaedic Australian Legal Dictionary

⁵ Limitation of Actions Act 1974, s 11 and 29(2)(c).

⁶ Explanatory notes, government Bill, p 2.

- do this with retrospective effect,
 - apply this to judgements made based on the application of previous time limits,
 - apply this to settlements made based on the application of previous time limits,
 - exclude this from actions properly tried on their merits,
 - exclude this from actions judged or settled for any reason other than the application of previous time limits,
 - exclude this from actions settled within time (and therefore previous time limits were not a factor), and
 - allow a court when awarding new damages to take into consideration previous settlement or judgement amounts paid.
- make a number of amendments regarding stays of proceedings to:
 - prevent an institution from having civil proceedings stayed on the basis of passage of time where the institution was the cause of the passage of time,
 - prevent an institution from having civil proceedings stayed on the basis of seeking to question facts (either facts of the child abuse or facts of liability) where the institution has already admitted those facts, or an inquiry has made formal findings regarding those facts,
 - limit this provision to a defendant who is an institution,
 - restrict this provision from applying to an institution who has not acted or omitted to cause a delay in the start of the proceeding, and
 - expressly exclude the application of this provision where the delay in commencement of proceedings is caused intentionally by the claimant.
 - Define child abuse in the above provisions as not restricted to an institutional context and as including both sexual abuse and serious physical abuse.⁷

1.4 Background to the Bills

1.4.1 Civil litigation recommendations from the Royal Commission

On 14 September 2015, the [Royal Commission into Institutional Responses to Child Sexual Abuse](#) released its [Redress and Civil Litigation Report](#) with recommendations on how best to provide effective justice to survivors. Among other reforms, the Commission recommended that:

- State and territory governments introduce legislation to remove any limitation period that applies to a claim for damages brought by a person based on personal injury from child sexual abuse in an institutional context (Recommendation 85),
- 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 (Recommendation 86),
- 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 (Recommendation 87), and
- State and territory governments should implement these recommendations to remove limitation periods as soon as possible, even if that requires that they be implemented before

⁷ Explanatory notes, private member's Bill, pp 1-2.

our recommendations in relation to the duty of institutions and identifying a proper defendant are implemented (Recommendation 88).

1.4.2 Queensland Government Issues Paper

Coinciding with the introduction of the government Bill, the Queensland Government released an [Issues Paper](#) (Government Issues Paper) and commenced a public consultation process on how to respond to the Royal Commission's civil litigation reform recommendations from the Redress and Civil Litigation Report. The public was invited to provide comments or make a submission on the Government Issues Paper to DJAG by 25 October 2016.

The Government Issues Paper, discussed in more detail below, considers a range of civil litigation reforms, including:

- whether the removal of limitation periods 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.

1.4.3 Other relevant background information considered

In addition to the Royal Commission Redress and Civil Litigation Report, the committee is aware of a number of key inquiries and reports which provide relevant background and context to the issues addressed by the Bills. For example:

- [Interim Report](#), Royal Commission into Institutional Responses to Child Sexual Abuse, 30 June 2014
- [Reforming Child Protection in Queensland: A review of the implementation of recommendations contained in the CMC's Protecting Children report](#), Crime and Misconduct Commission (Qld), June 2007 (Reforming Child Protection report)
- [Protecting children: an inquiry into abuse of children in foster care](#), Crime and Misconduct Commission (Qld), January 2004 (Protecting Children inquiry)
- [Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children](#), Australian Senate Standing Committee on Community Affairs, 30 August 2004 (Forgotten Australians inquiry)
- [Seeking Justice: An inquiry into how sexual offences are handled by the Queensland criminal justice system](#), Crime and Corruption Commission (Qld), June 2003 (Seeking Justice inquiry)
- [Child Sexual Abuse in Queensland: The Nature and Extent](#), Queensland Crime Commission and Queensland Police Service, June 2000 (Child Sexual Abuse inquiry), and
- [Commission of Inquiry into Abuse of Children in Queensland Institutions](#), 31 May 1999 (Forde Inquiry).

Additionally, the committee is aware of a number of key cases and judgements in this area. In this regard, the committee found particularly instructive the case of *Carter v Corporation of the Sisters of Mercy of the Diocese of Rockhampton & ORs* [2001] QCA 335, in particular Atkinson J's dissenting judgment regarding psychological and legal barriers faced by claimants.

1.5 Consultation on the Bills

1.5.1 Government Bill

The explanatory notes for the government Bill provide that the draft amendments to the Civil Proceedings Act, Limitation of Actions Act and the Personal Injuries Proceedings Act were provided to heads of jurisdiction, the Queensland Law Society (QLS) and the Bar Association of

Queensland (the Bar Association). The committee was informed that DJAG received no formal response from the QLS or the Bar Association.⁸ The explanatory notes also explain that similar amendments to the Civil Proceedings Act amendments contained in the Bill were previously included in the Justice and Other Legislation Amendment Bill, which lapsed on the dissolution of the Legislative Assembly on 6 January 2015.⁹

1.5.2 Private member's Bill

The explanatory notes for the private member's Bill provide that the policy objectives for the formulation of that Bill were based on the Royal Commission into Institutional Responses to Child Sexual Abuse and the Royal Commission Redress and Civil Litigation Report.

When introducing his Bill, Mr Pyne MP stated that many organisations and individuals contributed to the development of the policy objectives of the private member's Bill. This included, for example, Bravehearts, the Queensland Child Sexual Abuse Law Reform Council and the Indigenous Lawyers Association.¹⁰ Assistance was also provided by community groups, non-government survivor organisations, legal bodies and prominent Queensland law firms, including knowmore which is the official legal advisory service to the Royal Commission into Institutional Responses to Child Sexual Abuse.¹¹

1.6 Should the Bills be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend the Bills be passed.

The committee recommends that the government Bill be passed and that the private member's Bill not be passed.

Recommendation 1

The committee recommends the Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016 (government Bill) be passed.

Recommendation 2

The committee recommends the Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016 (private member's Bill) not be passed.

Non-Government Members Additional Comments and Recommendations

Whilst the non-government members agree that the government Bill be passed, they believe the Premier should go further and make the following amendments during the second reading:

Non-Institutional Sexual Abuse

It became evident in submissions and hearings that there is a strong desire, by the majority of witnesses, to extend the right to a claim to cases of victims of sexual abuse from other than non-institutional settings.

⁸ Department of Justice and Attorney-General, correspondence dated 7 September 2016, p 6.

⁹ Explanatory notes, government Bill, pp 5-6.

¹⁰ Explanatory Speech, private member's Bill, 18 August 2016, p 2985.

¹¹ Explanatory notes, private members' Bill, p 13.

The non-government members note that this view was also supported by the Leader of the Opposition who, in a “Motion to Take Note” on the 16th of August 2016, said:

The LNP believes that, by restricting the removal of the statute of limitations to only certain cases of child sexual abuse, there is an effective creation of two classes of survivors. That would be patently unfair. How could we as legislators say to a victim of child sexual abuse that they do not deserve their day in court to seek justice simply because of the circumstances of their abuse? That is why I foreshadow today that through the proper processes of this parliament we will seek to move amendments to the bill that broaden the effect of the government’s legislation and extend the range of survivors to whom it will apply. It is not fair to discriminate against people simply because of the circumstances in which they suffered, and we will do what we can to provide a voice for all survivors of child sexual abuse in Queensland.

The non-government members therefore recommend that the government Bill be amended to:

“Extend the right to claim, to sexual abuse victims, in circumstances other than an institutional sexual abuse setting.”

Non-Government Member Recommendation 1:

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.

Deeds of Settlement

Furthermore, the non-government members note the support of witnesses to the concept of re-opening “Deeds of Settlement”, in certain circumstances.

The non-government members therefore recommend that the government Bill be amended to:

“Allow courts, at their discretion, to re-open Deeds of Settlement which have been entered into, with respect to time barred sexual abuse claims.”

Non-Government Recommendation 2:

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.

2. Examination of the Bills

The following key issues arose during the committee's examination of the Bills:

Child abuse aspects

1. Whether legislation should be introduced to remove any limitation period that applies to a claim for damages brought by a person where that claim is founded on childhood sexual abuse that took place in an institutional context,
2. Whether any removal of the limitation periods should be made retrospective,
3. Whether proposed legislation should extend to non-institutional child abuse,
4. Whether proposed legislation should extend to all physical child abuse not just sexual abuse,
5. Whether unjust deeds should be reopened,
6. Whether jury trials should be reintroduced for civil actions for personal injury from child abuse, and
7. Whether provisions applying to institutions regarding the stay or dismissal of child abuse proceedings should be introduced.

Additional issues only covered in the government Bill

8. Whether class actions should be introduced,
9. Whether to amend solicitors' trust accounts administration provisions, and
10. Whether to make permanent current provisions relating to Justices of the Peace (JPs) having jurisdiction to hear certain Queensland Civil and Administrative Tribunal (QCAT) matters.

These issues are examined below.

2.1 Child abuse aspects

2.1.1 Statutory limitation periods

Under the Limitation of Actions Act, the basic limitation period applying in a personal injury claim, is three years from when the action accrued.¹² Child sexual abuse comes under this section of the Act. In a child sexual abuse claim, the limitation period is extended so that it ends three years from when the person turns 18 years of age (i.e. 21 years old).¹³ The court may extend time if there is evidence to establish the action and the prospective plaintiff did not have the means of knowledge of a 'material fact of a decisive character relating to the right of action'.¹⁴

The rationale for limitation periods is outlined in section 1.3 of this report. That is, to provide procedural fairness for the defendant and third parties with regard to matters such as access to evidence to defend a claim that may be lost or destroyed through the passage of time. Limitation periods also help ensure disputes are resolved as quickly as possible.¹⁵

¹² *Limitation of Actions Act 1974*, s 11.

¹³ *Limitation of Actions Act 1974*, s 29(2)(c). Note that s 29(2)(c) of the Limitation of Actions Act provides that any action for damages for personal injury must be brought within three years from the date on which a person ceased to be under a disability. A child ceases to be under a legal disability when the child turns 18 years old.

¹⁴ *Limitation of Actions Act 1974*, s 30 and 31.

¹⁵ Explanatory notes, government Bill, p 2.

2.1.2 Proposals under the government Bill

The government Bill amends the Limitation of Actions Act to retrospectively abolish the application of limitation periods (including periods applying to surviving actions) that would apply to claims for damages brought by a person where that claim is founded on the personal injury of the person resulting from sexual abuse of the person when the person was a child, and the sexual abuse occurred in an institutional context.¹⁶

Regarding the current situation under the Limitation of Actions Act in Queensland, the Premier made the following comments during her explanatory speech on the government Bill:

*Over and over again I have been told that this period of time is woefully inadequate to allow victims of childhood sexual abuse to even come to terms with their abuse on a personal level, let alone to find the enormous strength needed to address their pain to move forward and to commence the daunting and often arduous task of commencing litigation in the courts. We have prioritised this reform to recognise that there is no time limit on suffering and to ensure that survivors have the time they may need to come forward to talk about their abuse. This will give them the opportunity to argue their claim in a time frame that will accommodate the hardships they are already facing. The changes we are making will remove one of the barriers to justice that many victims have felt has let them down.*¹⁷

Government Issues Paper

As noted above, at the same time as introducing the proposed changes to the Limitation of Actions Act under the government Bill, the Queensland Government also released the Government Issues Paper which deals with the civil litigation recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse: Redress and Civil Litigation Report in the Queensland context. The main purpose of the Government Issues Paper is to commence a public consultation process on how best to respond to the Royal Commission's civil litigation reform recommendations from the Redress and Civil Litigation Report.

The Government Issues Paper considers a range of civil litigation reforms, including:

- whether the removal of limitation periods 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.

During her explanatory speech, the Premier explained the background and rationale of the Government Issues Paper:

We also recognise that for many survivors this is an important starting point, and other civil litigation issues relating to limitation periods and raised by the commission's recommendations also need to be worked through. My government has also committed to further public consultation on the scope for the removal of the statutory limitation period, including in the context of child abuse that is not of a sexual nature and not in an institutional context, and other civil litigation recommendations of the royal commission relating to the duty of institutions and the proper defendant. While New South Wales and Victoria have enacted legislation to remove the limitation period for actions relating to child abuse more generally and do not limit claims to institutional abuse, this followed considerable consultation on these issues. It is important for my government to fully

¹⁶ Explanatory notes, government Bill, pp 2-3.

¹⁷ Queensland Parliament, Record of Proceedings, 16 August 2016, p 2746.

*consider what broadening the scope of these recommendations would mean for Queensland, and consultation with the community and key stakeholders will inform that consideration. We are introducing this bill very promptly and, subject to this House, I would hope that the removal of the limitation period for institutional child sexual abuse actions could be in place in the first half of 2017.*¹⁸

2.1.3 Proposals under the private member's Bill

The private member's Bill proposes to:

- abolish limitation periods for personal injury claims from child abuse,
- widen the definition of child abuse to cover both sexual and serious physical abuse, and
- not restrict child abuse as having occurred in an institutional context.

These reforms are raised as discussion questions in the Government Issues Paper.

The private member's Bill also includes a number of proposed amendments that are not addressed in the government Bill or the Government Issues Paper. The private member's Bill also proposes to:

- create a legal framework for revoking unjust settlements impacted by time limits,
- provide measures to appropriately limit unjust grounds on which an institution may seek a stay of proceedings (such as when they are the cause of the ground they seek), and
- re-introduce civil jury trials for civil actions for personal injury arising from child abuse.

The explanatory notes to the private member's Bill state that the bill proposes to amend the *Civil Liability Act 2003* (Civil Liability Act) to re-introduce the right to trial by jury for civil actions for personal injury arising from child abuse.

The private member's Bill would amend the Civil Proceedings Act to:

- prevent an institution from having civil proceedings stayed on the basis of passage of time where the institution was the cause of the passage of time,
- prevent an institution from having civil proceedings stayed on the basis of seeking to question facts (either facts of the child abuse or facts of liability) where the institution has already admitted those facts, or an inquiry has made formal findings regarding those facts,
- limit this provision to a defendant who is an institution,
- restrict this provision from applying to an institution who has not acted or omitted to cause a delay in the start of the proceeding, and
- expressly exclude the application of this provision where the delay in commencement of proceedings is caused intentionally by the claimant.

The private member's Bill would also amend the Limitation of Actions Act to remove civil statutory time limits for personal injury actions arising from child abuse, with the following features:

- do this with retrospective effect,
- apply this to judgements made based on the application of previous time limits,
- apply this to settlements made based on the application of previous time limits,
- exclude this from actions properly tried on their merits,
- exclude this from actions judged or settled for any reason other than the application of previous time limits,

¹⁸ Explanatory Speech, government Bill, p 2746.

- exclude this from actions settled within time (and therefore previous time limits were not a factor), and
- allow a court when awarding new damages to take into consideration previous settlement or judgement amounts paid.

The private member's Bill would amend the Personal Injuries Proceedings Act to remove procedural time limits for personal injury actions arising from child abuse. It would also define child abuse in the above provisions as not restricted to an institutional context and as including both sexual abuse and serious physical abuse.

The private member's Bill proposes amendments to existing Queensland legislation as being necessary to comply with the recommendations of the Redress and Civil Litigation Report of the Royal Commission into Institutional Responses to Child Sexual Abuse, published in September 2015.

During his explanatory speech, Mr Pyne MP summarised the intent of his private member's Bill:

The bill puts forward important reforms that aim to create equal justice for survivors of childhood abuse and prevent any discrimination on the basis of context, type of abuse and past unjust settlements. The bill provides equal rights before the law to access to the court and to have evidence tested in the usual way. The rules of evidence are not diminished by this bill; a claimant must still prove their case. The bill means that whether you were abused as a child in an institution, by a family member or by some other individual under other circumstances, you will have an equal right to take civil action against the offender.

The bill is inclusive of children who have suffered serious physical abuse leading to long-term psychological injury. The bill recognises that the consequence of trauma and of severe prolonged physical abuse can be as damaging as sexual abuse.¹⁹

2.1.4 Discussion and stakeholder views

Respective removal of limitation periods

Both Bills provide for the retrospective removal of limitation periods:

- The government Bill proposes to retrospectively abolish the application of limitation periods (including periods applying to surviving actions) that would apply to claims for damages brought by a person where that claim is founded on the personal injury of the person resulting from sexual abuse of the person when the person was a child, and the sexual abuse occurred in an institutional context.
- The private member's Bill proposes to retrospectively abolish the application of limitation periods to rights of action relating to personal injury resulting from child abuse. This involves a wider ambit, covering child abuse which is not restricted to an institutional context and includes both sexual abuse and serious physical abuse.

In this regard, both Bills comply with Recommendations 85 and 86 of the Royal Commission's Redress and Civil Litigation Report.

However, the private member's Bill goes beyond Recommendations 85 and 86 by extending the scope of its provisions to non-institutional abuse and all physical child abuse (discussed further below).

¹⁹ Queensland Parliament, Record of Proceedings, 18 August 2016, p 2985.

Extend scope to non-institutional abuse and all physical child abuse

At the public briefing on the private member's Bill, Mr Pyne MP advised the committee about the rationale for extending the reach of any legislation beyond institutional child sexual abuse:

The royal commission was limited by its terms of reference to only reporting and recommending on matters of institutional abuse and of sexual abuse. The parliament is not so restricted. The parliament is free to consider all information before it and act accordingly to address the broader needs of Queensland victims of child abuse. The parliament has the capacity to acknowledge the obvious truth that what is just and proper law reform for victims of institutional and sexual abuse is much needed law reform for victims of non-institutional and non-sexual child abuse. There is no need for further consultation on this question. The royal commission has heard four years of evidence, and both Victoria and New South Wales have conducted extensive consultation and arrived at the conclusion that extending rights to all victims of child abuse is the right thing to do.²⁰

A majority of the submissions agreed with the approach of the private member's Bill in terms of legislating in relation to all physical child abuse and not limiting reform to child sexual abuse, in both an institutional and non-institutional context.

The Centre Against Sexual Violence Inc submits:

We would also like the legislation to include the removal of civil statutory time limitations and procedural time limits for personal injury actions arising from ALL forms of child sexual abuse, not just those acts that occurred within an institutional context.²¹

Similarly, the Gold Coast Centre Against Sexual Violence (GCCASV) comments:

GCCASV supports the definition of child abuse as not restricted to an institutional setting. Child sex offenders do not only offend in institutional settings, they are known to offend close to home where children are accessible. ... GCCASV also supports the definition of child abuse as both sexual and serious physical abuse. GCCASV believes that access to justice should not be dependent on the nature of the abuse perpetrated against the child.²²

Queensland Advocacy Incorporated (QAI) also observes in its submission:

As Mr Pyne MP noted in his explanatory speech when introducing the Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016 (Qld), the Queensland Parliament has a responsibility to represent all survivors of child abuse and to ensure equal rights of access to justice, whether or not the child abuse occurred within an institution and irrespective of whether it involved sexual or serious physical abuse. These issues go to the heart of justice and equality for all survivors of childhood abuse.²³

The Zig Zag Young Women's Resource Centre raises specific concerns about the narrowness of the definitions under the government Bill:

We are concerned that the introduction of legislative changes in one area only (the institutional context) as proposed in the Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016 essentially establishes significantly different legal responses made available to victims/survivors of childhood sexual abuse depending on where the abuse took place.

Under the proposed legislation, Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016, those who experienced child sexual abuse within

²⁰ Public briefing transcript, private member's Bill, 14 September 2016, p 1.

²¹ Submission 14, p 1.

²² Submission 4, pp 3-4.

²³ Submission 6, p 8.

the narrowly defined 'institutional context' would be afforded greater protections under the law than those who were subject to similar offences within a private context for example, intrafamilial child sexual abuse within the home. We strongly believe that all victims/survivors of childhood sexual abuse should have the same access to civil proceedings for personal injury arising from acts of child abuse irrespective of whether this abuse took place in an institutional setting or in another context. The Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016 provides for legal protections being available to all forms of child sexual abuse, not just those acts that occurred within an institutional context.²⁴

The Australian Lawyers Alliance (ALA) also supports a broader approach giving the following rationale:

While the terms of reference of the Royal Commission constrains its consideration to abuse linked with institutions, meaning it is only able to make recommendations in this regard, there is no reason to differentiate the class of individuals who might benefit from this reform. If survivors are in a position to sue a perpetrator that is not an institution, it would be unreasonable to prevent them from doing so simply by virtue of the Royal Commission's terms of reference. This approach would mean that some survivors would end up feeling that they had been abused by the wrong person, and injustice would be the result. ... There should be national consistency on this issue and a survivor in Queensland should not be in a worse position than one in Victoria or New South Wales. ...

It is also the firm view of the ALA that the injuries that this reform relates to should not be restricted to those emanating from childhood sexual abuse.

Again this is an important issue for consideration in ensuring consistency with other states. Most importantly, however, such a restriction fails to take into account the full extent of injuries that can occur in cases of abuse, such as physical and psychological abuse, both of which can be significant.

In light of this, it is the view of the ALA that lifting of limitation periods should apply to sexual, physical and associated psychological/psychiatric abuse in line with the precedent set by Victoria and NSW.²⁵

Of the Victorian and New South Wales approaches, knowmore favours the New South Wales provisions:

The New South Wales' position on this issue is reflected in Mr Pyne's Bill, and differs from the Victorian position in that:

- *there is included a 'threshold' for physical abuse; i.e. that it must be 'serious'; and*
- *it extends to 'connected abuse' linked to sexual or serious physical abuse, compared to 'psychological abuse' only, arising out of the act or omission that is sexual or physical abuse.*

We are of the view that Parliament should pass legislation that removes limitation periods not just for claims arising from child sexual abuse, but also for claims of serious physical abuse and, once either of those thresholds is met, any connected abuse. Accordingly, we favour the New South Wales' provisions.

Given the rationale for removing limitation periods for claims arising from child abuse, it is reasonable, in our view, to import a threshold of 'serious' for claims involving a component of physical abuse, particularly absent a claim of sexual abuse.

²⁴ Submission 12, p 2.

²⁵ Submission 18, pp 6-7.

The concept of 'connected abuse' will also allow a court to consider all forms of abuse associated with a survivor's experience of childhood sexual or serious physical abuse. It will also prevent definitional arguments arising round the point of whether a particular form of mistreatment amounts to 'psychological abuse' or not.

These terms should not be defined in legislation, and should bear their ordinary meaning, and be informed by the work of the Royal Commission and other inquiries; for example, in recognising that the harm caused to an individual by a particular form of abuse may vary considerably across survivors.²⁶

During the public hearing on the Bills, Ms Karyn Walsh, the Chief Executive Officer of Micah Projects, commented that the extension of any law in this regard to recognise physical and psychological abuse is considered to be best practice. Ms Walsh continued:

Certainly for the numbers of people we have consulted over a number of years, we feel that is an important inclusion in the bill and should be considered as an amendment to the government's bill. For many reasons, it can do more harm to try and dissect out what consequence, impact or harm came from which form of abuse.²⁷

In relation to these aspects, DJAG advised the committee that the results of public consultation on the Government Issues Paper will inform consideration of the issue as to whether the removal of the limitation period should be expanded to other types of child abuse and settings for such abuse.²⁸

In this regard, PeakCare concludes its submission as follows:

PeakCare notes the Premier's commitment to public consultation about removing the statutory limitation period in respect to child abuse that is not of a sexual nature and not in an institutional context, and looks forward to participating in the consultations which the Premier asserts will provide a full understanding about what a broader scope would mean in Queensland.²⁹

In the context of broadening the ambit of any scheme in this regard, the submission from the QLS cautioned as follows:

The decision to extend the scheme so broadly should not be taken lightly and there are many consequences to be considered. The mischief to be addressed by the Commission was institutional and systemic problems of child sexual abuse. The extension of civil actions, without limitation, against individuals is not responsive to that issue and must be considered in light of the difficulty for an individual to mount a proper defence in the absence of civil aid funding.³⁰

Committee comment

Committee members note the overwhelming evidence received via witnesses attending the hearing and submissions to the government Bill seeking to widen the definition of "child sexual abuse" in the government Bill to provide for victims to seek claims other than those in institutions. Therefore, committee members request the government in the second reading of the government Bill to give serious consideration to provide for such claims.

²⁶ Submission 19, pp 8-9.

²⁷ Public hearing transcript, government Bill, 26 September 2016, p 16.

²⁸ Department of Justice and Attorney-General, correspondence dated 30 September 2016, Attachment 1, p 1.

²⁹ Submission 10, p 4.

³⁰ Submission 21, pp 4-5.

Allowing unjust settlements to be reopened

The private member's Bill includes provisions which allow for past settlements to be re-visited. The explanatory notes of the private member's Bill provide:

Creating a legal framework to remove past unjust settlements is essential. If this is not done, then the Bill would not be compliant with the Royal Commission into Institutional Responses to Child Sexual Abuse which calls for ALL time limits to be removed.

Since past settlements were obtained under the duress of time limits, to fail to remove these deeds and allow the matters to be re-actioned, is to fail to remove the time limits for this group of victims.

It must be remembered that these 'settlements' were never the product of two equal parties negotiating on a level playing field. There was immense asymmetry between claimant (victim) and defendant (institution) and the playing field significantly skewed against the victim (time limits).

These 'settlements' were the product of the unjust time limits – it would be an affront to reason to remove the unjust time limits but not remove the product of those unjust time limits.

To fail to provide a clear and sensible legislative framework that guides the courts on revoking these deeds, would be irresponsible and dangerous – as such an approach would abandon victims, and also it would potentially jeopardise the wider law.

It is against the expectations of the community to place all the burden of risk and cost upon victims to apply to a court, with no legal framework to assist the victim or the court. It is unclear whether the court could even make such a ruling (to revoke these deeds) despite wanting to.³¹

Most submissions received by the committee were in favour of allowing prior deeds and settlements to be reopened.³²

The practical rationale for this reform was highlighted in the submission from knowmore:

We have dealt with many clients who have told us that they felt that they were effectively coerced into settling their claims, on the basis that if they did not accept the amount of monetary compensation offered by the institution (which they perceived as inadequate), their only other option was to take the matter to court, in circumstances where they were in receipt of advice that any such action would in all likelihood be doomed to failure, due to the limitation barrier alone. In those circumstances, the majority of our clients in such positions understandably resolved their claims by accepting the financial settlements offered, where, on any objective assessment, that settlement was manifestly inadequate and arbitrary in nature, bearing no similarity at all to the quantum of damages they would have received had they been able to litigate their matter before a court.³³

Micah Projects Inc made the following observations in this regard:

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.

³¹ Explanatory notes, private member's Bill, p 5.

³² For example, see Submissions 2, 3, 4, 6, 7, 8, 9, 11, 14, 15, 16, 19, 20, 22 and 23.

³³ Submission 19, pp 13-14.

While whole-of-Government Guidelines for responding to child sexual abuse claims propose that payments made under the Forde Inquiry 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.³⁴

In this context, ALA suggested that any reform in this area be consistent with Victoria and NSW.³⁵

However, the QLS suggested a more cautious approach and noted some of the disadvantages of this proposed reform:

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.

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.

However, the amendment is instructive in the case of settlement agreements formed on the basis of the operation of a limitation period having been expired. In this situation the enforcement of such a settlement agreement may prove to be a de facto limitation on actions and may reasonably be an agreement that the victim would not have executed but for the operation of the limitation at the time. In this context, it would be preferable if the court could consider and decide whether to set aside the settlement agreement in the totality of the circumstances rather than the agreement being deemed void per proposed s51(3).³⁶

Reintroduction of jury trials for civil actions for physical injury from child abuse

The private member's Bill amends the Civil Liability Act to reintroduce the right to trial by jury for civil actions for personal injury arising from child abuse. This aspect is not covered in the government Bill.

Mr Pyne MP provides the following background to this proposed reform in his explanatory speech:

Prior to 2003, survivors bringing actions for personal injury from child abuse had the right to be heard before a jury. This bill seeks to restore that right.³⁷

Some submitters were in favour of this proposal.³⁸ QAI made the following comments in support of this proposal in its submission:

The jury system has always been a way by which the community is involved in the administration of justice in our society. The engagement of ordinary members of the community helps to act as a check on the power of the judicial arm of government and to help to ensure a fair trial. The involvement of the community in an area such as this is particularly important, given that the abuse was perpetrated by persons in positions of authority, exercising power over vulnerable people in their trust and care. It is also appropriate that cases of civil liability for institutional abuse are likened in this way to criminal proceedings and distinguished from other civil cases, which usually concern less horrific subject matter.

This is not a new initiative, but seeks to reintroduce a right to trial by jury which was removed in 2003, reportedly as an unintended consequence of the removal of a right to

³⁴ Submission 20, p 6.

³⁵ Submission 18, p 7.

³⁶ Submission 21, p 5.

³⁷ Queensland Parliament, Record of Proceedings, 18 August 2016, p 2986.

³⁸ For example, see Submissions No. 3, 7, 8, 9, 11, 13, 18, 22 and 23.

*trial by jury more broadly. However, we agree with the sentiments of Mr Rob Pyne that the unique circumstances of child abuse (including the often repeated nature of the assaults, the malicious intent and the vulnerability of the child) sets child abuse cases apart from other civil cases and therefore the trial procedures should reflect this.*³⁹

The benefits of a jury over a judge-only trial were discussed in detail in Submission No. 23 (name withheld by request):

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.

...

By contrast the jury members owe no allegiance to anyone in the room, they owe allegiance only to the truth. They will never be back here again or have any ongoing relationship with any party.

They are free to undertake considered and unfettered deliberation of the facts.

*While any person on the jury will ordinarily have some bias this would likely be tempered by the presence of other members of the jury with different bias. By contrast a judge acting alone has no external safeguard against the influence upon their decision making from their own internal bias, which may well be subconscious bias (for example the fact that the judge comes from a vastly different socio-economic background to the plaintiff).*⁴⁰

GCCASV is also generally in favour of the reintroduction of civil trial by jury for personal injury arising from child abuse. However, it queried whether a fee should also be introduced, noting:

*...[s]hould civil trial by jury be introduced, consideration must be given to whether the plaintiff in a civil trial would be required to pay a fee for the use of a jury.*⁴¹

Knowmore acknowledges that some, but not all, survivors may choose to have their case heard by a jury:

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.*⁴²

Soroptimist International of South Queensland acknowledged the challenges presented in facing a jury for some survivor:

A jury process is difficult. It is hard to sit there in front of a room full of individuals whom you do not know and talk about abuse that has occurred. While there might be closed court proceedings, closed-circuit TV proceedings and support people present, it is very

³⁹ Submission 6, p 7.

⁴⁰ Submission 23, p 15.

⁴¹ Submission 4, p 2.

⁴² Submission 19, p 15.

*difficult, I think, for a person to go through that process once much less subsequent times.*⁴³

Ms Karyn Walsh, Chief Executive Officer of Micah Projects, told the committee:

*There are many survivors who feel that a jury is intimidating, and there are others who feel that it is appropriate, that it is a community and it makes it public, not just something between a judge and themselves. I think the option for a jury has merit, but we certainly did not have the time to arrive at a definite position and it is not our area of expertise. Certainly people want their day in court. Some people find juries a bit more intimidating and others feel that a judge would suffice or vice versa.*⁴⁴

Some submissions were not in favour of reintroducing jury trials. For example, one submitter (name withheld by request) stated:

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.*⁴⁵

The QLS also objected to the proposal on the following grounds:

The Society does not support the proposed introduction of new section 73 of the Civil Liability Act 2003 to institute jury trials for personal injury resulting from child abuse. 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.*⁴⁶

At the public hearing, Mr Tony Deane, Chair of the Litigation Rules Committee, QLS, commented:

The infrastructure of accommodating juries and the processes for juries I think would create an unnecessary burden. There is a clear division between criminal and civil contexts in terms of the burdens of proof. Certainly having had circumstances of civil trials with juries as well as judge-only trials, in the context of these types of actions, particularly with

⁴³ Public hearing transcript, 26 September 2016, p 8.

⁴⁴ Public hearing transcript, 26 September 2016, p 16.

⁴⁵ Submission 1, p 3.

⁴⁶ Submission 21, p 4.

*a long lead time, I fail to see how a jury can achieve something that a judge alone could not achieve.*⁴⁷

At the same public hearing, Mr Bill Potts, President, QLS, noted the potential expense associated with the reintroduction of jury trials:

*We as a community say that the provision of justice is one of the hallmarks of a free, democratic society, and because of that we recognise that the expense of that is one which is borne by the state. If it is unnecessary, then why go to that expense?*⁴⁸

Furthermore, he noted the absence of evidence regarding the reliability of juries when compared to cases decided by a judge alone. In addition:

*Sometimes we saw awards, particularly in defamation matters, which were outside the norm essentially because of a jury making findings of fact which went beyond—because of normal human sympathy—what these types of matters would excite.*⁴⁹

Mr Warren Strange, Executive Officer of knowmore also noted the cost implications of reinstating jury trials, while acknowledging there are differing views amongst survivors regarding support for jury trials:

*There are a number of survivors who do wish to see jury trials reinstated. On the other hand, and as Ms Walsh noted, there are many who do not. I think we flagged in our submission that for some the prospect of relating their story, their experience, to a jury would be another layer of challenge for them. There are obviously significant costs around conducting jury trials and logistical issues that would impact on any decision in that regard. It is probably worth noting that the majority of these cases, I think, would not go to trial. I am not sure of the exact figures at the moment. I would expect that probably under 10 per cent of civil cases that are filed would actually go through to a contested hearing. The majority are resolved through settlement negotiations and mediation.*⁵⁰

Additionally, at the public hearing, Ms Hillard, the spokesperson from Soroptimist International of South Queensland made the following comments based on her experience as a barrister:

*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. It has to be produced in a way that a jury can digest and facilitate. Judges who hear matters alone will often hear evidence-in-chief by way of affidavit and simply do the cross-examination and the presentation of issues. It is very expensive in terms of running a trial and having a jury trial available. They are longer. It could potentially slow down the process as well, and it makes it potentially cost prohibitive because a jury trial has flow-on effects as well for people who intend to apply under this legislation. I can probably say that Soroptimist International through their submission very clearly supports access to justice and very clearly supports accessibility to the court process, and my concern would be that a jury trial process would slow that down and hinder that quite significantly.*⁵¹

Ms Hillard also discussed the situation of a hung jury in this context:

In a hung jury situation, obviously there is an opportunity to go again. You can have 10 hung juries and continue going to trial every time. ... From a practical sense, you would expect that it would in fact result in a plaintiff feeling pressured to settle as well. A jury

⁴⁷ Public hearing transcript, 26 September 2016, p 3.

⁴⁸ Public hearing transcript, 26 September 2016, p 3.

⁴⁹ Public hearing transcript, 26 September 2016, p 4.

⁵⁰ Public hearing transcript, 26 September 2016, pp 20-21.

⁵¹ Public hearing transcript, 26 September 2016, p 7.

*process is difficult. It is hard to sit there in front of a room full of individuals whom you do not know and talk about abuse that has occurred. While there might be closed court proceedings, closed-circuit TV proceedings and support people present, it is very difficult, I think, for a person to go through that process once much less subsequent times.*⁵²

Restricting a stay or dismissal of child abuse proceedings

The private member's Bill proposes to amend the Civil Liability Act to prevent an institution from having civil proceedings stayed on the basis of:

- passage of time where the institution was the cause of the passage of time, and
- seeking to question facts where the institution has already admitted those facts, or an inquiry has made formal findings regarding those facts.

These provisions are restricted from applying to an institution who has not acted or omitted to cause a delay in the start of the proceeding and expressly excludes the application of this provision where the delay in commencement of proceedings is caused intentionally by the claimant.⁵³

Mr Pyne MP provided the following background to these provisions during his explanatory speech:

This bill seeks to address a so far unspoken and poorly understood barrier to victims accessing the court to have their evidence properly tested, and that is the question of the right of a defendant to stay proceedings. The right to stay proceedings, such as on the grounds of procedural unfairness, would occur to the defendant for a matter to be heard is a longstanding and sensible provision in our laws. A common reason cited is the passage of time. Usually this incorporates consequences of the passage of time such as witnesses growing old or forgetful or documents being lost or destroyed. However, where a defendant has acted intentionally to cause a delay in time, such as by concealing evidence, it is not just or proper that the defendant be permitted to profit from their sustained misconduct to evade responsibility for the initial child abuse. These are not isolated occurrences. ...

This bill offers one possible solution to this problem; namely, by placing a restriction on the right of a defendant to obtain a stay of proceedings based on the passage of time, where that defendant is the cause of the passage of time. Further provisions are made to assist the court with interpreting such scenarios as where an institution has made an admission of fact, such as the fact of the child abuse or the fact of the institution's liability, that the institution can now benefit from a stay of proceedings based on a stated inability to now question the admitted facts.

As a safeguard to wider law and fair process, the provision is narrowly restricted only to cases of personal injury arising from child abuse. As well, this provision is restricted only to defendants who are institutions and not individuals. This provision has an exclusion for delays caused by the claimant.

*The provision only applies to an institution that has caused a delay in commencement of the proceedings. It does not apply to an institution that has done the right thing—for example, reported the child abuse promptly, admitted the known facts and dealt honestly and openly with the victim or the victim's family.*⁵⁴

A majority of the submissions received were in favour of these proposed changes.⁵⁵

⁵² Public hearing transcript, 26 September 2016, p 8.

⁵³ Private member's Bill, Part 3.

⁵⁴ Queensland Parliament, Record of Proceedings, 18 August 2016, p 2987.

⁵⁵ For example, see Submissions 3, 4, 6, 7, 8, 9, 11, 14, 15, 22 and 23.

In its submission, QAI fully supports the proposed changes in the form proposed, and also made the following observations:

These are, at their heart, access to justice issues. In essence, they seek to help to mitigate the power imbalance that exists between a vulnerable person who has experienced an atrocious abuse of power and the perpetrator and the institution behind them. The importance of these justice safeguards are heightened given that the people concerned are vulnerable victims of serious offences who have sustained enduring psychological (and sometimes physical) injuries. As an administrator of justice, it is important that the courts are not unreasonably limited in their ability to bring about a just outcome. These amendments are all procedural in nature. They also all have the potential, if they are not approved, to stand in the way of a just outcome. The amendments are all necessary to ensure that the spirit of the more substantive amendments can be authentically translated.

We support the broad definition of 'institution' and consider it important that what constitutes an institution is widely construed to include all places where any person or people are living, who are receiving government funding.

The restriction on the right of an institutional defendant to obtain a stay of proceedings based on the passage of time, where the defendant was responsible for the passage of time, may be contentious (as recognised by Mr Pyne MP in introducing the Bill). QAI agrees with Mr Pyne's sentiments that any arguments of procedural unfairness for a defendant institution are outweighed by the 'gross procedural unfairness' our system has tolerated against the claimant by denying them access to the court in circumstances where the defendant has intentionally caused the delay.⁵⁶

A number of submissions, however, were against these proposed changes. For example, the QLS did not support the proposed introduction of new section 22A of the Civil Proceedings Act and were concerned about the changes operating to 'fetter the discretion of the court'.⁵⁷

At the public hearing, the QLS discussed these concerns further:

The commission which looked at these matters recommended that the removal of limitation periods should be balanced by expressly preserving the relevant courts' existing jurisdictions and powers to stay proceedings where it would be unfair to the defendant to proceed. The society is of the view that the explicit continuation of this power of the court is a necessary counterbalance to the removal of the limitation periods in these claims so as, firstly, not to fetter the discretion and jurisdiction of the court to deal with the individual factor or matrix in any claim and, secondly, to ensure that claims can appropriately meet the standard of proof required in civil law matters as a safeguard against the initiation of what may be seen as highly speculative claims. This is commonly known in the legal business as the floodgate argument, but it has a significant effect. It is a balancing of procedure and it is something which we think should be looked at very carefully.⁵⁸

Knowmore also opposed these changes:

In short, we apprehend that the inclusion of these provisions is likely to lead to the entrenching of a more adversarial response when a claim is notified, either as a precursor to a civil claim for damages for personal injury, or under some institutional or other redress process. In particular, for institutions which have any relevant insurance coverage, the

⁵⁶ Submission 6, p 8.

⁵⁷ Submission 21, p 4.

⁵⁸ Public hearing transcript, 26 September 2016, p 2.

*provisions will drive the defendant to make no admissions or responses which may later attract an argument around the potential availability of an application to stay or dismiss any consequent civil proceeding, and whether the defendant has complied with its obligations under the contract of insurance.*⁵⁹

At the public hearing, Mr Strange expanded on this view, expressing concern at the possibility of unintended consequences arising to the detriment of plaintiffs:

*A stay of proceedings, particularly in the civil jurisdiction, is quite an exceptional remedy. It will rarely be granted by a court other than in circumstances in order to prevent an abuse of process or where circumstances and other procedural steps and directions cannot overcome prejudice to the extent that the defendant would not be able to have a fair trial. It is quite an exceptional remedy. All of the factors that were listed in the private member's bill are ones that would be live issues in a stay argument if those factors existed. The parties would make submissions and they would be taken into account in the normal course of argument and decision around any type of application of that nature.*⁶⁰

A submitter, whose name has been suppressed by request, also objected to the proposed reforms concerning the Court's right to stay of proceedings on the following basis:

*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.*⁶¹

2.1.5 Estimated costs regarding child abuse aspects of the Bills

Government Bill

In relation to the estimated potential costs arising from the proposed amendments to the Limitation of Actions Act and the Personal Injuries Proceedings Act under the government Bill, the explanatory notes provide:

*It is not possible to estimate the financial impact of implementation for Government as costs will be associated with the number of claims brought. As raised by the Royal Commission, it may take as long as 22 years for a person to reveal the abuse they were subjected to, consequently the number of potential claimants cannot be determined. However, the amount of damages claimed, the associated legal costs and the associated administrative demands on affected agencies, and the workload of the courts may be substantial.*⁶²

At the public hearing on the government Bill, DJAG was asked to provide further information regarding the estimated costs to introduce the child abuse aspects of the Bill. In DJAG's response to this question on notice, it provided the following information to the committee:

The Department considers that the ability to assess this impact with any reliability is not achievable.

Any reliable modelling would require the State to have a clear indication of potential claimant numbers (to assess the impact on courts in hearing matters and agency and Crown Law involvement (in negotiating, settling or defending a claim) and the possible amounts paid either through negotiated settlements or awards of damages against

⁵⁹ Submission 19, p 12.

⁶⁰ Public hearing transcript, 26 September 2016, p 20.

⁶¹ Submission 1, p 3.

⁶² Explanatory notes, government Bill, p 4.

the State). As raised at the Committee hearing, the circumstances of each matter will impact on the amount attributable to each action.

It should be noted from the outset that the removal of the limitation period is likely to increase the number of matters that proceed to court for determination. This is because it removes the ability for defendants to use the limitation period as a 'potential' defence. The Commission's Report highlighted that the limitation period has been used as a tool by defendants to deter victims from pursuing civil litigation. .

In respect of potential claimants, the Department notes the actuarial modelling of a National Redress Scheme undertaken by Finity Consulting Pty Ltd at the request of the Royal Commission. Table 11.5 of the July 2015 Finity Report titled, National Redress Scheme Participant and Cost Estimates, estimates 2,950 participants could apply for redress in respect of sexual abuse in Queensland Government operated institutions.

The Department notes that in respect of damages, the Commission's Report also details a review by the Commission of payments for claims made in the period from 1 January 1995 to 31 December 2014 nationwide, through civil litigation, non-government redress schemes, and claims made to government (but not through redress schemes). Of the 2896 claims reviewed, the average payment was \$82,220 (2014 dollars). The average is skewed by a number of very large payments. The Commission found that generally, the 10% of claims that resulted in payments of over \$178,038, involved significant injuries, arising in circumstances where there appear to have been reasonable bases to argue that the institution owed a duty of care and had breached it. The median payment was \$45,297.

Crown Law have provided general advice about what a claim involving child sexual abuse which has happened in an institutional context where the State is the defendant institution may cost in respect of Crown Law's professional fees. It is important to note that these costs are estimates and will vary depending on:

- how long the claim remains on foot (e.g. does it settle in the pre-proceedings phase, proceed all the way to trial or finish anywhere in between);*
- the breadth of the allegations and the investigations required (for example duration and frequency of abuse);*
- whether a determination about liability can be made quickly so that the parties can just focus on resolving the amount of damages;*
- the amount of file material the relevant department has retained that is still available and can be located and reviewed; and*
- the degree of co-operation from the claimant's solicitors.*

If the matter resolves in the pre-proceedings phase estimated costs are:

- for non-complex matters - \$20,000 to \$30,000; and*
- for complex matters - \$30,000 to \$60,000.*

The pre-proceedings phase relates to requirements under the Personal Injuries Proceedings Act 2002 in which parties provide notice of the claim, responses to the claim and participate in a compulsory conference to try and resolve matters before proceeding to litigation.

If the matter fails to settle during the pre-proceedings phase and proceeds to litigation, but resolves before trial estimated costs are:

- for non-complex matters - \$30,000 to \$50,000; and*
- for complex matters - \$60,000 to \$100,000.*

If the matter proceeds through the pre proceedings phase and litigation all the way to a full trial estimated costs are:

- *for non-complex matters - \$50,000 to \$80,000; and*
- *for complex matters - \$100,000 to \$200,000.*

These estimates are not to be added together. The estimates provided are the total professional fees estimated dependent upon when the matter concludes. These figures are an estimate only of Crown Law's professional fees in these types of matter at this time. It is noted that barristers are often involved in these types of matters and their fees are in addition to Crown Law's fees and are paid directly by the Queensland Government Insurance Fund, the State's insurer. There are also often disbursements that need to be paid in respect of these matters, for example the fees for medical records, medical examinations, expert reports, and witness expenses. These vary from matter to matter.

The Department notes that in litigation where the State is not successful, there would also be costs awarded against the State for the plaintiffs' costs.⁶³

Private member's Bill

The explanatory notes of the private member's Bill state that a detailed assessment of the likely financial impact of implementing the private member's Bill is 'pending'. It also notes that although 'there may be cost to state institutions', not all costs will be borne by the state as much will be carried by non-state institutions.⁶⁴

During the public briefing on the private member's Bill, Mr Pyne MP refuted the argument that the private member's Bill would open the 'floodgates of litigation':

Another myth I would like to address is that law reform allowing victims to have proper rights of redress will open the floodgates of litigation ... The floodgates theory is unsupported. There is no evidence.

It is worth looking at the experience of other jurisdictions such as Canada, which passed retrospective reforms a decade ago and so offer us 10 years of evidence to review. Jurisdictions closer to home include Victoria and New South Wales. However, their legislation is, of course, much newer.⁶⁵

2.1.6 Other Australian jurisdictions

The legislative situation in other Australian jurisdictions is particularly relevant to this Inquiry. A summary of the current status of reform in this area of the law in all Australian jurisdictions is set out in a table in Appendix C.

The explanatory notes to the government Bill provide:

Victoria and New South Wales adopted legislation to remove limitation periods in respect of actions involving child abuse, inclusive of child sexual abuse. In both jurisdictions, the provisions removing the limitation periods are not limited to claims involving abuse occurring in institutional settings, and operate retrospectively.⁶⁶

⁶³ Department of Justice and Attorney-General, correspondence dated 7 September 2016, pp 3-4.

⁶⁴ Explanatory notes, private member's Bill, p 11.

⁶⁵ Public briefing transcript, private member's Bill, 14 September 2016, p 4.

⁶⁶ Explanatory notes, government Bill, p 6.

In responding to a question taken on notice during the public briefing, DJAG provided the following additional information concerning Victoria and New South Wales:

Victoria

Amendments to the Victorian Limitation of Actions Act 1958, effected by the Limitation of Actions Amendment (Child Abuse) Act 2015, commenced on 1 July 2015 ...

As a consequence the Victorian amendments remove the effect of the limitation period for personal injury claims and wrongful death actions founded on criminal child abuse. Criminal child abuse is defined to include, '(i) an act or omission in relation to the person when the person is a minor that is physical abuse or sexual abuse; and (ii) psychological abuse (if any) that arises out of that act or omission.

The terms "physical abuse", "sexual abuse" and "psychological abuse" in the Victorian Act are to be defined by the ordinary meanings of those words. The explanatory notes to the Victorian Act make it clear that this is intentional so as to avoid unintended 'loopholes'. Under the Victorian Act, the abuse does not need to have occurred in an institutional setting.

The Victorian Act, does not allow for claims that have been settled or received final judgment to be re-opened.

New South Wales

In NSW, the Limitations Amendment (Child Abuse) Act 2016, which commenced on 17 March 2016, amended the Limitation Act 1969 (NSW) to retrospectively remove the limitation periods from an action for damages that relates to death or personal injury resulting from 'child abuse'. ...

Under the NSW legislation, child abuse is defined to mean sexual abuse, serious physical abuse or other abuse perpetrated in connection with sexual or serious physical abuse. The terms 'sexual abuse' and 'serious physical abuse' are not defined by the legislation. ...

Again the abuse is not limited to that which has occurred in an institutional setting.⁶⁷

The current status of reform in other Australian jurisdictions was referred to by a number of stakeholders in their submissions. For example, in its conclusion, QAI noted that:

Victoria and New South Wales have led the way by amending their respective statutes to remove the limitation periods on claims relating to child sex abuse. (Tasmania is presently considering reform.) In both states, the proposed amending reforms received wide, bi-partisan reform.⁶⁸

A number of stakeholders raised concern about how important it is that law reform in this area be conducted consistently. For example, ALA submitted:

We emphasise the importance of national consistency in legal reforms on this issue. Victoria and NSW have introduced useful reforms in this area and whilst the ALA recognises that a broader consultation process is underway through the State Government Issues Paper process, it is the view of the ALA that it would be of significant benefit to residents in all states if the same advances that have been made in southern states were also implemented now as part of the current bills being considered in Queensland. This would not only help to ensure consistency of laws across institutions that operate across borders, but also in recognition that anything less than this may lead to Queensland

⁶⁷ Department of Justice and Attorney-General, correspondence dated 7 September 2016, pp 2-3.

⁶⁸ Submission 6, p 9.

*survivors having access to an inferior level of justice to that available in Victoria and NSW.*⁶⁹

As noted above, in its submission, knowmore detailed the developments in other jurisdictions and, in particular, highlighted the differences between the approaches taken in New South Wales and Victoria. In conclusion, it states:

*We are of the view that Parliament should pass legislation that removes limitation periods not just for claims arising from child sexual abuse, but also for claims of serious physical abuse and, once either of those thresholds is met, any connected abuse. Accordingly, we favour the New South Wales' provisions.*⁷⁰

2.2 Class Actions – Government Bill amendments to the *Civil Proceedings Act 2011*

2.2.1 Outline of proposal

The government Bill proposes to amend the *Civil Proceedings Act 2011* (Civil Proceedings Act) to introduce a comprehensive statutory regime to facilitate the effective conduct and management of representative proceedings (commonly called class actions).⁷¹

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.⁷² Key benefits of such proceedings include that they enable a dispute involving many people to be resolved by one case and they can give victims of disasters, amongst others, more efficient access to the court system.⁷³

2.2.2 Current law in Queensland

Queensland's Uniform Civil Procedure Rules (UCPR) currently enable an action to be brought in which a person or persons may represent others who have the same interest in the subject matter of the proceeding and could have been parties in the proceeding. The explanatory notes state, however, that these provisions are 'limited in their scope, and do not provide an adequate framework for the effective conduct of class actions'⁷⁴ with the effect that they have discouraged litigation involving large numbers of claims in Queensland.⁷⁵ This has meant that Queenslanders, such as victims of the floods, have brought class actions in other jurisdictions.⁷⁶

The Attorney-General described the impact of the current necessity for Queenslanders to bring representative actions in other jurisdictions:

⁶⁹ Submission 18, p 3.

⁷⁰ Submission 19, pp 8-9.

⁷¹ Explanatory notes, government Bill, p 1.

⁷² Explanatory notes, government Bill, p 3; Supreme Court of New South Wales, 'Class actions', 31 May 2016, http://www.supremecourt.justice.nsw.gov.au/Pages/sco2_class_action/sco2_class_action.aspx.

⁷³ Queensland Law Society, 'Queensland needs reform on class actions', 26 May 2016, http://www.qls.com.au/About_QLS/News_media/News/Queensland_needs_reform_on_class_actions; Slater and Gordon 'What are class actions?', accessed 23 August 2016, <https://www.slatergordon.com.au/class-actions/what-are-class-actions>.

⁷⁴ Explanatory notes, government Bill, p 3.

⁷⁵ Queensland Law Society, 'Queensland needs reform on class actions', 26 May 2016, http://www.qls.com.au/About_QLS/News_media/News/Queensland_needs_reform_on_class_actions; Cooper Grace Ward Lawyers, '[Class actions coming to Queensland courts](#)', 5 August 2016.

⁷⁶ Hon Yvette D'Ath, Attorney-General and Minister for Justice and Minister for Training and Skills, '[Queensland to allow class action law suits](#)', media release, 5 August 2016; Queensland Law Society, '[Queensland needs reform on class actions](#)', 26 May 2016.

For people who are often involved in emotionally and financially difficult circumstances, this can limit their access to justice through unnecessary complexity and inconvenience.

There can also be an additional cost burden for claimants who currently need to pursue class action matters through other jurisdictions.⁷⁷

2.2.3 Details of proposed amendments to the Civil Proceedings Act

Part 3 of the government Bill introduces a regime for representative proceedings in the Supreme Court of Queensland. Clause 10 of the government Bill proposes to insert new Part 13A – Representative proceedings in Supreme Court – into the Civil Proceedings Act. Part 13A is modelled on the representative proceedings schemes in the Federal Court of Australia and in Victoria and New South Wales.⁷⁸ The intention is that the provisions will establish ‘a comprehensive regime for the conduct of representative proceedings in the Supreme Court.’⁷⁹ The former Government introduced similar amendments in 2014 but the Justice and Other Legislation Amendment Bill 2014 lapsed when the Legislative Assembly was dissolved on 6 January 2015.⁸⁰

Under Part 13A, one or more persons would be able to start a representative proceeding on behalf of some or all of the other persons if:

- seven or more persons have claims against the same person,
- the claims of all the persons are in respect of, or arise out of, the same, similar or related circumstances, and
- the claims of all the person give rise to a substantial common issue of law or fact.⁸¹

If, at any stage of a representative proceeding, it appears likely to the court that there are fewer than seven group members, the court would be able to, on the conditions it considers appropriate:

- order that the proceeding be continued under Part 13A, or
- order that the proceeding no longer continue under Part 13A.⁸²

Proposed section 103J provides that if the court considers it likely if judgment were made against the defendant that the cost of identifying the group members would be excessive, having regard to the likely total of the amount that is likely to be distributed, the court may order that the proceeding no longer continue under Part 13A or stay the proceeding so far as it relates to the payment of money to group members, other than for costs.⁸³

Proposed section 103K provides that the court may order that a proceeding no longer continue under Part 13A if it considers it is in the interests of justice to do so because, for example, the proceeding will not provide an efficient and effective way of dealing with the claims of the group members.

⁷⁷ Hon Yvette D’Ath, Attorney-General and Minister for Justice and Minister for Training and Skills, ‘[Queensland to allow class action law suits](#)’, media release, 5 August 2016; Queensland Law Society, ‘[Queensland needs reform on class actions](#)’, 26 May 2016.

⁷⁸ Explanatory notes, government Bill, p 3.

⁷⁹ Explanatory notes, government Bill, p 8.

⁸⁰ Office of the Queensland Parliamentary Counsel, Justice and Other Legislation Amendment Bill 2014, status, accessed 23 August 2016, https://www.legislation.qld.gov.au/Bill_Pages/Bill_54_14.htm; Proclamation, Queensland Government Gazette, 6 January 2015, <https://publications.qld.gov.au/storage/f/2015-01-06T03%3A16%3A46.466Z/06-01-15-02-extra-gazette.pdf>.

⁸¹ Government Bill, new section 103B.

⁸² Government Bill, new section 103I.

⁸³ Government Bill, new section 103J.

Under the proposed amendments, the court would have power to decide issues of law and fact, make declarations of liability, grant equitable relief, make awards of damages consisting of stated amounts or amounts worked out in a stated way, award damages in an aggregate amount, and make any other order the court considers just.⁸⁴

An appeal from a judgment of the court under Part 13A would be able to be brought as a representative proceeding.⁸⁵

On the starting of a representative proceeding, the running of any limitation period applying to the claim of a group member to which the proceeding relates would be suspended.⁸⁶

2.2.4 Consistency with legislation in other jurisdictions

The committee understands that the amendments proposed under the government Bill concerning the Civil Proceedings Act are modelled on similar legislation schemes operating in:

- the Federal Court of Australia,
- Victoria, and
- New South Wales.⁸⁷

2.2.5 Stakeholder views

A number of submissions received by the committee commented on the proposed changes to the Civil Proceedings Act. All such submissions were in favour of the proposed reforms under the government Bill concerning the introduction of class actions in Queensland.

For example, one submitter (whose name has been suppressed on request) commented:

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.⁸⁸

Protect All Children Today Inc (PACT) is also supportive of the proposals:

The introduction of a comprehensive statutory regime, similar to that in place in the Federal Court, to facilitate the effective conduct and management of representative proceedings (class actions) is supported. We believe this will afford victims the opportunity to seek justice for what they have endured in the past.⁸⁹

A number of submitters commented on how the proposed class action changes will also assist persons who have suffered physical and sexual abuse. For example, GCCASV commented in its submission:

GCCASV supports the introduction of class actions in Queensland. Class actions are possible in other jurisdictions and are a fast growing type of litigation in Australia. The introduction of class action in Queensland would provide access to justice for victim/survivors who have suffered injury as a result of physical and sexual abuse.⁹⁰

Similarly, in its submission, the QAI endorses this proposed reform, especially given the potential of the reforms to assist survivors of abuse:

⁸⁴ Government Bill, new section 103V.

⁸⁵ Government Bill, new section 103Y.

⁸⁶ Government Bill, new section 103Z.

⁸⁷ Explanatory Notes, government Bill, p 6.

⁸⁸ Submission 1, p 1.

⁸⁹ Submission 7, p 1.

⁹⁰ Submission 4, p 2.

*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.*⁹¹

The proposed changes to introduce representative actions in Queensland were also welcomed by the QLS:

The Society has welcomed these reforms as a positive step towards providing Queenslanders with the same legal rights as those in NSW and Victoria. The regime is seen as a tool for efficient access to judicial processes, particularly for poorly resourced victims of disasters and other tragedies.

*In particular, the Society has noted that those who have suffered child sexual abuse at the hands of one person or entity may join together into one case, rather than file individual cases for each victim.*⁹²

Further support for these changes is noted by the Committee by the ALA⁹³ and PeakCare Queensland Inc.⁹⁴

2.3 Government Bill amendments to the *Legal Profession Act 2007*

2.3.1 Outline of proposal

The government Bill proposes to amend provisions of the *Legal Profession Act 2007* (Legal Profession Act) regarding legal practitioner trust accounts.

The Legal Profession Act provides for how interest on solicitors' trust accounts is dealt with, including its payment into the Legal Practitioner Interest on Trust Accounts Fund (LPITAF) and its allocation.

The government Bill will repeal all provisions in the Legal Profession Act relating to the LPITAF. The interest on solicitors' trust accounts will be paid to a departmental account and future funding of current LPITAF beneficiaries will be from the Consolidated Fund. The explanatory notes advise that the QLS was consulted on these amendments.

The government Bill will also simplify the solicitors' trust account arrangements by only requiring solicitors to keep a single general trust account, removing the requirement for a special deposit account. There are also other changes of an administrative nature.

2.3.2 Stakeholder views

The proposed changes to the Legal Profession Act were received favourably by all those that commented on them in their submissions.⁹⁵

⁹¹ Submission 6, p 7.

⁹² Submission 17, p 1.

⁹³ Submission 18, p 11.

⁹⁴ Submission 10, p 3.

⁹⁵ For example, see Submissions 1 and 10.

In this regard, PACT stated in its submission:

Any steps that can be taken to streamline a victim's access to financial compensation should be adopted. Further, the simplification of trust account arrangements will enable improved access to compensation by former child victims.⁹⁶

The QLS commented as follows in support of the changes:

The Society welcomes the amendments to the LPA relating to trust accounts, including the omission of the requirement for legal practitioners to operate a prescribed account. These changes reduce the procedural compliance burden on law firms and do not detract from the existing strong consumer protection measures in place. Notably, the legal profession continues to operate a fidelity guarantee fund which protects the clients of law firms who place their money in trust with a legal practitioner in the event of any default.

LPITAF receives interest on the solicitors' trust accounts and distributes its funds to legal assistance services, legal profession regulation and other beneficial purposes. The concept of using this interest money for socially beneficial purposes was first proposed and operated by the Society in the 1960s and continued under the Society's management until it came under the control of the Department of Justice on 1 July 2004.

As originally intended by the Queensland legal profession, the interest on solicitors' trust accounts has continued to be used for socially beneficial purposes. However, the funds available for this use have been in decline as the need, especially for legal aid and community legal centre funding, has increased. Accordingly, the amendments in the Government Bill are a positive step to move the funding of legal assistance services, the Legal Services Commission and the Supreme Court Library to the more secure and reliable source of the consolidated fund.

The Society is pleased that this positive legacy of generations of solicitors past will continue into the future to provide a further benefit to the Queensland community.⁹⁷

2.4 Government Bill amendments to the Queensland Civil and Administrative Tribunal Act 2009

2.4.1 Outline of proposal

The government Bill proposes to make permanent the current arrangements whereby Justices of the Peace (one of whom must be legally qualified) can hear certain minor civil dispute matters, up to the value of \$5000, in the Queensland Civil and Administrative Tribunal (QCAT) jurisdiction, in certain prescribed locations. The current relevant provisions (in Chapter 4, Part 4B of the QCAT Act) commenced on 14 May 2013, and are due to expire on 13 November 2016.

2.4.2 Stakeholder views

There was a mixed reaction to the government Bill amendments to the QCAT Act.

An example of a submitter in favour was the Centre Against Sexual Violence Inc who welcomes the preservation of JP QCAT jurisdiction.⁹⁸

However, a number of submitters raised concerns about the experience of JPs to undertake this role. For example, PACT stated in its submission:

Whilst we support this initiative in principle, we express concern over the expertise of JPs to hear minor civil disputes and recommend that this be achieved through an Expression

⁹⁶ Submission 7, p 2.

⁹⁷ Submission 17, p 2.

⁹⁸ Submission 14, p 1.

*of interest and specialised training, to ensure the right people are screened and selected for this important role in QCAT proceedings.*⁹⁹

The QLS also raised concerns in its submissions about the qualifications and experience of JPs:

*The Society has raised concern with this initiative previously noting that only legally qualified and experienced Justices of the Peace should be involved in determining QCAT matters such as minor civil disputes. 'Minor civil disputes' in QCAT can be legally challenging or may require expert evidence and require a depth of legal knowledge.*¹⁰⁰

The QLS also suggested that an independent review of the success of the JP trial in QCAT be undertaken.¹⁰¹

DJAG responded to the QLS's submission regarding JP qualifications and the proposed changes to the QCAT Act under the government Bill as follows:

*All JPs are required to meet strict criteria and to complete mandatory training before their appointment as JPs. They are required to complete further training and assessment before being appointed to QCAT by the Governor-in-Council on recommendation from the Minister. Criminal history checks are conducted both when they are appointed as JPs and when they are appointed (or re-appointed) to QCAT.*¹⁰²

2.5 Government Bill – Typographical errors

The committee notes that under clause 10 of the government Bill, two sections, 103T and 103V, have duplications in the numbering of subsections and paragraphs which could cause some confusion if not corrected.

⁹⁹ Submission 7, p 2.

¹⁰⁰ Submission 17, p 2

¹⁰¹ Submission 17, p 2

¹⁰² Department of Justice and Attorney-General, correspondence dated 30 September 2016, Attachment 1, p 6.

3. Compliance with the *Legislative Standards Act 1992*

3.1 Application of fundamental legal principles

3.1.1 Overview

Section 4 of the *Legislative Standards Act 1992* (Legislative Standards Act) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals¹⁰³
- the institution of parliament.¹⁰⁴

The committee has examined the application of the fundamental legislative principles (FLPs) to the Bills.

3.1.2 Government Bill

The two main issues arising in the Government Bill in relation to fundamental legislative principles are:

- the proposed retrospective operation of a number of the sections; and
- the potentially ambiguous or imprecise drafting of new section 11A(1).

Retrospective operation

As noted above, currently, the Limitation of Actions Act establishes limitation periods for various classes of action. An action in relation to child sexual abuse falls within ‘Actions in respect of personal injury’ under section 11 of the Limitation of Actions Act. Section 11(1) provides that an action relating to a personal injury must be brought within three years from the date on which the cause of action arose. Pursuant to section 29(2)(c), if the person was under 18 when the action accrued, the limitation period is extended so that it ends three years from when the person turns 18 years of age. Further, section 31 provides that the court may extend the time period if there is evidence to establish the action after the limitation period has expired.

The insertion of new section 11A by way of clause 4 will remove time limits for claims relating to child sexual abuse in an institutional context as they currently exist under section 11 of the Limitation of Actions Act. Clause 5 inserts new section 48 into the Limitation of Actions Act to ensure the retrospective operation of new section 11A to past claims, dismissals and judgements that were previously subject to the limitation period under section 11 of the Limitation of Actions Act.

The retrospective operation of section 11A in relation to past actions that were subject to limitation breaches section 4(3)(g) of the Legislative Standards Act which provides that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively. In this instance a defendant would have an expectation that a past matter they were involved in would be finished and not reopened at a later point in time.

The explanatory notes of the government Bill comment on this FLP breach and provide the following justification:

The proposed departure from the general principle, that legislation should operate prospectively, is justified on the basis that:

¹⁰³ *Legislative Standards Act 1992*, s 4(2)(a).

¹⁰⁴ *Legislative Standards Act 1992*, s 4(2)(b).

- *it is appropriate to relax the limitation period for victims of this abuse who typically do not report their abuse for long periods after the limitation period has expired, with victims sworn to secrecy by their perpetrators or suffering in silence out of misplaced shame;*
- *claims for damages that arise from allegations of institutional child sexual abuse should be determined on their merits; and*
- *unfairness to the defendant can be addressed by preserving the right of the court to stay proceedings.*

Further, the departure is mitigated to some extent as the amendment does not provide for the reopening of actions that have received final judgment, except where the judgment was made on the ground that the limitation period had expired.¹⁰⁵

The alternative view to this justification is that a limitation period offers protection and certainty for a defendant in circumstances where an alleged incident may have occurred years before and evidentiary issues exist, for example, an important witness has difficulty in recalling events.

The explanatory notes to the government Bill acknowledge the reasoning behind limitation periods:

The purpose of providing limitation periods is to bring fairness and certainty to civil litigation matters by: removing the threat of open-ended liability (for both potential defendants and third parties); ensuring that a defendant is not unfairly prejudiced in proceedings through inability to access documents to defend the claim, that due to the passage of time have been lost, deteriorated or destroyed, trace witnesses or sufficiently recall events; and ensuring disputes are resolved as quickly as possible.¹⁰⁶

It is also noted that section 11A(6) allows for claims against current institutions and those which no longer exist. It may be the case that if the institution no longer exists important records in relation to the claim will not be able to be retrieved, affecting the outcome of the matter.

The removal of time limits for claims relating to child sexual abuse in an institutional context will have a significant impact for both victims and defendants. It is likely that more claims will be made against institutions while also providing evidentiary challenges for all parties given the length of time between when an incident allegedly occurred and when the claim is filed.

In considering clauses 4 and 5, the committee notes that the provisions do not allow for the reopening of actions that have received final judgment; however an action can be reopened where the judgment or dismissal was made on the grounds that the limitation period had expired.

Further, section 11A(5) provides a safeguard in that the court still has the power to summarily dismiss or permanently stay proceedings if a lapse of time has a burdensome effect on a defendant that is so serious that a fair trial is not possible.

Potentially ambiguous operation and imprecise drafting

Section 4(3)(k) of the *Legislative Standards Act 1992* requires that legislation should be unambiguous and drafted in a sufficiently clear and precise way. Plain English is recognised as the best approach to the use of language in legislation, with the objective to produce a law that is both easily understood and legally effective to achieve the desired policy objectives.

The definitions of 'institution' and 'institutional context' at section 11A of the Bill could be interpreted as potentially breaching the FLP set out in section 4(3)(k). In its submission, the QLS expressed concern that these definitions may be considered too broad by including institutions which no longer exist

¹⁰⁵ Explanatory notes, government Bill, p 5.

¹⁰⁶ Explanatory notes, government Bill, p 2.

while also covering circumstances where the abuse occurred in a place not controlled by the institution yet was carried out by an official of the institution.¹⁰⁷ The broad nature of these definitions could result in unintentional outcomes however, on balance, the QLS considers the definitions justified:

*The expansive definitions have the potential for unintended consequences as they are applied to individual cases but may be considered justified to properly respond to the variety of structures institutions have adopted and scenarios where abuse has occurred.*¹⁰⁸

The QLS has also expressed concern that the definition of ‘institutional context’ under section 11A(2) may provide an expectation that the scope of liability in relation to a non-delegable duty¹⁰⁹ will be extended. The QLS state:

*The Society queries the extent to which the proposed s11A(2) may effectively be extending either the scope, or at least the expectation, of the boundaries of non-delegable duty. That is, does the definition or the boundaries of “institutional context” also inform how the law may develop around when and how breach of non-delegable duty (or indeed vicarious liability) may see liability awarded? To this end it would seem to us prudent to expressly state that these amendments are not intended to articulate the boundaries of liability; rather, the removal of limitation periods only. This is perhaps also made necessary by the civil liability protection for volunteers in section 39 (and following) of the Civil Liability Act 2003 (Qld).*¹¹⁰

It may be argued that the broad nature of the definitions does not provide enough detail as to the scope of a non-delegable duty and breaches section 4(3)(k) of the Legislative Standards Act which provides that legislation should be unambiguous and drafted in a sufficiently clear and precise way. To this end, the QLS submission is instructive as it suggests that it should be expressly stated that the Government’s amendments are designed to remove limitation periods only, and are not intended to redress the boundaries of liability.

Committee comment

On balance, and noting the various safeguards in place, the committee is of the view that the various public benefit considerations underpinning these clauses, outweigh concerns regarding potential risks arising from both the retrospective operation of certain provisions and the ambiguous nature of proposed section 11A of the Government’s Bill.

3.1.3 Private member’s Bill

The main issue in the private member’s Bill in relation to fundamental legislative principles is the proposed retrospective operation of a number of the sections.

Retrospective operation

Section 4(3)(g) of the Legislative Standards Act provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

¹⁰⁷ Submission 21, p 3.

¹⁰⁸ Submission 21, p 3.

¹⁰⁹ The concept of a non-delegable duty is used to justify the imposition of liability on one person for the negligence of another to whom the former has entrusted (or ‘delegated’) the performance of some task on their behalf.

¹¹⁰ Submission 21, p 3.

In this regard, the following two clauses of the private member's Bill, in particular, were identified to raise FLP concerns:

- **Clause 9** inserts new subsection (3A) into section 11 of the *Limitation of Actions Act 1974* to provide that 'a right of action relating to personal injury resulting from child abuse is not subject to a limitation period under an Act, law or rule of law'.
- **Clause 14** inserts related transitional provisions from this Bill into the *Limitation of Actions Act 1974* including section 49 which covers rights of action accruing before commencement.

Section 49(1) provides that new section 11(3A) exempts rights of action for personal injury from child abuse from any limitation periods, whether the right of action accrued before or after commencement of the amendments. This will allow actions in personal injury for child abuse to be brought, even where they would have previously been considered 'statute-barred' (because the right of action arose outside the 'personal injury' limitation period). There are two exceptions to this, being where a judgment has been given in the action for a reason other than the expiry of the limitation period, or where the action was settled or discontinued before the expiry of the limitation period (ss.49(2)).

Where the judgment entered in an earlier action was that the right of action was statute barred for being outside the limitation period, a new action may be brought. If such an action is brought the earlier judgment is taken to have never been made, however the court may take into account any amounts that were paid or payable as damages or costs under the earlier judgment (see new s.50).

New section 51 will allow a new action to be brought if, in a previous action, a settlement agreement was executed after the expiry of the limitation period for that action. If such an action is brought the earlier settlement agreement is declared void under s.51(3). A party to that voided agreement cannot recover money paid under it, although a court may take into account any amounts paid as damages or costs under the initial settlement agreement.

To the extent that proposed s.49 will potentially enliven actions that were previously statute-barred because of an expired limitation period, and allow previously executed settlement agreements to be voided, part 4 of the Bill operates retrospectively.

The above provisions adversely affect the rights and liberties of defendant institutions by retrospectively removing the limitation periods that previously would have statute-barred some actions. Whilst retrospectively removing limitation periods will be of significant benefit to victims of institutional child abuse who may have otherwise been statute-barred from pursuing a claim, it can also unfairly prejudice the rights of a defendant by compromising their right to have legal matters finalised expeditiously and potentially their right to adequately address allegations made against them.

Arguments against the removal of limitation periods (and against the potential to re-enliven apparently concluded actions) include that, with the passage of time, it becomes harder for a defendant to properly defend allegations made against them because witnesses for the defence may have died, relocated, suffer cognitive decline or dementia, or be unsuitable as witnesses merely because the events in question happened so long ago that their recall is limited or unreliable. Similarly, exculpatory evidence may have been lost, or simply never preserved, because it was considered that the matter had already been litigated or settled and there was no reason to believe that it might be able to be re-litigated at a future time.

For individuals, many of whom would not have the financial means to defend a personal injuries action, and who would be unlikely to receive legal aid funding for a civil matter, the potential consequences of removing limitation periods with retrospective effect become even more grave.

Committee comment

On balance, and noting the various safeguards in place, the committee is of the view that the various public benefit considerations underpinning these clauses, outweigh concerns regarding potential risks arising from the retrospective operation of certain provisions of the private member's Bill.

3.2 Explanatory notes

3.2.1 Overview

Part 4 of the Legislative Standards Act relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly and sets out the information an explanatory note should contain. Explanatory notes were tabled upon the introduction of the Bills.

3.2.2 Government Bill

In relation to the government Bill, the notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bills' aims and origins.

3.2.3 Private member's Bill

In relation to the private member's Bill, while the explanatory notes are fairly detailed and contain a reasonable level of background information and commentary to facilitate understanding of the aims and origins of the private member's Bill, the explanatory notes do not contain all of the information required by Part 4.

The explanatory notes do not contain a simple explanation of the purpose and intended operation of each clause in the private member's Bill as required by s.23(1)(h) of the Legislative Standards Act, and do not provide a reason for the non-inclusion of this explanation as required by s.23(2).

In relation to the 'brief assessment of the administrative cost to government of implementing the Bill, including staffing and program costs', required by s.23(1)(e) the explanatory notes state:

*Detailed assessment pending... It is expected that the cost will be greatest in the short term, diminishing predictably over time. The cost is not expected to be excessive or burdensome to government, based on modelling and international experience. The cost is proper and just.*¹¹¹

While modelling and international experience were referenced, no estimates of potential costs based on modelling or the experiences in other jurisdictions were provided. There is also no information provided to justify the prediction:

*It is expected that the cost will be greatest in the short term, diminishing predictably over time. The cost is not expected to be excessive or burdensome to government.*¹¹²

Additionally, while the explanatory notes state that 'community groups, survivor NGOs, legal bodies and prominent QLD law firms' were consulted, none of those parties are specifically identified.

¹¹¹ Explanatory notes, private member's Bill, p 11.

¹¹² Explanatory notes, private member's Bill, p 11.

Appendix A – List of submissions

Number	Submitter
01	Name suppressed
02	Terry McDaniel
03	Queensland Child Sexual Abuse Legislative Reform Council
04	Gold Coast Centre against sexual violence Inc.
05	Legal Aid Queensland
06	Queensland Advocacy Incorporated
07	Protect All Children Today Inc
08	Indigenous Lawyers Association of Queensland Inc.
09	Tzedek
10	PeakCare Queensland Inc.
11	Queensland Family and Child Commission
12	Zig Zag Young Women’s Resource Centre
13	Soroptimist International South Queensland
14	Centre Against Sexual Violence Inc.
15	Confidential
16	Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd
17	Queensland Law Society
18	Australian Lawyers Alliance
19	knowmore
20	Micah Projects Inc.
21	Queensland Law Society
22	Bravehearts
23	Name suppressed

Appendix B – Details of public briefings and hearings

Public briefings

Government Bill – Brisbane, 31 August 2016

Department of Justice and Attorney-General:

Ms Leanne Robertson, A/Assistant Director-General, Strategic Policy and Legal Services

Ms Imelda Bradley, Director, Strategic Policy

Ms Amanda Shipway, A/Director, Legal Assistance Strategy and Funding

Ms Carly Osborne, Principal Policy Advisor, Strategic Policy

Ms Sharon Sargent, Principal Legal Officer, Strategic Policy

Private member's Bill – Brisbane, 14 September 2016

Mr Rob Pyne MP, Member for Cairns

Mr Kelvin Johnston, Advisor to Mr Pyne MP

Public hearing – Brisbane, 26 September 2016

Queensland Law Society:

Mr Bill Potts, President,

Mr Tony Deane, Chair of the QLS Litigation Rules Committee

Soroptimist International:

Ms Kylie Hillard, Spokesperson

Mr Terry McDaniel

Micah Projects:

Ms Karyn Walsh, Chief Executive Officer

Knowmore Legal Service:

Mr Warren Strange, Executive Officer

Queensland Advocacy Incorporated:

Dr Emma Phillips, Assistant Advocate

Private hearing – Brisbane, 26 September 2016

Invited witnesses

Appendix C – Statutory limitation of action periods in child sexual and physical abuse claims in Australian states and territories

Legislation	Type of action	Standard limitation period	Circumstances where the limitation period may be extended
QLD Limitation of Actions Act 1974 (Qld)	Personal injury or injury resulting from the death of a person	s 11(1) -3 years from the date the action accrues	s 29(2)(c) If the person is under a disability (including an infant - s5(2)), 3 years from the date on which the person ceases to be an infant. ss 30 and 31 Where there is evidence to establish the action and the prospective plaintiff did not have the means of knowledge of a 'material fact of a decisive character relating to the right of action', a court may extend the limitation period by one (1) year from the date the 'material' fact became known to the plaintiff.
NSW Limitation Act 1969 (NSW)	Action for death or personal injury resulting from child abuse		s 6A (1) Action may be brought at any time and is not subject to any limitation period under the Limitation Act 1969 (NSW) . s 6A (2) Child abuse means: <ul style="list-style-type: none"> • sexual abuse • serious physical abuse • any other abuse connected with sexual or serious physical abuse which is perpetrated against a person under 18 years of age. Under sections 9 and 10 of Schedule 5, s 6A extends to existing causes of action, including cases where the relevant limitation period has already expired, an action has been commenced previously on the cause of action, or judgment on the cause of action has previously been given on the ground that the action was statute barred. ¹ s6A(6) A court's jurisdiction is not limited by the Act, for example, this section does not limit a court's power to summarily dismiss or permanently stay proceedings where the lapse of time has a burdensome effect on the defendant that is so serious that a fair trial is not possible.

¹ Limitation Amendment (Child Abuse) Bill 2016, [Explanatory Notes](#), p. 2.

Legislation	Type of action	Standard limitation period	Circumstances where the limitation period may be extended
Limitation Act 1969 (NSW)	Action for personal injuries	Injuries which do not fall within the definition of child abuse will continue to be covered under the previously existing provisions of the <i>Limitation Act</i> .	
VIC Limitation of Actions Act 1958 (Vic)	s 27O Death or personal injury of a minor resulting from physical or		s 27P(1) Action may be brought at any time after the date on which an act or omission alleged to have resulted in death or personal injury has occurred. s 27P(2) Action may be brought regardless of whether the abuse occurred before or after the commencement of the section.
	Sexual abuse and any resulting psychological abuse		According to the Explanatory notes to the Limitation of Actions Amendment (Child Abuse) Bill 2015: <i>The new section 27P applies to actions irrespective of the date of the relevant act or omission and irrespective of whether or not the action was subject to a limitation period at any time in the past.</i> ² s 27R However, the Act does not limit a court's jurisdiction, for example, to summarily dismiss or permanently stay proceedings where the lapse of time has a burdensome effect on the defendant that is so serious that a fair trial is not possible.
	Action under Part III of the Wrongs Act 1958 (Vic) for wrongful act or neglect causing death.		s 27Q(1) Action shall not be brought after the expiration of the period of 3 years from the date on which the cause of action is discoverable by the plaintiff. s 27Q(2) Action may be brought regardless of whether the date of death of the deceased is before or after the commencement of the section. s 27O(4) The extension provisions in Division 3 apply. A court may extend the limitation period if it is just and reasonable to do so.

² Limitation of Actions Amendment (Child Abuse) Act 2015, [Explanatory Notes](#)

	Legislation	Type of Action	Standard limitation period	Circumstances where the limitation period may be extended
SA	Limitation of Actions Act 1936 (SA)	Personal injuries	<p>s 36 (1) Three years after the cause of action accrued</p> <p>s36 (1a) However, if the personal injury remains latent for some time, the 3 year period begins when the injury first comes to the person's knowledge.</p>	<p>s 45 (1) - (3) If a person is under a legal disability (including a child - s45(2)), the limitation period is extended by the period during which the disability exists after the action accrued, however shall not be extended by longer than 30 years from the time the action accrued.</p> <p>s 45A If a child suffers personal injury and the limitation period is extended by more than 6 years from the date the action accrued, notice of an intended action must be given within 6 years by, or on behalf of, the child to any person alleged to be liable for the tort. The requirement for notice does not apply to a person who actually committed an intentional tort.</p> <p>s 48 (1) - (3)</p> <p>A court may extend the limitation period as the justice of the case may require, where material facts were unknown to the plaintiff or where the plaintiff acted reasonably in failing to commence proceedings within the limitation period due to conduct by the defendant.</p>

Legislation	Type of Action	Standard limitation period	Circumstances where the limitation period may be extended
WA Limitation Act 2005 (WA) s4 and s6(2) The Limitation Act 2005 (WA) applies to causes of action accrued after the 2005 Act commenced on 15 November 2005.	Personal injury	s14(1) 3 years from the date the cause of action accrued s 55(1) A cause of action accrues when the person becomes aware that he or she has sustained a not insignificant personal injury or at the time of the first symptom, clinical sign or other manifestation of the personal injury.	s 30(1) If a person is under 15 years of age - 6 years after the cause of action accrued (unless a longer limitation period applies). s 31(1) If a person is 15, 16 or 17 years of age an action cannot be commenced if the person has reached 21 years of age (unless a longer limitation period applies). s 32 (1) -(2) and s 33 If a person is under 18 years of age when a cause of action accrues, the time during which the person is without a guardian before the person turns 18 does not count in the reckoning of the limitation period, however an action cannot be commenced if the person has reached 21 years of age unless the defendant was in close relationship with the under-age plaintiff when the cause of action accrued, in which case an action cannot be commenced after the plaintiff is 25 years old. A person in a close relationship with the defendant includes a person who at law has responsibility for the long-term or day to day care, welfare and development of the plaintiff before they turn 18 years of age. s 38 Court may extend time to commence actions by 3 years in cases of fraud or improper conduct by the defendant. s39 A court may extend a limitation period for up to 3 years from when a person to whom the cause of action accrues became aware, or ought reasonably to have become aware — (a) of the physical cause of the death or injury, (b) that the death or injury was attributable to the conduct of a person, and (c) of the identity of the person. s 41 A court may extend the time to commence an application until the plaintiff is 21 years of age where the court is satisfied that in the circumstances it was unreasonable for a guardian of the plaintiff not to commence the action within the limitation period. s 44 When deciding, on an extension application, a court is to have regard to whether the delay in commencing the proposed action, would unacceptably diminish the prospects of a fair trial of the action, and whether extending the time would significantly prejudice the defendant. s 35 Limitation periods also apply where the plaintiff was suffering a mental disability at the time the action accrued.

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

Legislation	Type of Action	Standard limitation period	Circumstances where the limitation period may be extended
<p>Limitation Act 1935 (WA) Applies to actions accrued before the commencement of the Limitation Act 2005 (WA) on 15 November 2005.</p>	<p>Action founded on tort</p>	<p>s 38(1)(c)(vi) - 6 years after action accrues</p> <p>Under s 6 of the Limitation Act 2005 (WA), s 55 of that Act is used to determine when an action accrues, however if the action accrues before 15 November 2005, the applicable limitation period is that which would have applied before commencement day.</p> <p>s 55(1) A cause of action accrues when the person becomes aware that he or she has sustained a not insignificant personal injury or at the time of the first symptom, clinical sign or other manifestation of the personal injury.</p>	<p>s 40 If a person is under 18 years of age or insane, the limitation period commences when the disability ceases.</p> <p>s 47A No action shall be brought against any person (excluding the Crown) for any act done in pursuance of an Act, or of any public duty or authority, unless notice is given to the defendant as soon as possible after the action accrues and the action is commenced within 1 year of the cause of action accruing. Where no notice has been given, a court may allow an action to be heard within 6 years of the date the action accrued if the Court thinks it is just to do so.</p>

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

Legislation	Type of Action	Standard limitation period	Circumstances where the limitation period may be extended
<p>Limitation Amendment (Child Sexual Abuse Actions) Bill 2015 (WA) amends the Limitation Act 2005 (WA) The Bill is currently in the Legislative Assembly - Second Reading 12/11/2015</p>			<p>Section 5 of the Bill inserts s 7A into the Limitation Act 2005 (WA) which proposes that no limitation period would apply in respect of a child sexual abuse action.</p> <p>s 7A(4) The section would apply regardless of when the act or omission occurred and whether a limitation period ever applied to the action.</p> <p>s 47A of the Limitation Act 1935 (WA) requiring notice to plaintiffs acting under a statutory or public duty would not apply to a child sexual abuse action.</p> <p>s 7A(5) However nothing affects a court’s jurisdiction or powers.</p>

Legislation	Type of Action	Standard limitation period	Circumstances where the limitation period may be extended
TAS Limitation Act 1974 (TAS)	Personal injuries	s 5(1) Injuries incurred prior to 1 January 2005 - 3 years from date the action accrued.	s 5(3) Court may extend to 6 years from date action accrued where it is just and reasonable to do so. s 38A Alternatively, a court may extend the limitation period to 3 years commencing on the date of discoverability having regard to the justice of the case and taking into account certain specified matters or to 3 years commencing on 1 January 2005 in some circumstances. s 26(1) and (1)A If the person was an infant, 3 years from the date when the person ceased to be an infant, but only if the plaintiff proves that he or she was not in the custody of a parent at the time when the cause of action accrued. A person under a disability includes infants - s3(2).
	Personal injuries	s5A Injuries incurred on or after 1 January 2005 - the earlier of either: <ul style="list-style-type: none"> • 3 years commencing on the date of discoverability, or • 12 years commencing on the date of the personal injury or death 	s 5A(5) - A court may extend the 12 year long-stop limitation period up to three years from date of discoverability having regard to the justice of the case. s 26 (2) If a person was an infant, the limitation periods established under s 5A will apply from the date when the person ceased to be an infant but only if the plaintiff proves that he or she was not in the custody of a parent at the time when the cause of action accrued. s 26 (7) - If an action is brought against an infant's parent or a person in a close relationship with the infant's parent, the limitation period is 3 years commencing on the date when the plaintiff attains 25 years of age. s 26(9) A court may extend this limitation period to 3 years from the date of discoverability where it is just to do so.

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

Legislation	Type of Action	Standard limitation period	Circumstances where the limitation period may be extended
ACT	Limitation Act1985 (ACT)	Personal injury resulting from institutional sexual abuse of child	<p>s 21C(2) No limitation period</p> <p>s 21C(3) However, the jurisdiction of the courts is not limited, for example, a court’s power to summarily dismiss or permanently stay proceedings where the passage of time has a prejudicial effect on the defendant that is so serious that a fair trial is not possible.</p> <p>s 21C(1)(c) Section applies regardless of whether the action accrued before, on or after the commencement of the section.</p>
		Personal injury s 11 (1) and s 100 Before 9 September 2003 - 6 years from date of accrual. s 16B (2)(b) On or after 9 September 2003 - 3 years from date of injury.	<p>s 36 (2) Before 9 September 2003 – the court may extend the limitation period for any time period if the court decides it is just and reasonable.</p> <p>s 36(5)(a) On or after 9 September 2003 - no court discretion to extend limitation period.</p> <p>s 30 If the person is under a disability (including a person under 18 (see Dictionary), the limitation period is suspended for the duration of the disability. If would otherwise expire less than three years after the plaintiff ceased to be under a disability, the limitation period is extended in order to expire three years after the cessation of the disability.⁶</p> <p>s 30A In addition, if a child suffers personal injury and the limitation period does not end within 6 years after the accident giving rise to the injury or 6 years after the day the plaintiff (or the plaintiff’s parent or guardian) first knows that the plaintiff has suffered an injury that is or includes a disease or disorder, the plaintiff (or the plaintiff’s parent or guardian) must, within the relevant 6 year period, give notice of an intended claim to the defendant.</p>
			<p>s 30B If child’s claim relates to the provision of a health service, s 30 does not apply (s30(3)). If the injury happens on or after 9 September 2003, the limitation period is 6 years unless injury includes a disease or disorder in which case the limitation period is the earlier of either, 6 years from the date the injury was discoverable or 12 years from the date of the accident.</p>

Legislation	Type of Action	Standard limitation period	Circumstances where the limitation period may be extended
			<p>is extended in order to expire three years after the cessation of the disability.⁶</p> <p>s 30A In addition, if a child suffers personal injury and the limitation period does not end within 6 years after the accident giving rise to the injury or 6 years after the day the plaintiff (or the plaintiff's parent or guardian) first knows that the plaintiff has suffered an injury that is or includes a disease or disorder, the plaintiff (or the plaintiff's parent or guardian) must, within the relevant 6 year period, give notice of an intended claim to the defendant.</p> <p>s 30B If child's claim relates to the provision of a health service, s 30 does not apply (s30(3)). If the injury happens on or after 9 September 2003, the limitation period is 6 years unless injury includes a disease or disorder in which case the limitation period is the earlier of either, 6 years from the date the injury was discoverable or 12 years from the date of the accident.</p>
NT	Limitation Act	Tort	<p>s 12 3 years from the date on which the cause of action first accrues</p> <p>s 36 If a person is under a disability (including an infant - s4(1)), the limitation period expires 3 years after the date on which the person ceases to be an infant. If the limitation period would otherwise expire less than 3 years after the plaintiff ceases to be disabled, the limitation is extended to 3 years after the cessation of the disability. s 36 (4) The limitation period cannot be extended beyond 30 years from date action accrued.</p> <p>s 44 A court may extend the limitation period as it thinks fit, where material facts were not ascertained by the plaintiff or the plaintiff acted on representations by the defendant and that in all the circumstances of the case, it is just to grant the extension of time.</p>

