

Queensland Family and Child Commission Submission

To: Department of Justice and Attorney General

Date: 7 October 2016

Topic: Issues paper - The civil litigation recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse: *Redress and Civil Litigation Report* – understanding the Queensland Context

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The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Civil Litigation Review, Department of Justice and Attorney General (DJAG).

The QFCC has recently provided a letter of support to the Legal Affairs and Community Safety Committee regarding the:

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

Specifically, the QFCC supported the removal of civil statutory time limits for personal injury action arising from child abuse and recognised the retrospective effect of these amendments.

The QFCC believes these amendments recognise the impact of barriers to reporting child sexual abuse and reflect that time should not impede a victims ability to seek legal redress.¹

The QFCC was also pleased to note the amendments, under both Bills, proposed the reinstatement of the right to trial by jury for civil actions for personal injury arising from child abuse, including in an institutional setting.²

The QFCC is also currently preparing a submission to the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) in response to their consultation paper on criminal justice issues.

¹ Queensland Family and Child Commission 2016, Letter to the Legal Affairs and Community Safety Committee, *Limitations of Actions Inquiry*, 15 September 2016

² Queensland Family and Child Commission 2016, Letter to the Legal Affairs and Community Safety Committee, *Limitations of Actions Inquiry*, 15 September 2016

The QFCC submission will consider, in addition to criminal justice aspects, whether civil liability on institutions, rather than a criminal failure to protect/report offence, would be sufficient to require institutions to take responsibility for children in their care

Recommendation 85 – Questions 1 and 2

Considerations relating to the extension of form and context of abuse.

Recommendation

The QFCC recommends DJAG consider the following aspects prior to progressing any amendment to civil limitations to include other abuse categories:

- Legal Affairs and Community Safety Committee report regarding the
 - Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016; and
 - Limitation of Actions and Other Legislation (Institutional Child Sexual Abuse) Amendment Bill 2016.
- Issues relating to inconsistent definitions (across states and territories) of abuse types and thresholds. For example: serious or significant abuse, and their potential impact, if any, on civil litigant outcomes.

The law in most states governing statutory limits for civil litigation has allowed for the extension of time if certain conditions are met, however these conditions can be difficult to satisfy and the court is still required to exercise discretion to extend time.³ This has significant repercussions in relation to child sexual abuse survivors given child sexual abuse is usually hidden as a result of the very nature and underlying dynamics of this form of abuse.⁴ Recent research has also indicated that specifically, male victims are less likely to disclose their abuse and take longer to do so.⁵

Legislative reform has been instigated across a number of states based on both independent inquiries and recommendations on civil limitations for child sexual abuse by the Royal Commission in their *Redress and civil litigation report*.

Legislation in force

New South Wales (NSW) and Victoria have progressed amendment of limitation laws relating to child abuse, though to differing degrees.

³ Flynn, L 2016, *Child Sex Abuse: Statute of Limitations*, Accessed 4 October 2016, <https://www.shine.com.au/blog/abuse-law/child-sex-abuse-statute-limitations/>

⁴ Cashmore, J., Shackel, R. 2013, *The long-term effects of child sexual abuse*, CFCA Paper No. 11, Accessed 4 October 2016, <https://aifs.gov.au/cfca/publications/long-term-effects-child-sexual-abuse/determining-association-between-child-sexual-abuse>

⁵ Cashmore, J., Shackel, R. 2013, *The long-term effects of child sexual abuse*, CFCA Paper No. 11, Accessed 4 October 2016, <https://aifs.gov.au/cfca/publications/long-term-effects-child-sexual-abuse/determining-association-between-child-sexual-abuse>

Victorian time limitation laws do not apply⁶ under the, *Limitations of Actions Amendment (Child Abuse) Act 2015*, Division 5 – Actions for personal injury resulting from child abuse, Application of Division,(2)(b) when death or personal injury of a person result from:

- (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.*⁷

The NSW Parliament passed the *Limitation Amendment (Child Abuse) Act 2016* on 17 March 2016, removing the time limit on civil claims for child sexual abuse.

The amendments enacted in this Bill provide child abuse to mean sexual abuse, serious physical abuse or other abuse defined as ‘connected abuse’ (perpetrated in connection with sexual abuse or serious physical abuse).⁸

Current Bills before parliament

Queensland and Western Australia respectively have Bills currently before parliament which seek to amend legislation accordingly.

Queensland itself, as mentioned in the introduction of this submission, is also considering amendments to the Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016; and Limitation of Actions and Other Legislation (Institutional Child Sexual Abuse) Amendment Bill 2016.

While the QFCC does not theoretically oppose the inclusion of other abuse forms and contexts to the limitations of actions in relation to civil claims, the outcome of the current Bills before Queensland Parliament and the report of the Legal Affairs and Community Safety Committee must be dutifully considered.

While legislation in relation to limitation periods is governed under state legislation, the QFCC urges any review and potential extension of the form and context of abuse, to consider in vast inconsistency in both research, practice and legislation use to define abuse types. This matter of inconsistency is routinely raised when attempting to compare data relating to serious or significant abuse. In the context of civil action, inconsistent application of abuse types may impact the outcome for survivors of abuse dependent on the state in which they experienced the abuse.

⁶ Flynn, L 2016, *Child Sex Abuse: Statute of Limitations*, Accessed 4 October 2016, <https://www.shine.com.au/blog/abuse-law/child-sex-abuse-statute-limitations/>

⁷ Victorian Government 2015, *Limitations of Actions Amendment (Child Abuse) Act 2015*, 4, Division 5, 27O(1)(b)

⁸ New South Wales Government, *Limitation Amendment (Child Abuse) Act 2016*, No. 5, Schedule 1, s2, 6A(2)