



23 March 2015

Justice Policy
Department of Justice
GPO Box 6
SYDNEY NSW 2001

By email: justice.policy@agd.nsw.gov.au

UNIVERSITY OF NEW SOUTH WALES
KINGSFORD
LEGAL CENTRE

Dear Madam/Sir,

Discussion Paper on limitation periods in civil claims for child sexual assault

Kingsford Legal Centre (KLC) welcomes the opportunity to respond to the Discussion Paper on limitations in civil claims for child sexual assault.

Kingsford Legal Centre

KLC is a community legal centre that has been providing legal advice and advocacy to people in need of legal assistance in the Randwick and Botany Local Government Areas since 1981. KLC provides general advice on a wide range of legal issues, including child sexual assault. Childhood years may be least likely to engage a lawyer and pursue a civil case. The

¹ *Williams v Minister Aboriginal Land Rights Act 1983 no 2* [1999] NSWSC 84 26 August 1999.

assault. Nor does it recognise that the reason for delay is closely bound up with the cause of action itself.

benefit any of the survivors giving evidence to the Royal Commission. The benefits of any amendments to survivors may not begin to accrue for at least 12 years after the legislative amendments come into effect (when certain defendants would have otherwise been able to raise the expiry of the 'long-stop' limitation period as a defence).

Under the current legislative arrangements, determining when a cause of action commences, when it expires and any applicable exceptions is complex. Amendments to the Limitation Act mean different rules apply depending on when the act of violence occurred, the nature of the perpetrator, and when the survivor became aware they had a cause of action. Any further amendments that run from the date they come into affect will result in further unnecessary and unfair complexity in the law, making it more difficult for people to know their rights.

For these reasons, a human rights approach to any amendments beneficial to survivors of child sexual assault should be retrospective and apply to all survivors regardless of when they were sexually assaulted and by whom. This should apply to all survivors who have not already brought claims, or whose claims were judicially determined at an interlocutory stage, without the substantive merits of their cases being heard.

Recommendation

- 4. Amendments to the Limitations Act that are beneficial to survivors of child sexual assault should be retrospective and apply to all survivors regardless of when they were sexually assaulted and by whom.*

Model litigant principles

KLC supports the NSW Government's Guiding Principles for Government Agencies responding to Civil Claims for Child Sexual Abuse, in particular Principle 10 that declares that State agencies should not generally rely on a statutory limitation period as a defence.

If a limitation period is to be retained in cases of child sexual assault, KLC believes that non-Government institutions should be required to adopt similar model litigant principles. One

