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Mr Andrew Cappie-Wood
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Dear Mr Cappie-Wood

Limitation periods in civil claims for child sexual abuse discussion paper

Thank you for the opportunity to provide a submission in response to the abovementioned discussion paper.

The comments below are informed by our work in connection with our broad range of functions under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS-CRAMA) and Part 3A of the *Ombudsman Act 1974*.

Our responsibilities under CS-CRAMA include monitoring and reviewing the delivery of community services (including handling complaints and reviewing the situation of individual children or groups of children in out-of-home care). Part 3A of the Ombudsman Act requires us to keep under scrutiny the systems that government and certain non-government agencies in NSW have for preventing reportable conduct and handling reportable allegations and convictions involving their employees. In addition, my office was required (under then Part 6A of CS-CRAMA) to audit the implementation of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006–2011*.¹

Comments

As the discussion paper notes, the evidence gathered to date by the Royal Commission into Institutional Responses to Child Sexual Abuse suggests that many victims of child sexual abuse have been unable to pursue civil compensation. The application of statutory limitation periods to child sexual abuse claims is a common reason for this, with many claimants being statute barred as a result of delayed reporting or otherwise acting on the abuse they have experienced. Our work over many years confirms this.

Through our oversight role in relation to employment-related child protection, we are particularly familiar with the barriers victims face in coming forward about their abuse. Many such individuals have been assaulted by perpetrators in a position of power, authority and trust and this can significantly influence their ability and willingness to pursue criminal and civil remedies in a timely way.

¹ Our final report on this audit, *Responding to Child Sexual Assault in Aboriginal Communities*, was tabled in Parliament in January 2013 and is available on our website.

In recent years we have also identified serious deficiencies in the arrangements for handling victims' compensation claims on behalf of children and young people in statutory care. A copy of our June 2014 submission to the Royal Commission on this issue is attached for your reference. As highlighted in that submission and the reports it draws on, children in statutory care who have been victims of child abuse face a range of additional barriers to accessing victims compensation, both whilst in care and after leaving care. It is likely that these same barriers impact on the capacity and likelihood of this very vulnerable group of victims to initiate civil litigation.

Finally, our 2013 report on *Responding to child sexual assault in Aboriginal communities* observed that, in addition to common barriers facing all victims of child sexual assault, Aboriginal victims may face other barriers to reporting abuse, including negative perceptions of available support services; fear and distrust of government systems and services; and other factors that are particularly salient in the context of small, interconnected and isolated Aboriginal communities. It is probable that these and other barriers extend to the ability and willingness of Aboriginal people to pursue civil remedies.

In view of the fact that our work has highlighted the many barriers to justice facing victims of child sexual abuse, my office would strongly support any changes that ameliorate the detrimental and disproportionate impact on this group of the application of statutory limitation periods to civil claims.

I hope the above feedback is useful. If you have any queries or require further information, please do not hesitate to contact Julianna Demetrius, Director Strategic Projects Division, on (02) 9286 0920.

Yours sincerely

A handwritten signature in black ink, appearing to read 'B. Barbour', written in a cursive style.

Bruce Barbour
Ombudsman