

Submission to the New South Wales Department of Justice

Discussion Paper

Limitation periods in civil claims for child sexual abuse

It is a peculiarity of civil limitation laws, where applicable to historical child abuse cases, that the adult survivor is often faced with the Scylla of a constraining ‘limitation window’ for initiating civil law redress and the Charybdis of psychological incapacity (diagnostically attributable to the abuse) which may prevent the taking of such action until many years after the applicable limitation period has expired. Initiating a timely civil law action risks reviving traumatic memories of abuse – not least in terms of the minute scrutiny to which the allegations of abuse will be subjected in a court setting – at a time when the victim may not be mentally prepared for this; while delaying such action until the process of recovery from trauma is more advanced risks the loss of rights through the operation of civil limitation laws [...] The civil wrongs capable of being classified under the rubric of ‘child abuse’ in a sense contain the seeds of their own ‘forensic destruction’ because, arguably, woven into the fabric of such wrongs (particularly child sexual abuse) is the resultant incapacity of an adult survivor to pursue timely legal redress against the abuser.¹

1. INTRODUCTION

knowmore is a free, national service providing legal advice and assistance, information and referral services via a free advice line and face-to-face services in key locations, for people considering telling their story or providing information to the Royal Commission into Institutional Responses to Child Sexual Abuse (‘the Royal Commission’). Our service is staffed by solicitors, counsellors, social workers and Aboriginal and Torres Strait Islander Engagement Advisers and is conducted from offices in Sydney, Melbourne, Brisbane and Perth.

knowmore has been established by the National Association of Community Legal Centres, with funding from the Australian Government, represented by the Attorney-General’s Department.

Our service was launched in July 2013 and, since that time, we have provided over 6,739 client advices to over 2,243 clients.² The types of assistance we provide include:

¹ Hamish Ross, ‘Adults as grown-up children – a perspective on children’s rights’ (2013) 27 *Australian Journal of Family Law* 235, 245

² **knowmore**, *Service Snapshot* (Infographic, as at 31 December 2014). A copy is attached as Appendix 1 to this submission.

- information about the Royal Commission, its legal powers and procedures, the roles of the Commissioners and others involved, rights of representation before it and the Commission's guidelines and statements about how it intends to proceed;
- legal advice for people considering providing information to the Royal Commission about their options and what they may mean;
- legal advice on a range of legal issues including witness and informant protections, the availability of compensation or other forms of action or redress, and the effect of confidentiality agreements in past proceedings;
- linking people with specialist counselling and support services and victims' support groups; and
- preparation of statements and assistance with preparing submissions about needed reforms.

28% of our clients have advised they reside in New South Wales. 79% of **knowmore's** clients have been aged 45 years or over. Many of the clients we assist are seeking legal advice about their options, if any, to obtain financial and other redress in relation to child abuse they suffered in institutional contexts. Many of our clients have not previously sought redress; for many clients the work of the Royal Commission has led them to disclose abuse for the first time, despite having struggled with the impact of that abuse for most of their life.

However, a significant number of our clients have had direct experiences with civil litigation, redress and victims compensation systems, including the operation and effect of limitation periods in the commencement and resolution of civil proceedings for personal injuries related to child abuse, and in related settlement negotiations. As well as seeking financial compensation, these clients often have other objectives for taking civil legal action for the harm they experienced as a result of sexual abuse. Those objectives include:

- public acknowledgment of the wrong and for the harm that they have suffered;
- to achieve a just resolution;
- specific and general deterrence, whereby individuals and institutions with responsibility for the care of children are encouraged to take active steps to prevent and take action on child sexual abuse; and
- to ensure that the institution implements effective policies and procedures to protect children from abuse.

2. THE ROYAL COMMISSION

Since September 2013, the Royal Commission has held fourteen public hearings into institutional child sexual abuse occurring within the State of New South Wales.³ Many of these case studies have highlighted systemic issues that the Royal Commission is examining in both its work on civil litigation, including the application of

³ Case Studies 1, 2, 3, 5, 7, 8, 10, 14, 15, 18, 19, 21, 22 and 23.

time limitation defences, and more generally in its exploration of the avenues of redress that may be available to survivors in New South Wales.⁴

In addition to its public hearings program, the Royal Commission has undertaken a comprehensive research program into topics relevant to its work, including the release of Issues Papers. Several of these papers have directly addressed the needs of survivors and possible reforms to civil litigation systems that may better assist survivors to receive justice. This work culminated in the release in January 2015 of the Royal Commission's consultation paper on *Redress and Civil Litigation*.

knowmore has actively contributed to this body of work, through the making of submissions in response to the Royal Commission's Issues Papers,⁵ participating in a roundtable discussion; and preparing a comprehensive submission addressing the matters raised in the Commission's consultation paper.⁶

Collectively, these submissions outline **knowmore's** position in relation to the major issues now set out in the New South Wales Government's discussion paper, and we refer the department to the detail of those submissions and the applicable views and recommendations outlined therein.

knowmore's submissions primarily rely on what we have learned, through our work, about the collective experiences of our clients and their needs. In that regard, we note the fundamental importance of ensuring that child abuse survivors/claimants are afforded meaningful opportunities to access justice and, most importantly, choice in how to pursue outcomes that are appropriate and important for them. In our experience,⁷ and as found by the Victorian Family and Community Development Parliamentary Committee (as set out in the Committee's report, *Betrayal of Trust*),⁸ many survivors of child abuse will never be in a position to successfully pursue civil claims through the courts, as these particular claimants face additional legal and evidentiary barriers in accessing compensation through the civil litigation system. These barriers cannot be overcome by taking the single step of exempting child abuse claimants from the application of limitation periods.

We therefore reiterate our view, as set out in detail in our submissions to the Royal Commission, that it is both necessary and desirable to establish, and for the New South Wales Government to support, a national redress scheme for child abuse claimants. Without such a scheme, it is our view that many survivors will never be able to receive just outcomes that are truly meaningful for them.

⁴ See, for example, case study 19 concerning the Bethcar Children's Home.

⁵ **knowmore**, Submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse; Issues Paper 5 - Civil Litigation; Issues Paper 6 – Redress Schemes; and Issues Paper 7 – Statutory victims of crime compensation schemes. Viewed at <http://www.childabuseroyalcommission.gov.au/research/issues-papers-submissions>

⁶ **knowmore**, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse; Consultation Paper – Redress and Civil Litigations. Viewed at <http://www.childabuseroyalcommission.gov.au/policy-and-research/redress/submissions-on-redress-and-civil-litigation>

⁷ **knowmore**, Submission No 17 to the Royal Commission into Institutional Responses to Child Sexual Abuse, Issues Paper 5, Civil Litigation, pp.3-4

⁸ Family and Community Development Committee, Parliament of Victoria, *Betrayal of Trust* (2014) Chapters 25 and 26

3. Objectives of reform of limitation periods

knowmore believes that any reform should be guided by principles of fairness, equality and justice. Potential claimants should not be disadvantaged by the period in which they experienced abuse, or the identity of the institution responsible for the claimant at the relevant time.

The Royal Commission has highlighted research findings that the average time for a victim to disclose sexual abuse is 22 years. This is consistent with other sources of research on time taken to disclose child sexual abuse. As a result of this common delay in disclosing child sexual abuse, at the present time **knowmore** lawyers regularly have to advise clients that any civil claim the client may have against the perpetrator of abuse, or the institution responsible for the client at the time of abuse, is out of time. **knowmore** is not funded to represent clients in ongoing cases and therefore does not purport to advise clients upon issues such as the prospects of success of potential options such as whether their claim may be covered by one of the existing exceptions (disability or latent injury). We are funded to provide referral services, and in such circumstances we would advise clients about referral options to seek advice, about whether their claim may fall within one of the existing exemptions, from an experienced personal injury lawyer familiar with the issues arising in cases of claims for historical, sexual abuse.

A further objective of reform should be to ensure that the cost of child sexual abuse is fairly borne by those who were responsible for the harm. Under the current laws, the considerable cost of child sexual abuse is disproportionately borne by survivors and the Australian community, rather than individual perpetrators and the institutions where the abuse took place. The cost of unresolved childhood trauma in Australia caused by sexual, emotional and physical abuse has recently been calculated as \$6.8 billion annually.⁹ Perpetrators and institutions are able to take advantage of the current law to avoid bearing a fair proportion of this cost, at least in part, because of the current laws that apply to limitation periods for civil claims (and other liability issues, such as vicarious liability).

4. Model Law

knowmore submits that the Victorian *Limitation of Actions Amendment (Child Abuse) Bill 2015* provides an ideal model for reform in this area.

This Bill will reform limitation periods so that they do not apply to actions founded on death or personal injury resulting from acts of physical or sexual abuse of a child, and psychological abuse that arises out of physical and sexual abuse. The reform will be retrospective. The Bill does not define physical or sexual abuse and courts will be able to interpret these terms by reference to their ordinary meaning, informed by the inquiry work undertaken by the Victorian Parliamentary Committee inquiry and the Royal Commission.

⁹ ASCA, *The cost of unresolved childhood trauma and abuse in adults in Australia*, January 2015, 41.

DISCUSSION QUESTIONS

1. Do the existing statutory exceptions to limitation periods provide sufficient access to justice for victims of child sexual abuse?

In our submission responding to the Royal Commission's Issues Paper 5, Civil Litigation, we said the following about limitation periods generally, in the context of claims by survivors of childhood sexual abuse:

Our clients who have engaged with the civil litigation process have reported that defendants who have raised arguments that such claims are statute barred can delay the proceedings to a point where many years pass without any aspect of the substantive claim being heard. This unnecessary delay impacts on a survivor's capacity to continue with any claim, including their ability to continue accessing often highly priced legal representation.

...

*The public policy rationale for imposing limitation periods has been addressed at length in other legal and academic commentary; similarly there has been much commentary highlighting the prohibitive, inappropriate and unjust application of time limitation periods to cases of child sexual abuse.¹⁰ No doubt, for these reasons, the issue lay at the heart of the Parliament of Victoria Committee report *Betrayal of Trust* and that Committee's recommendations.¹¹ Our focus, therefore, will be on particular examples and issues illustrated by our clients' circumstances, which bring these problems into sharp focus.*

Many clients present to us with prima facie evidence of serious physical and/or psychological injury, child sexual abuse and institutional negligence. Yet, often, we are instructed that claims founded on this evidence have been struck out by the Court on the basis of a statute of limitations defence, primarily asserted by Australian Governments,¹² or that the client has been advised by their solicitor against commencing action, due to the likelihood of such a defence being maintained and upheld.

For other clients, if there is a possibility of pursuing action, the solicitor has asked for substantial fees upfront to protect themselves against the risk associated with overcoming a limitation period defence.

Many of our clients have presented in circumstances of financial disadvantage. Many report difficulty in securing and obtaining employment, as a direct consequence of the ongoing trauma

¹⁰ Ben Mathews, 'Limitation periods and child sexual abuse cases: law, psychology, time and justice' (2003) 11(3) *Torts Law Journal* 218; Annette Marfording, 'Access to justice for survivors of child sexual abuse' (1997) 5 *Torts Law Journal* 1; Hamish Ross, 'Adults as grown-up children – a perspective on children's rights' (2013) 27 *Australian Journal of Family Law* 235, 245

¹¹ Family and Community Development Committee, Parliament of Victoria, *Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations* (2013), 537 – 543

¹² On this note, see the tragic decision in: *Carter v Corporation of the Sisters of Mercy of the Diocese of Rockhampton* [2000] QSC 306 (Unreported, Supreme Court of Queensland, White J) – a decision concerning alleged abuse involving the Neerkol Orphanage

arising from their childhood sexual abuse. This cohort of clients generally lack the means to instruct lawyers on a private fee/disbursement paying basis. With the widespread unavailability of any legal aid funding for civil proceedings, such clients are in reality only able to contemplate civil litigation if a lawyer agrees to act on a 'no win, no fee' basis. In this context, the apparent expiration of the relevant limitation period operates as a significant disincentive for many lawyers to even contemplate taking on a client's case.

...

Positioning time limitation periods in a complex trauma framework

Current time limitations do not take into consideration the common experience of survivors' memories of abuse being outside of their awareness for many years. Dissociating or 'splitting off' traumatic material is well understood as one of the brain's coping/survival strategies. Trauma is a state of high arousal that impairs integration across many domains of learning and memory. In many cases, memories may suddenly emerge many years later following a seemingly unrelated triggering event – often, though not always, either witnessing or experiencing another traumatic incident.

Limitation periods also do not take into account the staged nature of recovery of complex trauma – safety, remembering and mourning and reconnection. For many survivors of child sexual abuse, becoming physically and psychologically safe takes many years. If this first stage of recovery is not firmly in place, speaking about trauma in the way necessary for engaging in a legal process such as civil litigation, poses significant risks to wellbeing.

Survivors of child sexual abuse commonly experience complex, long-term psycho-social impacts which can impair their capacity to engage with a variety of systems. These include economic disadvantage, unstable employment, housing issues, physical health problems, relationship difficulties and mental health issues, as well as barriers to accessing support for these problems.

...

When a survivor is dealing with chronic homelessness, complex family and relationship issues, flashbacks, panic attacks, depression, insomnia, dissociative episodes, addictions, eating disorders and/or ongoing emotional dysregulation (just some of the ongoing consequences of childhood trauma), it is extremely difficult for them to consider pursuing legal action and to take the necessary steps to prioritise any such action within a set timeframe.¹³

For these reasons, **knowmore** believes that the existing statutory exceptions to limitation periods (and the application of limitation periods in general) do not provide sufficient access to justice for survivors. The existing exceptions are narrow and limited to circumstances where the claimant can demonstrate incapacity

¹³ **knowmore** submission in response to Issues Paper 5 of the Royal Commission: pp.13-17. Viewed at <http://www.childabuseroyalcommission.gov.au/submissions/314/issues-paper-5,-civil-litigation>

to bring an action due to a disability or latent injury. For survivors of child sexual abuse this generally means having to establish a psychiatric injury.

The work of the Royal Commission, particularly its public hearings into the responses of institutions to child sexual abuse, has also highlighted that in some cases key people involved with the management of institutions where abuse took place minimised, denied and concealed evidence of abuse, or disclosures of abuse by children. This has contributed to the shame felt by survivors, reinforced the reluctance of survivors to disclose abuse, and engendered deep mistrust of authority in survivors.

As noted, there are also significant barriers to survivors accessing appropriate legal representation, including limited legal aid and pro-bono assistance for personal injury claims.

All of these circumstances affect the ability of survivors to safely disclose abuse, obtain legal advice, find appropriate legal representation and give instructions for a civil claim.

knowmore's experience is that the majority of survivors are currently prevented from taking action within the existing limitation periods, because of the interplay of personal, psychological, economic and societal factors experienced by survivors of child sexual abuse. Despite this, the law only recognises a relatively narrow concept of "psychological injury" that a claimant must demonstrate in order to fall within one of the existing exceptions.

As noted, limitation periods, and the rules regarding exemptions, also do not take account of the staged recovery process from trauma associated with child sexual abuse: safety, remembering, mourning and reconnection. Many survivors do not reach the first stage of safety for many years. Speaking about the abuse in the way that is required to bring a civil claim before a client is able to safely do so is a risk to well-being.

Reform options

knowmore supports reform that will remove limitation periods for personal injury claims founded on child physical and sexual abuse. The reform should apply to intentional and unintentional torts. The amendments should also be retrospective.

Option A: Remove limitation periods in claims for child sexual abuse

knowmore supports Option A for the reform of limitation periods, for the reasons identified above, and in the discussion paper.

Option A would be simple to apply and provide some certainty for survivors of child sexual abuse. Legal advice at an early stage could focus on the merits of any claim, rather than whether a client could bring an action out of time. It would minimise legal costs, and encourage early negotiation of claims.

Based on our experience **knowmore** can confirm that claimants are highly likely to be re-traumatised as a result of a requirement to demonstrate psychological injury at an early stage in proceedings, where there is considerable uncertainty that the substantive merits of their claim will even be considered either during negotiation, or in a court hearing. The requirement to demonstrate a psychological injury for the purpose of an exemption from the applicable limitation period imposes considerable personal and financial costs on a survivor.

2. Do the advantages of Option A outweigh any disadvantages?

knowmore considers that the advantages of Option A outweigh any of the potential disadvantages. **knowmore** does not believe that it is likely that Option A will result in more claims being brought where important evidence has been lost. Claimants will still have to prove all of the elements of the relevant tort. Claimants will require legal assistance to bring a claim, and most claimants can only secure legal assistance on a 'no win, no fee' basis from lawyers. Therefore it is unlikely that there will be an increase in claims where there is otherwise a lack of supporting evidence.

3. If Option A were adopted, would it be sufficient to rely on existing civil procedures (such as applications to strike out, dismiss or stay proceedings) to protect the proper administration of justice, including in cases where a fair hearing of a matter may not be possible?

In cases where a defendant is disadvantaged because important evidence is no longer available, or where a fair hearing of a matter is not possible, the general law permits a court to stay, strike out or dismiss proceedings. **knowmore** believes that these existing mechanisms will protect the proper administration of justice. The criminal justice system, where prosecutions for historical sexual offences are now routinely brought often decades after the alleged offences, stands as a persuasive example of the courts' capacity to ensure that trials only proceed in a manner that is fair to the defendant.

Option B: Reversing the presumption that limitation periods apply to causes of action based on child sexual abuse

knowmore does not support this option.

4. Do the advantages of Option B outweigh any disadvantages?

5. Are there other advantages or disadvantages of Option B?

knowmore does not consider that there are any real advantages to this option. The example given in the discussion paper in relation to this option from Ontario still confines an exemption from a limitation period to circumstances where a claimant is incapable of commencing proceedings because of his or her physical, mental or psychological condition.

This approach does not take account of the broader psycho-social factors that inhibit a survivor of child sexual abuse from making a claim within the prescribed period, which are discussed above in relation to Option A.

Option B does not meet the objective identified at the beginning of this submission, that is, that reform should be guided by principles of fairness, equality and justice, and should take into account that a disproportionate

burden of the costs of unresolved childhood trauma, caused by child sexual abuse, is currently borne by survivors and the Australian community.

Option C: Clarify the definition of 'disability'

6. Do the advantages of Option C outweigh any disadvantages?
7. Is there any appropriate way to amend the latent injury exception to better accommodate child sexual abuse claims?

Option C has the same disadvantage as Option B because it remains focussed on a claimant having to provide proof of a disability in order to fit within an exemption to a limitation period. Even if the definition of disability was widened to include factors such as intense feelings of shame, an inability to confront or recount experiences of abuse or a belief that the disclosures of abuse will not be believed, the term 'disability' will still not be broad enough to cover the full range of psycho-social and barriers that survivors face to disclosing abuse, and the economic and other barriers to obtaining appropriate legal assistance to bring a claim.

Option D: Remove limitation periods where there has been a conviction for child sexual assault

knowmore does not support this option.

8. Is there value in adopting Option D, either alone, or in combination with any of the other options?
9. If Option D were adopted, should it apply only to civil claims against the direct perpetrator of the sexual abuse, or is there scope for it to also apply to claims against third party institutions responsible for allowing the abuse to occur?

There are many practical and legal reasons why child sexual abuse often does not result in a criminal conviction. The department would be aware of the extensive body of research indicating that a large proportion of sexual offences are never reported to police by victims.

It must also be recognised that some forms of child sexual abuse were not covered by the criminal law until fairly recently. It is difficult to think of an act of physical or sexual abuse involving physical contact that would not have amounted to a criminal offence under state law, at any reasonably relevant point of time. However, it must be recognised that there are now a number of offences which have developed because of societal change, particularly changing technology which has created new methods of offending against children. These offences may or may not involve an element of contact or assault; for example:

- a. grooming offences;
- b. Commonwealth sexual offences involving the use of transit services;
- c. intentionally transmitting a very serious disease; and

- d. some child pornography offences and sexual servitude offences.

In many cases potential claimants of historical child sexual abuse will not be covered by these relatively new offence provisions. Equally, potential claimants will not be covered by offences that are introduced in future. It is worth noting here that 92.4 per cent of participants before the Victorian Committee reported abuse occurring between the 1930s and 1980s.¹⁴ Similarly, 71.4 per cent of people attending private sessions at the Royal Commission, so far, reported abuse occurring prior to 1980.¹⁵

The existence of complex evidentiary and procedural rules that apply to prosecutions for child sexual abuse means that many cases are not prosecuted even though the survivor is prepared to give evidence in court, and the perpetrator is still alive or, if they are prosecuted, result in an acquittal.

This option does not meet the objective that any reform should be consistent with the principles of fairness, equality and justice as it would only apply to a small proportion of survivors, and where the perpetrator has the resources to provide compensation to the survivor.

Option E: Amend the post 2002 provisions affecting minors sexually abused by a person who is not a 'close associate'

- 10. Should the 2002 amendments relating to minors be retained as is or amended in light of the issues raised above?

knowmore believes that the problems identified in relation to the 2002 amendments are better resolved by the adoption of Option A. Option E is not consistent with the objective that reform should comply with the principles of fairness, equality and justice. Nor does it promote the objective of ensuring that the costs of child abuse are fairly assumed by perpetrators and institutions.

The types of actions covered

- 11. How should the type(s) of actions to which any amendments apply be defined?

knowmore supports reform of limitation periods applying to a broad category of torts arising out of sexual and physical abuse against children. **knowmore** supports the approach taken in the Victorian Bill that will introduce reforms to actions founded on death or personal injury resulting from acts of physical or sexual abuse of children, as well as psychological harm arising out of those acts. **knowmore** supports this approach so that the reforms are as effective as possible.

knowmore does not recommend that the terms sexual abuse, or physical abuse be defined; however, if a definition is supported then we recommend that it can be based on the approach taken to define sexual

¹⁴ Family and Community Development Committee, *Ibid* Volume 1, 51

¹⁵ Commonwealth of Australia, Royal Commission into Institutional Responses to Child Sexual Abuse, *Interim Report* (2014) Volume 1, 286-287

misconduct and serious physical abuse for the purpose of reportable conduct (see the NSW Ombudsman's Practice Update 2013/1 Defining Reportable Conduct).

The criminal law for the period in which the abuse took place should not be used to define the types of actions to which the amendments should apply. As noted above, it must be recognised that some forms of sexual abuse were not covered by the criminal law until fairly recently and the cohort of people who experienced sexual abuse prior to such reform of the law of sexual offences is significant.

knowmore supports reforms extending to torts arising out of physical violence because the reported experience of our clients is that very often sexual abuse in an institutional context was accompanied by other forms of abuse, including extreme physical and emotional abuse and neglect. The use of extreme violence contributes significantly to the trauma and shame experienced by child sexual abuse, and can be a key strategy used by perpetrators.

12. Should any legislative amendments be retrospective?

13. If they are to be retrospective, what transitional provisions may be required?

knowmore supports reform of limitation periods so they do not apply to civil actions in relation to physical and sexual abuse of children, no matter when the abuse took place. That is, the reforms should be retrospective. This is necessary to ensure that the reforms are fair, apply equally to all claimants and provide justice for all potential claimants.

The discussion paper raises two sets of circumstances that need to be considered if reforms were applied retrospectively. The changes to the law should apply to any claim that has not been determined on its merits; that is, the change to the law should apply to claims that have already commenced where an extension to the limitation period has not yet been determined, as well as claims where the limitation period was judicially determined at an interlocutory state. If reform was not applied in this way it would disadvantage claimants who have already sought to bring a claim from having an opportunity to have the merit of their claim determined in the same way as other claimants will be able to do under the reformed law.

14. Is it likely that changes to the application of limitation periods to child sexual abuse cases would lead to a significant increase in the number of cases commenced?

15. Is it likely that any increase in civil child sexual abuse cases would have a substantial impact on insurance premiums?

16. If there were an impact on insurance premiums, is it likely that this would have any impact on the viability of any NGOs offering services to children, and how could this be managed?

The existing law arbitrarily prevents many survivors of child sexual abuse from having the merit of a claim for personal injury judicially determined. Consequently the cost of harm caused by child sexual abuse, and failure

by institutions to protect children from abuse, is unfairly borne by the individuals who experienced the abuse, their family and the Australian community, rather than the individuals who perpetrated the abuse and the institutions involved.

While it is likely that reform of limitation periods, particularly the adoption of Option A, will result in an increase in claims, not all of those claims will be litigated through the courts, and it is likely that many claims will be settled through negotiation.

Claimants will continue to face the barriers to litigation against institutions that are noted in the discussion paper. **knowmore** anticipates that reform of limitation periods will not result in a significant increase in claims that do not have merit, due to these barriers survivors face in securing legal assistance, and the rules regarding litigation costs.

Direct impacts on the legal system are difficult to predict; however in jurisdictions where reform of limitation periods has occurred, the impact on the legal system has not been overwhelming. For example, following the decision of the House of Lords in 2008 in *A v Hoare*,¹⁶ there is no evidence of a flood of claims entering the English legal system.

Any *potential* impact on the legal system, and potential defendants, must be weighed against the clear benefits that would flow to survivors of child sexual abuse if limitation periods were reformed. The reforms will not alter the legal obligations of perpetrators and institutions to not harm children in their care, and to take precautions for risk of harm. The reforms will however allow survivors to have their claims assessed on their merit, although survivors will still face other legal, evidentiary and financial barriers to pursuing a claim founded on child sexual abuse.

knowmore suggests that changes in risk prevention, employee screening and the development and adoption of best practice guidelines flowing from the Royal Commission, as well as the potential capacity for survivors to access any consequent redress scheme, are likely to mitigate against the impacts of reform to limitation periods on the bringing of cases and insurance premiums.

ATTACHMENTS

Appendix 1 – knowmore Infographic: Service snapshot to 31 December 2014

¹⁶ *A v Iorworth Hoare; C v Middlesborough Council; X & Anor v Wandsworth LBC; H v Suffolk County Council; Young v Catholic Care (Diocese of Leeds)* [2008] UKHL 6.