

3 December 2014

Limitations Exposure Draft
C/- Department of Justice
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LIMITATIONS EXPOSURE DRAFT

Thank you for the opportunity to provide feedback on the Exposure Draft of the Limitations of Actions Amendment (Criminal Child Abuse) Bill 2014.

The Insurance Council of Australia (ICA) notes that this Exposure Draft Bill will implement recommendation 26.3 of *Betrayal of Trust*, the Report of the Family and Community Development Committee's inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations.

The ICA acknowledges the terrible and long-lasting effects of criminal child abuse, and the challenges posed for victims by the existing limitation periods under the *Limitation of Actions Act 1958* (Vic).

The ICA also notes that the Bill will not re-open cases that have previously settled or been subject to final judgment.

However, the Bill is drafted to apply to past, as well as future claims of abuse, regardless of whether or not past claims were previously subject to a limitation period.

It is therefore necessary for the ICA to identify that adjustments to civil liability provisions can have a significant impact on the affordability and availability of liability insurance for various organisations.

Further, if a limitation period is removed with retrospective effect, it can lead to a circumstance whereby a relevant insurer may be exposed to claims from a policyholder, for which it has not collected any, or sufficient premium. If a significant number of claims are made against an insurer as a result of this legislative adjustment, it could have a substantial impact on the capital position of an insurer, and this can raise challenging issues of prudential management.

The ICA requests the Victorian Government to take this matter into account before finalising its position on the removal of limitation periods.

The ICA also acknowledges the potential barriers to claims against insurers for child sexual abuse. A recent paper by Sharanjit Paddam titled “The Royal Commission into Institutional Responses to Child Sexual Abuse – Implications for Insurers” canvasses these matters. This paper was presented to the 2014 General Insurance Seminar of the Actuaries Institute. This paper also more broadly discusses a number of key matters for consideration by insurers, as a result of the Royal Commission into Institutional Responses to Child Sexual Abuse (“Royal Commission”). This Paper notes some of the significant uncertainties for insurers in assessing the potential impact of the Royal Commission.

The ICA has been liaising with the Royal Commission on matters of civil litigation and redress. We anticipate the release by the Royal Commission of a White Paper on these matters in early 2015.

The ICA expects that it will provide a formal submission in response to matters raised in this White Paper. Further detail on the position of the ICA on proposed reforms to civil liability provisions will likely be set out in our response to the White Paper of the Royal Commission.

If you have any questions about this submission, please contact Vicki Mullen, General Manager, Consumer Directorate on (02) 9253 5120 or vmullen@insurancecouncil.com.au.

Yours sincerely



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