



WOMEN'S LEGAL SERVICES NSW

Incorporating
Domestic Violence Legal Service
Indigenous Women's Legal Program

2 October 2012

Our ref: PD:CS:B410/07

Your ref: 200801481

Ms Jodie Vella
Solicitor
Crown Solicitor's Office
GPO Box 25
Sydney NSW 2001

Dear Ms Vella,

Biles & Ors v State of New South Wales; 2008/316976

We refer to the above matters. As you are aware, in the management of the Plaintiffs' Notices of Motion ('**the Motion**') in each of these matters, Her Honour Judge Truss has raised with us the jurisdictional basis of the declaratory relief sought in order 1 of the Motion.

We acknowledge that Her Honour's concerns are well founded.

The Motion is reactive to the defendant relying on a Limitation Act defence. The reason for seeking declaratory relief was because, in the first instance, the plaintiffs rely upon s.52 of the Limitation Act and say they are not out of time and thus there is no need for any extension. Alternatively, orders 2 and 3 of the Motion relate to extending time.

Given the parties' wish to have the limitation point determined before trial it was obviously necessary to formulate, via the Motion, a vehicle for an adjudication of the issues.

If any of the plaintiffs are correct in their primary position and the proceedings were not commenced outside the limitation period, then your client's limitation defence relating to those plaintiffs will obviously fail, making orders for extension of time in respect of those plaintiffs unnecessary.

On reflection, it seems to us that the way of achieving an adjudication of the limitation point, within jurisdiction, and before trial, is to amend the Motion to delete the prayers for declaratory relief and in lieu seek orders that those parts of the defences seeking to rely upon the Limitation Act be struck out.

In this way the court can determine whether your limitation defences are well founded and if so, then proceed to determine whether the limitation period ought be extended.



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We trust you agree with this course and **attach** a suggested draft motion, which we would propose filing in Court, ideally when next before Her Honour Judge Truss on 12 October 2012. Please confirm your consent.

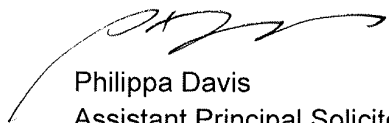
Further, we confirm that on 20 July 2012, Her Honour Judge Truss made directions for the parties to remove irrelevant documents and ensure that only material relevant to the matter of Kathleen Biles is before the court at the forthcoming limitations hearing in November 2012.

We have undertaken that process and are comfortable that the material exhibited to the affidavits we propose to read comply with Her Honour's direction.

We have been served with large volumes of documents upon which the defendant proposes to rely, but are concerned that much of it may be quite irrelevant to the forthcoming Motion. To save time at the hearing and avoid confusion, would you please provide us with an index of the relevant documents upon which you propose to rely.

Yours faithfully,

WOMEN'S LEGAL SERVICES NSW



Philippa Davis
Assistant Principal Solicitor

Form 20 (version 2)
UCPR 18.1 and 18.3

AMENDED NOTICE OF MOTION

COURT DETAILS

Court	District Court of New South Wales
Division	Common Law
Registry	Sydney
Case number	2008/316976

TITLE OF PROCEEDINGS

First plaintiff	Kathleen Monica BILES
Number of plaintiffs	14
Defendant	STATE OF NEW SOUTH WALES

FILING DETAILS

Person seeking orders	Plaintiff
Filed in relation to	Plaintiff's claim 2008/316976
Legal representative	Janet Loughman, Principal Solicitor Women's Legal Services NSW
Legal representative reference	JL:CS:B410/07
Contact name and telephone	Charissa Sun (02) 8745 6900

PERSON AFFECTED BY ORDERS SOUGHT

Plaintiffs and defendant in proceedings 2008/316976

HEARING DETAILS

This motion is listed at 9:30am 12 November 2012, District Court Sydney.

ORDERS SOUGHT

1. A declaration that:

- a. ~~At all material times each of the Plaintiffs was under a disability within the meaning of s.52 of the *Limitation Act 1969* ("the Act").~~
- b. ~~The Claim made by each of the Plaintiffs was not commenced outside the limitation period prescribed under s.14 of the Act.~~

1A. That paragraph 20 in each of the defences filed in these proceedings, pleading a bar under the Limitation Act 1969 (NSW) ("the Act"), be struck out.

- 2. Alternatively that pursuant to s.58 and/or s.60G of the Act the limitation period under s.14 of the Act be extended so that it expires on the day after proceedings were commenced by the Plaintiffs.
- 3. Such further orders including orders as to costs as the court considers appropriate.

SIGNATURE

Signature of legal representative

Capacity

Solicitor for the Plaintiff

Date of signature

NOTICE TO PERSON AFFECTED BY ORDERS SOUGHT

If you do not attend, the court may hear the motion and make orders, including orders for costs, in your absence.

REGISTRY ADDRESS

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