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Ms Angie McClung
Women's Legal Services NSW
PO Box 206
LIDCOMBE NSW 1825

By facsimile (02) 9749 4433*[delete options not required]*

Dear Ms McClung

AIL & Ors v State of NSW

I refer to the limitation application which is listed for hearing on 20 February 2012.

In the course of preparing the defendant's evidence on the limitation application, it has become apparent that the lapse of time since the events giving rise to the plaintiffs' claims has resulted in the deterioration of evidence upon which the defendant would otherwise have relied in its defence of the substantive proceedings with the consequence that a fair hearing is no longer possible.

In the circumstances, the defendant proposes to file an application returnable on 20 February 2012 seeking orders that the plaintiffs' proceedings be permanently stayed or dismissed or that the claim be struck out as an abuse of process, in accordance with the principles in *Batistatos v Roads and Traffic Authority of New South Wales* (2006) 226 CLR 256. I **enclose** a copy of the draft Notice of Motion.

The defendant proposes to rely upon the affidavits of Peter Maxwell sworn on 17 May 2011 and 3 August 2011 together with the exhibits thereto in support of the application.

Given that the application does not involve any additional evidence and that, if successful, it would result in the proceedings being brought to an end, it seems expedient that the application be heard prior to the limitation application - and this is the course I propose to suggest to the Court.

Please advise as to whether you have any objection to this course and, if so, the basis for your objection so that I might consider the defendant's position.

Yours faithfully

Evangelos G Manollaras
Solicitor
for Crown Solicitor
Encl. *[delete if not required]*