

29 June 2018

Mr Alan Cameron AO  
Chairperson  
NSW Law Reform Commission  
GPO Box 31  
Sydney NSW 2001

Dear Mr Cameron

### **Consent in relation to sexual assault offences: preliminary submission**

Thank you for the opportunity to make a preliminary submission to the NSW Law Reform Commission's review of consent in relation to sexual assault offences.

Legal Aid NSW suggests that the Commission consider the following matters as part of its review.

#### **The impact of the definition of consent on defendants under the age of 18**

Legal Aid NSW suggests that the Commission give particular consideration to the impact of the definition of consent on children and young defendants. We believe that provisions in relation to knowledge of consent need to be carefully considered to ensure that they provide sufficient scope for the trier of fact to take into account the level of development and maturity of children who are charged with sexual assault offences, and circumstances where the accused and victim are peers.

#### **The impact of delay of sexual assault trials on complainants and accused**

We note that the Commission has been asked to have regard to *issues relating to the practical application of section 61HA, including the experiences of sexual assault survivors in the criminal justice system* (Terms of Reference [2]). In the case of *Lazarus* the NSW Court of Criminal Appeal (in the second appeal) determined that it was not in the interests on justice to order a re-trial of the accused, partly because any re-trial would take place more than five years after the event.<sup>1</sup> For several reasons, lengthy delay in sexual assault trials may have significant adverse consequences on

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<sup>1</sup> *R v Lazarus* [2017] NSWCCA 279.

complainants and accused persons. We suggest that the Commission consider the issue of delay of sexual assault trials, including in the context of the pending evaluation of the Child Sexual Offence Evidence Pilot, and how lessons from the Pilot might be applied to proceedings involving adult complainants.

**The application of the definition of consent to the new offences of sexual touching and sexual acts**

The recently enacted *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018* (NSW) extends the definition of consent in section 61HA to new offences of sexual touching and sexual acts (sections 61KC-61KF). We suggest that Commission consider the application of the consent provisions to these new offences, including the potential consequences of any further reform on the conduct captured by them.

We look forward to making a more detailed submission on this review in due course. If you have any questions about this preliminary submission, please contact [REDACTED]

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Yours sincerely

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Brendan Thomas  
**Chief Executive Officer**