



The Hon Gabrielle Upton, MP
Attorney General
GPO Box 5344,
SYDNEY NSW 2001

16 July 2015

KINGSFORD
LEGAL CENTRE

Dear Attorney,

Changes to the Victims Compensation Scheme

Kingsford Legal Centre welcomes the NSW Government's commitment to making changes to the Victims Compensation Scheme. We understand that the changes will allow cases that were lodged under the former scheme to be reassessed under that scheme's provisions. We are aware that there are many key factors impacting vulnerable clients when implementing the changes.

About Kingsford Legal Centre

Kingsford Legal Centre (KLC) is a community legal centre based at the University of New South Wales in Sydney, NSW. It has been providing legal advice and advocacy to people in need of legal assistance in the Randwick and Botany Local Government Areas since 1981. KLC provides general advice on a wide range of legal issues and undertakes casework for many clients who, without our assistance, would be unable to afford a lawyer. In 2014 KLC provided 1725 legal advices and opened 271 new cases. KLC has a specialist employment law service, a specialist discrimination law service (NSW wide) and an Aboriginal Access Program. In addition to this, we operate as a teaching clinic for UNSW law students.

Considerations for vulnerable clients

KLC provides legal advice and representation to clients. Our casework focus is on complex matters for clients that have experienced violence, child sexual abuse or sexual assault. In 2014 we gave 81 advices and opened 17 new cases about victims compensation.

Based on our experience, we suggest that you consider the following factors in implementing the changes to the Scheme.

- **Ex gratia payments:** We are concerned that reopening cases would cause significant additional trauma to applicants who have already experienced initial trauma from acts of violence and further trauma from reliving these experiences in applying for compensation and other legal processes. Reopening cases would also result in considerable additional burden for victims services and legal assistance services supporting applicants through the process. We suggest consideration be given to making ex gratia payments to applicants to avoid additional retraumatisation.
- **Funded legal assistance:** If cases are to be reassessed under the old scheme, it is essential that funded legal assistance is provided to vulnerable applicants to help them navigate the system and avoid unnecessary retraumatisation. Community legal centres will struggle to meet the demand of assisting previous clients as well as

current and new clients within existing resources. We are aware of this legal need.

- *No time limit for applicants to reapply:* It may take applicants some time to assist particularly in rape cases, particularly for those that have experienced trauma. Further, it is likely that Victims Services may face difficulties in contacting more vulnerable applicants in a short period of time. If a time limit is imposed, it should be a minimum of 5 years, in line with the current scheme where applications for financial assistance can be kept open for 5 years.
- *Adequate notice for applicants:* Affected applicants must be notified of changes to the scheme and the opportunity for them to have their case reassessed with the possibility of additional compensation.
- *Withdrawn applications:* Applicants who withdraw their applications following the changes to the scheme should be given the opportunity to re-apply. Some applicants may not have gone through with their applications following changes when the amount of compensation they could receive has decreased drastically.

On-going concerns with the current scheme

We continue to have concerns that the current evidence requirements can be a significant barrier to victims of sexual abuse and sexual assault accessing the scheme. Applications for a recognition payment must be supported by a police or government report and a medical, dental or counselling report that verifies that the applicant has been injured as a result of the act of violence. While some victims may have a police report, many victims of sexual assault are well documented by health care professionals rather than police or government organisations. This is particularly true for Aboriginal and Torres Strait Islander communities and other communities, where there can be a strong preference for police or government organisations.

We urge you to consider as a matter of urgency amending the documentary evidence requirement for applications for recognition payments. We require that an applicant establish an act of violence and an injury on a civil standard of proof, without prescribing a form of evidence. At a minimum, we believe that an act of violence and injury should be sufficient to establish an act of violence and injury should be sufficient.

We look forward to the legislative review of the *Victims Rights and Support Act 2017*, and will raise additional concerns through that process, including the need for restitution, and the need for express reference to a balance of probability test in the Act. We request that a consultation period of at least 3 months be included as part of the review to facilitate engagement with applicants and non-government organisations in the process.

Please call me on (02) 9385 9566 if you would like to discuss our comments. We would also welcome the opportunity to meet with you to discuss our concerns in person.

Yours faithfully,
KINGFISHER LEGAL CENTRE



Emma Kedge
Acting Director