



29 July 2016

Director, Civil Law
Department of Justice
By email: policy@justice.nsw.gov.au

Dear Director

Statutory Review of the Victims Rights and Support Act 2013

Kingsford Legal Centre is pleased to have an opportunity to provide a submission to the statutory review of the *Victims Rights and Support Act 2013* (the Act). Kingsford Legal Centre (KLC) is a community legal centre based at the University of New South Wales providing free community based legal services to people in the Randwick and Botany local government areas. KLC provides legal advice on a broad range of legal issues with a focus on assisting disadvantaged clients and conducts outreach clinics at Kooloora Neighbourhood Centre, Long Bay Correctional Centre, South East Community Connect in

violence and victims of domestic violence, sexual assault or child sexual abuse who suffer serious psychological harm.

2. Category B should be amended to specifically include psychological or psychiatric harm as a form of GBH under this category.
3. Category C recognition payments should be available to victims of domestic violence who suffer psychological harm. Acts of choking, suffocation, strangulation or attempts to do those acts should be included in Category C.
4. The definition of harm for victims of domestic violence, sexual assault and child abuse should be expanded to include vocational, cultural, social, behavioural and interpersonal harm.
5. The Act should be amended to remove the requirement for a victim of sexual assault, child sexual assault and domestic violence to prove injury, unless the victim chooses to pursue a category of recognition payment which requires proof of a specific injury (such as grievous bodily harm).
6. Amend the Act so that children of primary victims who are under 18 years of age at the time of their parent or carer's death should automatically qualify for a Category A recognition payment.
7. Improve access to assistance under the Act for Aboriginal and Torres Strait Islander victims and ensure that victims seeking counselling assistance have access to Aboriginal and Torres Strait Islander counsellors, counsellors who speak languages other than English and counsellors with cultural competency.
8. Amend the Act to remove the specific requirements for documentary evidence for claims for economic loss and recognition payment. Instead claimants should be required to provide evidence of an act of violence to a standard of proof of 'reasonable likelihood.'
9. Amend the Act to change the evidence required to support claims for financial loss to allow claimants to substantiate claims with evidence from a broader range of sources.
10. Amend the Act to remove the time limits for claims for recognition payment and financial assistance by victims of domestic violence, sexual assault, child abuse and child sexual abuse.
11. Amend the Act to allow other claims for financial loss to be made out of time in exceptional circumstances.
12. Amend the Act so that the time limit for applying for internal review of a decision is longer.
13. Amend the Act so that victims of domestic violence, sexual assault and child sexual assault have a statutory right to elect whether or not the Commissioner can pursue restitution from offenders.

others, difficulties with inter-personal and sexual relationships and impairment of sexual pleasure.⁸

applications that were lodged for counselling were from victims who identified as Aboriginal or Torres Strait Islander.¹⁰

However, it is well recognised that Aboriginal and Torres Strait Islander women and girls experience high rates of domestic violence, and are up to 35 times more likely to be hospitalised due to domestic violence related assaults than other Australian women and girls.¹¹ The current application figures by Aboriginal and Torres Strait Islander victims do not reflect the incidence of violence experienced by Aboriginal and Torres Strait Islander women.

While it is positive that Aboriginal and Torres Strait Islander victims of crime are making use of benefits that are available under the Act, KLC believes that the data does not reflect the greater rates of victimisation of Aboriginal and Torres Strait Islander people, particularly Aboriginal and Torres Strait Islander women and children.

KLC recommends that administration of the Act should be improved to increase access for Aboriginal and Torres Strait Islander people and that the arrangements in place for approved counselling should reflect the area of greatest demand and need. Claimants, including those in regional and rural areas, should have access to Aboriginal and Torres Strait counsellors, counsellors who speak languages other than English and counsellors with cultural competency.

Evidence requirements

Under the Act a claim for financial assistance for immediate needs must be supported by documentary evidence (such as medical or police report) to show *on the balance of probabilities* that the applicant is a victim of an act of violence. A claim for a recognition payment or for financial assistance for economic loss must be supported by a police report, or a report to a government agency, and a medical, dental or counselling report to *verify* that the claimant has actually been injured as a result of an act of violence.¹²

It is not clear why two different standards of proof apply to these claims. The standard of proof that applies to personal injury compensation claims is the balance of probabilities. The Act does not provide economic loss compensation in accordance with the principles that apply to those types of claims. The emphasis of the current Act is on 'practical and financial support',¹³ yet the Act places access to that support at a higher evidentiary standard than recognition payment that i

Case study: Evidence and time limits for domestic violence and sexual assault

Ella was physically and sexually abused for two years throughout her relationship with Adrian. Some incidents were reported to police and Adrian was convicted of assault for one act of violence that occurred at the beginning of their relationship.

However other more serious acts of violence, including multiple sexual assaults, were never reported to police. Ella was unable to report one serious assault that resulted in an injury that required surgery because she was imprisoned by the perpetrator for one week following the event in which further physical abuse and sexual assaults occurred. While there were witnesses and medical records that document the injuries Ella suffered she did not make a report to police. Ella did not report some incidents to police because she was scared that she would suffer further abuse. Eventually Ella sought help from the police to get an apprehended domestic violence order. Ella was not able to claim for the medical costs for the surgery that she had as more than two years had passed by the time she sought legal advice.

evidence of an act of violence to a standard of proof of ‘reasonable likelihood.’

Evidence of loss in financial assistance claims

A victim seeking to claim for financial assistance for economic loss (loss of income) must provide evidence from the employer stating that the claimant was absent from work for a specific period¹⁹. Claims cannot be made on the basis of loss of capacity for work supported by other kinds of evidence. Claimants who are self-employed, or who work on a casual or sessional basis cannot comply with the requirement in the Act.

Victims who seek to claim financial assistance for actual expenses incurred as a result of the acts of violence must provide receipts, invoices or other approved forms of substantiation of expenditure.²⁰

Case study: Financial Loss

Jennifer was a victim of sexual assault which occurred in a small, close knit community where she had lived for some years. Prior to the sexual assault she worked on a casual basis at a number of different places. Following the sexual assault she continued to work however she experienced a significant drop in her income due to a number of factors that were directly connected to the harm caused by the sexual assault. While she was recovering from sexual assault she accepted fewer casual work opportunities. Due to the nature of her employment she did not have access to any paid leave.

She also had to sell up and move out of the community as a result of the sexual assault at considerable personal and economic cost.

She could not provide a letter from an employer saying she was absent from work on particular dates. She was not awarded any assistance for loss of income even though the records for her taxable income indicated that the drop in her income was connected to the sexual assault, and she could provide evidence that she had in fact refused offers of work more often following the sexual assault. This did not satisfy the requirements in section 39(4)(b) of the Act.

Time limits disadvantage women and child victims

A claim for financial assistance or recognition payment must be made within two years of the act of violence, or if the claimant was a child at the time of the violence, two years after turning 18 years.

Claims for recognition payment for domestic violence, child abuse or sexual assault can be made up to ten years after the act of violence. For child sexual abuse there is no time limit for a claim for recognition payment and for financial assistance (except the time limit still applies for financial assistance for loss of income).

The time limits imposed by the Act are arbitrary and potentially discriminatory given what we now know about the nature of domestic and sexual violence, and its impact on victims and delay in disclosure of child sexual abuse.

The Act is now out of step with recent reforms to the Limitation Act which

application for an internal review however clients commonly have to wait up to 2 or 3 weeks for an appointment at KLC. The time limit of 28 days is often not sufficient for a client to obtain legal advice and consider their position.

KLC recommends that the Act should be amended to introduce broad discretion to allow an extension of time for an internal review.

Victims of domestic violence and sexual abuse should be able to elect a restitution order is made

The Commissioner of Victims Rights has discretion to make an order for restitution of victims assistance against a perpetrator who has been convicted of an offence arising from the acts of violence