

**Submission to the**

**Scheme**

**30 April 2012**

Kingsford Legal Centre

Faculty of Law

University of New South Wales

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## **About Kingsford Legal Centre (KLC)**

KLC is a community legal centre which 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 2011 KLC provided 1818 legal advices and opened 388 new cases. KLC also has a specialist employment law service, a specialist discrimination law service (NSW wide) and an Aboriginal Access Program. In addition to this work, KLC also undertakes law reform and policy work in areas where the operation and effectiveness of the law could be improved.

## **Summary of Recommendations**

1. We recommend that sufficient resources be dedicated to the Victims Compensation Tribunal in order to enable claims to be determined within 12 months.
2. We recommend the continuation of a Victims Compensation Stion

12. We recommend the retention of \$7,500 as a threshold for claiming under the scheme.
13. We recommend the continued use of a schedule of injuries but with increased amounts of compensation for each injury.
14. We recommend that there should be better recognition of psychological conditions in

## **Victims Compensation matters**

Kingsford Legal Centre provides legal advice and representation to our clients in victims compensation matters. Our casework focus is on complex matters, for clients that have experienced domestic violence or sexual assault. In 2011 we gave advice to 54 clients about victims compensation and currently have 16 cases open.

In recent years we have noted several difficulties with the current system which impacts on the efficacy of the system and negatively affects the ability of the scheme to meet the objects of the Act.

In particular our current concerns with the operation of the scheme are as follows:

### **Delay**

The current scheme which operates with an estimated time of 25 months from lodgement to determination negatively impacts on victims and is a disincentive to claiming compensation under the scheme. The length of time before a determination makes it very difficult for individuals to act in their own cases. However, many solicitors are also reluctant to act in matters that take over 2 years for a relatively small amount of money.

Delay in determining claims also significantly impacts on the ability of victims to 'move on with their life' and can prolong feelings of trauma associated with the violence. The length of time a claim can take is a significant disincentive for victims who may wish to try to move on from the violence and feel that a long claims process delays this. Victims may have to continue to re-visit the facts of their cases as additional medical reports have to be sought and submissions written. This means that victims have to discuss, re-discuss and re-discuss what happened to them which has the effect of re-traumatising them. It would be highly preferable that sufficient resources were available in order to ensure a timely, efficient process and decision within 12 months.

### **Recommendation:**

**We recommend that sufficient resources be dedicated to the Victims Compensation Tribunal in order to enable claims to be determined within 12 months.**

**Importance of victims compensation as an area of law which women use for seeking some form of legal recognition of a wrong**

Traditionally women who have been subject to violence have not used the legal system to seek recognition of that wrong to the same degree as men. The levels of women reporting sexual assault is very low, with estimates that only 15 to 30% of women reporting they have been sexually assaulted<sup>1</sup>. Furthermore, more than 80% of sexual offences that are reported to police do not proceed to prosecution<sup>2</sup>. And of those cases that actually reach court, less than 50% of defendants are found guilty<sup>3</sup>. In the area of domestic violence, women have also historically not reported the violence they have experienced. In domestic violence there have been many efforts to increase levels of criminal prosecution. This is slowly starting to change. Currently 87% of victims of domestic violence are women. The offender is charged in 19% of incidents of intimate partner violence reported to police, with charges leading to conviction in 65% of cases<sup>4</sup>

**Relatively low rates of compensation, especially for women who are victims of violence**

***'Related acts' and the impact on women- case studies<sup>6</sup>***

Women's experience of longstanding, repeated, severe violence from their intimate partners has a severe impact on their self esteem, physical health, ability to manage their lives and general mental health. To capture this in one simple award does not adequately recognise the severity of the injury.

The Act should better recognise that being a victim of long term violence by the same perpetrator

**Recommendations:**

**We recommend that the 2011 amendments to the Act should be reversed to enable victims to claim for previous acts of violence and injuries, and that claims can be lodged and assessed as the victim decides;**

**We recommend that fees to solicitors should be increased in order to ensure proper levels of representation by the private profession;**

**We recommend that the expertise and value for money community legal centres provide to the scheme should be recognised, and the scheme should consider how community legal centres can be supported to continue this work.**

## Comments on the Scheme

### Purpose of the Scheme

KLC supports the retention of both a rehabilitation and compensation focus, and in particular notes that for our clients the receipt of compensation can have a rehabilitative function. We do not support any shift toward a model which only provides in-kind support through counselling and expenses claims as the payment of compensation for our clients is in fact often critical to the recognition of the injury and assists them in a practical way to overcome the impact of long term violence in their life.

*Wen formed a relationship with Stephen. After they had been going out for about 6 months, Stephen mo  
Stephen regularly abused alcohol and marijuana. He began to make threats of violence to Wen. Wen decided that she did not want to live with him any longer, and kicked him*

### Recommendation:

**We recommend that the scheme continue to make lump sum payments of compensation to victims.**

## **Levy and Restitution**

We support the role of a levy on convicted offenders, but we note that this levy is now imposed on many non-violent offences. We believe that there should be judicial discretion as to whether this levy be imposed for people experiencing financial hardship, but in general we support the retention of the levy.

KLC supports the continued role of restitution as a way of holding convicted offenders responsible for any compensation payouts. We note that in some cases the future possibility of restitution proceedings can be a disincentive to victims and in some cases victims do not proceed with claims on this basis. Of paramount concern to women in relation to the possibility of restitution proceedings is ensuring that any proceedings do not compromise their safety.

We support the continuation of restitution but note that many convicted offenders who have spent time in prison are often in a position of having limited financial resources and that the scheme cannot rely on restitution as an effective funding mechanism and that further funds from Treasury are required for the scheme's long term financial viability. However, we believe that the concept of accountability for criminal offences which cause injury should be retained in its current form through restitution.

### **Recommendation:**

**We recommend that there should be judicial discretion as to whether to impose the levy on convicted offenders.**

**We recommend the continued use of restitution proceedings against convicted offenders as a means of ensuring additional responsibility by convicted offenders.**

## **Limitation Periods**

KLC supports the retention of a 2 year limitation period for claims to be brought, with extension of time provisions.

**Darlene**

*Darlene was in a very violent relationship with her husband. They had a child together and the child was often a witness to the violence. When Darlene would try and escape the violence her husband would track her down and frequentle the*

**Recommendations:**

the schedule, and believe that the threshold for establishing a psychological injury is too high when compared to physical injuries.

We do not support the requirement of mandatory forms of evidence, such as a Police report in order for a claim to succeed. For our clients there may be many compelling reasons why the violence was not reported to the Police, including fear of the perpetrator, fear of intervention of community services in relation to children, or a lack of trust in the Police response based on previous experiences.

Instead a claimant should be able to bring all available evidence to establish the violence and injury and should not be precluded from doing so in the absence of a Police report.

We also note that due to the differing standard of balance of probabilities that a conviction should not be required in order to succeed with a claim. However, we have noted in recent times that many cases have failed in the absence of a conviction and we have been concerned at the extent to which the Tribunal relies heavily on the findings in criminal proceedings, when in fact the test is significantly different.

**Recommendations:**

**We recommend the continued use of the balance of probabilities as the evidentiary test in deciding a claim for compensation.**

**We recommend additional training for compensation assessors to ensure they use this test and the wide range of evidence that claimants may present.**

**Compensation**

The aim and purpose of compensation for clients depends on different factors for each one. For some clients it is a tangible recognition of their experience of violence, for others it is rehabilitative, and for other clients it acts as a form of restitution. For all our clients, compensation plays a very practical role in helping them recover from the long term financial disadvantages they face as victims of violence.

### **Impact of Compensation**

*Sadaf is an Iranian woman. She moved to Australia with her husband just twenty days after she was married*

*at her, pushes her around and forces her to have sex wi*

*When he leaves the house he takes the cables for the internet,*

*tiny allowance so she*

*rts her.*

*One day, after they have a fight, her husband throws her out of the house. He tells her he*

*have to leave the country as her visa is dependent on him. Sadaf is distraught. She has nowhere to go, no money and none of her belongings. She goes to a refuge. Because of her visa she does not qualify for any social security benefits. She cannot return to Iran as her family have threatened to kill her for leaving her husband. Although she speaks English well, and in Iran was qualified as an architect, in Australia she can only get a job paying minimum wage.*

*Sadaf stays in refuges for over a year. Eventually, with help from a social worker she is put in priority housing. She still has very little money or belongings. She can no longer contact her family and feels very alone. She is referred to KLC by her caseworker. When KLC advises that she might be eligible for victims compensation she says that, with the extra money, she will be able to buy some furniture and new clothes. She feels as though being able to get her life back together will help her to regain confidence; she hopes she will be able to work as an architect again here in Australia.*

### **Sarah**

*Sarah married John in India. Sarah moved to Australia to live with her new husband. Shortly afterwards, John became abusive towards Sarah. He forced her to sleep with him and threatened her on many occasions. Sarah eventually worked up the courage to leave John. She also contacted the police but refused to press charges due to fear she would be*

independence and autonomy, for others it may allow them to pay for fees at a TAFE college to enable them to retrain and start their lives afresh.

The aim of compensation should be to recognise the experience of the victim and attempt to provide redress for the impact violence has had on their life.

We strongly support the retention of lump sum payments of compensation but note the generally low amounts awarded for long term victims of domestic violence that needs urgent reconsideration under the scheme. These relatively low amounts and the long process for determination can diminish the value of compensation in the eyes of victims.

**Recommendations:**

**We recommend the retention of lump sum payments of compensation.**

**We recommend that lump sum payments should be increased in value.**

**We recommend that victims of multiple acts of violence by the same perpetrator should be compensated at a higher level and the impact of this violence appropriately recognised.**

**Expenses payments**

We support a wide definition of expenses under the fund including:

medical and dental expenses;

relocation expenses, costs to repair of the home or extra security measures;

loss of earnings;

replacement of property.

However, we are aware that some clients delay medical and especially dental treatment because they cannot afford to meet the expenses costs upfront.

***Inability of pay for dental treatment***

*Lei has recently left a long term violent relationship. She has limited access to money and is trying to support her 3 children. As a result of the violence she has severe problems with her teeth. Her dentist has told her that it will cost several thousands of dollars to repair. Lei can no longer can afford private health insurance and has not had the dental work done because she cannot afford it. Her missing and broken teeth are also impacting on her ability to get a job as her appearance is affected.*

*She is not able to make an expenses claim as she has not paid for the work to be done, she can only make an urgent payment request. Lei is worried that this process is a lot of paperwork and is not sure she wants to proceed.*

**Interim payments for hardship**

KLC supports the retention of access to interim payments on the basis of hardship, but notes that the need for interim payments could be reduced if all claims were dealt with in a timelier manner.

KLC believes that there needs to be a review of the current process for interim payments. The current process is too slow and costly. KLC believes that there needs to be a review of the current process for interim payments. The current process is too slow and costly.

## **Overall funding of the Scheme**

KLC notes the comments in the Discussion paper about the ongoing financial viability of the scheme. It is KLC's view that the scheme will never be self funding, as restitution and levy payments will never meet the scheme's requirements.

In light of this economic reality, the only real option is for the Government to continue to commit to the funding of the scheme from general revenue. We believe that this is the only appropriate funding option and should reflect the Government's obligations to victims of crime and to ensure that victims of violent crime are given some assistance by the state in getting their lives together.