

2 September 2015

The Hon Gabrielle Upton, MP  
Attorney General  
GPO Box 5341  
SYDNEY NSW 2001

By email: [office@upton.minister.nsw.gov.au](mailto:office@upton.minister.nsw.gov.au)

Dear Attorney,

## **Changes to the Victims Compensation Scheme**

Community Legal Centres NSW commends you and the NSW Government for your commitment to reassessing claims that fell between the old Victims Compensation Scheme and the new Victims Support Scheme. We welcome the introduction of the reassessment process and the *Victims Rights and Support Amendment (Transitional Claims) Regulation 2015*.

We have concerns about some aspects of the reassessment process and ask you to consider making some adjustments to ensure that victims of domestic violence and sexual assault do not experience unnecessary further trauma and stress. We feel it is vital that the system that is designed to support victims of violence operates from a trauma informed basis which includes providing an adequate period of time to respond. In particular, we ask you to consider:

- extending the deadline for making an application to 1 September 2020;
- providing discretion to extend the time limits on responding to requests for evidence;
- accepting reassessment applications for transitional applications that were dismissed due to no act of violence being established;
- ensuring full appeal rights;
- a widespread communications strategy that encompasses a broad range of services and includes culturally appropriate media; and
- funding of legal costs in limited situations.

## **About Community Legal Centres NSW**

Community Legal Centres NSW (CLCNSW) represents the network of 39 community legal centres (CLCs) throughout NSW. Victims support matters (particularly complex matters) make up a significant part of the work of many CLCs. CLCs predominantly assist clients with victims support matters related to domestic violence and/or sexual assault, including child sexual abuse.

**Community Legal Centres NSW**

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Our victims support clients are generally high-needs clients, with many very seriously affected by their experience of violence. A significant number of them are affected by a mental illness, drug or alcohol dependence, chronic unemployment, loss of their children to the child protection system, or other serious impact. Many clients experience post-traumatic stress disorder, significant anxiety or clinical depression. The trauma experienced by our clients often significantly limits their capacity to work.

## **Suggested adjustments to the reassessment process**

### *Deadline for making an application*

We are concerned the deadline of 1 September 2016 (reg 20(1)) is too short a timeframe for many applicants to reapply for assessment. It may take applicants some time to seek assistance to reopen cases, particularly for those that have experienced severe trauma. Further, it may be difficult for Victims Services and community legal centres to get in contact with vulnerable applicants, especially those without stable housing or have difficulty in understanding official correspondence.

We recommend that the deadline be extended to 1 September 2020; that is, a timeframe of 5 years, consistent with the current scheme where applications for financial assistance can be kept open for 5 years.

### *Evidentiary time limits*

Applicants are required to submit any additional evidence or information within 6 months of the date of lodging their reassessment application form (reg 20(4)). We understand that if the Commissioner requests further information or evidence more than three months after the application is made, then the applicant will have only three months to respond to that request (reg 20(5)).

We are concerned that many victims will have difficulty in gathering the requested evidence in this timeframe. This may be because the trauma from the act of violence has been compounded by the trauma caused by the 2013 changes to the scheme and so an applicant may not be ready to re-engage in the process just yet. It may be that clients do not receive the Commissioner's letter requesting additional evidence immediately as they may be away when it is sent. Some evidence is also difficult to obtain in a short period of time. For example, there can be lengthy delays in getting appointments for an Authorised Report Writer or to see a medical expert, and there can be further delays in obtaining reports.

We also anticipate that it may be difficult to gather evidence two years on from when the initial application was made. For example, some CLCs stopped pursuing evidence to support a Category 2 psychological or psychiatric disorder argument under the old scheme because a client only needed to show 'an injury' to obtain recognition payments under the new scheme. It will be very hard to gather this evidence two years on.

We recommend there be discretion to accept further information or evidence requested by the Commissioner out of time.

### *Consideration of dismissed matters where an appeal was not lodged*

Under reg 19(3), a person whose application was dismissed cannot apply for reassessment (except for family or secondary victims). We are concerned that some victims with dismissed applications may not have exercised their right of appeal. This may have been in situations where an error was made in the initial assessment. For example, last year a number of our members raised concerns with the Commissioner of Victims Services about the Victims Services assessors applying a quasi-criminal standard of evidence to establish an act of violence which is inconsistent with the *Victims Rights and Support Act*. It may be that some of these applicants whose matters were dismissed did not appeal the decision at the time. Others may not have exercised their right to appeal because they did not feel that it was worth the time and trauma of appealing for a low payment of \$1,500. Some of these victims may not have submitted the strongest initial application because an Authorised Report Writer was no longer offered or they did not feel that it was worth going through the trauma of obtaining additional medical evidence for a low payment of \$1,500. These victims are now out of time to appeal their dismissed applications.

We recommend that reassessment applications be accepted from applicants whose transitional applications were dismissed due to an act of violence not being established.

### *Restore full appeal rights*

We are concerned that appeal rights for decisions made about reassessment claims are limited to an internal review to the Commissioner of Victims Rights only. We recommend there be full appeal rights as under the old victims compensation scheme.

### *Widespread communications strategy*

As set out above, we are concerned that the most vulnerable victims will not hear about the opportunity to have their applications reassessed until it is too late. This is particularly the case for clients in unstable housing who are not accessing existing support services.

We recommend that the Reassessment Scheme is accompanied by a comprehensive and widespread awareness raising campaign that encompasses a broad range of services and extends to culturally appropriate media, such as the Koori Mail, National Indigenous Times and ethno specific community radio. We understand there has been an advertisement placed on one occasion in the Koori Mail. We commend this and recommend this advertisement be repeated in the Koori Mail.

### *Legal costs in limited situations*

While CLCs are committed to assisting vulnerable clients and we will do our best to support our clients through the reassessment process we believe it is unfair that legal costs will not be paid, particularly in cases of domestic violence and sexual assault. We are particularly concerned about how this will impact Aboriginal and Torres Strait Islander victims/survivors who want to be supported through the re-assessment process through an organisation with whom they have already engaged, including Aboriginal and

Torres Strait Islander organisations. We therefore request further consideration regarding the funding of legal costs in limited situations.

If you would like further information or to discuss our comments, please contact Edwina MacDonald, Solicitor, Kingsford Legal Centre on (02) 9385 9566, or Liz Snell, Law Reform and Policy Coordinator, Women's Legal Services NSW on (02) 8745 6900. We would also welcome the opportunity to meet with you to discuss our concerns in person.

Yours faithfully,

Kerry Nettle  
Acting Director  
Community Legal Centres NSW

CC The Hon Paul Lynch MP  
Mr David Shoebridge MLC