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11 January 2005

Our Reference: **73140**
agvclxm_cFosters Lawyers
PO Box 3028
MONASH PARK NSW 2111Your Reference: KEITH FOST
Phone Number: (02) 9374-3111

Dear Sir/Madam,

RE:

I refer to your letter of 5 January 2005 in relation to this matter.

Upon further investigation of this file, it has become apparent that made an appeal to the Tribunal on 19 June 2002. I apologise for any inconvenience caused by overlooking this in our letter of 22 November 2004. The Magistrate dismissed this appeal on 16 October 2002. I have enclosed a copy of the Magistrate's decision for your assistance.

An applicant for statutory compensation may appeal to the District Court on a question of law arising in any determination of the application by the Tribunal. Appeals to the District Court require the leave of the District Court. I have enclosed an information sheet for your assistance.

If you have any enquiries regarding the above, please do not hesitate to contact the Tribunal on or (toll free) and quote claim no **73140**

Yours faithfully

John Le Breton
Director

Appeal Information Sheet No. 4

Appeals to the District Court on questions of law

Section 39 *Victims Support and Rehabilitation Act 1996*

Filing of Appeal

The District Court Rules 1973, Part 6, Division 7A Section 60C, currently states that you must file a Notice of Motion within 3 months of the date on which the Tribunal's notice of the determination was served.

A Notice of Appeal must be filed with the District Court within 3 months after the day on which the relevant notice of the determination made by the Tribunal was served. (*Section 39(2) Victims Support and Rehabilitation Act 1996*). The District Court may allow further time in exceptional circumstances.

Grounds for Appeal

You may appeal to the District Court against a determination of an appeal by the Tribunal (a magistrate) on a **question of law only**. You cannot appeal to the District Court against a determination of a Compensation Assessor. If you want to appeal a decision of the compensation assessor you may file an appeal with the Tribunal (*Section 36 Victims Support and Rehabilitation Act 1996*).

Grounds for Appeal - Exceptions

Certain determinations are specifically excluded from appeals to the District Court (*Section 39(3)*):

- a) A determination of whether an injury for which compensation has been claimed is an injury specified in the schedule of compensable injuries, or whether it is a compensable injury of a particular description specified in that schedule.
- b) A determination as to whether a series of acts are related and constitute a single act of violence.

Relevant decisions on section 39(3) are :

Buckley v Victims Compensation Fund Corporation, Goldring DCJ, Wollongong District Court 30.10.03
Martins v Victims Compensation Fund Corporation, Sidis DCJ, Newcastle District Court 17.6.03
Walsh v Victims Compensation Fund Corporation, Balla DCJ, Sydney District Court 24.7.03

Leave - there is no right of appeal to the District Court against a decision of the Tribunal to refuse leave for a late application for statutory compensation (*Section 39(4)*).

District Court Decision

On an appeal, the District Court may only (*Section 39(5)*):

1. Affirm the determination of the Tribunal; or
2. Set aside the determination and remit the matter to be considered and determined again by the Tribunal (either with or without the hearing of further evidence) in accordance with the decision of the District Court on the question of law concerned.

Where to send your Notice of Appeal

You should file the Notice of Appeal in your nearest District Court. A sealed copy must be served on the Tribunal. To find out the location of your nearest District Court contact the Sydney District Court Civil Registry on (02) 9377 5830. Alternatively, you can get this information from their website at:

<http://www.lawlink.nsw.gov.au/dc.nsf/pages/dccontactcivil>