



Geraldton Community Legal Centre

Lotteries House
114 Sanford street Geraldton WA 6530
Postal Address: PO Box 159, Geraldton 6531

Tel: (08) 9938 0600
Fax: (08) 9964 3439

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Karen Bevan
Team Leader Policy and Research
Child Abuse Royal Commission

By email: solicitor@childabuseroyalcommission.gov.au

Dear Sir/Madam

**RE: ISSUES PAPER 7
STATUTORY VICTIMS OF CRIME COMPENSATION SCHEMES**

BACKGROUND

Geraldton Resource Centre Inc. ("GRC"), which incorporates Geraldton Community Legal Centre and Gascoyne Community Legal Service, along with a number of other tenancy, financial and community support programs, delivers a range of legal and social and community support services into a vast area of regional, rural and remote Western Australia throughout the Midwest, Murchison and Gascoyne regions. We regularly conduct outreach trips to the remoter communities within these regions from our two bases in Geraldton and Carnarvon. Our community legal service has specific programs to

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provide outreach legal services to rural and indigenous women. A significant number of our clients, particularly those accessing our legal services and prisoner support and re-entry programs, have experienced child sexual abuse and the flow on effects of dysfunction and disadvantage as a result of that trauma.

ISSUE

Our legal services regularly assist victims to access the West Australian criminal injuries compensation scheme and this is a core area of work for our Nyarlu Miyarnumalgu Indigenous Women's Legal Outreach Service with many of these clients having experienced child sexual abuse.

SUBMISSIONS

1. *What are the advantages and disadvantages of statutory victims of crime compensation schemes as a means of providing redress or compensation to those who suffer child sexual abuse in institutional contexts?*

ADVANTAGES of statutory victims of crime compensation schemes:

- They are generally more easily able to be navigated by victims (as opposed to pursuing a civil claim through the courts). It is easier for a victim to apply to a statutory scheme on their own behalf than it would be for him or her to self-represent in a civil action.
- The WA criminal injuries compensation scheme is accessed via a fairly straightforward application form and in the majority of cases is decided "on the papers" without the requirement to attend a formal hearing.
- When contrasted with a court process, they generally offer victims more certainty: concerning the process to be followed, the information or proof required to substantiate the claim, and the range of possible outcomes of the application.

- They offer victims the ability to tell their story, have their injury acknowledged and to receive compensation (depending on the decision of the Assessor), without needing to interact with or face the perpetrator.
- The WA Assessor of Criminal Injuries Compensation will deal directly with the individual who perpetrated the abuse, which spares the victim from having direct contact with the perpetrator.
- Victims are able to tell their story in a less formal way than they would through a court process, for example, we have had clients who have used poems and artwork to illustrate some of the impact of the offences upon them.
- Victims are able to request the Assessor restrict access by the perpetrator to certain supporting information lodged on their behalf, for instance, upon request by the victim, the Assessor will regularly with-hold psychological reports in relation to the victim from the perpetrator.
- They provide victims the opportunity to claim compensation where it might not otherwise be available to them (e.g. if the perpetrator has no funds to meet any award that might be made following a civil legal process or where the perpetrator is not known).
- They provide victims the opportunity to claim for future medical expenses, which the victim may not have the funds to meet.
- Many victims find that having a person in a position of authority, such as the Assessor, validate the authenticity of their experiences aids in the healing process.
- They provide financial compensation for losses incurred by the victim in the past and into the future as well as for the actual injury suffered by them.

DISADVANTAGES of statutory victims of crime compensation schemes:

- Compensation awards are generally capped.

- Compensation awards are typically quite low in situations of sexual abuse where the main or only injury is psychological. We believe that the level of monetary awards provide inadequate recognition of the devastating and long term consequences of child sexual abuse that often infiltrate all areas of a victim's life far into the future.
- Under the WA criminal injuries compensation scheme the victim is required to do everything that they reasonably can to report the abuse to the police and to aid in prosecution of the offender. In situations of child sexual abuse there is a high degree of fear and shame attached, which makes this pre-condition to accessing the scheme insurmountable for some victims.
- If the child sexual abuse occurred in an institution then the adults responsible for reporting the matter to the police may have failed to do so and, with the passage of time, there may be no purpose to be served by reporting the matter in adulthood.
- The victim may not know the names of his or her abuser(s) or be able to recall details sufficient to support a conviction depending on how young they were when the abuse occurred.
- Where there is no conviction then the victim may not be eligible for compensation, which can be detrimental to the healing process.
- For fragile applicants, having to confront their past trauma and everything that is associated with that, can be a very difficult and harrowing experience.
- The WA criminal injuries compensation scheme does not provide any support services to applicants and so they must access their own means of support as they go through what can be an extremely harrowing process.
- The WA criminal injuries compensation scheme does not provide reimbursement of an applicant's legal costs and so those applicants who require legal or administrative support to prepare and lodge their application will have to pay any legal fees out of their award of

compensation, unlike civil litigation where legal costs are usually paid on top of a compensation award.

- The 3 year time limit to apply is often insufficient in the context of child sexual abuse. In relation to minors, the time limit begins to run from the date of the abuse rather than from the applicant reaching the age of 18 years. Fortunately, the WA Assessor of Criminal Injuries Compensation is quite generous in exercising her discretion to extend time when requested with a statement from the applicant explaining the reasons for the delay.
- The only means for perpetrator accountability with our current system is for the Assessor to be able to recover part or all of the award of compensation from the perpetrator. If the perpetrator has no financial means to repay the award then there is no accountability (other than through the criminal justice system) for the impact of their actions on the victim.

2. *What features are important for making statutory victims of crime compensation schemes effective for claimants?*

- This question is already partially answered when we have highlighted the advantages and disadvantages of our current scheme.
- A clear, simple and straightforward process from preparation of the application through to assessment, making of a decision and options available to the applicant after a decision is made.
- A dedicated advice and referral service for victims putting together applications. This service would be particularly useful when applicants are trying to gather medical reports detailing their injuries. This dedicated service could provide a referral to an appropriate mental health professional(s) and could also facilitate the making of any interim payment that might be necessary.

- Great care should be taken to ensure that applicants are not re-traumatised by the process that they need to go through to submit an application. The scheme should have a therapeutic and sanative focus.
 - For victims, being given the opportunity to tell their stories is extremely important for their peace of mind and well-being. There should be mechanisms in place for applicants, particularly those from Indigenous backgrounds, to tell their stories through a variety of methods, other than in written statement format, for example, oral recordings, poems, and artwork.
 - It needs to be non-adversarial in nature.
 - There needs to be an acknowledgement that the abuse did happen and someone is listening to the victim.
 - The monetary award needs to be sufficient to mark the severity of the abuse and it's far reaching impact on the victim. Many victims of child sexual abuse have been left unable to ever work and the award of compensation can assist them with everyday living.
 - Some mechanism for perpetrator accountability for their actions and the impact they have had on the victim.
3. *Are there elements of statutory victims of crime compensation schemes, as they currently operate, that raise particular difficulties for claims by people who suffer child sexual abuse in institutional contexts? For example:*
- a. *some schemes have time limits and discretionary provisions to extend the time limits to make claims;*
 - b. *all schemes have caps on payments;*
 - c. *some schemes have lower caps on payments for offences committed earlier in time and one scheme does not apply to offences committed before 1971;*
 - d. *some schemes require that the act of violence or offence be reported to the police, or require an explanation if not reported to police; and*

e. most schemes require repayment of victims' compensation if the recipient later receives compensation from another source (e.g. via damages or settlement in civil litigation).

- All of the examples mentioned above raise particular difficulties for people who suffer child sexual abuse in institutional contexts and most have already been referred to as disadvantages in our answer to question 1 of this submission.
- Time limits applicable to statutory schemes are a significant issue, particularly with respect to claims made by child sexual abuse victims. The victim is a child at the time the offence occurs, and may not know of the availability of the scheme either at the time the abuse occurs, or before any applicable time limit expires.
- Sometimes memories relating to the abuse are buried in the victim's subconscious and the victim might only recall the abuse many years later.
- Victims of child sexual abuse should be given significant latitude when making applications, and each case should be considered on an individual basis, before the Assessor makes a decision regarding whether to extend the time limit.
- Applicants would benefit from more guidance around when and in what circumstances the Assessor might approve an extension to the time limit for making an application.
- However, writing to the Assessor explaining why an applicant didn't apply within the time limit is also a daunting process, and so an even better scenario would be for there to be no time limit applicable to claims relating to child sexual abuse.
- Removing caps on payments would allow for awards of compensation to be made that can reflect the severity and often life changing impact child sexual abuse can have on victims.

- Western Australia has one of the schemes that has lower caps on payments for offences committed earlier in time and our scheme does not apply to offences committed before 1971.
- Victims of older offences will usually have no access to civil litigation systems (due to time limits) and so the statutory compensation schemes remain their only avenue for redress and compensation.
- We believe that the amount of compensation should reflect the impact of the offences on the victim as at the date of application.
- For people with older offences, the extremely low amount of compensation means that there is no real financial reason to apply and so the benefit would merely be to obtain some form of acknowledgement that the abuse had occurred.
- We have advised people who were abused prior to 1971 and the lack of access to a compensation scheme has led to them feeling unacknowledged and as if their experiences are irrelevant and unimportant whereas from their point of view they have a lasting and continuing impact into their today.
- Mixed messages are being given to victims of child sexual abuse. On the one hand they are being encouraged to talk about and receive acknowledgement for the terrible things that they have kept as secrets for a very long time but then, on the other hand, their experiences are discounted and unacknowledged by way of lower caps or the unavailability of a compensation avenue.
- All applications where the matter was not reported to the police should also be considered very carefully. When a child is in institutional care, that child relies on the employees of that institution to protect and care for them. Where abuse has occurred, the victim child would also be in a position of needing to rely on that employee (or employees) to facilitate reporting of the matter to the police. There may be a number of reasons why the child victim is not assisted to make a report – including protection of an individual's or organisation's reputation (as seen in the case of the

substantial levels of child sexual abuse that occurred in Catholic institutions, but which was kept hidden from public view for many years).

- Payment of victims' compensation should not be held against applicants at a later time if they are eligible for compensation from other sources. At present, the amount that they get from these schemes is often less than what they could obtain through civil litigation or via damages.

4. *What changes should be made to address the elements of statutory victims of crime compensation scheme that raise particular difficulties for claims by people who suffer child sexual abuse in institutional contexts?*

- We believe that we have already suggested some changes that could be made in our answers to previous questions however in summary some features are as follows:
 - Non-adversarial approach;
 - Therapeutic process that incorporates an acknowledgement and an apology;
 - Simple and straightforward;
 - Non-time limited (open indefinitely);
 - Remove caps on compensation;
 - Provide for monetary awards that genuinely mark the severity of the abuse and it's far reaching impact on the victim;
 - Remove time limits to apply, including the bar to pre-1971 claims;
 - Sensitive and takes into account that it is individual people with individual experiences who need to relay those experiences in different ways and at different paces;

- Incorporate a dedicated advice, support and referral service for victims putting together applications;
- Allow for stories to be told through a variety of methods, other than in written statement format, for example, oral recordings, poems, and artwork;
- Incorporate some mechanism for perpetrator accountability for their actions and the impact they have had on the victim;
- Ameliorate the harshness of the requirement to report offences where they involve child sexual abuse;
- Recognise the difficulties in securing a conviction for child sexual abuse, even when matters are reported, and allow greater flexibility in awarding compensation in such cases even in the absence of a conviction;
- Allow for reimbursement of an applicant's legal costs in cases of child sexual abuse, the nature of which would suggest the applicant might need a higher level of support with the application process;
- We believe that thought should be given to having a specific statutory scheme for victims who have suffered child sexual abuse (whether in an institutional context or elsewhere) for the following reasons:
 - This would really single the issue out from crime generally and may have positive effects in terms of community attitudes to the sexual abuse of children;
 - The administrators of a statutory scheme focused solely on child sexual abuse would develop a very good understanding and insight into the short and long term physical and psychological effects of the abuse on victims. This could potentially be of real

assistance to victims who may not be adept at articulating the effect that the abuse has had on them.

5. *What forms of redress, including services and payments, should be offered through statutory victims of crime compensation scheme?*

- We have already referred to the need for a dedicated advice, support and referral service for victims putting together applications.
- Acknowledgement of the abuse, separate from the amount of compensation, is extremely important.

6. *To what extent, if any, should those who suffer child sexual abuse in institutional contexts be eligible for additional or different compensation and services, compared to victims of other crime? Why?*

Due to the fact that the abuse happened in childhood in a place that was supposed to be safe and nurturing, the damage caused by the abuse is most often extensive and reaches into adulthood. It is likely to affect every relationship the person has and healing is a long and slow process. Therefore, the award for support in monetary terms needs to be more extensive than for victims of other crimes. These abuses were mostly done by someone well known to the children in situations where escape and rescue were not options available to them.

7. *Are the levels of verification or proof required under statutory victims of crime compensation scheme appropriate for claims by those who suffer child sexual abuse in institutional contexts?*

- We have found that providing proof of injury can be difficult for our clients. They have often buried their experiences for long

periods of time and are reluctant to re-open old wounds and share details of what has happened to them and how it has affected them. Many of them have coped day to day by blocking out their experiences.

- Proof of psychological harm is provided by way of reports from professional counsellors, psychologists or psychiatrists. Many of our regional, rural and remote clients experience difficulties in accessing such professionals on a regular and ongoing basis, if at all. It can actually be dangerous for our clients to start down a road of disclosure and therapy that is incomplete or interrupted in some way, as once the lid is off the emotions they can become overwhelming. The writer has had one client commit suicide during the process to apply for criminal injuries compensation for child sexual abuse in an institutional context because she had to bring up long buried emotions for the purposes of her application and her rural location meant she then had no further access to psychological support services.
- We believe that the impact of child sexual abuse is well documented and, while this will vary from person to person, there shouldn't need to be the same rigorous requirements for proof of injury in this context that other victim's compensation applications might require.
- The institutions should also be involved in providing documents to the statutory victims of crime compensation scheme body that will verify that particular applicants were resident at particular institutions at particular times and particular staff members were employed at those times.
- The statutory victims of crime compensation scheme should be able to accept that abuse occurred based on the statement (in

whatever form) of the applicant, any documents made available by the relevant institution and any supporting evidence provided by the applicant as to injury they have suffered.

- Under no circumstances should a statutory victims of crime compensation scheme subject applicants to the potential for cross-examination or suggestion that abuse did not occur.

Yours faithfully

Alison Muller

Principal Solicitor

Geraldton Community Legal Centre