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To: [solitor@childabuseroyalcommission.gov.au](mailto:solitor@childabuseroyalcommission.gov.au)

## **Issues Paper 7: Statutory Victims of Crime Compensation Schemes**

In response to previous Issue Papers, Barnardos Australia has argued for a specialist Federal scheme to promote a uniform redress for victims of child sexual assault across Australia. We believe that State and Territory statutory victims of crime compensation schemes alone are unlikely to develop sustained adequate financial and psychological redress for those who have been abused. Most significantly, State and Territory victims of crime compensation schemes are unlikely to take on a prevention role or advocate for practical enforceable standards in out of home care services and other institutions. The Federal Government has a clear role.

### **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?**

The advantage of using a 'victims of crime compensation scheme' is that there could be a common assessment of the level of damages in all settings, including the family home and institutions.

However, there are disadvantages that these are currently State schemes, and view compensation for child sexual assault in the context of crime using the same understandings as criminal offenses against adults and without the understanding of the developmental damage to the victimised children. State compensation schemes have shown themselves to be subject to political and budgetary consideration for example as in NSW. The State schemes do not adequately allow for people who may come forward with allegations many years after the abuse occurred. The timeframes for making a claim in State schemes are currently too restrictive (within two years of turning 18 in NSW). This does not allow time for victims to disclose abuse.

Finally, we believe that specialist knowledge is required and this is not currently the case with the State-based schemes. There is no emphasis on prevention through the advocacy for enforcement of standards in institutions in particular out of home care institutions. Most importantly to leave victims of crime compensation schemes without significant change leaves institutions untouched when they have behaved unconscionably and failed to protect children in basic expected ways or excuse or protect perpetrators.

Victims of crime compensation schemes could become an ongoing source of knowledge and expertise of child sexual assault.

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

- Consistency throughout Australia
- Removal of timeframes for making claims
- Automatic acceptance of claims with a lesser level of proof required than needed in criminal court
- Access to counselling
- Standardised, financial determination which reach a community standard for compensation

**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;**

Time limits are totally inappropriate for child sexual assault in NSW.

**b. all schemes have caps on payments;**

Caps in NSW were low then they were reduced to 'very low'. They do not allow for the levels of lifelong disadvantage that has occurred.

**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;**

There should be no time constraints on the time a crime was committed because of the long period of time it may take to bring a claim.

**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;**

This requirement is clearly inappropriate for these crimes which are often not able to be identified or acted upon for many years. Most importantly this is a crime against children, many do not feel able to identify/complain until they are much older.

**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);**

We believe that only one process should be in place following allegations on criminal proceedings with civil litigations only in cases where organisations have acted improperly. The compensation is for the damage to the child of sexual assault not the compounding issue of failure of institutions.

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

There should be a specialist body able to deal with the unique issues related to child sexual assault. All timeframes should be removed for bringing a claim. Community-debated and acceptable levels of compensation should be available.

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

We have previously submitted that a specialist body is required which standardises processes and payments across Australia. Such a body needs particular skills in counselling but also knowledge of the 'out of home care' sector and other sectors in which children are especially vulnerable, including ways of making improvements to the protection of children. Any such body should have, as part of its mandate, the requirement to use its knowledge and to work for the prevention of future child sexual assault. There should be an enhancement of child sexual assault services available in the community for all children sexually abused.

**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 crimes? Why?**

Financial redress should recognise the particular developmental damage of child sexual assault for children assaulted wherever the abuse occurs and redress should be set at a level acceptable to the community for this developmental damage. We believe that the issues of trauma of a child sexual assaulted should be treated similarly and require comparable redress whatever the setting.

Extra resources are warranted to ensure that governments accept their responsibility for ensuring that institutions are working to 'best standards'. To this extent extra resources should go towards prevention and an accreditation and auditing process for children's services. A national compensation scheme should prosecute organisations who behave unconscionably and add to and reinforce the trauma of sexual abuse. Victims should not have to undertake civil actions against institutions.

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

As we have previously stated, if a person comes forward with an allegation, it is very difficult to prove or disprove and the benefit of the doubt should be given to the person making a plausible allegation. We believe that any other system will lead to an unnecessary waste of resources. Our current experience in NSW has been that the level of proof has been reasonable by the victims of crime compensation schemes.

Louise Voigt  
CEO and Director of Welfare  
**Barnardos Australia**