

NSW Government Submission

**Royal Commission into Institutional Responses to
Child Sexual Abuse**

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

The NSW Government welcomes the opportunity to respond to the Royal Commission's seventh issues paper, in relation to statutory victims of crime compensation schemes. NSW has extensive experience with such schemes, with a scheme offering compensation and support to victims of crime having been in place in this State since 1987.

In June 2013, NSW introduced the new Victims Support Scheme (VSS) to replace the former Victims Compensation Scheme (VCS). This followed an independent review of the previous compensation scheme by PriceWaterhouseCoopers (PWC)¹. The review found that victims of crime had to wait, on average, more than two and a half years to receive compensation. The review also found that the previous scheme was financially unsustainable, with a contingent liability of hundreds of millions of dollars.

The new VSS is based on a model recommended by PWC, and is designed to deliver more effective holistic support more quickly to victims of violent crime, and to ensure that the NSW Government can continue to provide support and services to victims of crime.

Victims Compensation Scheme (VCS)

What the scheme offered

The previous VCS provided a lump sum compensation payment to eligible individuals. A victim could apply for a compensation payment for injuries sustained during or as a result of a violent crime, provided that the total quantum exceeded a threshold of \$7,500. An expert report was required to accompany the claim for compensation for psychological or psychiatric disorder, and the maximum amount of compensation that was available for a single claim was \$50,000.

Victims whose compensation claims were successful could also claim up to \$10,000 for financial loss incurred directly as a result of the compensable injury (where the amount was not covered by other sources and provided the claim did not exceed the maximum of \$50,000). Financial loss included medical expenses, loss of earnings and loss of, or damage to, personal effects (maximum claim \$1,000) that were worn or carried at the time of the act of violence.

Interim urgent payments were available to victims who could demonstrate severe economic hardship, to cover medical, dental treatment or other expenses, such as funeral expenses incurred by family members of homicide victims. The amounts

¹ The PWC Review is available on the Department of Police and Justice website at http://www.victimsservices.lawlink.nsw.gov.au/agdbasev7wr/vss/documents/pdf/report_pwc-vcf-review.pdf

payable were deducted from the final compensation payment and were repayable if the compensation claim was ultimately unsuccessful.

For victims that were unable to meet the \$7,500 threshold test, it was possible for medical and other expenses of between \$200 and \$1,500 to be reimbursed through the Victims Assistance Scheme. However, since its inception in 2007, the uptake of that scheme was very low.

Free face-to-face counselling was also available to all primary, secondary and family victims.

Issues with the VCS

With the exception of free counselling, the emphasis of the VCS was on obtaining financial compensation, determined according to the nature and scale of the injury/injuries received. The scheme was complicated and required claimants to obtain medical and other expert reports to support their claims. Many victims retained the services of a lawyer to help them pursue their claims and, where relevant, were able to appeal determinations to the Victims Compensation Tribunal (VCT).

Between 2005/06 and 2009/10, demand on the VCS grew by 83% and the backlog of claims increased by 188%. As at 30 June 2012, there were 21,911 claims for compensation awaiting finalisation, with the average time between lodgement and determination of a claim exceeding 31 months and the accrued liability estimated to be \$392 million.

In August 2011, the then NSW Attorney General commissioned an independent assessment of the VCS by PWC, with a view to delivering more timely and effective financial support to victims of violent crime. PWC found the accrued liability of the VCS was projected to increase to \$430 million by 30 June 2013, and concluded that the scheme was financially unsustainable without injecting more funds and/or modifying the scheme. Further, the escalating waiting times between lodgement and determination of claims were undermining the objectives of the VCS.

Victims Support Scheme (VSS)

The VSS does not focus on specific injuries sustained by victims, but looks holistically at the impact of a violent crime on victims' lives as a whole. The VSS focuses on providing victims with practical and financial assistance when they need it most. The new VSS has reduced the amount of lump sum payments previously available under the VCS, and instead focuses on providing with minimal delay a package of practical and financial support to victims of violent crime with a smaller recognition payment. This package includes: free counselling, information and support, financial assistance with immediate and other needs, and a one-off recognition payment. The VSS pays for and refers victims to services. It does not directly provide services itself (except for information and support with the application process).

The key features of the VSS are as follows:

<i>Who is eligible?</i>	
Primary victim	The victim of the act of violence
Secondary victim	A person who experiences an injury as a direct result of witnessing an act of violence, resulting in the injury or death of the primary victim.
Family victim	A member of the immediate family of a homicide victim.
<i>Assistance available</i>	
Counselling	Up to 22 hours available to primary and secondary victims, with the ability to approve over 22 hours if there are exceptional reasons. For family victims there is no upper limit.
Immediate needs	Up to \$5,000 to cover items such as emergency medical or dental treatment, relocation expenses from a situation of continuing or potential violence, crime scene clean-up or implementation of safety measures in the home available to primary victims. May also be available to family victims, where appropriate.
Funeral assistance	Up to \$8,000 for family members of homicide victims.
Economic loss	Up to \$30,000 in total. This includes: ongoing medical/dental treatment; loss of actual earnings (capped at \$20,000), but only where no sick, recreational or other leave is available; up to \$5,000 for out of pocket justice-related expenses associated with related criminal or coronial proceedings, making statements to police, preparing victim impact statements, etc.; and up to \$1,500 for loss of or damage to clothing or personal effects worn or carried at the time of the act of violence; Available to primary victims or to a parent/guardian of a child victim. Justice-related expenses are also available to family victims
Recognition payment	A fixed amount of between \$1,500 and \$15,000, determined according to the nature of the act of violence. Acts of sexual assault of a child would be eligible for \$10,000.
<p>Note:</p> <ul style="list-style-type: none"> - Claims for immediate needs, funeral assistance or financial assistance may be paid directly to the service provider, or to the victim, if they have already incurred the expense. - Should a victim who was a child at the time of the act of violence make an application for victims support after turning 18, any payment, whether for immediate needs or economic loss or a recognition payment, will be reduced by any amount previously made to the victim's parent/guardian at the time or within 2 years of the act of violence. 	

<i>Time limits</i>	
Counselling	No time limit
Immediate needs, funeral assistance, economic loss or a recognition payment (other than the exceptions listed below).	Within 2 years of the incident or, if the victim was a child at the time, within 2 years of the victim turning 18.
For a family victim where a victim died sometime after the incident.	Within 2 years of the death of a victim.
For a recognition payment for a victim involving domestic violence, sexual assault or child abuse.	Within 10 years of the incident or, if the victim was a child, within 10 years of the victim turning 18.
For a recognition payment, out of pocket expenses or justice-related expenses for a victim of child sexual assault	No time limit.
Once an initial claim for immediate needs or economic loss has been made and is accepted, further claims may be made for up to 5 years or until the total amount for which the victim is eligible has been given.	
<i>Documentary evidence</i>	
Immediate needs	Documentary evidence (such as a medical or police report) is sufficient to support, on the balance of probability, the applicant's claim to be a victim of an act of violence. For actual expenses: a receipt or invoice of the expenditure is required.
Economic loss	A Police report or report of a Government agency and a medical/dental/counselling report to verify that the victim has actually been injured as a result of the act of violence. For actual expenses, a receipt or invoice of the expenditure. For loss of actual earnings, details of the employer, the period of absence from work and a statement from the employer substantiating the particulars.
<i>Reviews</i>	
An applicant can apply to the Commissioner of Victims Rights for a review of the decision in relation to the application for victims support. An applicant can seek an administrative review of a decision in relation to a recognition payment from the NSW Civil and Administrative Tribunal.	
<i>Funding for the Scheme</i>	
The Scheme is funded by the Victims Support Fund. In addition to funds from consolidated revenue, the Fund receives funding as follows:	

- All proceeds confiscated under the *Confiscation of Proceeds of Crime Act 1989*.
- All money required by the *Criminal Assets Recovery Act 1990* to be credited to the Victims Support Fund.
- All money recovered as restitution payments from offenders convicted of the offences for which a claim has been made.
- Victim support levies awarded under the *Criminal Procedure Act 1986*.

It should be noted that VSS payments will be reduced by any amount that the victim receives from any other source, including court-ordered compensation obtained through civil litigation. The victim will be required to refund the VSS for any amount the victim receives from another source subsequent to any payments made under the VSS.

The average time for an application under the VSS to be processed is 87 days.