30 June 2014

The Royal Commission

By email: Solicitor@childabuseroyalcommission.gov.au

Dear Sir or Madam,

Re: Submission on Issues Paper 7 – Statutory Victims of Crime Compensation Scheme in NSW

Intellectual Disability Rights Service welcomes the opportunity to provide a submission to the Royal Commission in relation to Issues Paper 7 on Statutory Victims of Crime Compensation Schemes in NSW.

About us

The Intellectual Disability Rights Service (‘IDRS’) is a community legal centre and disability advocacy service that provides legal services to people with intellectual disability throughout New South Wales. IDRS’ services include the provision of telephone legal advice and legal representation in select matters. IDRS engages in policy and law reform work and community legal education with a view to advancing the rights of people with intellectual disability. IDRS also operates the Criminal Justice Support Network (‘CJSN’), which supports people with intellectual disability when they come into contact with the criminal justice system, particularly at the police station and at court.

IDRS’ expertise in relation to Statutory Victims of Crime Compensation Schemes derives from our significant experience with people with intellectual disability as both victims and defendants in the criminal justice system. IDRS legal team in particular, has provided legal
assistance to many victims of crime seeking compensation and is representing a number of clients who have matters currently before the Commissioner of Victims Rights. Many of the clients that IDRS provides legal assistance to are people who have experienced childhood sexual abuse. IDRS’ focus in this submission is on the needs and interests of people with intellectual disability who have been victims of crime.

The experience of people with intellectual disability

Unfortunately, people with intellectual disability, in particular, young children and women with intellectual disability, have historically often been the recipients of physical and sexual abuse. Although there has been a range of different studies reporting different statistics, universally they demonstrate that the rates of sexual abuse towards people with intellectual disability are high with some studies reporting statistics as high as 80-90% of women with intellectual disability experiencing some form of sexual abuse in their lifetimes. People with intellectual disability have also historically experienced high levels of institutional care where they have been extremely vulnerable to sexual, physical and psychological abuse. Largely as a result of histories of institutional care, many people with intellectual disability have been, and continue to remain, isolated in the community. Many people with intellectual disability may not have family support systems or any other supports in place. This has often resulted in people being vulnerable to abuse and frequently significantly impacts on their ability to report abuse or take steps to seek redress for such abuse.

The clients assisted by IDRS often have extremely complex needs and may have dual or multiple diagnosis. In addition to intellectual disability, they may suffer from mental illness, drug and alcohol dependence, depression and anxiety or post-traumatic stress. Many of the clients of IDRS have experienced multiple instances of abuse and continue to experience the impacts of such abuse many years later.

Overview of the NSW Statutory Compensation Scheme

IDRS believes that it is important for victims of crime and in particular, victims of childhood sexual abuse, to be able to seek support and redress through a statutory compensation scheme.
IDRS believes that since the recent amendments to the NSW victims of crime compensation scheme via the Victims Rights and Support Act 2013, the current system in NSW does not provide adequate redress for victims of childhood sexual abuse in NSW. Significantly, the scheme does not provide adequate redress for people with intellectual disability who, often as a direct result of their disability, are not able to meet the necessary evidentiary requirements and are disadvantaged by overly restrictive time limitations. IDRS believes that the potentially disproportionate impact on people with intellectual disability of these restrictions amounts to an unacceptable breach of the human rights of people with intellectual disability and Australia’s international obligations under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) which demand that Australia take all appropriate measures to eliminate discrimination on the basis of disability \(^1\) and demand equal access to justice for people with disability.

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?**

IDRS believes that there are significant advantages for people with intellectual disability in having a statutory victims of crime compensation scheme as a means of providing redress or compensation to those who suffer child sexual abuse in institutional contexts. People with intellectual disability face many barriers to justice particularly in the criminal justice context which often means that statutory compensation is the ONLY available form of redress.

It is the experience of both IDRS legal team and Criminal Justice Support Network (CJSN) that many people with intellectual disability when reporting abuse to the police have not been taken seriously or believed. This is often the result of ingrained stereotypes of people with disability. They are commonly thought not to be credible or reliable witnesses or are viewed not to experience the same levels of trauma from sexual abuse because of their limited understanding. Even where police do take a report seriously, a person’s disability or impairment may result in them not being able to give evidence in court or being too vulnerable for the matter to proceed in the criminal justice system. Similarly, people with intellectual disability face many barriers to justice in the civil context and are often not able

---

\(^1\) United Nations Convention on the Rights of Persons with Disabilities, Article 4 (e)
to seek civil remedy. A Statutory Compensation scheme avoids many of the barriers to justice as victims do not have to give evidence in such a formal way, they are not subjected to the traumatic experience of a courtroom, submissions may be made on their behalf and costs are limited.

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

IDRS believes that any statutory scheme must be accessible for people with intellectual disability who have been victims of childhood sexual abuse. It is important that the schemes do not discriminate against people with intellectual disability and people with intellectual disability are able to access justice through the schemes.

IDRS believes that in order for a compensation scheme to be accessible to people with disability it is necessary that they are given the appropriate supports to assist them with their claims. IDRS believes that the most appropriate way to do this is to ensure that legal assistance is available to them or, at the very least, that case managers or support staff are trained in assisting people with intellectual disability and sufficient resources and time are devoted to ensuring that people with intellectual disability can access the schemes.

It is concerning to IDRS that the report of the Chairperson of the Victims Compensation Tribunal for 2012-2013 indicated that 70% of victims were legally represented at the Tribunal prior to the end of the Victims Compensation Scheme in NSW, whereas it has since been reported that under the new victims support scheme, approximately only 5% of victims now have legal representation.

Although at the start of the new scheme it was said that victims of crime will no longer need to be legally represented as instead they would be supported by co-ordinators and case managers, staff at Victims Services are not able to provide legal advice nor are they able to write submissions for a victim (for example to address s 44 factors that may result in refusal or reduction of financial support), or get information on more technical aspects of a client’s matter. Victim Services staff are currently not specifically trained in supporting the high and complex needs of people with intellectual disability and IDRS believes that people with intellectual disability may currently risk being disadvantaged by this process. In addition,
IDRS is concerned about the inherent conflict that Victims Services staff have in assisting victims with their claims as well as making determinations.

2. 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?

   a. Requirements that the act of violence or offence be reported to the police, or require an explanation if not reported to police;

In an application for financial assistance for immediate needs, documentary evidence ‘such as a medical or police report’ is required to ‘support, on the balance of probability, the applicant’s claim to be a victim of an act of violence’.  

In an application for financial assistance for economic loss or for a recognition payment, the documentary evidence required includes ‘a police report or report of a Government agency and a medical, dental or counselling report verifying that the applicant or child who is the primary victim concerned has actually been injured as a result of the act of violence’.

Although we acknowledge there being the need for some evidentiary requirement to demonstrate an act of violence, IDRS believes that the current requirements are unsatisfactory and may unfairly disadvantage people with intellectual disability.

As previously stated, there are significant barriers to reporting sexual abuse and sexual assault for people with intellectual disability. Many people with disability may fear reporting to the police or other Government agencies and be very unlikely to have the appropriate support to report in this way. IDRS believes that it may be much more likely that a person with intellectual disability reported the abuse to non-government agencies. The limited forms of documentary evidence may, therefore, disproportionately impact on people with disability.

---

2 s39(2)(a) Victims Rights and Support Act 2013 (NSW)

3 s39(2)(b) Victims Rights and Support Act 2013 (NSW)
b. Levels of verification or proof required

IDRS believes that the current requirements for verification or proof that an act of violence occurred and that a victim suffered harm are not appropriate and may unfairly, and unnecessarily, disadvantage people with intellectual disability. IDRS is particularly concerned that many people with intellectual disability, without legal assistance are not able to identify what evidence might be available to them to support their claim and risk missing out on receiving redress or compensation as a result of this. IDRS believes that it is not appropriate to limit the type of proof required. Of course, evidence must prove the required elements on the balance of probabilities but there should be more flexibility as to forms of evidence (as has been the case previously).

c. Caps on payments

Since the amendments to the NSW compensation scheme in 2013, payments for victims of crime have been significantly reduced. These amendments apply retrospectively such that they apply to victims who may have been the victims of childhood sexual abuse in institutional care who have previously made claims. The amendments will also apply to people who have matters currently before the Royal Commission.

IDRS believes that the payments for victims of childhood sexual assaults are grossly inadequate. Although recognition payments to victims of crime can never make up for the significant trauma that results from the type of abuse that victims are reporting to the Royal Commission, and victims also need support and counselling services, recognition payments do serve an important purpose as an acknowledgement of the hurt that victims have suffered and can be a means of redress that may allow victims to move forward with their lives. As stated previously, many people with intellectual disability who have been victims of childhood sexual abuse will never have any other form of redress, perpetrators are often not charged or convicted and other civil remedies are not accessible to people with disability.

Since 2013 some payments for sexual assault or sexual abuse have been reduced from a maximum of $50 000 and are now capped at $5 000 to $10 000. IDRS believes that these amounts are inadequate and fail to acknowledge the severity of such crimes.
d. **Time limits**

IDRS acknowledges that the Royal Commission is focusing on the sexual abuse of children and acknowledges that in NSW no time limit applies to victims who were victim of sexual abuse as children (under 18). IDRS believes that this is an extremely important component to any compensation scheme as it recognises the many reasons victims of sexual abuse are not able to report their abuse until many years later.

However, IDRS also wishes to draw to the attention of the Commission our concerns about the time limits that apply to people once they turn 18. It is important to recognise that many children with intellectual disability remain institutionalised care after they turn 18 and people with intellectual disability at 18 are very often as vulnerable to abuse and suffer the same barriers as those under 18 in being able to report such abuse. We are extremely concerned by the imposition of 10-year time limits for victims claims of domestic violence, child abuse and sexual assault in these circumstances. People with intellectual disability will be particularly disadvantaged by this change.

According to the *Victims Compensation Review Report*, the victims compensation schemes in other jurisdictions reviewed within Australia and the United Kingdom include exceptions to time limits.\(^4\) IDRS believes that there needs to be exceptions to time limits specifically where a person has been the victim of a sexual assault or has a disability.

3. **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?**

IDRS believes that the following changes need to be made to the Current NSW Victims support and rehabilitation scheme:

\(^4\) PricewaterhouseCoopers, NSW Department of Attorney General and Justice Review of the Victims Compensation Fund, 12 July 2012 at 98
a) Legal assistance should be available to victims of crime
b) Appropriate time resources and training should be given to Victims services staff assisting people with intellectual disability making claims for support or compensation.
c) There should not be a requirement that a matter be reported to the police or a government agency.
d) There should not be restrictions on the type of documentary evidence necessary for a claim to be successful.
e) Caps on payments should be increased. Caps on payment used prior to 2013 are more appropriate.
f) There should be an exception to the 10-year time limits for sexual abuse victims and people who are disadvantaged for example for people with intellectual disability.

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

IDRS believes that the current forms of redress including counselling, financial assistance for economic loss and immediate needs and recognition payments are all forms of redress that should be offered through a statutory victims of crime compensation scheme.

5. [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?] [Do not comment]

Yours faithfully,

Alexandra Craig, Solicitor

Signed for Ms Craig by Tim Chate, Solicitor

Intellectual Disability Rights Service

ali@idrs.org.au and tim@idrs.org.au and (02) 9318 0144.