

State of Tasmania's submission to the Royal Commission into Institutional Responses to Child Sexual Abuse

Issues Paper 7 – Statutory Victims of Crime Compensation Schemes

The statutory victims of crime compensation scheme in Tasmania is known as the Victims of Crime Assistance Scheme. It is administered by the Victims Support Services (VSS) within the Department of Justice. The scheme is governed by the *Victims of Crime Assistance Act 1976* (“the Act”).

Victims of Crime Services are available, free of charge, to all victims of crime requiring counselling and support services together with information and referral.

I. 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?

Civil claims against offenders can be a relatively expensive option and will only be useful if the offender has the financial resources to meet an award of damages.

Courts in Tasmania can order offenders to pay compensation to certain victims through a compensation order under section 68 of the *Sentencing Act 1997*, but again this will not be useful if an offender has no capacity to pay.

Tasmania's Victims of Crime Assistance scheme ensures that victims, where the perpetrator cannot be made to pay, still receive some level of compensation or financial assistance for the injury that they have suffered. The legislation is not intended to put such a victim in the same position as a person able to claim civil damages from an offender, but to ensure that they were not left in a position of receiving no payment.

One of the less tangible functions of the Act is to publicly acknowledge that a person has suffered some form of injury (mental or physical) because of the criminal behaviour of someone else. Section 4 of the Act sets out the basis for compensation.

A claim can be made with no fee and the application process was simplified in 2005 resulting in most victims being able to lodge their claim with little or no assistance. Claimants are encouraged to lodge their own claim using a simplified claim form and with the help from the Victims Assistance Unit if necessary rather than involving lawyers.

The Victims of Crime Assistance scheme allows victims to elect to have their matter determined on the papers or to appear before a Commissioner. If an applicant elects to appear their matter is listed before a single Commissioner and they are advised that they are entitled to be represented by a lawyer or assisted by any other support person of their choice. The hearing is informal and allows the victim to expand on the impact of the crime

against them. The hearing allows the Commissioner to hear from the victim and to clarify matters contained in the application. It can provide a mechanism in which to validate the victim's experience.

In Tasmania, future medical, dental, psychological and counselling expenses can be awarded. This means that victims do not have to wait until finishing all treatment before making a claim.

Tasmania's legislation sets out the limits of the maximum award payable to claimants.

In Tasmania offenders are not a party to proceedings, unless the Commissioner decides to recover costs against the offender under section 7A (where the offender has capacity to pay). In these situations the offender has a right to object to an application for the award of compensation being made.

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

General features of the Tasmanian scheme that considered important include:

- the determination of an award occurs in a non-adversarial and informal environment;
- proceedings under the Act are conducted in private and may not be published;
- the filing and continuance of an application for Victims of Crime Assistance is not subject to costs;
- claimants have access to and are offered support throughout the process of making an application;
- matters are able to be resolved efficiently and expeditiously;
- claimants have a choice as to whether they wish to appear at the hearing of their claim.

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).

In Tasmania, there is a time limit of three years from the time of the offence or for child victims, three years from attaining the age of 18 years. Section 7(1C) of the Act provides a discretion for an extension of time to make a claim where there are special circumstances to justify the extension. An extension will normally be granted where the nature of the impact of the abuse has been the reason that the claimant has not lodged the claim within time e.g. where a claimant's mental state has been so affected by the abuse that they have not been able to lodge the claim, or where the claimant has self-medicated on drugs and alcohol to such an extent that they have not been capable of lodging their claim or importantly where the claimant has remained fearful of the consequences of disclosure and has not disclosed the offence until after the expiration of the time limit.

Primary victims are defined as a victim against whom an offence was committed under the Act. The prescribed maximum payment for a primary victim for a single offence is currently \$30,000; and \$50,000 for more than one offence pursuant to Regulation 4(1) of the *Victims of Crime Assistance Regulations 2010*.

In Tasmania, a person who suffers an injury as a result of witnessing an offence or a parent, step-parent or guardian of a primary victim who is under 18 years old may be awarded compensation up to \$20,000. People in this class are referred to as secondary victims in the Act.

The Act also allows for awards of up to \$10,000 for a single incident for the spouse or child, stepchild, brother, sister, stepbrother, stepsister of a primary victim; parent or step-parent of a primary victim over 18 years old or someone who is in a personal relationship with a primary victim ("related victims"). The total amount awarded to related victims in respect of any criminal conduct cannot exceed \$50,000.

The Tasmanian scheme does not apply to offences that occurred prior to 21 June 1976 and the maximum prescribed payments do not vary depending upon when they occurred.

The Tasmanian legislation does not require that the offence is reported to police, but section 5(3A) of the Act requires that the Commissioner shall not make an award if a victim has failed to do any act or thing which in the opinion of the Commissioner should have been reasonably done to assist in the identification, apprehension, or prosecution of offender. Whether the victim is or was a child at the time of the offence is a matter relevant to the Commissioner's consideration. Similarly, it is not a requirement for an application for an award that the offender is convicted and it is contemplated that at times an offender may not have been able to be identified or prosecuted.

In Tasmania, compensation must be repaid if the recipient later receives compensation from another source as it is the intention of the Act to provide a payment to claimants who are unable to receive compensation from another source.

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?

One of the challenges in relation to the assessment of awards in relation to child sexual abuse relates to the timing of an application and the impact that bringing an application quickly may have on the payment amount. The behaviour, effect, reaction of the applicant can change over time as a child goes through various developmental stages their understanding of abuse and the psychological impact of it upon them will also change. The challenge for a compensation scheme is to support the claimant, provide services aimed at recovery and to minimise the potential that the claimant remains a victim as a result of the process itself. In Tasmania the ability to make an interim award and to claim for future health related expenses attempts to address this issue. However, it is recognised that an interim award may potentially delay recovery because there is no finality.

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

Some suggested redress options include:

- drug and alcohol rehabilitation services;
- psychological and psychiatric services, including parenting and relationship counselling;
- compensation and awards pain and suffering which could include payment for alternative therapies such as yoga, gym, music and the like to promote recovery and pro-social reintegration; and
- awards for loss of income.

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?

Whilst it is difficult to identify differences in the impact of non-institutional child sexual abuse and institutionalised child sexual abuse, there are some difference between the impacts of sexual abuse and the impacts of other violent crimes. Some of the particular issues related to child sexual abuse include the:

- insidiousness of the sexual abuse;
- abuse of trust and the impact of that abuse with the victim's relationships;
- power imbalance and feeling of helplessness and weakness;
- impact on self-esteem; and
- impact on development and educational and vocational attainment.

In Tasmania, the ability to extend time for the filing of an application, the choice as to whether a claimant appears at their hearing, the making of interim awards and the awarding of future psychological counselling goes some way in addressing these issues.

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?

In Tasmania, claims for compensation under the Act are determined on the balance of probabilities. The offender does not need to have been convicted of the offence and the offender is not a party to the proceedings and cannot cross examine the claimant.