24 June 2014

The Secretariat
Royal Commission into Institutional Responses to Child Sexual Abuse
GPO Box 5283
SYDNEY NSW 2001

By email: solicitor@childabuseroyalcommission.gov.au

Dear Madam/Sir,

ISSUES PAPER SEVEN – STATUTORY VICTIMS OF CRIME COMPENSATION SCHEMES

Kingsford Legal Centre (KLC) welcomes the opportunity to respond to the Royal Commission into Institutional Responses to Child Sexual Abuse (the Commission) on Issues Paper 7 – statutory victims of crime compensation schemes. KLC is of the opinion that the victims of crime compensation scheme in NSW should be reformed to better address the needs of survivors of institutional child sexual abuse.

Kingsford Legal Centre

KLC is a community legal centre which has been providing legal advice and advocacy to people in need of legal assistance in the Randwick and Botany Local Government Areas since 1981. KLC provides general advice on a wide range of legal issues, including child sexual abuse, and undertakes casework for many clients who, without our assistance, would be unable to afford a lawyer.

KLC also has a specialist employment law service, a specialist discrimination law service (NSW wide) and an Aboriginal Access Program. KLC undertakes law reform and policy work in areas where the operation and effectiveness of the law could be improved.

KLC’s clients are economically and socially disadvantaged. Many KLC clients have experience in institutional care and are victims of sexual assault. We have had extensive contact with members of the Stolen Generation and acted in the Stolen Generations’ case of Joy Williams.¹ It is through our experience providing advice to survivors that we base our recommendations to the Commission. We will be expanding on our submission made in relation to Issue Paper 5 – civil litigation and Issues Paper 6 – redress schemes.

Advantages of statutory victims of crime compensation schemes

The advantages of victim’s compensation schemes as a means of providing redress and/or compensation to survivors of institutional child sexual abuse are:

- **Inexpensive:** Victims compensation schemes are usually much less expensive than civil litigation. For example, in NSW there is no fee to make an application to NSW Victims Services for compensation.

- **Time limits more favourable to victims:** Victims compensation schemes typically do not abide by strict limitation periods mandated in civil litigation jurisdictions. For example, in NSW there is no time limit for survivors of child sexual abuse to apply to NSW


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Victims Services for recognition payments and out-of-pocket expenses and justice-related expenses.

- **Lower evidentiary requirements**: Victims compensation schemes typically require less evidence from survivors. For example, in NSW a survivor can rely on counselling and recent Police reports to support their victim’s compensation claim, whereas oral evidence of survivors given in civil litigation proceedings is often discounted in the face of other written evidence considered contemporaneous.

- **Less traumatising process**: Seeking compensation through victim’s compensation schemes can be a less traumatising experience for survivors than civil litigation. Survivors can rely on documentary evidence in support of their victim’s compensation application in NSW and do not have to give oral evidence in public or be cross examined.

- **Quicker**: Well-resourced victims compensation schemes are able to process applications fairly quickly, whereas Court processes are generally slow and many potential claimants may in fact not live long enough to see the matter resolved.

**Disadvantages of statutory victims of crime compensation schemes**

In our experience, there are some of the disadvantages of statutory victims of crime compensation schemes as a means of providing redress or compensation to survivors of child sexual abuse in institutions include:

- **Determined in private**: Applications for victims compensation in NSW are assessed on the papers. For some survivors, public litigation is important to achieving justice and public decisions sometimes ensure better decision making and consistency in decisions.

- **Limited and capped compensation**: The amount of compensation available under statutory victims of crime compensation schemes is usually capped and less than what might be awarded in civil litigation cases. In NSW survivors of child sexual abuse may be eligible for up to $5,000 for immediate needs, $30,000 for economic loss and $10,000 recognition payment.\(^2\) In Victoria primary victims are eligible for up to $60,000, plus $10,000 special financial assistance.\(^3\) In Queensland and Western Australia primary victims are eligible for up to $75,000.\(^4\) In South Australia primary victims are eligible for up to $50,000 and in the UK primary victims are eligible for up to £250,000.\(^5\)

- **Time limits**: Survivors of child sexual abuse are often locked out of the full range of compensation available. For example, in NSW survivors of institutional child sexual abuse only have two years after turning 18 to apply for financial assistance for economic loss and medical and dental expenses as a result of the abuse. This is despite the severe economic hardship of many survivors.

- **Different compensation in different jurisdictions**: Statutory victim's compensation schemes vary across jurisdictions, offering different forms of redress and different compensatory amounts to survivors of institutional child sexual abuse.

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\(^2\) *Victims Rights and Support Regulations 2013 (NSW) r 8 and r 12 and Victims Rights and Support Act 2013 (NSW) s 35.*

\(^3\) *NSW Department of Attorney General and Justice and PricewaterhouseCoppers Review of Victims Compensation Fund (12 July 2012) p 101.*


• **Limited forms of redress:** The Law Commission of Canada identified, survivors often want acknowledgement of the harm done and accountability for that harm, and may want a range of measures, such as an apology, access to specialist education and therapy, financial compensation, some means of memorialising their experiences, as well as a commitment to raising public awareness of institutional child abuse and preventing its recurrence. However, in NSW only counselling and compensation are available to survivors of child sexual abuse who seek redress through the statutory victim’s compensation scheme.

• **Onerous reporting requirements:** Victims of violence seeking statutory compensation in NSW must provide evidence that they have reported the violence to NSW Police or another Government agency. Survivors of institutional child sexual abuse often need to build trust and confidence in a person before they are able to disclose their incredibly traumatic story. Survivors may find it particularly difficult to report the violence to a government agency as it may have been government agency that allowed the abuse to occur in the first place. Aboriginal and Torres Strait Islander survivors of institutional child sexual abuse may find it particularly difficult to report the abuse to the NSW Police or government agency given the appalling history of state-sanctioned maltreatment. Cultural and linguistic barriers may also make it difficult for some survivors to report the abuse to government agency.

• **Restitution:** In NSW if a survivor is awarded statutory compensation, the NSW Government can seek to recover the amount of money paid to the survivor, from the perpetrator if the perpetrator has been convicted. While restitution is discretionary, some survivors are reluctant to apply for statutory compensation fearing that the perpetrator will try to re-enter their lives. Survivors may also feel uncomfortable knowing that perpetrators may have access to their application and supporting evidence for the purpose of preparing a response to a provisional order for restitution.

• **Limited legal assistance:** Legal services are not funded in NSW to provide advice and assistance to survivors of crime to apply for statutory compensation. Only a small number of legal services, mainly community legal centres, provide free assistance to survivors of violence, mainly assisting survivors of domestic violence and child sexual abuse. Legal Aid NSW is not currently making grants of legal aid to applicants for statutory compensation. While government staff administering statutory compensation schemes can provide some limited assistance to survivors of violence, they cannot provide legal advice and arguably it is a conflict of interest for government staff who ultimately determine applications for statutory compensation to assist survivors. Survivors of institutional child sexual abuse may find it particularly difficult to apply for statutory compensation unassisted, as collecting evidence of the sexual abuse may be re-traumatising.

• **Changes to schemes applying retrospectively:** The retrospective application of the new statutory victims of crime compensation scheme in NSW had a hugely detrimental and disproportionate impact on survivors of institutional child sexual assault who had lodged their claim under the old scheme. Survivors who had been waiting a long time for the determination of their application (due to delays with the administration of the scheme) and who were expecting up to $50,000 because of the severe psychological injury they incurred due to the sexual abuse, had to come to terms with the news that they would only be eligible for up to $10,000 under the new scheme. A special payment of $5,000 was made to survivors who had applied for compensation under the old scheme, but only those who applied within two years of the act of violence (or

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7 *Victims Rights and Support Act 2013 (NSW)* section 59.
turning 18). Many survivors of institutional child abuse were not eligible for the special payment because they were not ready to deal with the abuse before they were 20 years old.

- **Limited recognition of psychological harm and emphasis on physical injury:** As outlined above, the NSW scheme now places more emphasis on physical injury with limited scope for compensation for psychological injury. Most survivors will primarily have claims for psychological harm with often very limited evidence of physical injury, as it is often impossible for child victims to report the violence when it happens. This weighs the scheme against survivors who often cannot easily fit within injury categories.

- **Individualised claims:** Victims compensation schemes are not set up to recognise and provide redress for systemic and institutionalised violence. The mechanisms for claiming compensation and for restitution all focus on an individual perpetrator. This does not adequately deal with failures of institutions and institutionalised violence. As a result compensation amounts do not recognise aggravating factors such as breaches of duty of care or that the institution may have significant resources to pay toward compensation compared to that of an individual.

- **Grouping together 'series' of acts of violence:** In NSW acts of violence that were committed over a period of time by the same person or group of persons constitutes one act of violence. While survivors of multiple acts of sexual abuse are eligible for more compensation (up to $10,000) than victims of single act of violence (between $1,500 and $5,000) it does not adequately reflect the harm caused to survivors of systemic child sexual abuse in institutions, who could be severely psychologically damaged and unable to fully participate in society as adults. The manner in which the system operates is to disadvantage survivors who were abused by the same person over a very long period of time. This operates to disadvantage long term victims of serious abuse.

**Recommendations for reform of statutory victims of crime compensation schemes**

We believe the following changes should be made to the NSW statutory victims of crime compensation scheme to address the problems identified above:

- **Increased compensation:** The maximum amount of compensation payable to survivors of institutional child sexual abuse should be significantly increased to better recognise the significant harm caused to them. This should be recognised as a separate category of violence and should recognise repeated and systemic abuse. There should be no reduction in awards due to the ‘deeming’ of acts as being related, and instead a separate category should be created for long term child sexual abuse, with an appropriate level of compensation.

- **Specific recognition of psychological harm:** Legislation should specifically recognise psychological harm as an injury eligible for compensation.

- **No time limit:** No time limit should apply for survivors of institutional child sexual abuse to apply for statutory compensation, or for any type of payment toward economic or medical need.

- **No prescribed evidence:** If a survivor is able to establish, on the balance of probabilities, an act of violence occurred and they suffered an injury, the form of evidence should not be prescribed. Survivors should not be required to report the

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*Victims Rights and Support Act 2013 (NSW) section 19(4) and (7).*
violence to the Police or a government agency as a condition of receiving statutory compensation.

- **Optional restitution**: Survivors of institutional child sexual abuse should be able to elect whether or not restitution is pursued. This may encourage more survivors to apply for victim’s compensation. Restitution should also be available against institutions.

- **Funded legal assistance**: The scheme should provide some funding to solicitors to assist survivors apply for victim’s compensation. Money paid to solicitors should not come out of any compensation paid to survivors. Solicitors should be prohibited from charging survivors of institutional child sexual abuse apply for victims’ compensation.

- **Fund other forms of redress**: Offer a wide range of benefits to address the needs of survivors, including compensation, counselling and education, either directly, or by funding access to community services outside the scheme. Currently counselling under the NSW is capped and it should be extended for people who experienced sexual abuse as children.

- **Input from survivors**: We believe that State and Federal governments should engage with survivors and survivor groups to (re)design victims of crime compensation scheme/s that meet their needs. Survivor groups should be funded to allow them to engage, if necessary.

- **Secondary victims**: We believe that all those forced to live in institutions where abuse was widespread and systemic were affected by the culture of abuse, even if they were not themselves abused and should have access to statutory victims of crime compensation schemes to address their needs. Equally families of those abused were harmed and should also have access to statutory victims of crime compensation schemes to meet their needs.

- **Adequate training for staff**: The scheme should be managed by those specifically trained to understand the particular circumstances of survivors of institutional child sexual abuse.

- **Well publicised**: The Government should develop and deliver a public education campaign to promote the scheme.

KLC remains at the disposal of the Commission’s convenience should you wish to further discuss any part of this submission. We thank the Commission for its ongoing invaluable work and wish you every success in your future investigations.

Yours Sincerely,

KINGSFORD LEGAL CENTRE

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