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

Dear Sir/Madam

Issues Paper 7
Statutory Victims of Crime Compensation Schemes

Introduction

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people aged 25 and under. The Shopfront has been operating since 1993 and is a joint project of Herbert Smith Freehills, Mission Australia and the Salvation Army. The Shopfront is located in Darlington and our primary client base is in the inner city area. However, we also act for young people in other parts of metropolitan Sydney and occasionally in regional areas. Therefore our practice and expertise is in the main limited to the law of New South Wales, and in relation to statutory victims of crime compensation schemes, the former and current New South Wales schemes.

The Shopfront's clients come from a range of cultural backgrounds, including a sizeable number of indigenous young people. Common to most of our clients is the experience of homelessness: most have been forced to leave home due to abuse, neglect, domestic violence or extreme family dysfunction. This leaves them extremely vulnerable and traumatised and unable to protect themselves. Moreover, most of our clients have limited formal education and therefore lack adequate literacy, numeracy and vocational skills. A substantial proportion also have a serious mental health problem or an intellectual disability, often co-existing with a substance abuse problem. These clients have difficulty successfully navigating the different bureaucracies related to housing, appropriate medical care and financial assistance, in addition to managing their legal issues and the court system.

The Shopfront represents and advises young people on a range of legal issues, with a particular emphasis on criminal law. It is our experience that most of the young people we assist as criminal defendants are also victims of abuse with unresolved trauma. The Shopfront also assists clients to pursue victims' compensation claims, in particular claims for compensation for 'domestic violence' and 'sexual assault', which in the main relate to their history of child abuse. Most of this child abuse was perpetrated by foster carers or whilst under the care of the state.

Comments on Issues Paper 7

1 General Comments

We are fully supportive of any proposed statutory scheme for compensation for victims of institutional child sexual abuse, so long as it is sensitive to the needs of these vulnerable victims. We consider that any such scheme being either a specific redress scheme or a
taxpayer funded scheme should be specifically tailored to the needs of the victims of institutional child sexual abuse and properly funded.

We have had the benefit of reading the response to issues paper 6 dated 2 June 2014 and issues paper 7 by Kingsford Legal Centre (received in draft form) and fully endorse their submissions.

One of the main problems with the existing victims compensation schemes is that they are state based and funded and differ markedly in their treatment of compensation claims, evidentiary requirements and amounts and structure of payments. Any Victims Compensation Scheme set up for victims of institutional child abuse would need to be consistent across the states and be fully and appropriately funded so that no person is disadvantaged because they were abused in a particular geographical area.

2 Specific comments

2.1 Benefits of a victims of crime compensation scheme

In our experience dealing with young people who have been the victims of child abuse, in order for a victim to be successful in rehabilitation, they first need to feel closure and to feel that their suffering has been acknowledged by someone in authority. For many victims of child abuse, in particular sexual assault, the probability of a successful criminal prosecution is very slim and even a successful civil claim would be beyond their means and resources, even if the perpetrator had money, which for most victims is not the case. Consequently, a determination by a statutory compensation authority and importantly, the payment of a lump sum goes a long way toward a victim’s rehabilitation.

We submit that for most of these victims, mere words would not be sufficient. They have been manipulated and betrayed by the perpetrators of the abuse and the institutions that were supposed to care and protect them. The payment of monies through a statutory scheme is a symbol that the community abhors the crimes that were perpetrated against them and supports the victims.

Case study - C

C was made a ward of the state when she was just 18 months old. She was taken from her mother and placed with her mother’s sister by the Department of Community Services (DoCS).

From the age of approximately 4yrs until she was 18 years, her foster father/uncle raped her. In addition to sexually assaulting her daily, he also physically and emotionally abused her and manipulated her. For example he would force her to ride her bike around the backyard multiple times for hours until he told her to stop. Also she was not allowed to look at him directly or speak unless he authorised it. This meant that when DOCS visited to check on her, she couldn’t tell them anything.

When she tried to leave at 16 years old, he told her she had to stay until she was 18 years or the police would arrest her. In addition, when she was 8 years old, her 12-year-old foster brother/cousin also started sexually assaulting her. After she left at 18 years old she suffered mental health problems. She had been manipulated for most of her life that she was worthless and would not be believed.

After speaking to us, she reported this abuse to police and filed some victims compensation claims. The police and C worked together to try and convict the perpetrators, even asking her to wear a wire and confront her abusers. This was extremely stressful for her. The abusers never showed. To her great disappointment, the police were forced to drop the investigation.

C’s claims were assessed by the Victims Compensation Tribunal and she received lump sum compensation. In her eyes, she had finally been vindicated and felt empowered. She had not only been believed but instead of just receiving words and reassurance, she was paid a lump sum of money in the hope that she could piece together her shattered life. The amount of money paid was not in any way sufficient to compensate for over 16 years
of horrible abuse but it went a long way to saying that as a society we condemn what happened to her and hope that she can rebuild her life.

Many of our clients are traumatised from the child abuse they have suffered, and also have an intellectual disability and/or a mental illness. Such a vulnerable young person may not have the capacity to provide a witness account that would support a criminal conviction, nor manage a civil claim in the courts. Even so, he/she is still subject to the pain, suffering and humiliation that results from these sexual assaults.

In addition, it is our experience that in most, if not all areas of their lives, when they need to deal with the government or its institutions, our clients express feelings of considerable disadvantage as compared to the rest of the community. In attempting to manage their daily problems - in particular, dealing with homelessness, unemployment, lack of training, mental and physical health and the police and the courts - our clients' backgrounds, lack of social skills, literacy problems and trauma create many barriers that are difficult for them to surmount. However, we have found that in relation to victims compensation, our clients feel that they are treated equally to everyone else and that they have been heard and vindicated. This feeling of empowerment plus the receipt of a lump sum goes a long way to 'leveling the playing field' and assisting our clients to be able to participate more fully in our community.

In our submission, any proposed statutory scheme should include a lump sum payment and be easy to negotiate, even for the most vulnerable of the victims.

Several of our clients have used the lump sum compensation to enhance their lives in a positive way, usually using the money to further their missed education or to purchase items such as cars or whitegoods in order to benefit themselves and their children. In our experience, it is the lack of education or similar opportunities as a result of a traumatic childhood that continue to disadvantage our clients and even sometimes the next generation.

In addition, several of our clients have used the money to pay off their outstanding fines. One of the sanctions applied for non-payment of fines is that a person can have their application for a driver's licence refused or their current licence suspended. Therefore paying off these fines not only allows them to be free of debt but also entitles them to apply for or regain their driver's licence. This enhances their quality of life generally but also significantly raises their future employment prospects.

One of the aspects of the New South Wales statutory scheme that our clients consider helpful is the emphasis on documentary evidence. The idea that they do not need to face their perpetrators and be cross-examined goes a long way to instilling their confidence in the system.

2.2 Disadvantages of victims of crime schemes

In our experience the particular disadvantages of such schemes are:

(a) Capped payments for compensation which bear little or no relationship to the suffering of the victims.

(b) Lengthy delays (possibly six months if not longer) between the date of filing of an application and the date of receiving a determination. This is of particular concern when dealing with clients who are homeless or suffering from mental illness, as they have a tendency to lose contact with services.

(c) Complicated terminology and requirements which many of our clients find difficult to understand. For example the NSW Scheme provides for a number of factors which can result in a reduction or refusal of compensation. These include a failure to provide reasonable assistance to authorities, failure to mitigate injury and the concept of 'related acts' which can have the effect of combining multiple claims for sexual assaults by a group of people.

(d) Evidentiary requirements which are difficult if not impossible to meet. For example the NSW Scheme requires that a police report or a report from a government agency is required in order to lodge a claim. Many of our clients
have had negative experiences with police and government agencies and therefore instead report their crime to support services, many of which are non-government agencies. It is our experience that many of our clients, particularly those who were victims of child abuse, have been told all of their lives that they will not be believed. Therefore it takes a relationship of great trust to exist before a victim is able to have the confidence to disclose what happened to them. In these circumstances, many young people disclose their experiences of sexual abuse or domestic violence to counsellors, psychologists, refuge workers, social workers, employers and family members.

(e) Restricted time limits for claims: All of the victims of crime schemes impose restrictive time limits for victims to make their claims. Many of the victims of child sexual assault are people who are currently dealing with the results of a childhood and early adulthood consisting of physical and sexual abuse, substance abuse, homelessness and mental health issues. It is unfortunate but very common for many of them to find themselves in domestic relationships with violent partners. They spend their twenties and thirties trying to repair and rehabilitate their lives, before being able to deal with the trauma of their childhood. The NSW Scheme does recognise that victims of child sexual abuse are a separate category and have provided that there are no time limits in relation to this specific area of abuse.

(f) Ineligibility of convicted inmates to receive compensation. This arguably could include children who are the subject of an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987 NSW. We have received many reports from clients who were sexually abused as children whilst in custody. We presume that it would not be intended to exclude these victims of child sexual abuse.

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

It has been our experience that the following elements of the NSW victims compensation schemes (both the past and the current scheme) have been most effective for claimants:

(a) Perhaps of primary importance is the use of documentary evidence rather than oral evidence.

(b) Written determinations or decisions accompanied by a lump sum payment are seen as empowering for the victims of this abuse.

(c) Since many of the victims have been threatened or coerced into keeping silent, they tend to be extremely fearful that the perpetrator/s will find them. The fact that it is unlikely the perpetrators will find out about the claim, or that they will be required to interact with these perpetrators goes a long way towards inspiring confidence.

(d) The provision of free counselling, in addition to and not instead of a lump sum payment.

(e) Although processing of victims compensation applications does take some time, it is nowhere near the time periods that a civil claim in the courts would take.

(f) The fact that lodging an application for Victims Compensation doesn’t cost anything, unlike filing a statement of claim in a civil case.

(g) The payment by Victim Services of certain of the costs of collecting the relevant information. In order to provide any documentary evidence, victims often need to request their files from government agencies such as FACS or police or hospitals. For homeless or disadvantaged young people, they cannot afford the requisite fees.
2.4 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?

We refer to our comments in 1.2 above in relation to the disadvantages of these schemes. We consider that restrictive time limits and complicated terminology or difficult to navigate application processes would be difficult for such clients. Also, since it appears from the findings of the Royal Commission that most of the relevant institutions have been involved in covering up the abuse, then restrictive documentary or evidentiary requirements could be seen as insurmountable obstacles to the victims of these sorts of abuses.

2.5 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?

We repeat the comments made under "Disadvantages of victims of crime schemes" in section 1.2 above.

In addition, we note that all of the current schemes rely upon individual victims knowing about the schemes and filling out individual claim forms and complying with complex evidentiary and other procedures.

Since the relevant sexual abuse being dealt with by the Royal Commission is in an institutional context then perhaps some form of group application or class action type compensation structure would be applicable. This would mean that traumatised victims, who through no fault of their own are homeless or illiterate or suffering from a disability or severe mental illness, could also participate in the scheme.

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

It is our experience that the receipt of a written determination (that clearly expresses belief in the veracity of the victim's claims) from the relevant compensation authority coupled with a lump sum payment and free counselling provides the best form of validation for these victims.

We note that some of the victims compensation schemes offer financial assistance packages. These packages, upon production of receipts and other financial documentation, provide reimbursement for wages lost, expenses incurred for damage to property and medical expenses. It is our experience that the traumatised victims of this form of historical abuse, namely childhood sexual abuse, are generally ineligible for this form of compensation.

2.7 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?

It is our primary view that all victims of crime should receive compensation and services and that no victim is more 'deserving' than any other. Having said that, we do note that there is substantial literature on the damage that prolonged child sexual abuse can have on the sufferers compared to the victim of a one off physical assault. In addition, it appears from the recently publicised findings of the Royal Commission that the victims were not only sexually abused at these institutions but were then made to suffer humiliation and mistreatment by these institutions when they tried to report the abuse and to receive redress either in the form of an apology or compensation.

2.8 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 discussed above (in section 1.2 (d)), many of the victims of crime schemes only accept limited types of documentary evidence such as police reports or other reports of government agencies. The Royal Commission has spent many hours taking individual testimonies from the victims and also the institutions, so in our submission it would be
consistent for that form of oral evidence to be found acceptable. In the same vein, statutory declarations from victims who did not have the opportunity to appear before the Royal Commission should also be acceptable.

Conclusion

In conclusion, it is our view that a strong compensation scheme (in whatever form it takes) is important in empowering the victims, recognising their pain and suffering and for recognition that there has been a public wrong. Victims’ compensation is important not just to victims but also for a fair and just society.

Yours faithfully

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