Community Legal Centres NSW

**COMMUNITY LEGAL CENTRES CALL FOR URGENT REVERSAL OF VICTIMS COMPENSATION CHANGES**

Many Community Legal Centres ("**CLCs**") in NSW advise and represent clients in relation to victims compensation, particularly complex cases working with victims of domestic violence and sexual assault. CLCNSW, the peak body for the 39 CLCs in NSW, is appalled by recent changes to the victims compensation legislation, which restrict the availability of victims compensation, particularly to the most vulnerable people.

**CLCNSW calls for the following urgent actions**

1. the immediate reversal of amendments to s5(3) and s36(1A) and the removal of s23A of the *Victims Support and Rehabilitation Act (NSW)* 1996 (VSRA) that came into effect on 1 January 2011, and
2. a thorough, transparent and consultative review of victims compensation following revocation of the amendments, to look at a variety of issues relating to victims compensation.

**The new, narrow, definition of "related acts" is grossly unfair and unjust**

The new s5(3) definition of "related acts" states that acts are related because "they were committed over a period of time by the same person or group of persons". This restricts a victim, who has suffered from repeated violence from the same person or group, from more than one award of compensation. The new definition is in stark contrast to the recommendations of the recent ALRC/NSWLRC Final Report "Family Violence – A National Legal Response" (rec 29-5(b)).

Many CLCNSW clients are victims of both domestic violence and sexual assault by the same perpetrator. It is grossly unfair and unjust that a victim of repeated childhood sexual abuse by the same perpetrator, spanning a number of years, is deemed to have been subjected to only one act of violence because every sexual assault is artificially considered "related" under the Act. As Justice Rothman stated in *JM v Victims Compensation Fund Corporation* [2009] NSWSC 1300, p 23:

> *…there is nothing intuitive about the proposition that a rape (penile penetration) of a 5 year old is a related act to penile penetration of a 15 year old, just because the victim was the same, the perpetrator the same and the location generally the same.*

Under the old law, victims were limited in how many claims they could make for acts by the same perpetrator. Case law required the Victims Compensation Tribunal to make a proper evaluation of the claims for separate acts of violence, assessing the relationship between the perpetrator and victim, the nature of the assaults over time and many other circumstances particular to the individual case. It is clear that the new Act intends to circumvent existing and well-established case law and the decision in *JM*, making it even harder for victims who have been subjected to heinous crimes, over a period of time, committed by the same perpetrator, to receive compensation.

This amendment will disproportionately affect women, and in particular, Aboriginal women who are over-represented as victims of domestic violence and sexual assault. Further, it reinforces the outdated view that domestic violence and sexual assaults perpetrated by someone known to the victim over a period of time are "private" matters. It reinforces a stereotype that once a victim is injured as a result of one act of violence, any subsequent acts of violence to that victim does not cause further injury.

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**Exclusion of claims for earlier acts of violence disempowers victims**

A new provision precludes victims from making applications for acts of violence that occurred before a successful compensation claim was filed (in relation to a different act of violence) (s23A). Victims of sexual assault and child sexual assault are disproportionately negatively impacted by this change. Many child sexual assault victims experience subsequent domestic violence as adults. Many of these victims struggle for many years to talk about their experience of sexual violence in their childhood. If they have made a claim for compensation for a later act of violence, they will be unable to claim for the earlier sexual violence.

Section 23A actively disempowers victims. It is forcing victims to lodge their applications in chronological order of the act of violence, despite not being psychologically ready to address the earlier violence. The law fails to account for the significant research on the healing process for victims of domestic violence and sexual assault. It is forcing victims to disclose and engage in the compensation process simultaneously for all of the violence that has been inflicted on them. This is particularly onerous for victims of domestic violence and sexual assault, who have often experienced years of abuse and trauma, often by more than perpetrator.

**Changes to costs will leave victims without legal assistance**

Legal costs paid by Victims Services to the lawyers representing victims compensation claimants have been reduced, and the right to appeal in relation to costs has been removed. As a result, private solicitors are ceasing to assist clients in victims' compensation applications. This will increase demand upon CLCs which already struggle to meet the demands of clients with complex victims' compensation claims. Some victims will be left without legal assistance.

**Injustice is caused by restrospectivity of amendments and delays at Victims Services**

The amendments do not promote and respect the rights of victims. They exacerbate, not resolve, deficiencies in victims' compensation law and process for victims. The retrospectivity of the amendments (s23A and s5(3)) is particularly abhorrent. Victims with existing claims, in many cases filed 2 or 3 years ago, have had the law that applies to the determination of their claims changed.

At 1 January 2011 CLCs had numerous matters listed for a determination by an Assessor in October, November and December 2010. Delays in the Victims Compensation Tribunal (VCT) meant that these determinations were not made in 2010. These matters will now be assessed in 2011 and the new, narrower, law applies. This will reduce compensation payable to victims of repeated acts of violence, and may mean some applications, which were valid before 1 January 2011, are not invalid and will not be considered.

**Consultation was inadequate**

CLCNSW, on behalf of victims, has advocated about the significant problems in victims compensation for many years. CLCNSW and its members have previously raised concerns about victims' compensation policy and practice with Victims Services and the NSW Attorney General and requested consultation about any changes to victims' compensation legislation or practice.

In Parliament, the NSW Attorney General stated (Hansard, 30 November 2010):

> *The Government consulted very carefully over an extended period of time with victims groups…*

However, CLCs and other legal representatives for victims were not consulted prior to amendments being introduced into Parliament on 24 November 2010. The changes were rushed through Parliament in six days as part of an omnibus bill.

**For more information contact**:

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