

Changes to the NSW Victims Compensation Scheme – Issues of concern

1. Transparent and adequate consultation required

PricewaterhouseCoopers were commissioned by the NSW Government to review the NSW Victims Compensation scheme last year. There was a 6 week period to make public submissions, closing in May 2012. Many submissions recommended a transparent and adequate consultation process.

In September 2012, 80 leading legal, human rights, health, community and women's organisations wrote to the NSW Attorney General expressing concerns about any proposed changes to the victims compensation scheme and calling for extensive public consultation before any legislative changes occur as well as the public release of the PricewaterhouseCoopers report. These organisations recommended the release of a Discussion Paper detailing potential changes and a comprehensive plan for public consultations or meetings, including meetings in rural, regional and remote areas and consultations with a range of organisations that work with victims of crime. If legislative changes were to be drafted following a Discussion Paper and public consultation process, these organisations recommended stakeholders should be given the opportunity to review and comment on an Exposure Draft Bill, with a commitment from Government to consider submissions.

On 7 May 2013, without any notice, a final bill entitled the Victims Rights and Support Bill 2013 was introduced into the NSW Legislative Assembly. The PricewaterhouseCoopers report was publicly released the same day. Victims Services NSW has since announced that until the Bill is passed they are 'unable to accept or process any new applications for financial assistance or accept any new applications for compensation'. Some of the key issues of concern about the Bill are outlined below.

Recommendation: That the current Victims Rights and Support Bill 2013 not pass through NSW Parliament and that a transparent and adequate consultation process occur, involving victims and a range of organisations that work with victims of crime to ensure the development of a Bill that upholds victims rights.

2. Retrospectivity must be reversed

We are deeply concerned that the proposed new scheme to replace the NSW Victims Compensation scheme will apply to victims of violence who have already lodged claims under the old scheme but whose claims have not been determined by 6 May 2013.

The NSW Government has given rise to a legitimate expectation that victims' claims would be determined in accordance with the system in which they were lodged. Delays in the processing of victims compensation claims have largely been beyond the control of victims of violence. The Government commissioned report into the review of the NSW Victims Compensation scheme ('the PricewaterhouseCoopers report') acknowledges that 'it would be unfair to change these goalposts mid-way'.ⁱ

We are also concerned that the proposed new scheme is already causing additional trauma and revictimising victims, particularly victims of domestic violence, child abuse or sexual assault. Many victims applied for victims compensation more than 12 months ago, some almost 3 years ago. A significant number of these victims have relived their experience through a psychological assessment with an Authorised Report Writer. Where some such victims were previously eligible for up to \$50,000 for a serious psychological injury, there appears to be no separate recognition category for psychological injury.

Such victims would need to prove an assault to be eligible for a recognition payment of \$1,500 or an assault resulting in grievous bodily harm to be eligible for \$5,000. The additional trauma caused as a result of changing the goalposts mid-way is contrary to the right to the highest attainable standard of physical and mental health under the *International Covenant on Economic, Social and Cultural Rights*. There are also work, health and safety issues for Victims Services staff and others assisting victims with victims compensation applications who are responding to inquiries from distraught victims.

Many victims of domestic violence, child abuse or sexual assault apply for victims compensation outside the 2-year limit. The Government has said a one-off payment (transitional payment) will be given to those who have already lodged claims. This will only apply to those who lodged their claims within 2 years of the act of violence, or within 2 years after turning 18 years for children. So most victims of domestic violence and sexual assault will not be eligible for a transitional payment. At a time when the government speaks of its commitment to addressing domestic and family violence, for example, through the development of its Domestic and Family Violence Framework, such a substantial reduction in compensation conveys a clear message that violence against women is not important to us as a society.ⁱⁱ

It is inconsistent with human rights principles to dilute and diminish existing rights and protections and apply this retrospectively. The NSW government asserts that the Victims Rights and Support Bill is consistent with the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Basic Principles)*ⁱⁱⁱ. The *Basic Principles* recommend financial compensation for victims who have 'sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes' (emphasis added). The *Basic Principles* also support the 'strengthening and expansion' of funds for compensation.^{iv} It is against the spirit of the *Basic Principles* to reduce funds for compensation.

Recommendation: If the Victims Rights and Support Bill 2013 goes ahead, retrospectivity must be reversed.

3. That there be no upper time limits imposed on recognition payments for victims of domestic violence, child abuse or sexual assault.

Under the proposed new scheme applications for financial assistance must be made within 2-years of the act of violence or if the victim was a child at the time of the act of violence, within 2-years of turning 18 years of age. Applications for recognition payments must be made within 2-years of the act of violence unless the act of violence involves domestic violence, child abuse or sexual assault. Such victims must apply within 10 years of the act of violence or if the act of violence occurred when the victim was a child, 10 years after the child turns 18 years, that is, at 28 years.

Based on our experience of working with victims of domestic violence, sexual assault and child abuse there are many reasons why victims delay reporting the violence. These include:

- Given such crimes are an abuse of power and trust, often form a cycle of abuse, and perpetrators of such crimes frequently blame their victims, it can take some time for a victim to identify that what has happened to them is a crime;
- stigma, feelings of shame and loss of trust associated with such violent acts and that this takes time to overcome;
- It is often through counselling that additional acts of violence are identified and /or the true extent of injuries is realised and this also takes time – often there are long histories of violence involving different types of abuse (for example, the one victim may have experienced domestic violence, sexual assault and child sexual assault) sometimes involving multiple offenders;

- Victims need to emotionally prepare themselves to go through the compensation process. This may include disclosing to police, health professionals, family and/or friends and having the support of a counsellor;
- Women victims who are also primary care-givers for family often leave self care until last and this may mean they are only in a position to deal with acts of violence they experienced when they were children when their own families have grown up.
- Women may be reluctant to seek help due to social pressures, isolation from social support, economic dependence on the perpetrator and the threat of future attacks;
- For women from culturally and linguistically diverse backgrounds there are additional cultural and community barriers to disclosing such acts of violence;
- Fear of police;

According to the PricewaterhouseCoopers report, the victims compensation schemes in other jurisdictions reviewed within Australia and the UK include exceptions to time limits.^v A 10-year time limit could exclude many victims appearing before the Royal Commission from victims compensation in NSW.

The arbitrary imposition of a 10-year time limit denies equal access to justice particularly for victims of child sexual abuse and domestic violence, providing such victims with non-effective remedies in accordance with their human rights.

Recommendation: That there be no upper time limits imposed on recognition payments for victims of domestic violence, child abuse or sexual assault.

4. Recognition payment required for victims of domestic violence

There are four categories of recognition payments ranging from \$1,500 to \$15,000. The maximum amount of \$15,000 is limited only to a family member who was financially dependent on a homicide victim. We welcome the inclusion of recognition payments to acknowledge the trauma a victim has suffered. However, there is no recognition payment for victims of violence who experience psychological abuse and harm.

It is well known that domestic violence is a serious human rights abuse within Australia. For decades domestic violence advocates have argued that domestic violence is more than physical abuse. This is also recognised in the objects of the *Crimes (Domestic and Personal Violence) Act*.^{vi} Domestic violence also includes emotional abuse: through repeated derogatory taunts; stalking; withholding financial support; and isolating victims from their family, friends and culture. This is recognised in the family violence amendments to the *Family Law Act* which took effect last year. In contrast, the proposed recognition payments appear to focus only on physical assault and no longer recognise psychological injury.

The injuries victims of domestic violence experience are often repeatedly sustained over an extended period of many years; often involve a pattern or cycle of abuse; are often perpetrated by someone the victim knows; and are a means of coercion, control and dominance of the victim. In our experience of working with victims, the impact of these crimes is long lasting and the need for support and rehabilitation, including compensation is very important. Domestic violence must be acknowledged through a recognition payment.

Under the old NSW victims compensation scheme the maximum payment for a victim of domestic violence who could prove a Psychological disorder – Category 2 was \$50,000. Similarly, the maximum

payment for sexual assault was also \$50,000. These payments recognised the serious harm caused by domestic violence and sexual assault.

Under the proposed new scheme, victims of domestic violence will only be eligible for a recognition payment if they can show assault (\$1,500) or grievous bodily harm (\$5,000). There needs to be a category of payment which adequately recognises the harm caused by domestic violence which includes psychological abuse and harm.

We are also concerned that many victims of domestic violence, child abuse or sexual assault may not be currently employed due to the long lasting impacts of violence. The PricewaterhouseCoopers report acknowledges the gendered nature of such violence and that there should be payments other than loss of earnings to ensure the needs of these victims are also met.^{vii} The new proposed scheme includes up to \$20,000 in financial assistance for loss of actual earnings. This could be awarded, for example, to a victim of a violent act that happens at a pub. Where loss of actual earnings cannot be demonstrated, only up to \$5,000 for out-of-pocket expenses can be claimed. After decades of work trying to bring violence that happens in the home into the public sphere the government appears to be giving greater recognition to public acts of violence.

Recommendation: Domestic violence and sexual assault should receive the maximum level of recognition payment.

5. Documentary evidence include reports by a support service

The requirements for documentary evidence are too burdensome, particularly for victims of domestic violence, child abuse or sexual assault. We are particularly concerned at the narrow scope of the evidence required under clause 39(2)(b) for those applying for financial assistance for economic loss or for a recognition payment. That clause stipulates that either a police report or a report of a Government agency is required and in addition, a medical, dental or counselling report verifying actual injury as a result of the act of violence.

It has been well established by decades of research that there are barriers to reporting domestic violence, child abuse or sexual assault. Some victims also fear reporting to police or other government agencies. Reports to non-government agencies, such as welfare, health, counselling and legal assistance services should therefore also be accepted.

Recommendation: Categories of evidence should be amended to include a report by support services (as defined in pt 1, cl 1).

Prepared by the Community Legal Centres NSW's Victims Compensation Committee.

ⁱ PricewaterhouseCoopers, *NSW Department of Attorney General and Justice Review of the Victims Compensation Fund*, 12 July 2012 at 51.

ⁱⁱ Over 50% of successful victims compensation claims in 2010-2011 were for victims of domestic violence and sexual assault. See Victims Compensation Tribunal, *Chairperson's Report 2010/2011*, Victims Services, Department of Attorney General and Justice, Sydney at 20.

ⁱⁱⁱ Victims Rights and Support Bill 2013, Second Reading, 7 May 2013 at 33.

^{iv} *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, General Assembly Resolution 40/34 of 29 November 1985.

^v PricewaterhouseCoopers, *NSW Department of Attorney General and Justice Review of the Victims Compensation Fund*, 12 July 2012 at 98

^v PricewaterhouseCoopers, *NSW Department of Attorney General and Justice Review of the Victims Compensation Fund*, 12 July 2012 at 60.

^{vi} Section 9(3)(d) *Crimes (Domestic and Personal Violence) Act*