



4 May 2012

Review of NSW Victims Compensation Scheme
GPO Box 2650
Sydney NSW 1171

By email: victims.compensation@au.pwc.com

Dear Sir/Madam,

Review of the NSW Victims Compensation Scheme

Introduction

1. Women's Legal Services NSW (WLS NSW) appreciates the opportunity to respond to the Issues Paper on the Review of the NSW Victims Compensation Scheme.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
3. WLS NSW is also a member of Community Legal Centres NSW (CLC NSW) and actively participates in the CLC NSW Domestic Violence and Victims Compensation Subcommittee.
4. This submission is based on the experience of our clients and therefore focuses upon the experience of victims of domestic violence, sexual assault and child sexual abuse.
5. For the reasons outlined in detail below we strongly believe that lump sum compensation payments should continue in addition to counselling and other services, particularly for victims of domestic violence, sexual assault and child sexual abuse.

Consultation process

6. We are disappointed that the review process has not offered a variety of ways and adequate notice to respond, so that stakeholders could properly engage with this review. The short consultation process for written comments to this review, particularly given that 50 questions were included in the Issues Paper, has made it very challenging for our organization to respond on the important issues raised in the Paper that will have an impact on disadvantaged women.



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7. We further wish to express our concerns about the way applicants for compensation have been contacted to participate in this review. Some applicants, including some of our clients, have been sent a letter from Victims Services with a survey designed by PricewaterhouseCoopers. Applicants for compensation have been through traumatic experiences which resulted in their application for victims compensation and many also have low literacy skills. The style of letter and complexity of survey, without warning from Victims Services, is an insensitive and inappropriate way to seek feedback from an important stakeholder group. We also believe that as a consequence the results of this survey are unlikely to be a reliable source of data.
8. We would also like to be consulted further on any proposed changes that may be made to the *Victims Support and Rehabilitation Act 1996 (NSW)* (the *Act*). We ask that any proposed changes be made public, for example, in the form of an Exposure Draft Bill and that there be adequate time for written comments and public consultations before final legislation is drafted. We recommend that these consultations take place in urban as well as rural, regional and remote areas and include consultations with a range of organisations who work with victims of crime, Aboriginal community organisations and organisations working with culturally and linguistically diverse (CALD) communities.
9. We also ask that any report resulting from this review be made public.

Gendered nature of violence and the need to prioritise victims of domestic violence, sexual assault and child sexual abuse

10. Violence against women is one of the most widespread human rights abuses. In Australia:

- domestic violence puts more women aged 15-44 years at risk of ill health and premature death than any other risk factor;¹
- one in three Australian women will report being a victim of physical violence and almost one in five will report being a victim of sexual violence in their lifetime according to the Australian Bureau of Statistics.² We also know that family violence and sexual assault are under reported.
- approximately 350,000 women will experience physical violence and 125,000 women will experience sexual violence each year.³
- some groups of women experience higher rates of violence. These include Aboriginal women⁴, women with disabilities⁵, women from culturally and

¹ VicHealth and Department of Human Services, *The Health Costs of Violence. Measuring the Burden of Disease Caused by Intimate Partner Violence – A Summary of Findings*, 2004 at 10 accessed on 1 May 2012 at: <http://www.vichealth.vic.gov.au/~media/ResourceCentre/PublicationsandResources/Mental%20health/IPV%20BOD%20web%20version.ashx>

² Australian Bureau of Statistics (2005) Personal Safety Survey, ABS Cat. No. 4906.0, Canberra: Commonwealth of Australia. (ABS 2005).

³ ABS 2005, Note 2.

⁴ ABS 2005, Note 2; Mouzos, J. and Makkai, T. Women's experiences of male violence: Findings from the Australian component of the International Violence Against Women Survey, Research and Public Policy Series, No. 56, Canberra: Australian Institute of Criminology, 2004.

⁵ ABS 2005, Note 2; Lievore, D. 'Prosecutorial Decisions in Adult Sexual Assault Cases' Trends and Issues in Crime and Criminal Justice, Issue.1 2005 at 291.

linguistically diverse backgrounds⁶, younger women and older women.⁷

- whatever the form violence takes, it has serious and often devastating consequences for victims, their extended families and the community.
 - domestic and family violence is the biggest single cause of homelessness among women and children.
 - almost one in four children in Australia have witnessed violence against their mothers or step-mothers.
 - violence against women also comes at an enormous economic cost. Research released by the Government shows that each year violence against women costs the nation \$13.6 billion.⁸ This figure is expected to rise to \$15.6 billion by 2021.
11. Under international human rights, States are required to act with due diligence to protect, promote and fulfil their human rights obligations.⁹
 12. Significantly, States may be held responsible for private acts, such as domestic and family violence, if they fail to act with due diligence to prevent, investigate or punish acts of violence.¹⁰
 13. In her first thematic report to the United Nations Human Rights Committee, the current Special Rapporteur on Violence Against Women, its causes and consequences, Ms Rashida Manjoo focused on the right of individuals to reparations for the violation of their human rights, a right 'firmly enshrined in the corpus of international human rights and humanitarian instruments.'¹¹
 14. It is important to draw a distinction between reparations measures and other rehabilitation measures, such as social policy and development measures, which are measures addressed at the entire population, eg social security, as distinct from victims of crime.¹²
 15. 'Given the disparate and differentiated impact that violence has on women and on different groups of women, there is a need for specific measures of redress in order to meet their specific needs and priorities. Since violence perpetrated against individual women generally feeds into patterns of pre-existing and often cross-cutting structural subordination and systemic marginalization, measures of redress need to

⁶ ABS 2005, Note 2.

⁷ ABS 2005, Note 2.

⁸ KPMG, *The Cost of Violence against Women and their Children. Safety Taskforce*, Department of Families, Housing, Community Services and Indigenous Affairs, Australian Government, 2009.

⁹ Human Rights Committee, *General Comment No. 31*, CCPR/C/74/CRP.4/Rev.6, para. 8; Committee on the Rights of the Child, *General Comment No. 5*, CRC/GC/2003/5, 27 November 2003, para. 1; Committee on Economic, Social and Cultural Rights, *General Comment No. 14*, E/C.12/2000/4 (2000), para. 33.

¹⁰ CEDAW *General Comment 19: Violence against Women*, as contained in UN Doc A/47/38 (1992) at paragraph 9.

¹¹ *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, Human Rights Council, A/HRC/14/22 accessed on 16 April 2012 at:

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.22.pdf> See also: the *Universal Declaration of Human Rights* (art. 8), the *International Covenant on Civil and Political Rights* (art. 2, para. 3), the *International Convention on the Elimination of All Forms of Racial Discrimination* (art. 6), the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (art. 14), the *Convention on the Rights of the Child* (art. 39), CEDAW *General Comment 19* at paragraphs 9, 24(i), 24(t)(i).

¹² Note 11 at paragraphs 20-21

link individual reparation and structural transformation. Additionally, women who experience violence have traditionally encountered obstacles to accessing the institutions that award reparations.¹³

16. We note in the F2011 Victims Compensation Tribunal *Chairperson's Report* that 25% of awards for statutory compensation related to victims of sexual assault and 32% related to victims of domestic violence.¹⁴ While recognising that men also experience sexual assault and domestic violence, predominantly this is a crime perpetrated against women and children.
17. Given the significant human rights abuse that violence against women constitutes, the Special Rapporteur's comments above, and that over half of NSW victims compensation payments are made to victims of domestic violence and sexual assault, WLS NSW believes that the NSW victims compensation scheme should prioritise victims of domestic violence, sexual assault and child abuse.
18. These crimes are rarely one off, often continuing over an extended period of time 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 as outlined further below.
19. Additionally, in 1985 Australia endorsed the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Basic Principles)*.¹⁵ While not legally binding, by endorsing this Declaration, States, including Australia, have committed to:
 - a. endeavouring to provide financial compensation to victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; (Article 12(a))
 - b. encouraging the establishing, strengthening and expansion of national funds for compensation to victims; (Article 13)
 - c. strengthening judicial and administrative mechanisms to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible (Article 5), including avoiding any unnecessary delay in granting awards to victims; (Article 6(e))
 - d. taking measures to protect [a victim's] privacy and ensure their safety from intimidation and retaliation; (Article 6(d))
 - e. reviewing practices, regulations and laws to consider restitution as an available sentencing option in criminal cases; (Article 9)
 - f. training for police, justice, health, social service and other personnel concerned

¹³ Ms Rashida Manjoo, Note 11 at paragraph 24

¹⁴ Victims Compensation Tribunal, *Chairperson's Report 2010/2011*, Victims Services, Department of Attorney General and Justice, Sydney at 20.

¹⁵ *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, General Assembly Resolution 40/34 of 29 November 1985, available at <http://www2.ohchr.org/english/law/victims.htm>

to sensitise them to the needs of victims, and guidelines to ensure proper and prompt aid;(Article 16)

20. These *Basic Principles* are particularly relevant to this review and are discussed further in responding to the questions below.

NSW Victims Compensation scheme's purpose

Question 1 Are the objectives of the Act still appropriate in meeting the needs of victims of violent crime?

21. WLS NSW believes the primary objective of the Act should be 'to provide support and rehabilitation for victims of crime'. While the other objectives relating to recovery of compensation from those guilty of a crime are important with respect to accountability, we are concerned that restitution in particular acts as a barrier for victims of crime, especially victims of domestic violence, sexual assault and child abuse, to seek compensation. This is discussed further at Question 5.

Question 2 Are the objectives of 'support and rehabilitation' best achieved by 'counselling and compensation'?

22. WLS NSW believes the objectives of 'support and rehabilitation' are best achieved by both counselling and compensation.

Counselling

23. We acknowledge the importance of making counselling available to all victims of violence, including women in prison and we commend the Australian Government's acceptance of Universal Periodic Review (UPR) recommendation 86. 82, which is consistent with this.
24. We also welcome the pilot counselling program for women in prison in Dillwynia Correctional Centre. We have heard anecdotally that this is beneficial to those accessing it and that a second pilot is expected to commence soon in Wellington Correctional Centre. Given the very high percentage of women in prison who have been victims of violence, as outlined in Question 47, WLS NSW recommends that counselling for women in prison be extended to all women in prison who would like to access it.
25. It is important that counselling is available to all victims of violence who would like to access it. However, based on our experience of working with victims of violence, particularly victims of domestic violence, sexual assault and child abuse and based on research discussed below, WLS NSW also acknowledges that not all victims of violence find counselling helpful.
26. Significantly, as Wise et al note, there is little agreement on the 'best therapeutic approach'.¹⁶
27. Furthermore, therapeutic interventions that focus on reliving and exploring an abuse experience can be 'traumatising for both the victim/survivor and the counsellor' and 'somewhat limited in affecting change in the numerous areas of concern of many

¹⁶ S. Wise, D. Florio, D.R. Benz, P Gerer, 'Ask the experts: Counselling sexual abuse survivors,' *Annals of the American Psychotherapy Association*, 2007, No 10, 18-21.

survivors.¹⁷

28. Astbury notes that of the women who experience violence who access health services, the majority access primary health services rather than specialised sexual assault services. Astbury posits that it is important primary health care workers do not employ techniques that would otherwise be used in other aspects of general health care, such as patient compliance. She argues this would 'likely be highly counterproductive [for victims of domestic violence and sexual assault] because it mimics the controlling behaviour of the perpetrator and reinforces the woman's sense of powerlessness and lack of agency.'¹⁸
29. Several researchers support the need for specialised and different counselling services for victims of domestic violence, sexual assault and child sexual abuse.¹⁹ This includes culturally appropriate frameworks for services working with Aboriginal women. Additionally, there is a need for a multicultural framework for services working with CALD women, as there are 'significant differences in the forms of violence perpetrated' and 'even greater diversity in the way violence itself is perceived, understood and incorporated into individual women's world-views'.²⁰ In the absence of appropriate training health practitioners have identified that they do not know how to respond to CALD women who have experienced violence because of their 'desire to maintain cultural sensitivity' and 'a fear of offending'.²¹
30. As outlined in the CLC NSW Submission we support mandatory cultural awareness training for all counsellors and Authorised Report Writers.²² We believe this is important with respect to both Aboriginal cultural awareness and Culturally and Linguistically Diverse cultural awareness training.
31. Additionally, many advocate that choice and autonomous decision-making must be paramount in counselling for victims of domestic violence, sexual assault and child sexual abuse.²³ This is a feature of the 'wellness' approach.²⁴
32. We also note that we have assisted clients who have developed a strong relationship with a counsellor prior to coming into contact with Victims Services. Unfortunately Medicare only covers the cost of a certain number of counselling sessions and the majority of our

¹⁷ Hodge and J. Myers, 'Counseling of adult women survivors of childhood sexual abuse: Benefits of a wellness approach' *Journal of Mental Health Counselling* Volume 2010, 32(2) at 139;

¹⁸ J. Astbury, 'Services for victim/survivors of sexual assault – identifying needs, interventions and provision of services in Australia,' *ACSSA Issues Paper 6*, December 2006 at 20 accessed on 27 April 2012 at: http://www.aifs.gov.au/acssa/pubs/issue/acssa_issues6.pdf

¹⁹ A. Howard, S. Rigor, R. Campbell, S. Wasco, 'Counselling services for battered women: a comparison of outcomes for physical and sexual assault survivors', *Journal of Interpersonal Violence*, July 2003, Vol 18(7) 717-734; E. Hodges & J. Myers, "Counseling of adult women survivors of childhood sexual abuse, Note 17.

²⁰ A. Allimant and B. Ostapiej-Piatkowski, 'Supporting women from CALD backgrounds who are victims/survivors of sexual violence: Challenges and opportunities for practitioners', *ACSSA Wrap No.9 2011* at 5 accessed on 30 April 2012 at: <http://www.aifs.gov.au/acssa/pubs/wrap/wrap9/w9.pdf>

²¹ A. Allimant and B. Ostapiej-Piatkowski, 'Supporting women from CALD backgrounds who are victims/survivors of sexual violence, Note 20 at 6,

²² CLC NSW, *Victims Compensation Review submission*, question 27

²³ J. Herman, *Trauma and Recovery: The Aftermath of Violence--from Domestic Abuse to Political Terror*, Pandora, London, 2001; K. Lynch, 'The Long Road Back,' *In Session: Psychotherapy in Practice, 2000*, Vol 56 (11) 1427-1432; E. Hodges & J. Myers, "Counseling of adult women survivors of childhood sexual abuse: Benefits of a wellness approach', Note 17.

²⁴ The 'wellness' approach focuses on mental, emotional, social, vocational, cognitive and spiritual aspects of well-being and building on strengths developed through wellness counselling to help victims/survivors begin to describe, reframe and heal from the abuse experience. See: E. Hodges & J. Myers, "Counseling of adult women survivors of childhood sexual abuse, Note 17.

clients receive social security payments and cannot afford to continue to see their counsellor once the free sessions have come to an end. We know that clients are electing to have no counselling rather than having to start again with an Approved Counsellor. This issue is further compounded for victims living in regional, rural and remote areas who may have to travel a large distance to access an Approved Counsellor. We therefore recommend that Victims Services has discretion to make up front payments to counsellors or psychologists (who are not Approved Counsellors) that victims have existing relationships with rather than reimbursing clients for counselling expenses at a later date.

33. In its *First Interim Report* in 1997 the NSW Parliament Joint Select Committee noted 'there will always be a significant number of people, who, for reasons of their own, will not wish to avail themselves of counselling.'²⁵
34. WLS NSW submits that for all the reasons outlined above, counselling for victims should be offered but should be voluntary. We further submit that there should be no negative inferences drawn or negative consequences imposed as a result of a victim choosing not to access counselling.

Compensation

35. We believe victims compensation as a form of reparations also plays a key role in the support and rehabilitation of victims for a number of reasons.
36. Firstly, compensation is a symbolic acknowledgment of pain and suffering and recognises that a wrong has been done. This is very important, particularly for victims of domestic violence, sexual assault and child abuse, who in our experience often comment on the importance of being believed and a feeling of their experiences of trauma being validated by an award of compensation. This is also supported by research.²⁶
37. WLS NSW therefore supports the continuation of the beneficial legislation of the NSW Victims Support and Rehabilitation Act 1996 which ought to be interpreted liberally and beneficially (*Fleming v White* [1981] 2 NSWLR 719 at 722) and in favour of the grant of benefits to a claimant (*Elena Harvey v Victims Compensation Tribunal & Anor* [2001] NSWSC 604).
38. Significantly, in its *First Interim Report* in 1997 the NSW Parliament Joint Select Committee on Victims Compensation noted it was 'generally acknowledged that the retention of providing some form of lump sum payment compensation to priority victims is important as a public recognition of their suffering.'²⁷
39. Furthermore, the awarding of compensation by the State, particularly to victims of domestic violence, sexual assault and child abuse, moves these issues from the private sphere into the public sphere by providing public recognition of pain and suffering and that a wrong has been done. WLS NSW believes this public recognition and state accountability plays a role in reducing violence against women and children.

²⁵ NSW Parliament Joint Select Committee on Victims Compensation, *First Interim Report: Alternative Methods of Providing for the Needs of Victims of Crime*, May 1997 at 12(16) accessed on 22 April 2012 at: [http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/30516e5d23ac3a19ca2570b30004a811/\\$FILE/Report%2001.pdf](http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/30516e5d23ac3a19ca2570b30004a811/$FILE/Report%2001.pdf)

²⁶ See Isobelle Barrett Meyering, *Victims Compensation and Domestic Violence: A National Overview*, Australian Domestic and Family Violence Clearinghouse, Sydney January 2010 at 3;

²⁷ *First Interim Report*, Note 25 at 12(16).

40. Compensation also makes a practical difference for victims of crime, whether it be to assist with relocating and accommodation costs; to buy a washing machine to wash soiled sheets which have been soiled as a result of an act of violence; or to pay for a much needed holiday to assist in the recovery process and/or bring a victim and/or survivor closure. We also refer to the *First Interim Report* in which the NSW Parliament Joint Select Committee acknowledges the many examples of practical benefits of compensation for victims of crime.²⁸
41. Additionally, as Dawson and Zada acknowledge, in contrast to criminal proceedings, victims' compensation schemes and the awarding of compensation itself are victim centred processes.²⁹
42. Given the long lasting and detrimental impact of domestic violence, sexual assault and/or child abuse upon victims, which often, based on the experience of our clients, limits or prevents victims from ever meaningfully engaging in educational opportunities and/or employment, compensation should not be limited to pecuniary compensation, such as reimbursements, services and lost wages. It is important that non-pecuniary compensation that acknowledges pain and suffering is retained.
43. Furthermore, compensation, particularly for victims of domestic violence, sexual assault and/or child abuse should continue as a lump sum and the victim should be able to decide how they spend the money. Given the loss of control and disempowerment experienced by victims of domestic violence, sexual assault and child abuse, providing victims of crime with the choice of how best to spend their compensation money provides victims with agency, is empowering and is important in the healing process.
44. Additionally, at the time of making a victim's compensation application, it is important to acknowledge that a victim of domestic violence, sexual assault or child abuse may not be emotionally or psychologically able to earmark particular ways she will spend her compensation money.
45. Additionally, from a cost-benefit analysis perspective, to continue with the lump sum approach would also reduce unnecessary administration costs that would arise in any new system.

Question 3 Are the objectives of the Act being met by the current benefit and support structure of the Fund?

46. We believe that the objectives of the Act are being met by the current benefit and support structure of the Fund which includes compensation and counselling. However, we note that the maximum award of compensation remains at \$50,000 as it has since 1987.³⁰ Allowing for inflation today this amount would be \$107,000.³¹
47. Given the high levels of violence against women and children in Australia in the form of

²⁸ First Interim Report, Note 25 at 12(16)

²⁹ Dawson and Zada cited in Barrett Meyering, *Victims Compensation and Domestic Violence: A National Overview*, Note 26 at 2-3.

³⁰ *Victims Compensation Act 1987*

³¹ Based on the Reserve Bank of Australia's Inflation calculator accessed on 27 April 2012 at: <http://www.rba.gov.au/calculator/>

domestic violence, sexual assault and child abuse;³² the importance of Governments' commitment to reducing violence against women and children through the National Plan;³³ and the nature and impact of this violence as outlined in paragraph 18 above, WLS NSW supports the proposal outlined in detail in the CLC NSW submission of expanding the compensation range for sexual assault and domestic violence. This is discussed further in Question 23 below.

Question 4 *Should the principle of the scheme be based on "compensation" or "support and rehabilitation", or a combination of both?*

48. We submit that combination of both is appropriate as discussed in Question 2 above.

Question 5 *Is it appropriate to impose a levy on convicted offenders?*

49. We refer to the *Second Interim Report* on the Joint Select Committee on Victims Compensation in which levies are described 'as a revenue-raising device based on the view that law breakers, as a class, should be responsible for specifically funding victims compensation before the general pool of taxpayers.'³⁴
50. We note that a levy is already imposed on convicted offenders in NSW under section 79 of the *Act*. Section 79 imposes a levy of \$148, if the person is convicted on indictment or pursuant to a committal under Division 5 of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986*, or \$64, if the person is convicted otherwise.
51. We support a levy imposed by the Court at the time of conviction and the levy should be directed to the NSW Victims Compensation Scheme. Additionally, offenders should be informed of the levy and purpose at the time of conviction.
52. There are several compelling reasons why we support a levy. These reasons also relate to why we oppose restitution, particularly in matters of domestic violence, sexual assault and child abuse.
53. Firstly, our paramount concern is the safety of the victim. Many of our clients inform us that if a conviction is recorded against the perpetrator, they will not make a victims compensation claim because the perpetrator will be made aware of their claim through restitution proceedings. Many victims have informed us that they fear for their safety, believe the perpetrator would try to seek retribution and would try to re-enter their lives and so recommence the cycle of violence. This acts as a serious deterrent preventing some of the most vulnerable victims from accessing victims compensation and is contrary to the United Nations principles of protecting victims from intimidation and retaliation.³⁵
54. Secondly, the current process of restitution in NSW provides an offender with the name of the victim, injuries, date and amount of compensation. In our experience, perpetrators

³² 1 in 3 women have experienced physical violence since the age of 15 and almost 1 in 5 have experienced sexual violence. See Australian Bureau of Statistics, Personal safety survey, 2006

³³ National Plan to Reduce Violence Against Women and their Children, 2010-2022

³⁴ NSW Parliament, *Second Interim Report on the Joint Select Committee on Victims Compensation: The Long Term Financial Viability of the Victims Compensation Fund*, December 2007 at 75, accessed on 30 April 2012 at: [http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/dcbdc3ff9dc9e5b6ca2570b30007522c/\\$FILE/Report%2002.pdf](http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/dcbdc3ff9dc9e5b6ca2570b30007522c/$FILE/Report%2002.pdf)

³⁵ United Nations, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Basic Principles)*, Article 6(d), Note 15.

often share the details of the victim's injury or amount of compensation with others whom the victim did not want to be aware of either a diagnosis of injury or that she had received compensation. While not the intended purpose, restitution is being used as a means for the perpetrator to continue the cycle of violence and abuse against the victim. This is contrary to the United Nations principle of protecting the privacy of the victim.³⁶ WLS NSW strongly opposes perpetrators being enabled to exercise coercion and control in this way.

55. Thirdly, if the Court imposed a higher levy instead of restitution the perpetrator is held accountable in a timely manner, rather than many years after the event as is currently the case with restitution. Also the perpetrator may be less likely to seek retribution if the Magistrate or Judge imposes the levy rather than restitution being a direct result of the victim seeking compensation.
56. Additionally, applying a levy means that all offenders are liable to pay and the charge is therefore not restricted to only those offences in which victims apply and are awarded victims compensation. We submit this is a more equitable system for offenders and appropriately shifts the focus to the actions of the offender rather than the victim.
57. While we support a levy to supplement government funding of the Victims Compensation scheme, for the reasons outlined in our opening there are important reasons why the government should and does have primary responsibility for funding a victims compensation scheme. We refer particularly to our arguments on the gendered nature of violence and that state reparations are in line with our human rights obligations.

Question 6 Is it appropriate to require convicted offenders to pay compensation to any victim of the crime?

58. In principle, we agree that convicted offenders should be accountable for their actions including some form of financial recompense. However, we question the current effectiveness of restitution and we oppose restitution in matters relating to domestic violence, sexual assault or child abuse for the reasons outlined in Question 5.
59. A levy is a more appropriate way of convicted offenders providing financial recompense, particularly in matters of domestic violence, sexual assault or child abuse.
60. In terms of a cost-benefit analysis, the NSW Auditor-General's Report of 2011 notes that only 6.5% of restitution debts owed by offenders are likely to be received.³⁷ As outlined in the *Second Interim Report* in 1997 the difficulties in offenders paying restitution continue to relate to the difficulties in locating offenders often many years after the offence has taken place, that many offenders are unemployed or on some form of welfare support or are in custody.³⁸
61. Significantly, the figure of 6.5% does not take into account the administrative expense in trying to collect restitution debts, which in 1997 amounted to more than 50% of the

³⁶ United Nations, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Basic Principles)*, Article 6(d), Note 15

³⁷ *NSW Auditor-General's Report: Financial Audit Focusing on Law, Order and Emergency Services*, Department of Attorney General and Justice Vol 7, 2011 at 27.

³⁸ *Second Interim Report*, Note 34 at 60; *Victims Compensation Tribunal NSW, Chairperson's Report 2010/2011*, Victims Services Attorney General and Justice, Sydney 2011 at 28.

restitution debts received.³⁹ WLS NSW submits that an offender may be more likely and able to pay a levy rather than a large compensation amount and that Victims Services would therefore be more successful in receiving payment of a levy than payment for restitution.

62. WLS NSW refers to the recent report on Penalty Notices by the NSW Law Reform Commission which recommends the extension of work and development orders to prisoners.⁴⁰ We consider this to be one way impecunious perpetrators can 'pay' the levy. While this may not provide funds as such to the Victims Compensation Fund it is a way that further holds offenders to account for the harm caused.

Convicted offenders' perspective

63. WLS NSW experience in restitution matters is limited to situations in which the clients defending restitution have also been victims of violence themselves. The main issue in relation to such restitution proceedings is that the amount of money owing in restitution is deducted from any victim's compensation payable to our client as a victim of violence.
64. WLS NSW has assisted clients to successfully challenge restitution orders. For example, we assisted a client who was a victim of sexual and physical violence perpetrated by her father over many years. After years of continuous abuse the young woman eventually retaliated against her father and was later convicted of assault. We assisted the young woman to have restitution waived in the circumstances that she had been a victim of significant abuse, had served time in prison and was now trying to care for her children and was suffering financial hardship.
65. An issue of concern is whether the victim knows they have a legal right to challenge restitution in such circumstances. This is of particular concern for women in prison who may not have ready access to legal advice, especially given the high number of women in prison who have experienced physical and/or sexual violence during their life. See Question 47 for further information.

Question 7 If the scheme is changed (with regards to eligibility, compensation and services), what should the continuation of rights be under the existing scheme?

66. As outlined above, WLS NSW strongly believes that compensation and counselling should both continue, particularly for victims of domestic violence, sexual assault and child abuse.
67. We wish to raise our great concern at the impact of the 2010 amendments to the NSW Victims Compensation scheme which included detrimental changes that applied retrospectively and took place with very little consultation.⁴¹
68. These changes particularly impact upon victims of domestic violence, sexual assault and

³⁹ *Second Interim Report*, Note 34 at 61.

⁴⁰ NSW Law Reform Commission, *Penalty Notices, Summary Report 132-S*, February 2012 at 8 accessed on 30 April 2012 at: [http://www.lawlink.nsw.gov.au/lawlink/lrc/lrc.nsf/vwFiles/R132S.pdf/\\$file/R132S.pdf](http://www.lawlink.nsw.gov.au/lawlink/lrc/lrc.nsf/vwFiles/R132S.pdf/$file/R132S.pdf)

⁴¹ Particularly s 23A and s 5(3).

child abuse and particularly Aboriginal women as outlined by CLC NSW.⁴² We note the Victims Compensation Chairperson's most recent report refers to 'the special focus on Indigenous issues and priorities in the NSW Government State Plan.'⁴³ We submit that to disadvantage Aboriginal women runs counter to this focus and that such amendments are potentially discriminatory in their effect.

69. Given the current 25 months delay in processing victims compensation claims, which is due to no fault of the victim, we believe the retrospective effect of the amendments to be unjust and contrary to the beneficial intention of the legislation and the objectives of the Act, namely, support and rehabilitation.
70. Should there be any additional disadvantageous changes to the scheme it is important that they not be applied retrospectively. Victims Compensation applications that are filed prior to the introduction of any changes should be assessed under the scheme in place at the time of filing.

Questions on eligibility

Please find below our answer to these 3 questions:

Question 8 *Are the current limitation periods appropriate? Under what circumstances, if any, should special leave be granted?*

Question 9 *Should there be an absolute upper limit on eligibility?*

Question 10 *What limitation periods should apply and should these periods vary by the type of crime?*

71. We do not support a general time limit for lodging claims of less than 2 years and would suggest that the time limit be extended to 3 years to bring it in line with the time limit for personal injuries.⁴⁴
72. We further submit that this time limit be extended to three years from when a child reaches the age of 18 years.
73. We recommend that the provision of granting leave for out of time applications to victims of domestic violence, sexual assault and child abuse continues as it currently does, that is, that there is a presumption leave will be granted unless 'the Director is satisfied that there is no good reason to do so'.⁴⁵

⁴² CLC NSW, *Community Legal Centres Call for Urgent Reversal of Victims Compensation Changes*, 2010 accessed on 30 April 2012 at

http://www.clcnsw.org.au/cb_pages/files/CLCNSW%20VC%20infosheet%20for%20forum_FINAL.pdf

⁴³ *Chairperson's Report 2010/2011*, Note 14 at 14.

⁴⁴ *Limitations Act 1969* (NSW) s18A

⁴⁵ *Victims Support and Rehabilitation Act 1996* (NSW) s26(3)(b)

74. This is important for the following reasons which are based on the experience of our clients, the experience of other community legal centres working in this area,⁴⁶ and is also supported by research.
- Child sexual assault and adult sexual assault are hidden and secret crimes.⁴⁷ For victims of domestic violence they are also often subjected to sexual violence.⁴⁸ The stigma, shame and loss of trust associated with violent crimes such as domestic violence, sexual assault and child abuse act as a barrier to women and children disclosing such crimes and that this takes time to overcome;⁴⁹
 - 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;⁵⁰
 - For CALD women there are cultural and community barriers to disclosing such acts of violence;⁵¹
 - Victims of such violent crimes may not know how to access support services, including counselling;
 - 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;⁵²
 - Sexual violence 'may diminish survivors' feelings of power, self-determination, coping skills and dignity' and this takes time to rebuild;⁵³
 - 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 of such violent crimes need to know the NSW Victims Compensation scheme exists and how to access it. This is particularly challenging for Aboriginal women, CALD women, women with disabilities including psychological injuries as a result of the act of violence, women in regional, rural and remote areas who may have limited

⁴⁶ See CLC NSW submission.

⁴⁷ See: Lara Fergus & Monique Keel, 'Adult victim/survivors of childhood sexual assault' *ACSSA Wrap 1*, Australian Institute of Family Studies, November 2005 accessed on 3 May 2012 at: http://www.aifs.gov.au/acssa/pubs/wrap/acssa_wrap1.pdf

⁴⁸ Howard et al, 'Counselling services for battered women', Note 19 at 717

⁴⁹ Howard et al, 'Counselling services for battered women,' Note 19 at 719-720, 729-730; Natalie Taylor & Judy Putt, 'Adult sexual violence in Indigenous and culturally and linguistically diverse communities in Australia,' *Trends and Issues in crime and criminal justice*, Australian Institute of Criminology, September 2007 at 3 accessed on 1 May 2012 at: <http://www.aic.gov.au/documents/1/D/F/{1DF7DB51-E301-4666-BEB2-78763EE00B71}tandi345.pdf>

⁵⁰ Mahoney cited in Howard et al, 'Counselling services for battered women,' at 719, Note 19; D. Lievore, *No longer silent: A study of women's help-seeking decisions and service responses to sexual assault, A report prepared by the Australian Institute of Criminology for the Australian Government's Office for Women*, 2005 at 9, 36 accessed on 28 April 2012 at: <http://www.aic.gov.au/publications/previous%20series/other/61-80/no%20longer%20silent.aspx>

⁵¹ Maria Dimopoulos, 'Implementing Legal Empowerment Strategies to Prevent Domestic Violence in New and Emerging Communities,' *Issues Paper 20*, Australian Domestic and Family Violence Clearinghouse, November 2010 at 14, accessed on 30 April 2012 at: http://www.adfvc.unsw.edu.au/PDF%20files/IssuesPaper_20.pdf; Natalie Taylor & Judy Putt, 'Adult sexual violence in Indigenous and culturally and linguistically diverse communities in Australia,' Note 49 at 3; Jenny Mouzos & Toni Makkai 'Women's experiences of male violence: findings from the Australian component of the International Violence Against Women Survey (IVAWS)' *Research and Public Policy Series 56*, Australian Institute of Criminology, Canberra, 2004 at 31-32;

⁵² Koss & Harvey and Harned cited in Lievore, *No longer Silent*, Note 50 at 10-11, 30-32;

⁵³ Howard et al, 'Counselling services for battered women,' at 720 Note 19

access to services; and women with low literacy. Culturally appropriate services and support, including access to interpreters, is required.⁵⁴

- Victims of such violence need to emotionally prepare themselves to go through the victims 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.

75. Given the objectives of the Act are support and rehabilitation of victims of violence, victims of such violent crimes should be empowered to access victims compensation when they are emotionally ready to do so. The healing of victims should be paramount and s26(3)(b) is an important acknowledgement of the impact of such crimes and that a time limit should not generally be imposed on such victims. This is a strength of the current scheme that should not be lost.

76. That there is a need for the presumption for leave to be granted in cases of domestic violence and sexual assault is further reflected in the statistics included in the Victims Compensation Tribunal Chairperson's report that 2,532 out of time applications were granted in matters of sexual assault and domestic violence in F2011.⁵⁵

77. We further note that leave to claim out of time decisions cannot be appealed. As discussed at Question 42, we submit that appeals should be allowed on decisions to refuse leave to file out of time as there is no good reason to refuse appeal rights on this issue.

78. We also support that in all other matters that 'leave should not be given unless the applicant establishes that there is good reason to do so.'⁵⁶

Upper limit on eligibility

79. WLS NSW is concerned by the recommendations made in the F2008, F2010 and F2011 Victims Compensation Tribunal Chairperson's reports that an upper time limit be imposed on victims of sexual assault and domestic violence such as to restrict eligibility for victims compensation.

80. We note the Chairperson's recommendation of an upper limit of 20 years.

81. Some of the reasons proposed for an absolute upper time limit include 'the claims are very time consuming to deal with', the claims 'are nearly always accompanied by an ARW report at a cost of \$605 to the Fund' and 'they would still be entitled to counselling.'⁵⁷ WLS NSW acknowledges that from our experience of working with victims of domestic violence, sexual assault and child abuse, such matters are generally time consuming in building trust between the client and solicitor, in gathering the evidence and in cases where there is no police and/or medical evidence in drafting detailed statutory declarations

⁵⁴ Natalie Taylor & Judy Putt, 'Adult sexual violence in Indigenous and culturally and linguistically diverse communities in Australia,' Note 49 at 5; A. Allimant and B. Ostapiej-Piatkowski, 'Supporting women from CALD backgrounds who are victims/survivors of sexual violence, Note 20 at 11-12.

⁵⁵ *Chairperson's Report 2010/2011*, Note 14 at 12.

⁵⁶ *Victims Support and Rehabilitation Act 1996 (NSW) s26(3)(a)*

⁵⁷ *Victims Compensation Tribunal NSW, Chairperson's Report 2009/2010*, Victims Services Attorney General and Justice, Sydney 2011 at 33.

and in formulating legal arguments in often complex matters. However, victims should not be denied access to justice because their matter is time consuming. Community Legal Centres, such as WLS NSW represent the most disadvantaged and marginalised clients precisely because they are vulnerable and otherwise unlikely to be able to exercise their rights and access justice.

82. We further note that there is considerable research that sexual assault is under reported and there are often significant delays in reporting⁵⁸ and that once such violence is disclosed, it can be cathartic for the victim to go through the victims compensation process to have the opportunity to be heard, believed and their experiences validated. That this often requires an ARW report at a cost of \$605 is a reflection of the serious nature of the injury and is therefore required by the Scheme. It is not due to any fault on the part of the victim and should not be a reason to disentitle a victim from claiming compensation.
83. To limit eligibility to the scheme highlights a lack of understanding of the nature of these crimes which are primarily perpetrated against women and children and which have deep, long lasting and detrimental impacts on victims⁵⁹ which may take many years to surface and a life time to heal.⁶⁰
84. We refer again to research which has found that male intimate partner violence is the leading contributor to death, disability and illness for women aged 15 to 44 years, exceeding other well-known risk factors, including high blood pressure, obesity and smoking.⁶¹
85. Furthermore, to suggest counselling alone is sufficient⁶² is to minimise the extent of harm suffered by such victims and deny these victims the important symbolic value of compensation which publicly acknowledges a harm has been done and the practical benefits of compensation which helps victims to rebuild their lives.
86. Additionally, while the number of victims applying for victims compensation more than 20 years after the act of violence is significant enough to highlight a need for the victims compensation scheme to continue to allow such applications - 389 claims lodged in the year ending 30 June 2011 – this represents only 4% of total applications lodged in the year ending 30 June 2011⁶³ and so should not be considered too burdensome.
87. WLS NSW strongly believes there should be no upper time limit for victims of domestic

⁵⁸ 19% of women who experienced sexual assault by a male perpetrator reported it to the police in 2005. See: Australian Bureau of Statistics, Personal Safety Survey Australia 2005 Reissued August 2006 accessed on 30 April 2012 at: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0/> ; Natalie Taylor & Judy Putt, 'Adult sexual violence in Indigenous and culturally and linguistically diverse communities in Australia,' Note 49 at 4-5; See also Julie Stubbs, 'Sexual Assault, Criminal Justice and Law and Order' (2003) *14 Women Against Violence* 14, 16-7.

⁵⁹ See: J. Noll, 'Sexual abuse of children: Unique in its effects on development?' *Child Abuse and Neglect*, 2008, Vol 32, 603-605.

⁶⁰ The World Health Organisation acknowledges that health consequences of violence can persist long after the violence has stopped. See World Health Organisation, *World Report on Violence and Health*, WHO, 2002 at 101 accessed on 1 May 2012 at:

http://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap4.pdf

⁶¹ VicHealth and Department of Human Services, *The Health Costs of Violence. Measuring the Burden of Disease Caused by Intimate Partner Violence – A Summary of Findings*, 2004 at 10 accessed on 1 May 2012 at:

<http://www.vichealth.vic.gov.au/~media/ResourceCentre/PublicationsandResources/Mental%20health/IPV%20BOD%20web%20version.ashx>

⁶² *Chairperson's Report 2009/2010*, Note 57 at 29.

⁶³ *Chairperson's Report 2010/2010*, Note 14 at 11, 33.

violence, sexual assault, child abuse or abuse in institutional care.

88. The case studies included below highlight why an absolute time limit in cases of domestic violence, sexual assault or child abuse is inappropriate.

Case study 1

Joan* applied for victims compensation for Sexual Assault some 50 years after the 'act of violence'. She had been sexually assaulted by a member of her church in the mid 1950s when she was a young child. The assaults were reported to the police in 2005 after an event triggered memories for the client. The offender was still alive and was interviewed by police who prepared a brief for the DPP, but ultimately the prosecution did not proceed given the delay between offence and reporting.

Joan recalls the terror she felt at the thought of telling anyone about the abuse as a child because she believed her father would have belted her if he found out. As an adult, she then just got on with her life but eventually had to seek assistance to deal with depression and feelings of helplessness and ultimately was so overwhelmed she needed to take action including reporting and applying for victims compensation.

At first instance the Assessor was not satisfied that an act of violence was established but the Chairperson was satisfied on appeal.

Joan commented on the importance of being believed and felt her experience had been validated by the award of compensation.

Case Study 2

Emily,* an Aboriginal woman, applied for victims compensation for Sexual Assault some 30-40 years after the 'acts of violence.' She was sexually assaulted by a male relative as a child over a number of years in the 1960s and 1970s. Emily told some family members at the time but was not believed by them. She did not report the abuse to police but did report to a counsellor when she was an adult.

By the time Emily made her victims compensation application the relative had died. However, there were Court records relating to another child which corroborated what Emily had said. A detailed statutory declaration was also provided.

We raised that it was extremely difficult for a young Aboriginal child in the 1960s to approach police officers, who were predominantly white males, in a small town about sexual assault.

Emily's victims compensation claim was successful.

Case Study 3

Molly,* an Aboriginal woman, applied for victims compensation for Sexual Assault some 46 years after the 'act of violence'.

The violent sexual assault was perpetrated by a family friend when Molly was a teenager. She was too scared to report to police at the time and too ashamed to tell

anyone at the time what had happened.

Molly reported the sexual assault to police, some 36 years after the assault, shortly after seeing the perpetrator at a community event, which brought back the memories of the assault.

Again, the difficulty for an Aboriginal child to approach predominantly white male police officers in a small town in the 1960s was raised.

Molly's victims compensation claim was successful.

* not her real name

89. As these case studies highlight there are very good reasons why victims of domestic violence, sexual assault and/or child abuse delay telling anyone about the violence. These case studies also highlight that evidence is able to be gathered and put to the Tribunal and that compensation is a crucial part of being believed
90. In considering significant delays in reporting, particularly to police, it is also important to acknowledge that many Indigenous Australians are distrustful of the police given the association of police with the legal system that resulted in Indigenous Australia's dispossession of land, loss of culture, removal of children from their families and Indigenous deaths in custody. Additionally, many Indigenous Australians may also distrust the police due to experiences of over policing.⁶⁴
91. WLS NSW, along with other community legal centres, is greatly concerned that an absolute time limit will disproportionately impact upon Aboriginal women victims of domestic violence, sexual assault or child abuse who for the reasons outlined above may not have disclosed the violence to police, who for reasons of shame and stigma may not have disclosed the violence to anyone else until many years after the violence stopped and who because of limited access to services may not have been aware that their health was linked to their experience of violence or they were entitled to victims compensation until many, many years after the violence.

Question 11 What offences of violent crime should and shouldn't be covered?

92. We endorse the comments made in the CLC NSW submission.

Question 12 In what circumstances should support be available for primary, secondary, family and / or support persons of victims?

93. We endorse the comments made in the CLC NSW submission.

⁶⁴ Mathew Willis 'Non-disclosure of violence in Australian Indigenous communities' *Trends & issues in crime and criminal justice no.405* Australian Institute of Criminology, January 2011 at 3 accessed on 3 May 2012 at: <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi405.aspx>

Question 13 Who should be able to claim expenses or compensation in respect of a homicide?

94. We endorse the comments made in the CLC NSW submission.

Question 14 The current threshold for compensation is \$7,500 in compensable injuries. Is this an appropriate threshold?

95. We believe the current threshold is appropriate, however we believe the range and amount of compensation for victims of domestic violence, sexual assault and child abuse should be expanded as proposed by CLC NSW. For further comment see our responses to Questions 21 and 23.

96. Additionally, the current deduction of \$750 for all victims compensation awards under \$20,000 as required by s19A of the *Act* is confusing for victims. Despite explaining it is an administrative deduction imposed by Victims Services, clients perceive this as solicitors deducting fees, which is potentially misleading and incorrect. To prevent confusion, victims should be informed up front of the correct threshold and maximum award payable with any administrative deductions included in these amounts.

97. We emphasise that this should not result in clients failing to meet the threshold due to the administrative fee which is consistent with s19A(4). Rather, the compensation award amounts must be accurate reflection of what will be paid.

Question 15 Under what circumstances, if any, should secondary victims or support persons be covered?

98. We have no comment on this Question at this time.

Question 16 What level of evidence should be required to establish that an act of violence has occurred on the balance of probability (police reports, medical reports, witness accounts, etc)?

99. WLS NSW submits there should be no set required evidence to establish an act of violence has occurred on the balance of probability.

100. In some instances there may be police reports and medical reports, which will assist in establishing an act of violence has occurred on the balance of probability. In other instances a detailed statutory declaration may be the only evidence available and sufficient to persuade an Assessor or a Magistrate that an act of violence has been committed.

101. This is important because of a range of reasons including: that it is a matter for the decision maker to determine in each matter whether there is sufficient evidence to persuade on the balance of probabilities that an 'act of violence' has been committed irrespective of the source of the evidence; police reports are often not accurate reflections of what has actually occurred in a domestic violence offence including that the victim may minimize or deny the exact nature of the events when the police arrive due to fears of threats and intimidation; the beneficial intention of the *Act*; the primary objectives of 'support and rehabilitation' for victims; and many believing one of the strengths of the NSW Victims Compensation scheme is that victims are believed and as a result feel their experiences have been validated by an award of compensation. This is discussed further at Question 2.

Question 17 Should a police report on the violent crime be required as part of the application process for eligibility?

102. WLS NSW submits that a police report should not be required in all cases.

103. It is important to acknowledge that there are many reasons why victims of violence, especially victims of domestic violence and sexual violence may not report to police or disclose to health professionals.

104. Some of these reasons were discussed in Question 8 including: the nature of domestic violence and sexual violence offences; the stigma and shame victims of such violence often experience; the victim's fear of retaliation by the perpetrator if she seeks help; cultural and community barriers preventing CALD women from reporting violence and seeking help. Additional reasons include: fear or distrust of police, particularly by Indigenous Australians who may distrust police due to experiences of over policing and/or association of police with the legal system that resulted in Indigenous Australia's dispossession of land, loss of cultural, removal of children from their families and Indigenous deaths in custody.⁶⁵

105. There is also evidence to support newly arrived refugees and migrants fearing or distrusting police due to often brutal interactions with police in their homeland.⁶⁶

106. We also endorse the additional reasons why people fear or avoid the police as outlined in the CLC NSW submission, namely due to: previous negative interactions with the police; people in rural, regional or remote areas where the perpetrator of the crime is related to or friendly with police; people with outstanding warrants; lack of knowledge of services and how to access them.⁶⁷

107. It is for these reasons that we strongly believe that failure to report to police or a health professional in cases of domestic violence, sexual assault or child abuse should be removed as s30 factors. Such reporting is an unnecessary burden for the victim and acts as a barrier for the most vulnerable of victims to even apply for victims compensation.

Question 18 Should applicants be required to show evidence of their injuries and associated recovery costs?

108. In order to be awarded compensation under the current NSW Victims Compensations scheme a victim must establish on the balance of probabilities:

- (a) they were a victim of an act of violence; and
- (b) suffered a compensable injury; and
- (c) this occurred in NSW.

109. WLS NSW supports a victim having to establish this and we refer to Question 16 for the type of evidence which should be accepted to support this.

110. We further support a system whereby victims are not responsible for their associated recovery costs, for example dental and physiotherapy expenses. We note, however, that

⁶⁵ Mathew Willis 'Non-disclosure of violence in Australian Indigenous communities, Note 64 at 3.

⁶⁶ Mathew Willis 'Non-disclosure of violence in Australian Indigenous communities, Note 64 at 3.

⁶⁷ CLC NSW Victims Compensation Review submission, question 17.

very few of our clients are in a position to pay recovery costs up front to later receive as reimbursements when they receive their compensation award. We therefore recommend that such costs be covered through adequate public health care which can be accessed by victims of violence.

111. We further submit that any payment of associated recovery costs be in addition to compensation. See our responses to Questions 19 – 26 below for further information.

Questions on compensation

Question 19 What should the aim and purpose of any compensation payments be?

112. Victims compensation payments are made for the purpose of providing 'support and rehabilitation' in the form of practical assistance to a victim. Compensation is not designed to return victims to the position they were in before the act of violence. Rather, it compensates for the pain and suffering that the victim has experienced. It also acts as an important symbolic and public recognition of harm done and helps validate victims' experiences. The aim and purpose of compensation is discussed further in our response to Questions 2 and 20.

Question 20 Are lump sum payments the most appropriate way of providing this compensation?

113. WLS NSW believes that lump sum payments are appropriate, particularly for victims of domestic violence, sexual assault and/or child abuse.

114. Lump sum compensation also goes some way towards acknowledging for victims of domestic violence, sexual assault and child abuse that the impact of their experiences of violence are likely to have resulted in injuries that have led to poor education and work opportunities and consequent financial impact. Lump sum compensation contributes to 'getting life back together again'.

115. One of the strengths of the current victims compensation scheme is the lump sum payment of compensation and the sense of agency and freedom a victim experiences in choosing how to spend this money. Many of our clients have been victims of crime where their ability to make choices for themselves has been taken away, with the perpetrator often controlling their lives. Being able to choose how to spend their money empowers victims and is an important step towards recovery.

116. WLS NSW submits that the Tribunal should therefore not determine how compensation payments should be spent in the course of the recovery process for victims, as what may work for one victim may hinder the recovery process of another. See also our responses to Questions 2 and 19.

117. We support the current approach of lump sum compensation payment and strongly urge against any form of prescriptive compensation.

Question 21 What types of injuries should compensation be provided for and to whom?

118. Both primary and secondary victims of violence should be compensated for injuries.

119. We submit the following types of injuries should be compensated

- psychological or psychiatric disorder (providing for a range of severity)
- specific physical injuries – in addition to those currently included in the schedule, specifically including pregnancy, loss of a foetus, gynaecological damage which reduces the ability to bear children and contraction of a non-curable sexually transmitted disease
- sexual assault (allowing for a range of severity)
- domestic violence (allowing for a range of severity)

120. For further and specific details of the injuries included in these categories we endorse and refer to the CLC NSW submission.⁶⁸

121. We also refer to recommendation 29.5 made in the Family Violence – A National Legal Response Final Report in 2010 which is outlined below.⁶⁹

Recommendation 29–5 State and territory victims' compensation legislation:

(a) should define an 'act of violence' to include family violence and ensure that evidence of a pattern of family violence may be considered;

(b) should not provide that acts are 'related' merely because they are committed by the same offender, and should provide that victims have the opportunity to object if claims are to be treated as related; and

(c) should ensure that victims' compensation claims are not excluded on the basis that the offender might benefit from the claim. (Other measures should be adopted to ensure that offenders do not have access to victims' compensation award.)

122. This recommendation should be considered in this review of the NSW Victims Compensation scheme.

123. If contrary to this recommendation, s5(3) continues, the proposed maximum awards of \$75,000 for domestic violence and \$150,000 for sexual assault would go some way to addressing the inequities of the current system with respect to related acts as outlined in the CLC NSW submission.⁷⁰

Question 22 Is a schedule of compensable injuries appropriate?

We believe that a schedule of compensable injuries is appropriate. The schedule allows victims who do not engage a solicitor, to be able to navigate the scheme and know approximately how much compensation they may be entitled to. It is a helpful tool, but it needs to be reviewed and updated at regular intervals.

We would argue that the multiple injuries schedule, that is to receive only 10% of the award for the second injury, 5% for the third injury and no amount for any further injuries is unfair, particularly for victims of domestic violence who may have been subject to multiple injuries over the course of the relationship.

⁶⁸ CLC NSW, *Victims Compensation Review submission*, question 21.

⁶⁹ Australian Law Reform Commission / NSW Law Reform Commission, *Family Violence – A National Legal Response Final Report, Vol 2, ALRC Report 114*, October 2010 at 1395.

⁷⁰ CLC NSW, *Victims Compensation Review submission*, question 21.

If the schedule of compensable injuries is no longer used we strongly support the CLC NSW proposal⁷¹ that the focus of the scheme be on:

- sexual assault;
- domestic violence;
- psychological and psychiatric disorder;
- serious long-term or permanent injury or disability; and
- dependent relatives of homicide victims.

Question 23 What is an appropriate level of compensation?

124. WLS NSW strongly supports an increase in the range of compensation for domestic violence and sexual assault.

125. We note that the maximum victims compensation award for any act of violence of \$50,000 has not increased since 1987. Allowing for inflation, today this would equate to \$107,000.⁷²

126. In respect to domestic violence the amount of compensation should be raised to reflect the severity and duration of domestic and family violence. Many of our clients have been in long-term domestic violence relationships spanning decades. These women have experienced multiple physical, have suffered immense emotional and psychological abuse and have often had their finances controlled.

127. The range of compensation should increase from (\$7,500 - \$10,000) to a maximum of \$75,000. This better reflects the financial burden women face when trying to recover from domestic violence.

128. In respect of sexual assault, as discussed in Questions 8, 9 and 10 there are often long lasting impacts from such violence, including psychological injury which should be acknowledged through an increase in range of compensation. An increase in compensation also makes a clear statement to the community that such crimes are abhorrent. We support an increased range of compensation for victims of sexual assault with a maximum award of \$150,000.

129. We support the introduction of categories and ranges of compensation for domestic violence similar to categories and ranges of compensation for sexual assault as discussed in the CLC NSW submission.⁷³

130. We also refer to our response in Question 21 and note that if contrary to recommendation 29.5 in the *Family Violence – A National Legal Response Final Report*, s5(3) continues, the proposed maximum awards of \$75,000 for domestic violence and \$150,000 for sexual assault would go some way to addressing the inequities of the current system with respect to related acts as outlined in the CLC NSW submission.⁷⁴

131. We further submit that in light of inflation, it is very reasonable to recommend the

⁷¹ CLC NSW, *Victims Compensation Review submission*, question 22.

⁷² 50,000(1987 figure) roughly equates to \$107,000 in 2011 when adjusted for inflation. See: The Reserve Bank of Australia Inflation Calculator, accessed on 1 May 2012 at: <http://www.rba.gov.au/calculator/annualDecimal.html>

⁷³ CLC NSW, *Victims Compensation Review submission*, question 21

⁷⁴ CLC NSW, *Victims Compensation Review submission*, question 21.

increases proposed.

Question 24 What should the maximum amounts of compensation be for primary / secondary victims?

132. Currently the maximum amount of compensation is \$50,000 for both primary and secondary victims. We note that this amount has not been increased since 1987. As discussed at Question 23, allowing for inflation today this would equate to \$107,000.

133. For the reasons outlined in the introduction and at Questions 2, 8, 9 and 10, victims of domestic violence, sexual assault and child abuse should be prioritised. We further submit that the maximum award in matters of domestic violence be increased to \$75,000 and in matters of sexual assault be increased to \$150,000.

Question 25 What conditions should pre-exist before compensation should be paid? (For example, permanent injury or costs over a certain amount.)

134. The current pre-existing conditions are that the Applicant is a victim of an act of violence and has suffered a compensable injury. We believe there are appropriate conditions.

135. We do not agree that a permanent injury is required for compensation to be awarded.

136. We further refer to our response to Question 21.

Questions on services

Question 26 What specific services should the Fund provide for victims? (For example, counselling, "gap" medical and dental payments, cleaning, home care, legal aid, accommodation, relocation, loss of replacement of damaged clothing, income replacement, funeral expenses, incidental travel, security of premises, loss of financial support, translation services, other)

137. The Fund should provide payment for services that have been engaged by the victim as a result of their being a victim of violence. Specific services such as specialist counselling and medical and dental treatments should be provided. Further services such as those listed as examples in the question should also be provided to victims. However, we strongly advocate any services funded should be in addition to compensation for victims.

138. We further submit that a cap of \$1,100 on disbursements is insufficient, particularly if this includes the cost of interpreters, the cost of specialist medical/psychologist/ARW reports and fees for access and copies of documents. It is important that victims compensation is accessible to all who are eligible to apply and that barriers to its access be minimised. This includes ensuring victims have access to interpreters when required.

139. Additionally, we submit that the Victims Assistance Scheme (VAS) should also continue. The VAS provides victims who do not meet the threshold for victims compensation with payments of up to \$1500 to help cover costs associated with being a victim of violence such as house cleaning, changing the locks, relocation costs. We refer to the Victims Compensation Tribunal Chairperson's report and submit that the cap should be increased. We note there have been several occasions when the maximum \$1,500 payment has been

made but this has not covered expenses.⁷⁵

Question 27 What are the main gaps in coverage for mainstream and specialised services for victims of violent crime?

140. There are significant gaps in services to prevent and respond to violence against women as well as barriers to accessing existing services.
141. Government needs to make a serious commitment to preventing violence before it occurs as a strategy central to the long-term goal of eliminating family violence. Preventative strategies implemented must be long-term strategies, engaging all members of society, aiming to change deeply entrenched attitudes about women, inequality, power imbalances and the justification of violence within society.
142. WLS NSW strongly supports a co-ordinated approach to addressing domestic and family violence in NSW. However we believe that for such a strategic framework to have a lasting impact it will require a high level of sustained commitment from senior levels of government and sufficient resources allocated. The Victorian experience⁷⁶ in developing an integrated response to domestic violence demonstrates that the key elements are a high level of leadership, a commitment by both government departments and non-government agencies to work together, and the resources to enable this to occur.
143. Effective prevention projects also depend on having adequate services available to respond to the experience of violence.
144. It is necessary to ensure that other services that are essential for victims of violence are adequately funded. For example, more funding is needed for refuges, counselling and health services, which can assist women and children after experiencing violence, and can also play an important role in preventing further violence.
145. In addition, we endorse the comments made in the CLC NSW submission.

Barriers to access for Indigenous women

146. Indigenous women are disproportionately affected by domestic violence: in comparison to non-Indigenous women, they are 10 times more likely to die due to assault and 35 times more likely to be admitted to hospital for family violence related injuries.⁷⁷ It is vitally important that Aboriginal women and Aboriginal services for victims of violence in rural and remote as well as metropolitan areas are widely consulted about services needed and best ways to respond.
147. Currently, Aboriginal women face particular obstacles in accessing mainstream and specialist services. In our experience, Aboriginal women will only access a service once a relationship of trust has developed between that service and the Aboriginal community. The disadvantage, discrimination, dispossession, the stolen generations and poor experiences of Aboriginal people with the police, courts, Department of Community

⁷⁵ Victims Compensation Tribunal NSW, *Chairperson's Report 2010/2011* at 21.

⁷⁶ Office of Women's Policy, *Victoria Reforming the Family Violence System in Victoria: Report of the Statewide Steering Committee to Reduce Family Violence*, Melbourne, 2005.

⁷⁷ Australian Institute of Health and Welfare (2006) *Family Violence among Aboriginal and Torres Strait Islander Peoples*, x.

Services and legal services in the past, continue to linger today for many Aboriginal people, particularly Aboriginal women.

148. Aboriginal women who are victims of violence (including sexual assault) feel an enormous sense of shame and humiliation about what has happened to them. They are afraid of retaliation and blame by their community if they report the violence and the perpetrator is incarcerated. These women will not report and often act to try and stop that violence without the support of trustworthy services and personnel. Often they do not have anywhere safe they can go to in a small community, especially with their children.
149. WLS NSW submits it is not enough to focus on providing a service in relation to one aspect of the situation for an Aboriginal woman who is a victim of violence. Properly funded and resourced holistic services are essential if Aboriginal women and children who are victims of violence are able to be free of violence and live in safety. Building trust can take a long time and it is essential that local Aboriginal women are employed in services to engage with and support the clients. Any funding of services (for example, refuges, specialist violence services, family support, counselling and legal) must be long term and not done in a piece-meal fashion with the need to constantly apply for new funding every 6 to 12 months. Short term projects have significant limitations in being effective, including difficulty in recruitment of experienced staff, lack of time to develop strong networks and therefore trust in the community, an inability to be able to plan long term projects and lack of capacity to meet the needs of the clients they are intended to assist in any meaningful way.
150. In rural and remote areas, services such as emergency accommodation and counselling can be non-existent or extremely limited. In cases of domestic violence and sexual assault it is important that culturally appropriate counselling is provided by women for women victims. As outlined in the CLC NSW Submission we support mandatory cultural awareness training for all counsellors and Authorised Report Writers.⁷⁸ We believe this is important with respect to both Aboriginal cultural awareness and Culturally and Linguistically Diverse cultural awareness training. The need for specialist sexual assault services is discussed further in our response to Question 2.

Barriers to access for culturally and linguistically diverse women

151. As outlined in Questions 2, 8, 9 and 10 there are significant barriers preventing CALD women from reporting violence and accessing services. We repeat the recommendation made in Question 2 for a multicultural framework for services working with CALD women and for mandatory cultural awareness training for all counsellors and ARWs as discussed above.

Barriers to access for women with disabilities

152. Women with disability also report barriers to accessing services. We refer to the CEDAW Concluding Observations on Australia which recommended, as a matter of priority, that abuse by women with disabilities living in institutions or supported accommodation be addressed.⁷⁹

⁷⁸ CLC NSW, *Victims Compensation Review submission*, question 27

⁷⁹ UN Committee on the Elimination of Discrimination against Women (CEDAW) (2010) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia*, 30 July 2010, CEDAW/C/AUS/CO/7, at paragraph 43.

Barriers to access for women in prisons

153. We refer to our response to Questions 2 and 47 which highlight the gaps in services for women in prison.

Barriers to access for women in regional, rural and remote areas

154. There is a significant lack of access to services generally and specialist services for sexual assault victims in particular, in rural, regional and remote NSW. We refer to our response to Question 31 for further information.

Question 28 *What rehabilitation and supports are needed for victims?*

155. As discussed at Question 2 specialised services for victims of sexual assault, child abuse and domestic violence are required. We also support the adequate funding of public health to provide appropriate counselling and cover other health expenses, including dental as discussed at Question 18.

156. We also support the continued payment of disbursements of expenses as outlined in Question 26. We strongly advocate that this would all be in addition to continuing compensation payments, particularly to victims of domestic violence, sexual assault or child abuse. This is discussed further in our response to Question 2.

Question 29 *What information services are useful and how should this information be disseminated?*

157. We note that the majority of our clients had not heard of Victims Services prior to having contact with our service. We recommend that Victims Services more actively promote their services, including sending materials in different languages to key places women access, such as Women's Health Centres.

Question 30 *What are your views on the Victims Access Line (VAL) as a single entry point for victims of crime?*

158. WLS NSW is concerned that the Victims Access Line, a 1800 number, is not accessible for all. This is because a mobile phone is increasingly the primary means of telephone access for many people.⁸⁰ Unlike a call from a landline to a 1800 which is free, a call from a mobile to a 1800 number can cost up to \$1.78 a minute.⁸¹ It is essential that free call and local call rates are available for mobile phone users. We refer to our submission in response to the Australian Communication and Media Authority (ACMA's) Discussion Paper: Calls to freephone and local rate numbers⁸² and to the Australian Communications Consumer Action Network submission in response to the Inquiry into Domestic Violence

⁸⁰ People on low-incomes are more likely to be among the 14% of Australians who only have a mobile phone and have no choice but to pay for a free or local-rate call. See: Australian Communications and Media Authority (ACMA), *Numbering: Implications of Research into Consumer Issues, Consultation Paper 4*, May 2011 at 16.

⁸⁰ ACMA, *Numbering: structure of Australia's telephone numbering plan, Consultation paper number one*, October 2010 at 45.

⁸¹ ACMA, *Numbering: structure of Australia's telephone numbering plan, Note 80 at 45*.

⁸² WLS NSW, *Submission to ACMA Calls to freephone and local rate numbers, November 2011 accessed on 22 April 2012 at: http://www.womenslegalnsw.asn.au/downloads/law-reform/2011WLSNSW_ACMA_NumberingPlan.pdf*

Issues and Trends in NSW.⁸³

159. We welcome the recent announcement of the ACMA's intention to amend the Numbering Plan such that calls from mobiles to 1800 numbers be free and calls from mobiles to 13/1300 be the cost of a local call but note this will not take effect until January 2015.⁸⁴ It is therefore important that alternative ways to access the VAL be offered to those who only have access to a mobile in the short-term, including a text call back service. This would involve a victim sending a text message and receiving a call back from the VAL.

Question 31 What special remote area needs may be required?

160. Victims residing in rural, regional and remote (RRR) areas should not be disadvantaged by their location and every effort should be made to facilitate access to specialised and gender and culturally appropriate services wherever victims live.

161. If this cannot happen, victims in RRR areas should be offered the choice of having practitioners, such as ARWs and Approved Counsellors, visiting their community for appointments or be given easy access to travel subsidies paid in advance so they can choose the most appropriate ARW or Approved Counsellor for them. If ARWs and Approved Counsellors have to travel they should be reimbursed for travel expenses.

162. Additionally even if there are appropriate ARWs and Approved Counsellors in the victim's local community they should still be offered the option of visiting a practitioner outside of their area if they have concerns about lack of confidentiality within their community.

163. If victims are travelling away from home to see an ARW or an Approved Counsellor they should be offered support to attend the appointment. We have assisted victims travelling to Sydney for ARW appointments that have never been to Sydney before. They report feeling completely overwhelmed by the thought of navigating a large metropolitan area particularly at a time when they know they will be talking about the worst things that have ever happened to them. We suggest the appointment of intensive caseworkers for victims of domestic violence and sexual assault to provide a comprehensive assessment of needs and to provide support to access services including ARWs, Approved Counsellors, reporting to Police and obtaining legal advice.

164. We also refer to comments in Question 2.

Question 32 To what extent are case managers required to provide support to navigate the complexity of mainstream and specialist service systems for victims? i.e. Should there be a broader service coordination role?

165. It is unclear whether this question refers to case managers within Victims Services or external to Victims Services. Further, we are unaware of the current role that case managers play in the NSW Victims Compensation scheme.

⁸³ ACCAN, *Submission in response to the Inquiry into Domestic Violence Issues and Trends in NSW*, March 2011 at:

<http://accan.org.au/files/Submissions/Inquiry%20into%20domestic%20violence%20trends%20and%20issues%20in%20NSW%20Final.pdf>

⁸⁴ ACMA, 'Update – mobile calls to freephone and local rate numbers,' 24 April 2012 accessed on 1 May 2012 at: <http://engage.acma.gov.au/update-mobile-calls-to-freephone-and-local-rate-numbers/>

166. We agree that mainstream and specialist service systems are complex and that victims of violence benefit from support and advocacy to access appropriate services. We support integrated and holistic services [as outlined in our answer to Questions 26 and 27].

167. We are not persuaded that a case manager role within Victim's Services beyond providing information about services, including advocacy services, is appropriate. Consideration needs to be given to the extent to which there is a conflict of interest and therefore appropriate for a Victims Services employee to take on an advocacy role.

Question 33 Is witness assistance support required for victims, for example, a friend's expenses in attending court proceedings?

168. Witness assistance support is necessary for victims of violence. Going to court can be stressful and traumatising for victims, therefore having a family member or friend attend court can be essential for the victims well being. We therefore support reasonable travel costs to be paid for the cost of a victims personal support person to travel to and from the court.

169. We also note the need for a co-ordinated approach to witness assistance support and refer to the Witness Assistance Service through the Director of Public Prosecutions and to Women's Domestic Violence Court Advocacy Services which operate safe rooms and provide other assistance to women seeking ADVOs in Local Court.

Question 34 What limitations should be made on the financial support provided in respect of services?

170. We submit there should be no limit on the financial support provided to victims of domestic violence, sexual assault and child abuse with respect to services. This includes such services as counselling, interpreter's costs and dental costs. See our response to Question 26 for further information.

Question 35 What are the barriers to utilisation of services and benefits?

171. We endorse the comments made by CLC NSW in their submission.⁸⁵ Please also refer to our responses to Questions 2, 5, 17, 27 and 31.

Question 36 Should interim payments in cases of financial hardship be available and if so, what level of evidence is required for payment and what limits would be appropriate?

172. We note that the current system requires a specific need for money urgently and the likelihood of a final award to be made. We are of the view that it should remain so and be determined on a case-by-case basis depending on the circumstances.

173. This system has worked well for many of our clients who have suffered domestic violence and/or sexual assault and are in urgent financial stress. We note that the financial stress is often a result of the injury of domestic violence that they have suffered.

174. For example, we acted for a client who was the victim of sexual assault who was homeless and experiencing severe financial hardship. She could not find appropriate emergency accommodation. She had no capacity to accumulate sufficient money to establish ongoing

⁸⁵ CLC NSW, *Victims Compensation Review submission*, question 35.

housing. We made an application for an interim award of compensation. The Tribunal granted our client a \$3000 payment which she used to pay for bond and advanced rent to establish a tenancy.

Question 37 What services definitely shouldn't be provided by the scheme?

175. WLS NSW would appreciate the opportunity to comment on any proposal to proscribe any particular services if that is what is intended.

Question 38 If the level of financial assistance to meet specific needs is increased in the scheme, how should the compensation amounts available under the scheme be changed?

176. We submit there may be certain injuries in which financial assistance to meet specific needs is appropriate and of itself may be sufficient. However, if the scheme shifts to an 'assistance with services' approach, we strongly advocate that victims of domestic violence, sexual assault and child abuse not only be assessed on a 'financial assistance to meet specific needs basis', but also receive compensation. This is for the reasons outlined in our response to Questions 2 and 20.

177. We further believe the \$1,500 for reimbursements available through VAS for those who do not meet the victims compensation award threshold is underused and should be better promoted.

Question 39 What are acceptable waiting times for access to compensation benefits?

178. We believe the current waiting time of up to 25 months as a result of inadequate funding and resourcing of the scheme is unacceptable.⁸⁶ To unnecessarily draw out this process is to delay justice for the victims and to delay closure that often results with an award of compensation to victims.

179. We also note that what constitutes an appropriate and acceptable waiting time often depends on the matter, whether out of time submissions are required, how quickly evidence can be located and collected and the needs of the client. It is important to note that complex matters can take time – in building trust with the client; in taking instructions from often traumatised clients about potential sources of evidence of act(s) of violence and injuries and in locating such evidence; in waiting times to see an ARW, particularly for victims outside metropolitan areas; in taking instructions for the drafting of a detailed statutory declaration; and in drafting submissions.

180. At times, victims of domestic violence, sexual assault and child abuse may not be emotionally and/or psychologically ready to provide instructions when they are contacted by their solicitor for such information. Keeping in mind the primary objective of 'support and rehabilitation' of the victim, there needs to be flexibility to allow for extensions of time in these circumstances and such extensions should be made without penalising the victim.

181. Once the claim and evidence are submitted for assessment, the determination and payment of compensation should be without delay.

⁸⁶ *Chairperson's Report 2010/2011*, Note 14 at 11.

182. We further recommend the continuation of interim payments in circumstances of financial hardship. This is particularly important if it takes considerable time to assess a victims compensation application.

Question 40 What are acceptable waiting times for reimbursement of payment for appropriate services and for timeliness of the delivery of services?

183. We endorse the comments made in the CLC NSW submission.

Question 41 Are there any administrative roadblocks that may deter victims from accessing appropriate compensation?

184. We endorse the comments made in the CLC NSW submission.

185. Additionally, as discussed at Question 5, in our experience restitution proceedings deter victims from accessing appropriate compensation, particularly victims of domestic violence, sexual assault and child abuse.

Questions on Disputes

Question 42 Under what circumstances should disputes be allowed under the Fund?

186. We assume that this question relates to the appeals process in relation to victims compensation claims.

187. The current regime allows for appeals pursuant to section 38 and 39 of the *Act*.

Appeal from an Assessor to a Magistrate

188. Section 38(3) provides:

“An appeal from a determination of a compensation assessor is to be determined on the evidence and material provided to the compensation assessor. However, the Tribunal may, by leave, receive further evidence and material if it considers that special grounds exist or if the evidence or material concerns matters occurring after the determination appealed against.”

189. We note that although this section allows for further evidence to be requested by the Tribunal, we are not aware of this occurring and these appeals are usually de novo hearings.

190. We would like to see more readiness on the part of the Tribunal in allowing the filing of additional evidence in appeal matters, especially in matters where an adverse finding has been made based on an absence of evidence on a particular issue. We submit that in such cases, there should be an obligation on the Tribunal to allow further evidence in support of a claim in accordance with the principles of natural justice.

191. We are concerned by the current risk that on appeal an award of compensation may be dismissed or reduced. We submit that this risk should be removed in matters involving domestic violence, sexual assault and child abuse because the risk acts as a deterrent to applicants asserting their appeal rights.

Appeals from the Tribunal to the District Court

192. Appeals to the District Court can only be made on a question of law and what is considered an “error of law” is interpreted narrowly.

193. Section 39 (3) provides:

For the purposes of this section, the following matters are not questions of law:

(a) a determination of whether an injury for which compensation has been claimed is an injury specified in the schedule of compensable injuries or whether it is a compensable injury of a particular description specified in that schedule,

(b) a determination of whether a series of acts are related and constitute a single act of violence.”

194. We submit that what constitutes an “error of law” should not be limited. Section 39 (4) provides:

An appeal does not lie to the District Court against a decision of the Tribunal to refuse leave for a late application for statutory compensation.

195. We submit that appeals should be allowed on decisions to refuse leave to file out of time. There is no good reason to refuse appeal rights on this issue.

Question 43 What dispute process should be followed?

196. In our experience the current timeframe of 3 months to appeal to a Magistrate of the Tribunal is appropriate. This period allows applicants the time to obtain advice about an appeal, consider their legal options and provide proper instructions. The time period should not be shortened.

197. We would support any proposed changes to the Appeal Notice which would make the appeal process less formal and complex and more user-friendly, particularly in light of the number of self represented litigants pursuing compensation.

198. We believe it is appropriate that appeals from an Assessor’s decision continue to be determined by a Magistrate. However, we would support a policy change which would see all dismissed applications being referred to another Assessor or Magistrate for a review (note, not an appeal) of the determination. Importantly though, this should not over-ride or replace the existing right of appeal to a Magistrate of the Tribunal.

199. We also feel the current timeframe of 3 months to appeal to the District Court is appropriate. The time period should not be shortened.

200. We support the current provisions of s39(5) which provides:

On an appeal, the District Court may only:

(a) affirm the determination of the Tribunal, or

(b) set aside the determination and remit the matter to be considered and determined again by the Tribunal (either with or without the hearing of further evidence) in accordance with the decision of the District Court on the question of law concerned.

Question 44 Should there be different levels of dispute resolution and what principles should guide this?

201. As outlined above, we support retention of the current appeal system.

202. Ready availability of District Court decisions would assist Applicants and their solicitors to better understand decisions and determine whether to pursue an appeal. We note that other Tribunals such as the Administrative Appeals Tribunal make judgments and decisions available through their website. We also note Victorian Tribunals publish regular guidelines and judgments on a wide range of specific issues.⁸⁷

203. Similarly, it would be helpful for Applicants and solicitors to have access to de-identified published decisions of the Tribunal and / or detailed section 65 Guidelines which set out the rationale for decision making. This would improve the transparency of determinations and promote increased consistency in decision-making in victim's compensation claims.

Questions on other issues/ considerations

Question 45 *What role should legal providers play within the Fund, in the process of making an application, seeking a review, or appealing a decision?*

The importance of legal advice

204. The Tribunal and other organisations have some useful resources on the victims compensation scheme, however these resources cannot replace legal advice where the law is applied to each person's individual circumstances.

205. Demand for advice in victims compensation matters continues to grow and WLS NSW is unable to meet the demand.

The importance of representation in making an application

206. While we accept that there may be some applications that do not necessarily need to be prepared by a solicitor,⁸⁸ we submit that for most matters Applicants are best served by having legal representation in a claim for compensation.

207. Legal representation is particularly important in matters involving domestic violence and sexual assault because they often involve multiple acts of violence or claims, out of time claims, no police reports, little evidence and claims where section 23A issues need to be addressed. Unrelated acts of violence claims require considerable analysis of the facts and legislative provisions to determine how many claims applicants may be entitled to make.

208. We have outlined the challenges for victims of domestic violence, sexual assault and child abuse in disclosing the violence and reporting to police at Question 17. We have further outlined the reasons why, if these victims do disclose the violence, it is often many years after they have occurred at Questions 8, 9 and 10. All these factors add to the complexity of the matter and highlight the need for legal representation in such victims compensation matters.

209. Additionally, community legal centres, including WLS NSW, generally represent the most disadvantaged and marginalised clients who present with at least one of the following issues which would adversely affect their capacity to navigate the victims compensation scheme unrepresented:

⁸⁷ Available at: <http://www.vocat.vic.gov.au/publications/relevant-review-cases>

⁸⁸ An example may be an assault in a public place where the offender was charged and convicted and where there is ample evidence of act of violence and injury and where the Applicant does not face any s23A issues.

- complex needs such as homelessness, histories of their own incarceration, drug and alcohol dependency or mental health conditions;
- highly traumatised as a result of the history of assaults, which impairs their ability to communicate effectively and accurately, without significant time and support;
- reluctance to divulge details of abuse and will only do so if there is a relationship based on trust and absolute confidentiality. This is particularly so for Aboriginal clients;
- from culturally and linguistically diverse backgrounds where there are significant language and cultural barriers to overcome in gaining comprehensive and accurate instructions;
- have physical, intellectual and psychiatric disabilities which hamper their ability to provide detailed instructions about their history of violence without significant time and support;
- have low-rates of literacy;
- have out of time applications;
- have little evidence to prove act of violence; and
- possibly have multiple applications relating to various acts of violence and / or multiple offenders

The importance of representation in an appeal

210. Where claims are dismissed, unrepresented applicants should be assisted to access an independent solicitor (through for example, the Law Society Pro Bono scheme) for advice about appeal rights and possible grounds of appeal and if appropriate, representation in an appeal.

211. It is unlikely many victims would be able to navigate the appeals process without legal representation.

Decreased access to legal representation as a result of the changes to the costs provisions

212. Legal representation in victims compensation claims is generally available through private practitioners, community legal centres (CLCs) and pro bono services of law firms.

213. On 1 January 2011, changes were made to the *Act's* costs provisions which resulted in greater uncertainty about whether or not costs will be awarded, decreased the costs payable in some circumstances and removed the right to appeal in relation to costs. As a result of these changes, in our experience smaller numbers of private practitioners are now willing to act in victims compensation matters.

214. As a direct result, CLCs, including WLS NSW have experienced an increase in client referrals and inquiries in relation to victim's compensation claims and a significant increase in demand for representation because our usual referral options no longer exist. Similar pressures have been placed on the pro bono schemes of large law firms, which for CLCs, has meant a reduction or loss of this as a referral option. This increasing demand on CLCs, including WLS NSW, is not sustainable without additional funding which would provide for the employment of a solicitor to assist with meeting the demand or changes to the costs provisions. Without measures to attract private practitioners back to

the area of victims compensation, or significant increases in funding to CLCs, some victims with complex needs will inevitably be left without legal assistance.

215. Further, the current scheduled costs of \$907.50 does not adequately reflect the amount of work done by a legal professional for a complex matter. There is need for some discretion when awarding costs and whilst we acknowledge that in the past, some legal firms have been able to recoup considerable professional costs by assisting clients with victims compensation applications, in many cases, the costs will still not reflect the hours of work carried out in complex matters.
216. Even though CLCs provide free legal services, and are generally funded through the NSW and Federal Governments, costs in victims compensation matters are important in covering the upfront disbursements payable in victims compensation claims (and which our clients are usually not in a position to fund directly).
217. We recommend the retention of professional fees and that a schedule of fees be structured in a way which more accurately reflects the complexity of matters and the amount of work actually done. We note that in Tasmania, costs payable to solicitors fall into three categories which take into account the complexity of the application and the ability (or lack thereof) of the applicant to prepare an application without assistance:
- simple matters - \$550
 - standard matters - \$770
 - and complex matters - \$1100
218. We support the current discretion not to grant any costs, for example in relation to frivolous claims, or very poorly prepared claims. The legal practitioner's right of appeal in relation to costs should be reinstated.
219. We hope greater certainty in professional costs will stem the decline in private practitioners willing to undertake victims compensation work (while also taking into account the quality and quantity of that work).
220. We support the current provisions which prevent legal practitioners from charging a client professional fees. Costs should continue to be payable directly by the Scheme.

Question 46 What other potential funding sources should be considered?

221. As outlined in our opening, there are important reasons why the government should and does have primary responsibility for funding a victims compensation scheme. We refer to our arguments made in the introduction to this submission on the gendered nature of violence and that state reparations are in line with our human rights obligations.
222. While we do not support restitution with respect to crimes of domestic violence, sexual assault and child abuse, we do support a levy to supplement government funding as discussed in our responses to Questions 5 & 6.
223. We believe the following potential funding sources should also be considered:
- Additional funding from the Consolidated Fund as recommended by the NSW Auditor General⁸⁹

⁸⁹ NSW Auditor General Report, Financial Audit, Vol 7 2011, Note 37 at 27.

- Increasing the levy, in place of restitution⁹⁰
- Funding from Churches, the state and other organisations which provided institutional care in which abuse took place
- Proceeds of crime – from both state and federal government

224. WLS NSW strongly supports an increase in funding to the scheme in order to protect the important contribution that compensation makes to the support and rehabilitation of women who have experienced domestic violence, sexual assault and child abuse.

Question 47 What support should be available for convicted inmates who are victims of violent crime?

225. A high proportion of women in prison have been victims of violent crime prior to coming into custody. The 2009 NSW Inmate Health Survey found that:

- 66% of female inmates had been involved in at least one violent relationship;
- 28% of female inmates had been involved in two or more violent relationships;
- 29% of female inmates had been subjected to at least one form of sexual violence; and
- 22% of female inmates had been subject to sexual violence on more than one occasion.

226. In NSW Aboriginal and Torres Strait Islander women represent 30% of women in prison. Aboriginal people are incarcerated at 13 times the rate of non-Aboriginal people⁹¹ and Aboriginal women are the fastest growing group in NSW prisons.

227. Aboriginal women in prison and children in juvenile detention centres have experienced high levels of victimisation throughout their lives, often commencing through witnessing domestic violence and abuse in the home and then going on to experience child sexual abuse and relationships of domestic violence. The Australian Law Reform Commission's *Family Violence – A National Legal Response Report* highlights these experiences:

228. 'A NSW study on Aboriginal women in prison found that over three quarters had experienced child sexual assault, just under half had been sexually assaulted as adults, and almost 80% had experienced family violence'.⁹²

229. Women in prison have limited access to mental health and support services that would assist their psychological recovery from such violent crimes. We strongly urge that women in prison have access to a range of mental health and support services, such as trauma counselling and other rehabilitation therapies to assist them in their recovery as is consistent with acceptance of UPR recommendation 86.82 and that the pilot counselling program taking place in Dillwynia Correctional Centre and due to start in Wellington Correctional Centre be extended to all women in prison.

230. We also note that victims of an act of violence who are in custody at the time of that act of violence have very limited grounds for eligibility to victims compensation. We believe that human rights, including civil rights, should not be limited because a victim is in custody. The victims compensation scheme should extend to all victims of an act of

⁹⁰ For example, in the 1997 *Second Interim Report* it was reported that some States in the United States imposed a levy of up to \$500 for more serious offences. See Note 34 at 77.

⁹¹ Corrective Services NSW, *Statistical Profile of Offenders*, 2009.

⁹² See Natalie Taylor and Judy Putt, *Adult Sexual Violence in Indigenous and Culturally and Linguistically Diverse Communities in Australia* Note 51 at 2.

violence, with the priority on victims of domestic violence, sexual assault and child abuse.

Question 48 To what extent should benefits and compensation be adjusted for contributory negligence?

231. We oppose adjustments for contributory negligence in matters of domestic violence, sexual assault and child abuse.

232. We have outlined our concerns and recommendations with respect to Section 30 factors at question 17.

Question 49 Are there other funding models that should be considered?

233. We refer to Question 46.

Question 50 How should the scheme link with the broader service system?

234. We are not clear what this question is asking and would appreciate the opportunity to comment on any proposal that is made.

235. If you would like to discuss any aspect of this submission, please contact Liz Snell, Law Reform and Policy Coordinator 02 8745 6900.

Yours sincerely,

Women's Legal Services NSW

Janet Loughman
Principal Solicitor