

Review of NSW's Victims Compensation Scheme 2012: Submission to Attorney-General

Introduction

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people aged 25 and under. The Shopfront has been operating since 1993 and is a joint project of Freehills, Mission Australia and the Salvation Army.

The Shopfront is located in Darlinghurst and our primary client base is in the inner city area. However, we also act for young people in other parts of metropolitan Sydney and occasionally in regional areas.

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

The Shopfront represents and advises young people on a range of legal issues, with a particular emphasis on criminal law. It is our experience that most of the young people we assist as criminal defendants are also victims of abuse with unresolved trauma. The Shopfront also assists clients to pursue victims' compensation claims, in particular claims for compensation for the compensable injuries known as 'domestic violence' and 'sexual assault', which in the main relate to their history of child abuse.

1 Comments on the Issues Paper dated 22 March 2012

General Comments

We do not intend to address every single one of the 50 individual questions raised in the Issues Paper but to direct our comment to the main headings in the paper. We do note the comments at the beginning of the Issues Paper addressing the imbalance between the number of lodged claims and the amount of available funding.

With this in mind, we propose that if there are amendments to be made to the current scheme, then the compensable injuries of Sexual Assault and Domestic Violence be treated in a separate category and these rights to compensation for pain and suffering be preserved. We make this submission on the basis that, as already acknowledged by the structure of the Victims Support & Rehabilitation Act 1996 (1996 Act), these are special types of injury and it is virtually impossible to quantify and attribute particular injuries to these claims. Yet, from our experience it is these types of

violent acts that cause the most significant damage. We would submit that the community's abhorrence for these types of offences, in particular as regards the physical and sexual abuse of children, is evidenced in the fact that our criminal legislation and our courts view these violent acts as warranting severe punishment. In particular we refer to sections [61J](#). (Aggravated sexual assault) and [66A](#). (Sexual intercourse-child under 10) of the Crimes Act 1900 , which confer a maximum penalty of between 20 and 25 years imprisonment:

Level Playing Field

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

National Injury Insurance Scheme

We note the proposal of the current federal government to introduce a no fault National Injury Insurance Scheme (NIIS) and a National Disability Insurance Scheme (NDIS). We consider that it would be premature to discuss this proposal in detail, particularly as the NIIS is only intended to cover new cases of **catastrophic** injury and also the fact that catastrophic injury resulting from criminal injury will not be covered until the end of 2015 and the NDIS only covers people with significant and permanent disability. Even though we would submit, some of our clients may be catastrophically injured, their condition often results from the cumulative effect of multiple traumas. In addition, even assuming that our clients fall within the relevant definitions of people covered by the schemes, we have doubts that these severely traumatised homeless young people would be physically and psychologically able to negotiate the bureaucracy and access the organisations that provide relevant services as part of these schemes.

Most importantly, we draw your attention to the discussions of the NSW Parliament when they were debating the Bill behind the current Victims Support & Rehabilitation Act 1996 (1996 Act). When introducing this Bill, the Hon Hannaford (AG) stated "*the objective of this bill was not to compensate injuries as insurance schemes would. Rather the bill was to serve as a formal acknowledgement of the Government and the community of the unjust infliction of injury and suffering on the victim*".

When dealing with the injuries suffered by victims of child abuse, domestic violence and sexual assault, the benefits of the current NSW Victims Compensation Scheme, in particular for the most vulnerable members of our society, go beyond the mere provision of a form of disability insurance.

However, assuming the NDIS and the NIIS do work as proposed, we submit that they may be useful to assist to relieve the financial burden on the Tribunal in relation to the injuries categorised in Schedule 1 to the 1996 Act, obviously apart from domestic violence and sexual assault. In relation to those specified injuries, in particular the injuries which award the higher levels of compensation (ie brain injuries or permanent disabilities), the NDIS and the NIIS may become the first stop for assistance. However as emphasised above, we consider that the injuries of sexual assault and domestic violence should continue to be treated as special types of injury, entitling the victims to compensation for pain and suffering.

Comparisons with other jurisdictions

We note that the Issues Paper refers to an analysis of compensation schemes in other jurisdictions, in particular it refers to Victoria, Queensland, Western Australia and the United Kingdom. We note that each of these jurisdictions provide that sexual assault and in some cases domestic violence are to be treated differently to other acts of violence, supporting our submission that it is generally acknowledged that these types of violent crimes should be treated differently. A

number of these jurisdictions have more stringent requirements in order for a victim to be paid compensation, for example police reports, evidence of expenses actually incurred, court hearings and in some jurisdictions, lack of a criminal record. We would urge you not to adopt any of these more stringent conditions, in the interests of fairness and justice as it is our submission that these would have a disproportionately negative effect on the most vulnerable members of our society and could prevent them from accessing compensation to which they may be entitled.

2 Scheme-specific considerations

2.1 Purpose of the Scheme

We note the statement that the current scheme is heavily compensation focused and in particular the question whether the objectives of support and rehabilitation are best achieved by counselling and compensation. We submit that in our experience in order for a victim to be successful in rehabilitation, they first need to feel closure and to feel that their suffering has been acknowledged by someone in authority. For many victims of child abuse, in particular sexual assault, the probability of a successful criminal prosecution is very slim and even a successful civil claim would be beyond their means and resources, even if the perpetrator had money, which for most victims is not the case. Consequently, the Determination by the Victims Compensation Tribunal and the payment of a lump sum goes a long way toward a victim's rehabilitation. We submit that for most of these victims, mere words would not be sufficient. They have been manipulated and betrayed by the perpetrators of the abuse (who in many cases were their carers). The payment of monies by the Tribunal is a symbol that the community abhors the crimes that were perpetrated against them and supports the victims.

Case study - C

C was made a ward of the state when she was just 18 months old. She was taken from her mother and placed with her mother's sister by DOCS. From the age of approximately 4yrs until she was 18 years, her foster father/uncle raped her. In addition to sexually assaulting her daily, he also physically and emotionally abused her and manipulated her. For example he would force her to ride her bike around the backyard multiple times for hours until he told her to stop. Also she was not allowed to look at him directly or speak unless he authorised it. This meant that when DOCS visited to check on her, she couldn't tell them anything. When she tried to leave at 16 years old, he told her she had to stay until she was 18 years or the police would arrest her. In addition, when she was 8 years old, her 12 year old foster brother/cousin also started sexually assaulting her. After she left at 18 years old she suffered mental health problems. She had been manipulated for most of her life that she was worthless and would not be believed. After speaking to us, she reported this abuse to police and filed some victims compensation claims. The police and C worked together to try and convict the perpetrators, even asking her to wear a wire and confront her abusers. This was extremely stressful for her. The abusers never showed. To her great disappointment, the police were forced to drop the investigation. C's claims were assessed by the Tribunal and she received lump sum compensation. In her eyes, she had finally been vindicated and felt empowered. She had not only been believed but instead of just receiving words and reassurance, she was paid a lump sum of money in the hope that she could piece together her shattered life. The amount of money paid was not in any way sufficient to compensate for over 16 years of horrible abuse but it went a long way to saying that as a government and community we condemn what happened to her and hope that she can rebuild her life.

Several of our clients have used the lump sum compensation to enhance their lives in a positive way, usually using the money to further their missed education or to purchase items such as cars or whitegoods in order to benefit themselves and their children. In our experience, it is the lack of education or similar opportunities as a result of a traumatic childhood that continue to disadvantage our clients and even sometimes the next generation. In addition, several of our clients have used the money to pay off their debts to the State Debt recovery office. This then allows them to apply for their driver's licence, which not only enhances their quality of life but also significantly raises

their future employment prospects. Therefore, although we do not wish to minimise the effect that successful counselling can have on assisting our clients to improve their lives, we consider that the lump sum payment when applied successfully can make a significant difference.

Case study - D

D was born to a 15 year old mother with alcohol and mental health issues. The grandmother, was also young, having had her children when she was still a child. D also had children when she was young. Consequently this was the third generation that had not been modelled adequate parenting and was suffering from poverty, substance abuse and disadvantage. From the age of 3 years until 13 years, D was not only the subject of physical abuse and neglect by her mother but also sexual abuse from her mother's many partners. D's mother committed suicide when D was 13 years old. D successfully claimed victims compensation for the horrible abuse she had suffered. She used the money to purchase a fridge and a washing and drying machine. She was not only looking after her own children but 2 younger siblings as well. The balance of the money she used to finance a TAFE course. Through her successful victims compensation claim, it is hoped that D can break the cycle of abuse and disadvantage that had been evident for several generations. D also benefitted from counselling made available to her through Victims Services. We consider that it is the combination of lump sum compensation plus the counselling provided which gave D the best chance of a better life.

Vulnerable Victims with intellectual disabilities or mental illness.

As discussed above, many of our clients are traumatised from the abuse they have suffered, have an intellectual disability and/or a mental illness. The current system for recovering victims compensation is difficult for these most vulnerable members of our society, however they are managing with our assistance. If the process became more complicated, or more hurdles were raised, it could mean that these very vulnerable people could be prevented from accessing the compensation that is available to the rest of the community. Even though a vulnerable young person who has an intellectual disability may not have the capacity to provide a witness account that would support a criminal conviction nor even manage a civil claim in the courts, he/she is still subject to the pain, suffering and humiliation that results from domestic violence and/or sexual assaults.

The current system of lump sum compensation does go a long way to 'levelling the playing field' particularly with its emphasis on documentary evidence and the inclusion of s 30 (1) (b1) allowing for the [act of violence](#) to be reported to a relevant health professional or practitioner, or a relevant agency, rather than a restrictive requirement to report only to police.

In addition, we note the concern raised on page 6 of the Issues Paper that 'the payments may not be used in the recovery and rehabilitation of victims..'. There is a system in place to protect clients who may lack capacity to manage the lump sum payments. We have a number of clients for whom the Guardianship Tribunal has appointed financial managers to manage the lump sum payments to assist in recovery and rehabilitation of these vulnerable, abused people. These clients still have the satisfaction of knowing that their suffering has been publicly acknowledged and their lives enhanced.

Counselling in addition to and not as an alternative to Compensation

We note that the current Victims Compensation Scheme also provides a Counselling Scheme running concurrently with the compensation process or in some cases as an additional service. We do not wish to minimise the value of this counselling service but merely to point out that it is not always the right solution in isolation for a young homeless person, dealing with substance abuse and other disabilities. It is our experience that our clients require stability and some form of vindication or feeling of self worth before being able to successfully engage in the Counselling process. In addition, it is difficult for a homeless young person to maintain the consistency of attendance over a lengthy period of time which we understand is necessary for successful intervention. Further as discussed above, for most of our clients it is the receipt of the Determination by the Assessor and the payment of a relatively large (by their standards) sum of money that not only provides them with the necessary vindication, but can go a long way towards assisting them to create a stable life which could assist the rehabilitation process.

2.2 Eligibility

We note the comments on eligibility in the Issues Paper, in particular the issues of time limits and reporting to the police. It is our experience that for victims of child abuse, there are many factors preventing these victims from reporting to police and in addition from claiming compensation within restricted time limits. In particular, we note that there are often family and cultural reasons why a particular victim of child abuse cannot make a claim nor report to the police within a certain time. For many of our clients, the perpetrator of the abuse is a member of the family or close family friend. Consequently, the child is prevailed upon to withdraw the claim or retract the statements by family members.

Case Study - F

F was born to a Filipino mother. She never knew who her father was. When she was very young (around 3-4 years old) , F was often left with male family friends, some of whom sexually abused her. When F first disclosed this abuse to us over 15 years later, she stated that at the time she didn't understand what was happening to her. A review of her DOCS files revealed that DOCS suspected the abuse but when her mother was confronted with the possibility, she refused counselling or assistance, stating that it was not in her culture to deal with these matters with strangers and that such matters were kept within the family. Consequently, it was not until many years later that this matter was reported to police nor compensation successfully claimed.

In addition, as stated above, many of our clients are so traumatised or have intellectual disabilities or as a result of their homelessness or substance abuse issues are unable to report to the police. If a police report was made a condition of a compensation claim, then it could effectively bar our most vulnerable and needy victims from making a claim.

2.3 Compensation and Services

Compensation

We repeat our comments under the headings 'General Comments' and 'Purpose of the Scheme' set out above.

Services

We note the comments regarding Services and in particular, the question about barriers to the utilisation of services and benefits. As discussed above, many of our clients have difficulty dealing with mainstream services and navigating the bureaucracies that surround them. In particular as many of our clients are homeless or have an intellectual disability or mental health issues, they cannot satisfy the geographic or other similar criteria which most mainstream services necessarily require, before registering them.

However, we would submit that any services made available in addition to lump sum compensation can only serve to enhance the victim's quality of life. In particular we support the suggestion of appointing case managers to assist vulnerable and traumatised victims of crime navigate the complexity of mainstream and specialist services for victims. It is our experience that homeless youth with either a mental illness or an intellectual disability have great difficulty accessing different services.

3 Other issues

Length of time to process applications

We note the comments regarding the length of time it takes for claims to be processed. It is our submission that although this creates a great deal of frustration for our clients, this administrative issue should not be used as an excuse to limit or remove people's current entitlements to

compensation. The benefits of receiving lump sum compensation (as described above) we would submit, far outweigh the prospect of waiting a few months longer for a determination.

Convicted Inmates

With regard to convicted inmates who are victims of violent crime, we would submit that the current restrictions placed upon them in relation to claiming compensation be eased. It is our experience that the young people whom we assist as criminal defendants almost invariably have a history of abuse. This is not to excuse their offending but merely to point out that the dividing line between victim and criminal defendant is often blurred.

We submit that the situation as it currently stands creates a separate underclass of victim who is not entitled to the benefits, both monetary and otherwise, which can be gained from a successful compensation claim. We would submit that it also sends a message that society is only willing to condemn violent crimes and compensate its victims, if the victim is a specific type of preferred person. We do not believe that this is within the spirit nor intention of the Victims Compensation Scheme.

We would be happy to discuss any issue arising from this submission.

Yours faithfully

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