Community Legal Centres NSW

30 April 2012

Review of NSW Victims Compensation Scheme
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Sydney NSW 1171
By email: Email: victims.compensation@au.pwc.com

Re: Submission in response to the Issues Paper: Review of NSW's Victims Compensation Scheme

About CLCs and CLCNSW

CLCNSW represents the network of 40 community legal centres (CLCs) throughout NSW. Victims compensation matters (particularly complex matters) make up a significant part of the work of many CLCs. Our members include:

- Wirringa Baiya Aboriginal Women's Legal Centre, a NSW state-wide service for Aboriginal women, children and youth, with a focus on assisting victims of crime;
- Thiyama-li Family Violence Service, based in Moree, which provides Aboriginal clients with legal support in relation to family violence, as well as counselling in the areas of domestic violence, sexual assault, and grief and loss;
- Women's Legal Services NSW, a state-wide service with a focus on domestic violence, sexual assault, family law and discrimination; and
- Many generalist (geographically-based) community legal centres that advise and represent clients in victims compensation matters.

Clients assisted by CLCs in NSW with victims compensation matters are predominantly victims of domestic violence and / or sexual assault including childhood sexual assault. As a result of many years experience in this area, some of our members CLCs have developed specialist knowledge in relation to assisting victims of sexual assault and domestic violence.

It is also worth noting that clients assisted by CLCs in relation to victims compensation matters are generally high-needs clients: many have been very seriously affected by their experience of violence. As a result a significant number of CLCs' victims compensation clients are affected by a mental illness, drug and alcohol dependence, chronic unemployment, loss of their children to the child welfare system, or other serious impact. In a recent survey of CLCs about their victims compensation workload, CLCs estimated that the majority of their clients

experience post traumatic stress disorder, significant anxiety, major / clinical depression, and very high levels of unemployment.[1]

Approximately 20 CLCs in NSW participate in the CLCNSW Domestic Violence and Victims Compensation Sub-Committee. CLCNSW, through its Victims Compensation Sub-Committee, has been actively involved in responding to various reviews of and amendments to the victims compensation legislation since its inception. We are well placed to assess the impact of the current Victims Compensation Scheme ('the Scheme') on vulnerable applicants and to provide insight and feedback to the NSW Government on any proposed changes to the Scheme.

This submission draws significantly upon the submission by Wirringa Baiya Aboriginal Women's Legal Centre, however it also includes a wider focus drawing upon experiences of our other members centres and some additional comments.

Commentary on Consultation Process

In September 2011 we wrote to the NSW Attorney General calling for the victims compensation review to allow a variety of formats for input, including written submissions and public meetings. We suggested that pro-active consultation should occur with a wide variety of stakeholders, in both metropolitan and regional areas of NSW. We also stressed the need for sufficient time for input from stakeholders and the public, and suggested a minimum period of 3 months for consultation. We had anticipated that the consultation would be widely promoted to encourage participation.

We anticipate that this review may lead to amendments to the *Victims Support and Rehabilitation Act 1996* (NSW) (the VSRA). Given that the consultation period for response to the *Issues Paper* is so short, and has not been widely promoted, we call for further consultation before final legislation is drafted. For example an exposure draft bill could be made available, with sufficient time for considered feedback from stakeholders before the final bill is drafted.

We also encourage Price Waterhouse Coopers to approach and meet with a range of organisations who work with victims of crime, including services in rural, regional and remote areas, and with Aboriginal community organisations.

Commentary on human rights and victims compensation

The support and rehabilitation of victims of crime is a human rights issue. The review of victims compensation in NSW should be considered in this light.

Human rights which may be violated as a result of violent crime (and its subsequent impact on the victim) include:

- freedom from violence[2]

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[1] Responses from individual CLCs to a CLCNSW survey conducted in September-October 2011. 38 out of 40 CLCs in NSW responded.

[2] Found, for example, in *Convention on the Elimination of all forms of Discrimination Against Women 1979* (articles 2, 5, 6, 15, 16)*; Convention on the Rights of the Child 1989* (article 19).

- security of the person[3]
- the right to life[4]
- freedom from torture[5]
- the highest attainable standard of physical and mental health[6]
- the right to work[7]
- the right to education[8]
- the right of development of the child.[9]

Australia is bound at international law to protect, respect, promote, and fulfil these human rights. 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] When human rights are violated (whether due to, or despite the efforts of) the State, international human rights law also sets out obligations in relation to victims of crime, including the provision of reparations.

The *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* sets out guiding principles adopted by the United Nations General Assembly.[11] The Declaration establishes that States should:

> *"…endeavour 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"*

as well as:

> *"…the family, in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimisation."*[12]

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[3] Found, for example, in *Universal Declaration of Human Rights 1948* (article 3); *International Covenant on Civil and Political Rights* (article 9(1)).
[4] Found, for example, in *International Covenant on Civil and Political Rights 1966* (article 6(1)).
[5] Found, for example, in *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (articles 1, 2, and 16).
[6] Found for example in the *Convention on the Rights of the Child 1989* (article 24), *United Nations Declaration on the Rights of Indigenous Peoples 2007* (article 24), *International Covenant on Economic, Social and Cultural Rights 1966* (article 12).
[7] Found, for example, in *Universal Declaration on Human Rights* (article 23(1)); *International Covenant on Civil and Political Rights 1966* (article 6), *United Nations Declaration on the Rights of Indigenous Peoples 2007* (article 17).
[8] Found for example in the *Convention on the Rights of the Child 1989* (article 28), *United Nations Declaration on the Rights of Indigenous Peoples 2007* (article 14), *International Covenant on Economic, Social and Cultural Rights 1966* (article 13).
[9] Found, for example, in *Convention on the Rights of the Child 1989* (article 6).
[10] CEDAW General Comment 19: Violence against Women, as contained in UN Doc A/47/38 (1992) (Article 9). The Beijing Declaration and Platform for Action adopted by the Beijing Fourth World Conference on Women reaffirmed this principle: Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995, UN GAOR, Annex I, 1995.
[11] *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.
[12] ibid*,* article 12.

The declaration also states that *"the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged."*[13]

The Declaration sets out principles in relation to Access to justice and fair treatment (Principles 4-7), Restitution (Principles 8 – 11), Compensation (Principles 12-13) and Assistance (Principles 14 – 17). We attach (as a separate document) a copy of the Declaration as it is highly relevant to the review.

Any changes to NSW legislation relevant to victims of crimes should be consistent with the principles in this Declaration.

In a 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.'[14] The summary of the report states, in part,

> *Both the Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on the Elimination of Violence against Women place upon the State the duty to prevent, investigate, punish and provide compensation for all acts of violence wherever they occur. Article 4 of the Declaration states that women who are subjected to violence should be informed about and provided with access to the mechanisms of justice and to just and effective remedies for the harm that they have suffered, as provided by national legislation. The obligation to provide adequate reparations involves ensuring the rights of women to access both criminal and civil remedies and the establishment of effective protection, support and rehabilitation services for survivors of violence. The notion of reparation may also include elements of restorative justice and the need to address the pre-existing inequalities, injustices, prejudices and biases or other societal perceptions and practices that enabled violations to occur, including discrimination.*

In this report Ms Manjoo reflects on the gender nature of violence, and states

> *The little attention devoted to reparations, both at a substantive and procedural level, for women who suffer violence contrasts with the fact that women are often the target of both sex-specific and other forms of violence, not only in times of conflict but also in ordinary times. Women often bear the brunt of the consequences of violence that targets them, their partners and dependants. 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.*[15]

In a country such as Australia that has access to relative wealth and economic stability, there is a moral and ethical imperative (as well as a legal obligation) to provide victims of violence with access to compensation schemes.

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[13] ibid, article 13.

[14] *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

[15] Ibid, at paragraph 24.

Response to Issues Paper

Questions on scheme purpose

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

2) Are the objectives of "support and rehabilitation" best achieved by "counselling and compensation"?

The primary focus of the VSRA on providing "support and rehabilitation" for victims of violent crime is appropriate.

We are also in general agreement with the object relating to a levy on persons convicted of violent crimes and view this as a form of accountability.

We have concerns about the object of recovery of money from specific offenders, primarily because of the impact this has on vulnerable victims of crime. Please see detailed comments under Question 6 below.

Support and rehabilitation for victims of crime should include compensation, counselling, and financial support such as that provided through the Victims Assistance Scheme.

Counselling

Counselling is beneficial to many victims of violent crime. We provide examples under Question 3, below.

However, counselling can sometimes be distressing and some victims of crime do not find it helpful for them. We strongly recommend that counselling should be removed from the s30(1d) factors.[16]

Access to free counselling should remain a feature of the scheme, but it should be a voluntary option.

In relation to the provision of counselling by the Scheme, please refer to our response to Question 26 in which we submit that a counselling scheme based upon payments to private counsellors may not be the most effective, economical or accessible format.

Compensation

State provisions of compensation to victims of violent crime can assist the mental and physical recovery of a highly marginalized cross-section of our community. This assumes the amount of compensation is adequate and the victims of crime are treated with sensitivity.

[16] Section 30(1) of the VSRA lists the factors that a compensation assessor must take into account when determining whether to award compensation, and the amount of compensation.

Numerous rationales exist as to why the state should provide such compensation. These rationales apply not only to compensation for economic loss resulting from violent crime, but also to pain and suffering victims may experience. They can be broadly divided into three categories, with some overlap:

a) compensation can be of great symbolic value to victims;
b) compensation can be of great practical value in ameliorating the impact of violent crime on victims' lives; and
c) the process and award of compensation involves victims in the criminal justice system, where they are often otherwise excluded.

a) State compensation is of great symbolic value for victims of violent crime

Victims of violent crime are very frequently damaged by their experiences. Many victims feel a sense of alienation and despair, and a loss of confidence in the ability of the state to protect them; violent crime undermines an individual's public trust. The provision of compensation by the state can play a significant role in regaining both the individual and the community's trust in public institutions.[17] The therapeutic value of receiving compensation is well-recognised. Given that money is a symbol of value and importance, the provision of compensation sends the message that the community and the State recognises the impact of crime on the victim, and cares about those generally who have been harmed by crime.[18]

A Canadian study highlighted that compensation was of great therapeutic benefit to victims.[19] Several solicitors from our member CLCs have noted that sexual assault and domestic violence victims who received compensation felt the State and community acknowledged their experiences, and that their stories had finally been believed.[20] Without this support, trauma experienced by victims could be expressed as anger, withdrawal, and other disrupting behaviours.[21]

b) State compensation can have important practical effects on the lives of victims of violent crime

Where compensation is adequate, it can have a great practical impact on the ability of victims to recover from their experiences and improve their lives.
If medical expenses are not fully covered by Medicare, it can enable financial access to health services. Provided compensation is not limited to actual economic loss it can help victims obtain or sustain safe accommodation. It can also ameliorate the long-term practical impacts of violent crime victims suffer throughout their lives, including but not limited to: lost opportunities for further education, reasonable living conditions, the ability to form long-term, beneficial relationships and the pursuit of employment and travel: these comments

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[17] F. Megret, 'Justifying Compensation by the ICC's Victims Trust Fund: Lessons from Domestic Compensation Schemes' (2010-2011) 36 *Brooklyn Journal of International Law* 123, 160.
[18] I. Barrett-Meyering, 'Victim Compensation and Domestic Violence: A National Overview' (2010) *Australian Domestic & Family Violence Clearing House*, 3; I. Freckelton, 'Criminal Injuries Compensation: Law, Practice and Policy' (2001) *LBC Information Services*, 97.
[19] Des Rosiers, N, Feldthusen, B & Hankivsky, OAR 1998, 'Legal compensation for sexual violence: therapeutic consequences and consequences for the justice system', *Psychology, Public Policy, and Law*, vol. 4, issue 1/2, pp. 433-451 as reported in Barrett-Meyering, 'Victim Compensation and Domestic Violence: A National Overview', 3.
[20] This observation was also noted in Barrett-Meyering, 'Victim Compensation and Domestic Violence: A National Overview', 3.
[21] M. O'Connell, 'Criminal Injuries Compensation: Revisiting the Rationale for State Funded Compensation for Crimes Victims', Paper prepared at 'Promising Practices for Victims and Witnesses in the Criminal Justice System – a National Conference (2003), 17.

particularly, but not exclusively, relate to the long-term impact of domestic violence and sexual assault.[22]

We submit that compensation should not be limited to direct economic loss (such as loss of wages) because due to the long-term effects of the violence inflicted upon them, many victims of domestic violence and sexual abuse are not in employment, nor have they been able to pursue education.

Financial compensation provides victims of violent crime with the freedom to allocate the compensation received in accordance with their priorities, providing a sense of empowerment. Some examples of the ways that lump sum payments have been used by clients of CLCs are provided in response to Question 20.

c) Including victims in the criminal justice system

The modern criminal justice system, whereby offenders are charged by the State and all fines are paid to the State, largely excludes the victims of crime. The criminal trial offers little possibility of restitution to the victim in question.[23]

Compensation schemes aim to address this exclusion.[24] An application for compensation involves gathering information, having a victim's story heard at a Tribunal and receiving counselling, as well as the compensation itself, a process that can be highly therapeutic for a victim that would otherwise have little role in the criminal justice system.[25] A key aspect of the compensation process is that unlike the trial, it is victim-centered, examining exclusively what is best for the victim and giving the victim an opportunity to have their story heard.[26]

This benefit of compensation has been echoed by many of our member CLCs – clients stating at the end of the process that they finally feel believed and validated, and that this is of enormous importance to them. They feel their voices have been heard and victims compensation often provides closure for them.

d) As detailed above, the provision of compensation is required by the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.*

In summary, we submit that the provision of compensation, and of suitable and accessible counselling, is the appropriate focus for the Scheme. Victims of violence crime may require a number of additional services or benefits (including medical and dental assistance; safe public housing; assistance with finding employment etc), however these are (or should be) available through separate government programs, and need not be duplicated by Victims Services in NSW.

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[22] Ibid; Barrett-Meyering, 'Victim Compensation and Domestic Violence: A National Overview', 3.

[23] Pursuing reparations from the offender through civil law is frequently inaccessible due to the cost of lawyers and the risk of costs orders against the victim. If the offender has limited finances, the use of civil law is futile.

[24] Megret, 'Justifying Compensation by the ICC's Victims Trust Fund: Lessons from Domestic Compensation Schemes', 125.

[25] Freckelton, 'Criminal Injuries Compensation: A Cost of Public Health', 196.

[26] Barrett-Meyering, 'Victim Compensation and Domestic Violence: A National Overview', 3; M Dawson and J Zada, 'Victims of crime: the therapeutic benefit of receiving compensation', paper presented to *Australian and New Zealand Association of Psychiatry, Psychology and Law Annual Congress* (1999), 3.

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

We are not aware of any robust research on the efficacy of the current NSW scheme, in particular, in terms of successful support and rehabilitation of victims. However, the more general research mentioned above under Questions 1 & 2, indicates that compensation is a valid and useful tool for supporting and rehabilitating victims of crime.

We note that the Chairpersons Report 2010/2011 refers to a survey developed by Victims Services to evaluate the Approved Counselling Scheme (26):
97 per cent of respondents either agreed or very much agreed to the proposition "*I found counselling worthwhile and it has helped me cope better*".

Observations of CLC in the course of their work with victims of crime include:

> *Although all of our clients find the victims compensation process emotionally exhausting and gruelling, almost all found it as an cathartic and validating experience that helped to bring some closure to the violence they had experienced.*
> (Wirringa Baiya Aboriginal Women's Legal Centre)
>
> *Our clients really appreciate the counselling. 20 hours of free counselling is really important to them because otherwise they need to pay and usually can't afford to do so. The free counselling via health and community services usually has such a long waiting list and our clients find it hard to access it. This scheme gives a really quick approval and clients can be making an [appointment] to see a counsellor with a day or 2 of making the application.*
> (Hawkesbury Nepean Community Legal Centre)

However, access to counselling for victims of crime who are in prison is severely lacking. We have heard anecdotally that the pilot counselling scheme at Dillwynia Correctional Centre is beneficial for the women. We recommend this be extended to all women in prison. The provision of counselling and assistance with recovery to all victims of violence (including those in prison) is consistent with Recommendation 86.82 of the Universal Periodic Review (Australia, 2011).[27]

One solicitor from Shoalcoast Legal Centre reports: "I definitely think that the counselling helps. I also think the compensation helps. Most of the victims I've dealt with over the years have been on DSP because they are so traumatised by the violence that they are unable to function. The compensation was going to be used by the victim to improve the victims life, by enabling them to purchase a few things that they ordinarily would not be able to afford on DSP [Disability Support Pension], like a car, new furniture, holiday etc. I've also have had a couple of victims use the compensation to relocate themselves away from the perpetrator and/or the reminders of the violence."

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[27] Available at: http://www.ag.gov.au/Documents/OIL%20-%20UPR%20-%20Australia%20-%20outcomes%20report.doc

On the other hand, another solicitor from Shoalcoast Legal Centre felt that the objectives of the VSRA are not being met because:

> *(i) the Fund favours physical injuries over psychological injuries. It is an arbitrary construct that Psych 1 injury is only available for victims of kidnapping and armed robbery. I have many clients who have been psychologically injured by criminal acts of their next-door neighbours. However, because they do not meet the threshold of Psych 2 injury, they are unable to claim for victims compensation, and yet they are victims of crime.*
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> *(ii) The assessors appear to be giving more weight to police evidence than other evidence. Most victims of domestic violence and sexual assault do not report to the police, and therefore they are being penalised.*

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

The scheme should be based on both compensation, and support and rehabilitation. Please refer to our response to Questions 1, 2 & 3 in relation to the importance of compensation and counselling.

Neither the availability of compensation, nor support and rehabilitation should be sacrificed due to the current shortage of funds experienced by the Scheme.

Commentary on "unsustainability of the fund"

In relation to this question the Issues Paper states:

> *"Clearly, the Fund is financially unsustainable. Changes to the benefit structure will be needed, either in the approach or the quantum of benefits paid"*

Although the current timeframe for resolution of victims compensation applications is too long, we are not convinced that the fund is as "unsustainable" as suggested in the Background section of the Issues Paper.

The figures drawn from the Chairperson's Report 2010/2011 are that:

- There are around 21, 610 pending claims as of 31 December 2011
- The value of the pending claims is projected at $239.2 million
- The scheme received around 9,000 claims in 2010/11
- The present budget allocation of around $60 million enables the finalisation of about 4,900 claims per year

While these figures appear dire at first glance, it is also important to note that:

- The 2010/2011 Chairpersons Report states that 40% of received claims are dismissed. It would be logical to assume that a similar proportion of the 21,610 claims pending would also be dismissed. As such, not all of these claims will be awarded compensation (and we assume the figure of $239.2M should be significantly lower).
- The number of claims submitted decreased between 2009/2010 and 2010/2011. This could be due, in part, to the restrictions introduced by the 1 January 2011 changes (limiting the number of old claims through the application Section 23 (A)). Should that trend continue, we would expect to see a further reduction in the annual

numbers of claims lodged and the number of successful claims awarded compensation.

The *Time for Action* report noted an Access Economics report stating the cost of violence against women to the economy was $8.1 billion. And that if no new actions are taken to reduce the incidence of violence against women, this figure will have almost doubled to $15.6 billion by 2021-22. The report also noted the severe effects of domestic and family violence on women's physical and mental health.[28] In this context, the NSW budget allocation of $60 million per year for support and rehabilitation of victims of violent crime accessing the Scheme (the majority of whom are women) is very low, and should be increased.

The current backlog of claims should be resolved by a one-off injection of additional funding.

As a longer-term measure, if the NSW Government is unwilling to increase the budget allocation for Victims Services, one idea is for the Scheme to focus on compensation (as it currently does), with a specialised counselling and rehabilitation scheme to be moved into the health budget (but still accessible via Victims Services).

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

Yes, in theory, and we note that this already occurs in NSW. A levy is most appropriate in relation to convictions for violent offences (see more detail in Question 6).

We suggest that convicted offenders should be provided with a simple explanation about the victims compensation levy, noting that the levy is a nominal payment that contributes to the overall victims compensation fund in NSW and does not representing the true "cost" of the offence.

Although the levy is not high, we are nevertheless concerned about its potential impact upon people facing financial hardship, who have no realistic lawful means to pay the levy. The NSW Law Reform Commission has recently made recommendations in relation to the impact of penalty notices on people who have genuine difficultly meeting a financial penalty.[29] We suggest that, although a levy is different form a penalty notice, some of the mitigation measures identified by the NSW Law Reform Commission are appropriate in relation to the victims compensation levy. Alternatively, there should be judicial discretion as to whether to impose the levy on people with no short-term prospect of actually paying the levy.

One benefit of the levy is that it is not tied to actual individual compensation payments, and thus does not impact upon the privacy of the victim in the way that restitution does. Please see our response to Question 6 for further details.

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[28] *Time for Action: The National Council to Reduce Violence against Women and their Children* 2009-2021, published March 2009 by the Commonwealth Government, at 79.

[29] Penalty Notices (Report 132), 2012. Available at: http://www.lawlink.nsw.gov.au/lawlink/lrc/ll_lrc.nsf/pages/LRC_cref123

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

While accountability by the perpetrator of violence is a worthy goal, we have serious concerns about restitution based on individual compensation awards made by the Scheme.

In particular, as discussed below, restitution is a barrier to victims seeking compensation through the Scheme, and can lead to genuine safety concerns for victims of violence.

We also query whether restitution is worthwhile from a financial and resource point of view.

On the one hand, restitution rightly requires convicted offenders to:

- confront, and hopefully take responsibility for, the impact of violent crime upon the victim(s);
- contribute financially to the victims compensation fund (from which the victim of their crime has received compensation) to offset the financial burden on the state (and ultimately tax-payers).

On the other hand our concerns in relation to restitution are:

- The current process of restitution, in terms of information given to the offender, does not respect the victim's right to privacy. For example, the offender is given the name of the victim, the injuries sustained by the victim, and the amount and date of compensation paid to the victim. This provides the offender with information that can be used against the victim. For example, the victim may want to keep an injury or diagnosis private, but the offender can communicate the injury to people in the community, friends, family or neighbours of the victim etc. Information about the payment received by the victim may also be circulated to people that the victims does not want to tell about the money.

- The offender, and/or other people who find out about the compensation payment, may put financial pressure upon the victim to get their hands on money.

- The perpetrator may receive notice that restitution is payable several years after the actual offence or conviction. The perpetrator may blame the victim for claiming compensation and thereby creating this debt (other members of a community may also blame the victim). A new cycle of violence may be triggered by the restitution notice. The fact that the offender may be pursued for restitution puts the most vulnerable victims at risk of retribution by the offender.

- We assume that the majority of convicted offenders are unable to pay the full amount of the restitution order, and some will never be in a position to pay a significant amount of restitution. The restitution debt (even if negotiated downwards) could trap offenders in a cycle of debt. Offenders without assets or savings who have served time in prison are particularly unlikely to be able to pay and the existence of a large debt may be detrimental to their successful reintegration into the community. Even comparatively small debts have a significant and long-term effect on people whose sole source of income is government benefits.

- In light of the above comment, we query the efficiency of collecting restitution at all.

The NSW Auditor-General's report (Volume 7, 2011) stated:

> *Of $289 million of restitution debts owing by offenders, only $18.8 million is likely to be received…*

and

> *…The Department is currently developing proposals with the State Debt Recovery Office (SDRO) to improve collection of restitution debt. The proposals include transferring the management and enforcement of restitution debts to the SDRO.*

We are not sure how much money is spent on processing restitution orders and pursuing restitution debts. However, there appears to be a large administrative burden for the collection of a small amount of money. Even if systems were as efficient as possible, the reality is that many offenders are never going to be in a financial situation where they can pay the full restitution debt.[30]

- Convicted female offenders are likely to also be victims of crime (e.g. domestic violence and sexual assault).[31] Assuming they are unable to pay the restitution amount, they will incur a restitution debt. If at some point they decide to pursue victims compensation for acts of violence against themselves, the amount they are awarded will be reduced by their restitution debt. This may leave them with an amount of restitution which is insufficient to assist in their rehabilitation (or they may end up below the $7500 threshold and not receive any compensation). While they can appeal the restitution, they may not know they have this right or have the means to pursue it.

Several CLCs report that clients fear retribution by the perpetrator of violence, if the perpetrator receives a notice of restitution. As a result, some victims of crime do not claim victims compensation. Some clients lodge a claim for victims compensation before criminal proceedings have concluded. If a conviction is recorded (and hence restitution will be requested from the perpetrator if compensation is awarded to the victim), the victim will withdraw their victims compensation application. In some ways, it is safer for victims to proceed with victims compensation claims if the offender is not convicted of the crime.

Although there is a mechanism for Applicants to request that Victims Services does not proceed with restitution orders, CLCs report that in practice it is difficult to apply to, and convince Victims Services, not to issue restitution orders. As a result, clients who are adamant that they do not want to perpetrator to know about compensation will not proceed with their compensation claim.

Some victims may want the offender to be subject to restitution, while others do not, for fear of the consequences. Restitution may be more appropriate in situations of where the victim and offender are not known to each other, have no joint history or social connections.

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[30] Most CLCs do not act for perpetrators and as such, have little experience of actual restitution proceedings. We are not sure how difficult or resource intensive it is for offenders and Victims Services to agree upon a realistic amount and plan for payment.

[31] This is discussed in response to Question 47, below.

In light of the various problems with restitution, detailed above, our recommendation is that restitution be abolished, and replaced with a levy for offenders convicted of violent crimes.[32]

A benefit of this approach is that it would establish offenders' financial responsibility to contribute to the support and rehabilitation of the victims closer to the time of conviction. For example, a levy at the time of conviction for a violent offence, that reflects the seriousness of the crime and likely impact upon victims, *instead of* restitution relating to a specific award of compensation. In determining the amount of the levy a magistrate could take into account mitigating circumstances and the offender's financial means.[33]

This approach would provide a greater pool of financial contributors, and means that violent offenders would not be "let off the hook" just because their victim(s) chose not to (or were too frightened to) pursue compensation. This approach would not violate the victim's right to privacy.

If restitution is to remain an aspect of the scheme, we strongly recommend that restitution is not used in relation to any claims involving domestic violence, sexual assault, or child abuse. This exception is necessary to ensure that victims of these crimes are not scared away (by the possibility of angering the perpetrator) from making victims compensation applications, and to support and rehabilitate applicants rather than stirring up fear and anxiety about the consequences of restitution.

Given that a small proportion of payments by the fund are actually recovered through restitution, these recommendations are likely to have a minimal impact on the fund, while at the same time reducing the administrative burden of restitution proceedings.

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

Any changes disadvantageous to applicants should not be retrospectively applied. Applications pending at the time of any changes coming into effect should be assessed under the scheme in place at the time of lodgement.

Some of the changes to the VSRA which came into effect on 1 January 2011 were retrospective (for example, amendments to s23A and s5(3), which were disadvantageous to victims). We made our concerns at the time known to the previous and current Attorneys General. These changes causes distress and confusion for victims compensation applicants, including applicants who had lodged their claims 2-3 years prior. Some clients had to be informed that their previously valid claims were now potentially invalid under the new law, and/ or that their chances of having multiple acts of violence acknowledged were reduced due to a new definition of "related acts".

Disadvantageous retrospective changes are not compatible with the "support and rehabilitation' of victims.

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[32] Other offences (e.g. not involving a conviction or not involving violence) could remain subject to the levy currently in operation.

[33] Please refer also to our comments under Question 5, in relation to offenders with no realistic prospect to pay a levy.

We advocate an injection of funds into the scheme to clear the existing backlog of claims, prior to the commencement of a new or amended scheme. This allows maximum certainty for applicants and will minimise confusion and distrust in the scheme.

Questions on eligibility

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

9) Should there be an absolute upper limit on eligibility?

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

We do not support a general time limit for lodging claims of less than 2 years.

Following violent crime, it may take time:
- for a victim to understand that what happened to them was a crime (e.g. in relation to domestic violence, child sexual assault or abuse in institutions)
- for a victim to become aware of the extent of their injuries
- for a victim to become aware of support for victims and the victims compensation scheme, and be able to access such support
- for a victim to receive appropriate psychological intervention
- for a victim to disclose the violence, particularly in the case of domestic violence, sexual assault and child sexual abuse, given the shame and stigma often associated with these acts of violence
- for Culturally and Linguistically Diverse (CALD) women to disclose the violence, particularly in the case of domestic violence, sexual assault or child sexual abuse, due to cultural and community barriers to disclosing
- for women with intellectual or cognitive disability to disclose the violence, particularly in the case of domestic violence, sexual assault or child sexual abuse, due to lack of comprehension of what has happened to them and/or the inability to convey this to those who are in a position to report the violent crime
- for a victim to become emotionally ready to disclose the assaults to police and family; and to go through the victims compensation process.
- for a victim to understand the requirements of a victims compensation application and the process
- for a victim to access any assistance needed to prepare an application (for example, in relation to literacy needs, legal assistance etc).

The Issues Paper notes that there have been significant increases in applications for incidents occurring more than 2 years prior, and also for incidents occurring more than 10 years before the application is lodged. While this may be burdensome for Victims Services, it also indicates that 2 years may not be long enough for victims to become aware of, and be ready to engage with, the victims compensation process. The more injured or traumatised the victim, the longer they are likely to need before being able and ready to apply for compensation.

The availability of special leave to apply after the 2 year timeframe should be retained. It is entirely appropriate that victims of domestic violence, sexual assault and child abuse should be given leave unless there is a good reason not to, as per section 26(3) of the Act. This provision is a clear acknowledgement that the significant trauma victims suffer impedes their ability to bring claims within the general 2-year time limit.

As noted in the 'Disputes' section below, a decision to refuse to allow a claim to be filed out of time cannot be appealed. We submit that this restriction on appeal rights should be removed.

We further submit that there should be no absolute upper limit on eligibility.

The current Chairperson of the Victims Compensation Tribunal has recommended that the time limit for claims outside two years be capped at 20 years from the date of the violence or 20 years from when the victims turns 18 in the case of child victims[34].

The Chairperson's Report 2010/2011 states that 398 claims were lodged where the victim was 18 years or younger at the time the alleged sexual assault offence was committed but where the victim was aged between 41 and 90 at the time of lodgement[35]. If is not clear whether some of those claims were lodged by the same victim for acts of violence which the Tribunal may end up deciding are "related acts" (see s5(3) of the VSRA). In any case, it is a very small percentage of the claims lodged for that year being 8,854.

The Chairperson estimates that more than half of these claims are unsuccessful (with no explanation of why they are unsuccessful).[36] This indicates that a significant number of these claims are successful.

One of our member centres, Wirringa Baiya Aboriginal Women's Legal Centre, has stated in their submission:

> *We have ran a number of claims for sexual assault victims who experienced violence more than 20 years ago and our clients have largely been successful. The Chairperson also stated that these claims are time consuming, which we find surprising given that most of these claims rely on evidence provided by Statutory Declaration only. The Chairperson does not explain why this is this the case.*

The same Chairperson's Report refers to domestic violence victims being successful for acts that occurred more than 20 years ago. The Chairperson states that these claims will often be successful and states that it is his view that *"they certainly do not represent the best use of the sparse resources of the Fund."*[37]

It is our submission that victims of domestic violence, or of sexual assault, who have been living with the trauma of violence for more than 20 years and are still affected, are equally deserving of compensation as a victim whose experience of violence ceased say one year ago. If anything, the trauma suffered by those victims who endured violence many years ago is more profound because there was less support and assistance to both end the violence and deal with the impact.

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[34] *Chairperson's Report 2010/2011*, page 33.
[35] *Chairperson's Report 2010/2011* at page 13 and 33.
[36] Ibid, 33.
[37] Ibid.

We do not support the Chairperson's recommendation of an upper time limit of 20 years. In particular, an upper time limit is inappropriate for situations of domestic violence, sexual assault, child sexual assault, or abuse in institutions.

If the government is seriously considering legislating a final limitation date on all claims we strongly argue that 20 years after the act of violence is far too short a period and should not be considered as appropriate.

As an example, we address below the inappropriateness of an upper time limit for sexual assault claims.

Example: why there should be no absolute time limit for claims of sexual assault

Child sexual assault and adult sexual assault are hidden and secret crimes. These crimes are rarely disclosed until many years later. Victims of sexual assault face significant barriers in reporting sexual assaults perpetrated on them.

For example, many victims of child sexual assault:

- struggle for many years to talk about their experience of sexual violence in their childhood.
- face cultural and community barriers to disclosing, and
- experience subsequent mental health issues, substance addition, and / or domestic violence as adults, which further impact on reporting and recovering from sexual assault.

One community legal centre reports:

> *"Certainly many of our clients struggled with the consequences of the violence for many years before reaching a point where they could seek compensation. Some of our clients self-medicated with alcohol or drugs for years, some became so dysfunctional that they committed crimes to support their habits and found themselves in gaol. Others describe a life of half living, feeling numb and distant from their children and friends, or highly anxious and phobic and housebound.*
> *....*
> *Although all of our clients find the victims compensation process emotionally exhausting and gruelling, almost all found it as an cathartic and validating experience that helped to bring some closure to the violence they had experienced."*

We refer you to the considerable literature about under-reporting of, and delay in reporting, sexual assault which is available through the Australian Centre for the Study of Sexual Assault (Australian Institute of Family Studies) and the Domestic Violence Clearinghouse.

An absolute time limit on sexual assault claims would disproportionately affect Aboriginal women and children.

Research by the NSWBOCSAR consistently shows that Aboriginal women and children are over-represented as reported victims of sexual assault and child sexual assault. Of course the true extent of sexual assault and child sexual assault in Aboriginal communities is unknown. The *Breaking the Silence* report of the Aboriginal Child Sexual Assault Taskforce

commissioned by the NSW Attorney-General's Department, reported that child sexual assault was considered to be a 'huge issue' in every community consultation. [38]

The impact of colonisation, denial of culture, dispossession, racism, police treatment, fear of deaths in custody and the reaction of the family and the community have significantly deterred Aboriginal women and children from reporting sexual assaults. Whilst these factors continue to affect Aboriginal women and children today, more Aboriginal victims now have the courage and fortitude to disclose and talk about the sexual abuse they experienced. The barriers to reporting this crime were described and clearly acknowledged in the *Breaking the Silence* report.

The *Breaking the Silence Report* also highlighted a profound lack of knowledge about Victims Services and victim's compensation within the Aboriginal community[39]. This report also noted that Victims Services' own review of service delivery to the Aboriginal community for 2001 to 2003 showed that although Aboriginal people are 2-6 times more likely to become victims of crime, they are five times less likely than a non-Aboriginal victim of crime to lodge a victims compensation claim.[40] Although in recent years the number of Aboriginal applicants has increased in the last financial year only 8% of the total number of claims received were Aboriginal.

Wirringa Baiya Aboriginal Women's Legal Centre reports:

> *It is only now that many older Aboriginal women have the courage, knowledge and psychological well being to come forward to disclose sexual abuse. We submit that it would be demoralising, unjust and tragic if older Aboriginal women were unable to make an application for victims compensation for the sexual abuse they experienced as children or young women. Many of our clients tell us of the critical role the compensation process played to assist them to heal. Many of our clients have cried with the news of the decision that the Victims Compensation Tribunal believed that they were sexually abused many years ago and acknowledged the harm it caused.*

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

In NSW in order to be successful a victim must be able to establish on the balance of probabilities that they were:

1. a victim of an act of violence; and
2. as a result of that violent crime have suffered an injury.

In relation to the first element, what is an act of violence is defined by section 5 of the *VSRA.* This essentially involves the commission of an offence involving violent conduct resulting in injury or death.

It is our view that all acts of violence should be covered by the scheme.

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[38] Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future* (2006), 48 ('*Breaking the Silence Report*').
[39] *Breaking the Silence Report*, 216-217.
[40] *Breaking the Silence Report*, 213.

Section 24 of the *VSRA* excludes certain persons from being eligible for compensation. We support the exclusions from eligibility presently covered in sub-sections 24(1), (2) and (3). Sub-section 24(4) should be removed: acts of violence against convicted inmates (occurring while the person is imprisoned) should not be excluded from the scheme. This exclusion minimises the seriousness of violence against people in custody and is offensive. It offends Australia's human rights obligations.

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

The impact of violent crime can certainly extend beyond the primary victim to witnesses, dependants of the victim, carers or people close to the victim, and the community more generally.

Under the VSRA (section 8), the definition of secondary victims is limited to actual witnesses of the violence, plus parents or guardians of primary-victim children who are under 18. To receive compensation secondary victims must prove they have a compensable injury, generally Psychological Injury Category Two which very difficult to prove, and a very high bar.

We have argued under Question 21 below, that availability of Psychological Inquiry Category One (chronic psychological or psychiatric disorder that is moderately disabling) should not be restricted to a small number of offences. Consideration should be given to applying this expansion of compensable injuries to secondary victims as well as primary victims.

NSW should give consideration to broadening the definition of secondary victims to include partners, carers, and dependent children of the primary victim. These secondary victims would still need to demonstrate a compensable injury stemming from the act of violence, so the number of compensation awards would not be high.

For example, a child suffering from a chronic moderately disabling psychological injury as a result of witnessing domestic violence and/or sexual assaults of their mother (where the mother is a primary victim) should be able to access compensation as a secondary victim, or alternatively as a 2nd primary victim under the "domestic violence" injury.

We note that a secondary victim can only be awarded compensation if there are any funds left over from the pool of money allocated to the act violence (see section 19 (2) of the *VSRA*).

The availability of counselling through the Scheme should be available to primary victims, witnesses, and immediate family members and carers of the primary victim.

The provision of compensation and counselling to family members and carers who are significantly affected by the act of violence is compatible with the purpose of the VSRA "support and rehabilitation".

We would prioritise compensation and counselling for a broader range of secondary victims / family members who are actually "injured" or significantly affected by an act of violence against a primary victim, over the payment of compensation to non-dependant, distant family members of a homicide victim.
Please see also the response below to Question 13.

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

Under the current NSW scheme, compensation is only available to family members (other than secondary victims) when the act of violence has resulted in the primary victim's death.

We submit that the potential recipients of compensation in respect of a homicide may be too broad. Under section 9 of the VSRA potential recipients are:

> (a) the victim's spouse, or
> (b) the victim's de facto partner who has cohabited with the victim for at least 2 years, or
> (c) a parent, guardian or step-parent of the victim, or
> (d) a child or step-child of the victim or some other child of whom the victim is the guardian, or
> (e) a brother, sister, half-brother, half-sister, step-brother or step-sister of the victim.

Under section 16 of the VSRA, dependent family members rightly take priority, and we support the retention of s16(2)(b). The definition of "dependency" is not defined in the VSRA and we are unclear how it is interpreted. However, we understand that evidence of actual financial dependency is currently required, even for children under 18 years. We submit that the legislation should deem dependency to exist for any children of the deceased, under the age of 18. Parents are legally responsible for their children, so evidence of actual financial dependency should not be required. It should be irrelevant whether a parent has actually been providing financially for their child or has been failing to do so.

In a situation where there are no dependent family members, the $50,000 is split between all other family members. This is an arbitrary arrangement which does not take into account the real impact of the death, nor the likely needs for rehabilitation and support. For example, a spouse (who is financially independent) who has been living with the deceased for 15 years will receive the same amount of compensation as a sibling who has not spoken with the deceased for 15 years.

NSW should consider adopting a requirement, as in the ACT scheme, that to be eligible for compensation, immediate "non-dependent" family members must have ""had a genuine personal relationship with the victim at the time of the victim's death" (see section 16).

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

The financial threshold of $7500 has been in place since 2006 and was a large increase from the previous threshold. The threshold should not be increased further. It is arguably too high already, as it excludes many victims of assaults claiming physical injuries which are ascribed a low value, including victims with multiple injuries which are discounted.

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

We do not understand the question.

Please see response to Questions 12.

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)?

No set type of documentation should be required. Evidence available will depend on the context. In some situations only one form of evidence may be available (e.g. one medical report, or one detailed statutory declaration), but it may be of such weight that the decision-maker is convinced, that on the balance of probabilities the act of violence occurred. The assessor should consider all available evidence.

Given the nature of domestic violence and sexual assault offences, the shame and stigma that many victims often experience and other challenges in reporting to police as outlined in question 17, we strongly believe that failure to report to police in cases of domestic violence and sexual assault should not be considered as part of the s30 factors at all. We believe the current inclusion of this as a s30 factor is an unnecessary burden for the victim to establish and acts as a barrier to applying for victims compensation.

Guidelines and records of decisions made by compensation assessors and the VCT are needed to promote consistency in decision-making. One CLC solicitor notes "It also seems that each individual assessor has their own threshold of 'balance of probabilities' making it difficult in some cases to reach the threshold set by some assessors even if there are police reports and other evidence."

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

No, the test of whether the crime occurred on the balance of probabilities is sufficient. Obviously a police report may assist in establishing the occurrence of the crime, but this should not be a requirement as there are many valid reasons why crimes are not reported to police. This is particularly so for a range of disadvantaged or marginalised groups in our society, who are also more likely to be victims of crime.

Reporting to police is an especially complex issue for many victims of crime.
Various groups may not have ready access to police, including children, some people with disability, and victims of domestic violence whose communication and movements are constantly monitored.

Many victims of domestic violence and sexual assault find it very difficult to report violence for a range of complex, legitimate psychological reasons including retaliation by the offender.

For other people there are valid reasons for fearing and avoiding the police: migrants or refugees from countries where police brutality or corruption is widespread; people with previous negative interactions with police; people in rural, regional or remote areas where the perpetrator of crime is a police officer (or is related to or friendly with police); people with outstanding warrants; newly arrived migrants with no knowledge of services in Australia or how to access them etc. Aboriginal people may avoid or fear police in light of poor historical relationships with police (for example, the legacy of forced removal of children, deaths in custody, and racism), as well as more current experiences of racism.

In relation to the reporting of domestic violence or abuse against children, women who have not been able to leave the relationship have valid reasons to fear that their children could be removed by Community Services if they report to police. In other situations women have previous experiences of trying to report domestic violence but have been treated dismissively or blamed for being in a violent relationship: it will then seem futile to approach the police again.

Whether the act of violence was reported to a police officer within a "reasonable" time is one of the factors that a compensation assessor must take into account when determining whether to award compensation, and the amount of compensation (section 30 (1)). Section 30 should be amended to remove the reference to police reporting.

If this recommendation is not followed, then sub-section 30(2) of the *VSRA*, which lists the matters a compensation assessor may take into account when considering whether a matter was reported to police within a reasonable time, should be expanded to include "cultural reasons for not reporting to police".

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

In the current scheme, to be awarded compensation, a victim must establish that:

1. they were a victim of a violent crime; and
2. as a result of that violent crime have suffered an injury.

This is appropriate. In other words, yes, an applicant must provide evidence to convince the assessor (on the balance of probabilities) that they suffered an injury.

Evidence of associated recovery costs should not be required, or relevant. As detailed elsewhere, compensation for pain and suffering should be the primary focus of the compensation component. In terms of medical expenses, most of these should be covered by Medicare. Any gap payments should be covered by the scheme as a service (reimbursement of out-of-pocket medical expenses) which is in addition to compensation.

Additional comment on Eligibility: Restrictions on claiming for earlier acts of violence

Another issue around eligibility to lodge a valid claim relates to the requirement in Section 23A of the VSRA. This provision, which came into effect in January 2011, was never subject to adequate consultation. This provision precludes victims from making applications for acts of violence that occurred before a successful compensation claim was filed (in relation to a different act of violence). Victims of sexual assault and child sexual assault are disproportionately negatively impacted by this change. As mentioned above, many child sexual assault victims experience subsequent domestic violence as adults. Many of these victims struggle for many years to talk about their experience of sexual violence in their childhood. If they have made a claim for compensation for a later act of violence, they will be unable to claim for the earlier sexual violence.

Section 23A actively disempowers victims. It forces victims to lodge their applications in chronological order of the act of violence, despite not being psychologically ready to address the earlier violence, or else to forfeit compensation for the earlier act. The law fails to account for the significant research on the healing process for victims of domestic violence

and sexual assault. It forces victims to disclose and engage in the compensation process simultaneously for all of the violence that has been inflicted on them. This is particularly onerous for victims of domestic violence and sexual assault, who have often experienced years of abuse and trauma, often by more than perpetrator.

We acknowledge the exception in s23A for "exceptional circumstances", but this creates uncertainty and delays, and creates an unnecessary hoop for victims to try to jump through.

We submit that Section 23A imposes an inappropriate restriction on eligibility for victims compensation.

Questions on compensation

Please see our comments under Question 4 in relation to the "unsustainability" of the fund. In addition to considering a change to the "approach or the quantum of benefits paid", the NSW Government should also consider increasing the budget allocation to Victims Services, and/or moving the financial burden of the counselling scheme into the health budget.

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

Please see response to questions 1& 2, above. In summary, rationales for the provision of compensation to victims can be broadly divided into three categories, with some overlap:

a) compensation can be of great symbolic value to victims;
b) compensation can be of great practical value in ameliorating the impact of violent crime on victims' lives; and
c) the process and award of compensation involves victims in the criminal justice system, where they are often otherwise excluded.

These three outcomes are all valid and worthwhile aims and purposes for a compensation scheme.

We submit that compensation paid by the victims compensation scheme should primarily be for:

- pain and suffering (see below for further discussion)
- loss of educational, employment, and other personal potential

In the 1999 report of the Joint Select Committee on Victims Compensation CLCNSW (formerly known as the Combined Community Legal Centres Group NSW) was quoted, to sum up the policy behind the provision of payment for pain and suffering:

> *"The rationale of statutory victims compensation schemes is to provide a forum where victims of crime can obtain some redress by way of recognition and validation of their experiences as victims of crime, to provide some acknowledgement by the state that the person has suffered harm, and through monetary compensation, to provide a tangible expression of the community's regret"[41].*

[41] Joint Select Committee on Victims Compensation, *Second Interim Report: The Long Term Viability of the Victims Compensation Fund* (1999), 38.

Appropriate medical and dental care (including mental health care) should be available to all people through the Medicare system, regardless of whether it was caused by an act of violence or not. Therefore, it is our view that payment for medical care should not be a primary focus in the calculation of victims compensation amounts. We note that in reality there will be out-of-pocket medical expenses and our preference is that coverage of any gap medical expenses be provided as a "service" in addition to compensation. Please see also our response to Question 26 (in relation to expenses and services, as distinct from compensation).
We note that despite the lengthy schedule of injuries, a significant portion of victims compensation awards relate to domestic violence and/or sexual assault.

We submit that the recognition of pain and suffering for victims of domestic violence and sexual assault is of critical importance. CLC clients generally do not have significant need for reimbursement of expenses or short-term loss of earnings (such as time off work) arising immediately from the act of violence. As detailed below, a focus on direct economic loss would be meaningless and discriminatory, when the dynamics of domestic violence and sexual abuse are considered.

The crimes of domestic violence and sexual assault are rarely one-off single incidents of violence. These types of crimes are perpetrated by people close to their victims. They are forms of violence used to control and dominate the victims. They are crimes that are often of a long duration, which may involve a pattern or cycle of abuse. They are crimes that involve abuse that can literally go on for years and years.

One of our member centres, Wirringa Baiya Aboriginal Women's Legal Centre reports:

> "For the large majority of our clients who experience domestic violence, the violence often has begun for them when they were teenagers or young adults. Thus it has occurred while they were still at school or having just finished school. Also most of our clients had children with their violent partners and generally became a parent young, either in their late teens or early twenties. This in effect means that the large majority of our clients never begun, or had the opportunity to have, paid work and therefore any career or income of their own.
>
> Child sexual abuse by its very nature is a crime against children, from as young as infants to late teenage years. We have had clients who have experienced sexual assault from pre-school ages through to 18 years (and in some cases into adulthood by the same perpetrator). The abuse results in serious disruption to their emotional and cognitive development and thus their schooling, adversely affecting their ability to seek or acquire paid work.
>
> Thus our clients rarely claim for loss of wages because they were unable to ever seek paid work as a result of their injuries, or are overwhelmingly stay-at-home, single mothers raising their children in difficult circumstances. In relation to our clients it would be meaningless and discriminatory to amend the current scheme to primarily focuses on economic loss, such as loss of wages.
>
> The main injury that results from domestic violence and sexual assault is profound psychological trauma. Certainly many victims of domestic violence will suffer physical injuries ranging from broken burns, scarring to soft-tissue injuries but all of our clients who have suffered domestic violence have been psychologically affected.

Our clients who have suffered domestic violence, sexual assault, or in some cases both, typically are diagnosed with:

- Severe depression
- Severe anxiety
- Post-traumatic stress disorder.

In summary, our clients, as a result of the prolonged violence suffer profound pain and suffering which in turn affects their ability to parent, contribute to community and society and their capacity to earn an income."

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

Payments for pain and suffering should be lump sum payments. It is difficult to breakdown awards for pain and suffering, or loss of earning capacity and other potential, into smaller components.

Victims of crime are best placed to decide what to use that lump sum payment for. It is paternalistic and offensive to suggest that the State would know better unless a victim has a significant disability that would require the victim to have a guardian and/or financial manager. Some victims may want some financial counselling about how to mange their compensation sum but this should be entirely voluntary.

Our member CLCs have provided some examples of how clients ended up using the lump sum compensation received:

- numerous examples of victims of long-term domestic violence being able to finally move away from the perpetrator and set up a home somewhere she feels safe.
- A client who paid for treatment of a scar she incurred as a result of an act of violence.
- A client who paid for the repair of a breast implant which burst during an assault.
- A client who used the money received to pay off household debts.
- A client who used to money to move herself and her immediate family a long way away from family members and neighbours who turned against her after she made the victims compensation claim in relation to violence perpetrated by her father.
- A client who gave most of the compensation that she received to her daughter and her son, both of whom had been badly affected by her husband's violence towards her.

Although we submit below that the compensation available is not adequate for certain categories, nor has it kept up with inflation since 1987[42] the lump sum compensation that is currently available to victims in NSW is of huge benefit in their efforts to establish or re-establish their lives.

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

In relation "to whom" obviously the person who has been injured. In relation to non-primary victims, please see our response to Questions 12 and 13.

Types of injuries

The compensation scheme should cover:

[42] The maximum award for Victims Compensation has remained at $50,000 since 1987.

1. psychological or psychiatric disorder (providing for a range of severity)
2. non-transient specific physical injuries
3. sexual assault (allowing for a range of severity)
4. domestic violence (allowing for a range of severity)

Comments in relation to the above categories:

1. Psychological or psychiatric disorder (providing for a range of severity)

In relation to psychological and psychiatric disorder, chronic and moderately disabling should not be restricted to certain acts of violence (currently armed robbery, abduction or kidnapping).

One might argue for instance that domestic violence often takes the same form as these listed offences, in that domestic violence can trap and restrict the free movement and exercise of will by the victim and the degree of post traumatic stress experienced by the victim is equivalent. A young boy brutally bashed by other local young people is similarly traumatised by the loss of freedom and ability to move freely in his community.

The victims of any act of violence should be able to nominate the injury of Psych Category 1.

2. Non-transient specific physical injuries

For the listing of specific physical injuries, the schedule is useful. If our recommendation below in relation to sexual assault is not adopted, then we submit that the following should be added to the list of injuries (sustainable by a woman):

- pregnancy;
- the loss of a foetus
- gynaecological damage which reduces the ability to bear children

In addition, in relation to both women and men, contraction of a non-curable sexually transmitted disease, should be added to the list of injuries.

This is an important acknowledgement of the damage that can be caused by unwanted pregnancies resulting from sexual assault and violent relationships and of miscarriages that can occur when women are assaulted while pregnant.

3. Sexual assault

In relation to sexual assault, the currently available categories are useful but very rigid. They should incorporate additional factors, including whether the victim became pregnant, suffered a miscarriage or contracted any diseases as a result; and whether the victim's ability to have children in the future has been reduced.

The Queensland scheme, *Victims of Crime Assistance Act 2009* (QLD) contains a good list of factors relevant to assessing the impact of sexual assault. Section 27(f) of the *Act* provides that 'injury' means:

> "…(f) for a sexual offence, the totality of the following adverse impacts of the sexual offence suffered by a person—
>
> (i) sense of violation;
> (ii) reduced self worth or perception;
> (iii) lost or reduced physical immunity;

(iv) lost or reduced physical capacity (including the capacity to have children), whether temporary or permanent;
(v) increased fear or increased feelings of insecurity;
(vi) adverse effect of others reacting adversely to the person;
(vii) adverse impact on lawful sexual relations;
(viii)adverse impact on feelings; or
(g) a combination of matters mentioned in paragraphs (a) to (f)."

4. Domestic Violence

We support the inclusion of domestic violence as a stand-alone injury (e.g. as an alternative to demonstrating a specific physical injury, or psychological or psychiatric disorder). We submit that the current Scheme significantly undervalues domestic violence and that the current range of compensation is grossly inadequate to cover severe or prolonged domestic violence

The range of compensation for this injury is between $7,500 and $10,000. This means that a victim of five or twenty years of ongoing physical violence could at most only be awarded $10,000 minus $750 (section 19A(1) of *VSRA* deduction) unless she can establish:

- Category 2, chronic psychological or psychiatric disorder that is severely disabling; or
- successfully make claims for unrelated acts of domestic violence (which is increasingly difficult in light of the Court of Appeal decision *VCF v JM [2011] NSWCA 890*.

We suggest an appropriate range of compensation for domestic violence (taking into account the limited funding for the Scheme) is from $7500 to $75000.[43]

We call for a broader range of compensation for the injury of domestic violence. This could be either:

- divided into categories of severity (as the VSRA does in relation to sexual assault); or
- by a scale of compensation for domestic violence from $7500 to $75000[44], with relevant considerations in the amount of the award *including*:
  - the seriousness of the injuries (mental and physical) sustained;
  - the impact on the victims access and ability to undertake education and work etc;
  - The impact on the victims ability to form positive relationships; and
  - and whether the violence consisted of a single act, or repeated / multiple acts of violence.

We note the "domestic violence" injury extends to personal violence offences against people in residential facilities. The categories for domestic violence should be broad enough to extend to children and patients in residential institutions who are physically abused in care.

Commentary in relation to sexual assault, domestic violence, and Related Acts

There are good policy reasons for not requiring victims of sexual assault, and/or domestic violence to demonstrate specific types of injuries. In many such cases there is significant

[43] If this were adopted, an exception should be introduced to the maximum amount of compensation under s19 of the VSRA.
[44] $50,000 (1996 figure) roughly equates to $75 000 in 2011 when adjusted for inflation (using the Reserve Bank of Australia Inflation Calculator: http://www.rba.gov.au/calculator/annualDecimal.html).

"pain and suffering", but no lasting or permanent physical injuries. In many cases for victims of domestic violence the main physical injuries are soft tissue injuries such as bruising to the body or black eyes, which are not recognised as injuries on the schedule.

Psychological assessment can be time-consuming and emotionally traumatic for people who do not want to enter into that process. Furthermore, the current Psychological or psychiatric disorder (Category 2) ("chronic psychological or psychiatric disorder that is severely disabling") is a very high bar, and hard to prove.

For the offence -based injuries of "Domestic Violence" and the three categories of "Sexual Assault" a victim needs to only establish physical or psychological harm. In this way there can be recognition and compensation for the frequent soft-tissue injuries and psychological disorders which are not severe enough to be assessed as "chronic and severely disabling".

Providing for a broader range of sexual assault and domestic violence categories that takes into account the prolonged or repeat nature of acts of violence, could assist to remedy the injustice created by the "related acts" provision (see below). For example, instead of dismissing and ignoring all but one of the acts of violence (as currently happens where acts are "related"), an additional category of sexual assault could be created to acknowledge that repeated sexual assaults occurred and to compensate at a higher level. This level could be capped at say $150,000 to prevent a situation of unlimited compensation.

Similarly, domestic violence could be compensated by way of a range of categories, which take into account a range of factors including severity, frequency and duration of the domestic violence.

The current related acts provisions are extremely broad. Section 5(3) of the VSRA provides:

> Except as provided by subsections (3A) and (3B), a ***series of related acts*** is two or more acts that are related because:
> (a) they were committed against the same person, and
> (b) in the opinion of the Tribunal or compensation assessor:
>> (i) they were committed at approximately the same time, or
>> (ii) they were committed over a period of time by the same person or group of persons, or
>> (iii) they were, for any other reason, related to each other.

Section 5(4) states: "For the purposes of this Act, a series of related acts, whether committed by one or more persons, constitutes a single act of violence."

For victims of multiples acts of violence, this provision essentially means that only one act of violence is acknowledged and compensated by the state. The symbolic and therapeutic objectives of acknowledging the crime and the victim's suffering are greatly diminished.

Furthermore, the provisions result in grossly unfair outcomes in terms of compensation awarded. For example, the same amount of compensation is likely to be awarded to:

- a victim of one violent crime resulting in injury; and
- a victim of repeated violent crimes, regularly inflicted over months or years, who is repeatedly and cumulatively injured. (e.g. a victim who is gang raped by multiple offenders on a weekly basis for 10 years).

Another example of inequity is that a victim who has been physically assaulted and injured on 2 occasions by different offenders may be entitled to 2 awards of compensation, but a victim who has been physically assaulted and injured repeatedly for 10 years by the same offender is likely to get 1 award of compensation (as the acts are likely to be "related acts").

Currently a sexual assault victim who, having established a pattern of sexual abuse, can be awarded between $25,000 and $50,000. Compare this to a victim of a single violent assault by a stranger, which resulted in a fractured kneecap with full recovery who can be awarded $18,000 (minus $750 for the section 19A (1) deduction).

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

Section 5(3) is in stark contrast to the recommendations of the recent ALRC/NSWLRC Final Report "Family Violence – A National Legal Response" (rec 29-5(b)).

Although there may need to be some restriction on the total amount of compensation available for a victim of a large number (or frequency) of violent crimes, this should be structured and addressed in a way that acknowledges the repeated nature of the violence as well as the severity of the crimes and any resulting injury / injuries.

It is difficult to quantify the amount of suffering victims of domestic violence and sexual assault endure, as the harm, especially the psychological harm, can be so profound. Having said that, we think that the amount of compensation for pain and suffering paid to victims of domestic violence and sexual assault in other schemes such as Queensland and Victoria is highly inadequate and insulting.

We note that the ACT scheme is highly inequitable for domestic violence victims who would have to establish an extremely serious injury, compared to sexual assault victims who only need to establish 'pain and suffering'.

22) Is a schedule of compensable injuries appropriate?

See comments in response to Question 21.

However, if the schedule of compensable injuries is abolished, we submit that focus of the scheme should be on:

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

23) What is an appropriate level of compensation?

Please see response to Question 19 in relation to the appropriate function of compensation. Obviously the level of compensation must be adequate to this function.

The 'compensable injuries' on the "Schedule of Injuries" (Schedule 1 to the *VSRA*) are generally amounts of compensation for the pain and suffering attributed to particular injuries.

The Schedule of Injuries does not comprehensively compensate victims for all that they suffered: it in no way compensates a victim to the extent of placing the victim back in the position they were prior to the violence, as would be the case if seeking damages in a personal injury claim at common law. Back in 1997 the Joint Select Committee on Victims Compensation noted:

> *"This Schedule is not considered to be an accurate compensatory measure of what a victim has suffered, in that it does not attempt to place the victim back into the position he/she was in before the incident.*
>
> *In fact, it largely does not even provide for differing degrees of physical impairment.*
>
> *What it is designed to do is to recognise that the victim has suffered as a result of a crime by the provision of a token financial gesture. How large that token gesture should be without insulting the victim is a matter of opinion."*[45]

What is an appropriate amount of compensation for the State scheme to award for pain and suffering, depends on the nature of the act of violence, the duration of the violence and the nature and extent of the injury.

We also note that the maximum amounts of compensation for each injury on the Schedule of Injuries have **not** been increased since the Schedule's inception in 1996. Furthermore the maximum award of $50,000 has not increased since 1987. We also point out that the Joint Select Committee on Victims Compensation in its report stated that in 1996-97 the Victims Compensation Tribunal paid out $65.75m in awards for pain and suffering.[46] However, in 2010/2011, some 16 years later, the total paid for compensation awards, legal costs and disbursements and approved counselling was $63.2 million.[47] The real value of this compensation is obviously decreasing. We propose that the size of individual awards, and the amount of funding made available to the Scheme, should be revised upwards.

Please refer to responses under Question 21, in relation to the appropriate level of compensation in relation to domestic violence and sexual assault. In summary, we submit that the maximum level of compensation should be $75,000 (awardable for homicide, and severe domestic violence). $150,000 should be the maximum for the most severe category of sexual assault.

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[45] Joint Select Committee on Victims Compensation, *Second Interim Report: The Long Term Viability of the Victims Compensation Fund* (1997), p38.
[46] Joint Select Committee on Victims Compensation, *Second Interim Report: The Long Term Viability of the Victims Compensation Fund* (1997), 37.
[47] See page 8 of the *Chairperson's Report 2010/2011*.

The minimum threshold of $7,500 is a newer development and should not be increased.

A related issue is that the under section 19A if the VSRA $750 is deducted from any award of under $20,000. This causes unnecessary confusion for applicants. For the benefit of the applicants, the compensation amounts listed in the schedule should clearly state the total award that a client is applying for (and can actually receive).

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

In relation to primary victims, please see Questions 21 and 23.

In relation to secondary victims, please see Question 12.

The strictly capped combination of primary and secondary victims in section 19(2) & (3) is too rigid and should be revised.

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

The current pre-existing conditions are that the applicant is a victim of an act of violence, and has suffered a compensable injury. These are the appropriate conditions.

We strongly disagree that a permanent injury should be a pre-requisite for compensation. As stated under Question 21, we submit that compensation should be available for:

1. psychological or psychiatric disorder (providing for a range of severity)
2. non-transient specific physical injuries
3. sexual assault (allowing for a range of severity)
4. domestic violence (allowing for a range of severity)

Pre-requisites such as "permanent injury" would unduly narrow the objective of the scheme: "to provide support and rehabilitation for victims of crimes of violence…" and would be inconsistent with human rights law.

As mentioned above, the scheme should account for pain and suffering and loss of potential. It should not be limited to simple re-imbursement of costs.

Questions on services

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)

We stress that direct services, or reimbursement / coverage for specific expenses should be provided in addition to compensation. As detailed above, services and reimbursement of expenses cannot replace the value of compensation.

The types of expenses that would be useful to victims of crime, if claimable through the Scheme (in addition to compensation) include:

- Out-of-pocket medical, dental and home-care expenses
- Interpreting and translation services (for example, where the client has to pay for interpreting or translation services in relation to medical issues, or arranging personal safety)
- In situations where there are ongoing security concerns, measures to secure the home, or relocation expenses
- Income replacement for a period
- Replacement of essential property (e.g. clothing)
- Funeral expenses

For Applicants without funds, direct payment of expenses to the third-party provider may be necessary in some cases, instead of reimbursement.

In addition to compensation, the Scheme should provide the following services:

- access to a specialist counselling service for victims of crime and trauma.
- access to voluntary financial counselling
- assistance in accessing medical care
- assistance in accessing drug and alcohol rehabilitation
- assistance in accessing home-care
- assistance in accessing legal help
- court support and liaison service
- information about the Victims Register

Counselling

In 2010/11 there were 6717 applications for initial counselling received and an eventual 3811 people who received counselling through the approved scheme. The Fund paid $3.42 million to approved counsellors who are private practitioners.

Using the Approved Counselling Scheme means accessing particular private practitioners. Of course, some victims of crime may choose or seek to access mental health and therapeutic services from public health providers and these costs are usually borne by the health service directly or recouped through Medicare.
NSW Health and Community Health Services including the Aboriginal Medical Services, already provide a wide range of mental health services including trauma counselling, psychiatric and psychological services, and recovery services. However, mental health services remain under-funded and struggle to meet the demand presented by many people suffering mental health and other post-trauma conditions including people diagnosed with post traumatic stress disorder.

Nonetheless, these services are often well placed within public health and community settings to respond to the complex and high level needs of their consumers including making appropriate referrals to other services such as the range of medical and GP services on offer, local referrals for crisis accommodation and housing support, provisions of caseworkers and social workers to provide intensive case-management to individuals or families at risk, legal services to address ongoing safety and other needs as well as encouraging consumer participation in groups, courses and therapy to address ongoing and developing complex needs.

We suggest that rather than sole reliance on private counsellors, the Government consider funding specialist trauma counsellors and allied professionals in public and community health services across NSW as another option for victims who prefer to access these services.

Counselling services for victims of violent crime should be responsive, culturally and socially appropriate and equipped to address the complex needs of victims of crime and trauma.

There are many gaps in service provision for mental health and therapeutic services in NSW and we note that this is especially so for victims living in rural and regional environments. We note that there is a lack of culturally appropriate services for Aboriginal women and children and CALD women, and that there is especially a lack of services for childhood sexual abuse.

In some rural and remote communities there are no approved counsellors who are female (important for our female clients who have been victims of domestic violence or sexual assault victims, or both) or with appropriate cultural awareness training, or have had sufficient experience of working with clients with complex and multiple health and other needs. As such, some of our clients are unable to access the counselling services provided by Victim's Services Approved counsellors. This lack of face-to-face counselling in rural and regional areas should be addressed.

We also note that the Federal Government funds a national sexual assault, domestic and family violence counselling service (1800 RESPECT). The aims of the service are to provide a best practice, professional 24/7 telephone and online, crisis and trauma counselling service to anyone whose life has been impacted by sexual assault, domestic or family violence; and to assist people affected by sexual assault, domestic or family violence to achieve recovery. This is an initiative under the National Plan to Reduce Violence Against Women and their Children. For more information see: http://www.1800respect.org.au/).

Costs / Disbursements

We note that Disbursements relate to expenses incurred in making a claim under the fund. This is distinct from the services and expenses / reimbursements to support and rehabilitate a victim of crime discussed above (Question 25).

The cap of $1100 for disbursements is too low. Although many applicants will never reach the cap, other applicants have to spend significantly more than $1100 to obtain the documentation need for their compensation claim. For example, some specialist medical reports cost more than $1100. If counselling or psychologist reports are needed, these can cost up to $800. In addition there may be fees for access to documents / freedom of information processing.

We recommend that the cap be increased to allow for the current cost of obtaining relevant reports.

Historically interpreter expenses incurred in the course of preparing a claim were treated as disbursements, and subject to the cap. If this is still the case, we submit that the cap operates as a form of discrimination, in that non-English speakers will be less likely to make claims

(for example if they have insufficient funds to cover both the medical reports plus their own interpreter costs).

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

Gaps include:

- Not enough Authorised Counsellors have experience of working with Aboriginal women and children, or with CALD clients;
- Access to support for prisoners who are victims of violence is severely lacking;
- Timely counselling for victims living in regional, rural and remote areas

We are aware that many of the Authorised Counsellors do not have experience of working with Aboriginal women or communities and are not aware of the complexities of domestic violence and sexual assault within Aboriginal communities. We are aware that Victims Services encourages Approved Counsellors to undertake training in relation to Aboriginal cultural awareness, but that this is not compulsory. We would suggest that this should be made mandatory for all counsellors and Authorised Report Writers. We are of the view that this should occur in line with the mandatory cultural awareness that all new employees of Government departments and agencies undertake.

Aboriginal counsellors should be supported, trained and encouraged to become Authorised Counsellors. While we are not suggesting that all Aboriginal victims of violence want access to Aboriginal counsellors, we do think that Victims Services should encourage Aboriginal counsellors to join the Approved Counselling scheme and could engage better with Aboriginal communities by doing so. We feel that by recruiting more Aboriginal staff in all roles and especially in therapeutic roles, would strengthen Aboriginal women and communities to speak up about violence and to seek support and rehabilitation services to address their trauma.
In relation to services in prisons, please see Question 47.

28) What rehabilitation and supports are needed for victims?

As described above, compensation and counselling are needed, in addition to reimbursement for particular expenses, and the assistance described in Question 26.

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

Question not addressed.

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

The VAL is a useful service and should continue. The exclusive use of a 1800 number to contact the VAL is a serious problem, as these calls are very expensive from a mobile

telephone.[48] Many victims of crime will only have access to a prepaid mobile phone. From a mobile the costs of calling a 1800 number (and of staying on the line) are currently prohibitive. As a short-term solution Victims Services should offer a text call back service where victims can text their number. At a minimum a land-line number should be provided to access the VAL.

We also recommend that the "Aboriginal Access Line" should be staffed by Aboriginal workers. It would be the expectation of someone calling this number that the person answering the phone is an Aboriginal person and not simply someone with cultural awareness training.

31) What special remote area needs may be required?

Please see Question 26 in relation to counselling and Question 45 in relation to legal assistance.

Awareness of the scheme in remote areas could be promoted by Victims Services staff visiting these areas and making links with local service providers.

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?

We are not aware of the current role of case managers and what the job description is for these roles. We are also unaware of how these staff view their role. As far as we are aware, CLC clients do not rely on these case managers so we have little knowledge of their role.

We assume that case managers can assist victims with coordinating access to services. However, we are concerned that case managers may have an inherent conflict of interest – assisting applicants, but feeling pressure to keep the costs to the fund down.

It is essential that vulnerable unrepresented applicants are properly supported and advised in relation to their victims compensation rights. If case managers are going to be increasingly relied upon to provide this service, we would recommend they undertake:

- mental health awareness training; and
- Aboriginal cultural awareness training; and
- cultural awareness training for working with CALD clients; and
- comprehensive training about power and control and abusive relationships; and
- comprehensive training around trauma.

In Question 45 we explain why legal assistance is essential for the vast majority of applicants.

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[48] The website of the Australian Communications Consumer Action Network details this problem: http://accan.org.au/index.php?option=com_content&view=article&id=221&Itemid=274

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

Witness assistance is required for victims and we note that the Witness Assistance Service through the Director of Public Prosecutions provides this statutory function already. We have no objection to reasonable travel costs being paid for the cost of a victims personal support person to travel to and from court to support them.

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

We are not sure what this question is asking.

We do not favour a cap on the reimbursement of expenses listed under Question 26.

In relation to the provision of counselling under the scheme, please see Question 26. We suggest that continued access to counselling should be consistent with therapeutic benefits of continued counselling.

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

Barriers include:

- Restitution being sought from the offender is a real barrier to claiming victims compensation: restitution creates risk for the victim. Fear of the offender being notified of (and required to pay for) the compensation award can result in victims not applying for compensation. See response to Question 6.
- Section 30 factors (including whether or not a victim reported the crime to police) is a barrier to claiming compensation – see Questions 16 and 17.
- Section 30(1d) suggesting it is necessary for victims to access counselling to mitigate the injury when this may be detrimental for them.
- A shortage of legal representation is a barrier – see Question 45.
- The lack of approved counsellors or accredited report writers in rural, regional or remote areas.
- Lack of access to counselling for victims in prison.

In relation to children who are in the care of the Minister, the 2010 Ombudsman's Report made 11 recommendations in relation to how Community Services could better manage the interests of, and potential victims compensation claims for these children.[49]

In relation to the level of under-resourcing of services for women experiencing violence, please refer to the *Time for Action* report. Some of the key indicators mentioned in that report were:

- inability of many services to demonstrate shared or cultural competencies for delivering high-quality services to specific population groups of women;

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[49] NSW Ombudsman, *The need to better support children and young people in statutory care who have been victims of violent crime: A report arising from an investigation into the NSW Department of Human Services (Community Services)* (June 2010).

- inability of emergency accommodation facilities to meet basic physical standards for disability access, or accommodate women with complex needs such as those with an intellectual disability, mental health issues and problems with substance abuse;
- inability of women seeking emergency accommodation or telephone counselling to access specialist support, particularly in rural and remote areas; and
- difficulty for women, particularly in rural and remote areas, in accessing legal advice and representation for domestic and family violence applications and associated family law and child protection matters.[50]

In relation to Aboriginal people, please see commentary under Question 17. These comments are in relation to police, but can apply to services more generally.

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?

Yes, interim payments should be available for victims who have urgent expenses that they cannot pay for (e.g. medical costs, or bond for a rental property so they do not become homeless), or funeral expenses in relation to a primary victim. The current section 33 appears to provide for this, although we do not have a lot of experience with interim awards of compensation.

We agree that an interim award should not be made unless the compensation assessor is satisfied that the applicant will be entitled to receive compensation (as in section 33(2) of the VSRA).

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

We are unsure of the intention of this question and what answer the question seeks to elicit. The question seems to assume that there may be services provided by Victim's Services at the moment that are unnecessary – we are not aware what these services might be.

However, we note that Victims Services should not expand into providing housing, direct health care, legal or any other professional advice.

Access to financial counselling should be provided, but it should be voluntary.

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?

Please see response to Question 23. Direct services or reimbursement of expenses should not be at the expense of compensation awards. As noted above, compensation should be primarily for pain and suffering, and for loss of life potential, not to cover particular expenses.

The maximum amounts of compensation for each injury on the Schedule of Injuries have not been increased since the Schedule's inception in 1996. We recommend increases in line with inflation, particularly if our other recommendations under Question 21 are not adopted.

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[50] *Time For Action*, above n 25, 78.

Questions on administration
39) What are acceptable waiting times for access to compensation benefits?

The current situation where claims are determined each year to the extent of the (inadequate) budget allocation, and claims in excess of the allocation increase the projected future liability, is obviously not in the best interests of victims of crime.

The current waiting times are unacceptable, in that claims that are ready for assessment are being delayed solely due to lack of funds within Victims Services.

Even if adjustments are made to the victims compensation scheme, CLCNSW recommends an immediate injection of funds from Consolidated Funds to clear the backlog of existing claims.

An appropriate timeframe depends on the matter, the circumstances of each claim and how quickly evidence can be assembled, and the needs of the victim.

Once the claim and evidence are ready for assessment, the determination and payment of benefits should occur promptly. The current delays between the listing date and the actual determination are unacceptable.

We suggest that where the evidence has been provided early on, straightforward claims should be determined within 12 months from the date of lodgement. For more complicated claims, 18 months might be a reasonable amount of time.

However, there should be flexibility in the target times and applicants should not be penalised if there are delays on their part.

Wirringa Baiya Aboriginal Women's Legal Centres notes that the time between lodging the application (the form) and getting an outcome from the Assessor is not necessarily indicative of administrative problems with Victims Services.
Most of their matters take at least two (2) years for a determination, and they feel that most of their clients need at least two years to come to terms with the application and prepare themselves for the steps needed to access compensation.
The reasons why a complex matter may take two years to reach determination include:

- gathering evidence, appealing freedom of information requests, reviewing evidence
- taking instructions from traumatised clients
- framing the applications
- drafting and finalising Statutory Declarations
- preparing submissions addressing out of time considerations
- waiting for determinations from the Victims Compensation Tribunal about out of time submissions
- assisting arranging counselling and other mental health services
- assisting our client with non-VCT civil legal problems (family law, housing, debt, discrimination, ongoing violence)
- preparing our client to see the Authorised Report Writer (this can take our clients many months and sometimes years)
- arranging travel for our clients from rural locations to the ARW appointment
- waiting for the ARW report

- drafting final submissions

Wirringa Baiya Aboriginal Women's Legal Centre reports:

> "For some of our clients it can take many conversations before they feel comfortable enough to speak about the violence they experienced in any detail. In addition our timelines for completion are delayed because as clients build rapport and trust, they disclose other violence that they may wish to claim for. Child sexual assault is often the most difficult issue our clients struggle to discuss, the other is sexual assault within a relationship. These conversations happen over many months and sometimes years and for a woman who has often lost all trust in systems and services, it is important for us to have this time with our clients in order to gain their trust and for us to help them have their story told.
>
> Section 23A of the *VSRA* now means that all potential claims need to be lodged before any final determination, thus as additional claims are filed the possible assessment date for the other claims is pushed back. If our matters were being listed for determination within shorter periods (for example, between 6 – 12 months) we would be likely to request an adjournment.
>
> We are not aware of the situation for "straight forward" matters where there has been a single discrete assault, a conviction and ample evidence. But that is often NOT the case for our clients. We prioritise taking on more complex matters and for these matters, we would be concerned about the process being sped up.
>
> Generally speaking most of our clients do not complain about how long it takes for a decision."

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

Reimbursement should be prompt to minimise financial hardship for the applicant.

As noted above for applicants without funds to pay for services, direct payment of expenses to the third-party provider may be necessary in some cases, instead of reimbursement.

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

The victims compensation process itself is enough to deter victims, especially if no legal assistance is available to them and there is no immediately available evidence.

As far as we are aware, Victims Services currently refers potential applicants to the Law Society Pro Bono Scheme or the Law Society Solicitor Referral Service.

The Law Society Pro Bono Scheme is not available until the person has been refused Legal Aid. Not only is this time consuming, but Legal Aid does not do a lot of victims compensation representation, so for many applicants applying to Legal Aid is futile.

The Law Society Solicitor Referral Service provides the contact details of three private solicitors who have listed "Victims Compensation" as a practice area. Unfortunately this list appears to be out of date (possibly as private solicitors have stopped doing victims compensation work following changes to the costs provisions). We are aware of potential applicants who have called all three solicitors, to be told that none of them want victims compensation work.

Questions on disputes

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

43) What dispute process should be followed?

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

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

The current regime allows for appeals pursuant to section 38 and 39 of the VSRA.

Recommendation to Introduce Internal Reassessments

Currently, an applicant who received a negative decision can appeal to the Victims Compensation Tribunal (Tribunal).

We recommend that before a final determination is made at the Assessor level, all negative decisions should be 'double-checked' or reviewed by a senior assessor. This should occur before the applicant is notified of the decision.

This should not replace any appeal rights, but merely be an internal measure to improve consistency in decision making, and ensure that the applicant is given a solid decision and record of reasons.

It is likely that this will negate the need for many appeals to go ahead, resulting in an overall saving of time and money. It will also mean that fewer applicants have to confront the complex and stressful course of appealing a decision.

Timeframe

In relation to appeals, we feel that the current timeframe (3 months) is appropriate – it allows applicants time to get advice about an appeal, consider their legal options and provide proper instructions.

Evidence at Tribunal stage

Section 38 (3) provides that:

> *"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."

We note that although this section allows for further evidence to be requested by the Tribunal, but we have not heard of this occurring. Therefore these appeals are usually just de novo hearings of the original evidence.

We recommend an amendment to Section 38, to allow further evidence to be presented to the Tribunal as a matter of course. This allows a victims compensation applicant to address concerns or weaknesses in their claim, as identified by the initial assessor, and is in accordance with the principles of natural justice. This is particularly important for unrepresented applicants who have prepared the initial application themselves with little idea of what is required. If additional evidence can be filed on appeal, then a lawyer can assist the applicant to present the full range of available evidence. This will help ensure that victims of crime receive the reparation they are entitled to.

Risk of reduced award of compensation

Where a person has been awarded compensation at the initial stage, but they dispute that the correct amount has been awarded, there currently exists a risk that on appeal to the Tribunal, an award of compensation will be dismissed or reduced.

This risk acts as a deterrent to Applicants asserting their appeal rights, and going through that process is not consistent with the rehabilitation and support of victims.

We submit that this risk should be removed, particularly in matters where there is a discretionary range of compensation: domestic violence, sexual assault and psychological or psychiatric disorders.

Appeals from Tribunal to District Court

Appeals to the District Court can be made on a question of law only.

We note that "error of law" is interpreted narrowly and 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.*

We are of the view that there should be greater scrutiny of decisions made by the Tribunal and 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.*

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.

Need for greater transparency in decision-making

As we have raised with Victims Services previously, there should be greater transparency of Victims Compensation Tribunal decisions. It would be helpful for clients and practitioners to have access to deidentified published decisions from the Tribunal. We note that other Tribunals such as the Administrative Appeals Tribunal make judgments and decisions available through their website. We note also that states such as Victoria publish regular guidelines and also judgments on a wide range of specific victims compensation / assistance issues.[51] We recommend the NSW scheme introducing a similar service to assist practitioners and to improve the transparency and accessibility of victim's compensation.

This should promote increased consistency in decision-making, and will allow applicants and their legal support to better understand decisions, and decide whether to pursue a review or appeal.

Questions on other issues/ considerations

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 utility of legal assistance – simple matters

We submit that for most matters applicants are best served by having legal representation in a claim for compensation. Whilst the Tribunal and other organisations have produced some useful resources on the victims compensation scheme, these resources can not replace legal advice where the law is applied to each person's individual circumstances.

However, there may be some literate and highly-functioning applicants who are able to prepare straightforward claims without a solicitor's assistance. For example, where there was a single act of violence, there are Police records, a successful prosecution and ample medical records, and the applicant has never been subjected to any other acts of violence.

Where an assessor receives an application that is clearly inadequate and prepared by an unrepresented applicant, they should suggest the applicant seek legal advice and provide referrals.

Similarly, where claims are dismissed, unrepresented applicants should be assisted to access an independent solicitor (through, for example, the Law Society Pro Bono scheme, a relevant community legal centre, or Legal Aid NSW) for advice about possible appeal rights.

The utility of legal assistance – disadvantaged clients, complex matters and appeals

Legal practitioners are best placed to provide assistance with framing and drafting the victims compensation application and submission.

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[51] Available at: http://www.vocat.vic.gov.au/publications/relevant-review-cases.

Legal representation is particularly crucial for complex matters (e.g. multiple acts of violence, acts of violence occurring more than 2 years ago, no conviction of the offender, no police records etc). For example, where there are multiple acts of violence, in light of the 'related acts' provisions in the VSRA, considerable analysis of the facts and legislative provisions is required to determine how many claims an applicant should submit.

Applications for victims compensation are rarely straightforward for victims of domestic violence, sexual assault and child sexual assault. These types of criminal violence, by their very nature, are complicated, hidden and messy.
Gathering, coordinating and evaluating evidence is generally beyond the capacity of applicants who have suffered this kind of trauma because of educational, cultural or emotional/psychological limitations or combination of these.

Victims of domestic violence, child sexual and sexual assault:

- face significant barriers in accessing the justice system and enforcing their rights;
- significantly under-report the violence to police or health practitioners due to fear of retribution and shame;
- have long histories of violence involving different types of abuse (e.g. the one victim may have experienced domestic violence, sexual assault and child sexual assault), sometimes involving multiple offenders, and
- frequently do not disclose or talk about these crimes until many years after they occurred.
- may have complex needs such as homelessness, histories of their own incarceration, drug and alcohol dependency or mental health conditions.

As mentioned above, in a recent survey of CLCs about their victims compensation workload, CLCs estimated that the majority of their clients experience post traumatic stress disorder, significant anxiety, major / clinical depression, and very high levels of unemployment.[52] In addition, CLCs represent clients who:

- due to the nature of the violence they have suffered, are often highly traumatised, which impairs their ability to communicate effectively and accurately, without significant time and support;
- are Aboriginal and for cultural and historical reasons are reluctant to divulge details of abuse and will only do so if there is a relationship based on trust and absolute confidentiality;
- are from culturally and linguistically diverse backgrounds where there are significant language and cultural barriers to overcome in gaining comprehensive and accurate instructions;
- have out of time applications, and
- possibly have multiple applications relating to various acts of violence and / or multiple offenders.

Other procedural reasons why applicants need legal assistance, identified by CLCs include:

- Confrontational/stressful nature of proceedings
- Clients need to be properly instructed and reminded to attend counselling, collate written evidence, write a victim's statement, attend the ARW etc.
- Complexity of proceedings

[52] Responses from individual CLCs to a CLCNSW survey conducted in September-October 2011.

- Legalistic process of naming injuries[53]

Legal practitioners also assist clients with advice and assistance in relation to reviews or appeals.

A solicitor from Shoalcoast Legal Centres notes "Victims who dispute the assessor's decision are unlikely to be able to make an appeal that would be successful without legal assistance".

Access to legal assistance

Legal assistance in relation to victims compensation is available through:
- private practitioners;
- community legal centres
- pro bono services of several law firms
- Legal Aid NSW

Our observations are that the number of private legal practitioners willing to do victims compensation work is decreasing. Meanwhile community legal centres, and the private law firms that do some pro bono representation for victims compensation matters are at capacity. Legal Aid has very strict criteria for victims compensation representation, so does relatively few matters.

This shift away from private practitioners stemmed from changes to the costs provisions which took effect on 1 January 2011. These changes introduced greater uncertainty in whether or not costs would be awarded, decreased available costs in some circumstances, and removed the right to appeal in relation to costs.

In particular one private law firm in Sydney, which had a large victims compensation practice, ceased acting for clients in victims compensation applications. As a direct result, some community legal centres have experienced an increase in client referrals and inquiries in relation to the victim's compensation claims.[54] In a recent survey of CLCs victims compensation workload, one CLC noted:

> *We have opened files for 3 clients this last week. All clients have complex needs and multiple claims. We would have preferred to refer them out but have had difficulty placing them. We don't have the capacity to take on any other new matters and we are trying to place the remaining 5 matters - with great difficulty*[55]

Over the past 3 years, the number of people assisted by CLCs in relation to victims compensation claims has increased. In relation to casework (where representation is provided to a client) by CLCs in NSW, the workload is increasing: 1,015 cases (2009), 1,213 cases (2010), and 1,295 cases (2011).[56]

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[53] Issues identified in a CLCNSW internal survey of NSW CLCs in relation to their victims compensation work, March – April 2012.

[54] In a CLCNSW internal survey of NSW CLCs in relation to their victims compensation work (March – April 2012) eight CLCs recorded an increase in requests for legal advice or assistance since January 2011. No CLC recorded a decrease.

[55] CLCNSW internal survey of NSW CLCs in relation to their victims compensation work, March – April 2012

[56] CLSIS data, generated April 2012, provided to CLCNSW by Legal Aid NSW.

In relation to legal advice by CLCs in NSW about victims compensation matters, the numbers have also increased: 2,527 advices (2009); 2,749 advices (2010); 2,944 advices (2011).

At the same time the total number of claims lodged with Victims Services decreased: from 9,245 (2009-2010) to 8,854 (2010-2011).

This increasing reliance of victims of crime upon CLCs is not sustainable without additional funding for CLCs.

Without measures to attract private practitioners back to the area of victims compensation, or to significantly increase funding to CLCs or Legal Aid, some victims with complex needs will inevitably be left without legal assistance.

Costs provisions

The current payments available for professional costs (of legal practitioners) do not adequately reflect the amount of work done by a legal professional for a complex matter.[57]

There is some need for some discretion when awarding costs and we acknowledge that in the past, some legal firms have been able to recoup considerable professional costs by assisting clients with victims compensation applications. However, the Scheme should not rely on solicitors taking on complex victims compensation matters without fair reward for the time involved.

The amount of time CLCs estimate that they spend in relation to each victims compensation application varies greatly, however it is notable that out of 22 CLCs, 19 estimate that they spend more than 20 hours on each application. This includes 7 CLCs that estimate more than 80 hours is spent per application.[58]

One of our member centres, Hawkesbury Nepean Community Legal Centre, reports:

> *"In many of our matters, we work well in excess of 50 hours on a claim. However, we have never been successful in our submissions to the Tribunal for an increase in costs under s35(3) even though we believe we have established the exceptional circumstances that warrant an increase in costs in a particular matter.*

Another CLC, Wirringa Baiya Aboriginal Women's Legal Centre, notes:

> *…most of our matters take many hours of legal work and effort to complete and that because our clients present with complex matters, it is common to spend anywhere up to 100 hours on our victim's compensation matters. While we do not infer that this is the same for all solicitors, we make the general point that (in our experience) the solicitors who take on victim's compensation matters for domestic violence and sexual assault victims recognize the very real effect of trauma on their clients and have a social justice focus in the services that they provide.*

We support the current scheme whereby clients cannot be charged for professional fees.

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[57] The possible professional costs are found in Reg 12 of the Victims Support and Rehabilitation Rule 1997. For example "up to $825" plus GST, for an application where compensation is awarded.

[58] CLCNSW internal survey of NSW CLCs in relation to their victims compensation work, September 2011.

Costs should continue to be payable directly by the Scheme.

We recommend the schedule of fees be expanded to account for the varied complexity of matters and the amount of work actually done. More specifically
CLCNSW recommends that costs payable to solicitors who represent applicants could include 3 tiers which take into account the complexity of the application and the ability (or lack thereof) of the applicant to prepare an application without assistance. For example, under the Tasmanian scheme, costs are awarded on the basis of the complexity of the matter:

- simple matters - $550
- standard matters - $770 and
- complex matters - $1100

The assessor should have the 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.

We hope such a change will stem the decline in private practitioners willing to do victims compensation work (while also taking into account the quality and quantity of that work).

CLCs provide free legal services to our clients, and are generally funded through the NSW and Federal Governments. As this funding is minimal and CLC services are stretched to capacity, the receipt of professional costs assists CLCs to provide assistance to a greater number of clients.

Other types of legal assistance

In addition to advice and assistance in relation to victims compensation claims, legal assistance may be needed to help victims through the legal/ court process (if there are criminal charges). For example, protecting victim's confidential information, understanding court processes, or assisting victim to voice opinions if prosecution are engaging in plea-bargaining.

46) What other potential funding sources should be considered?

While we are not opposed to some form of levy payable by convicted offenders (see suggestions under Questions 5 & 6), the primary responsibility for funding support and rehabilitation of victims lies with government. This is in line with the human rights obligations of the state, detailed above.

Access to counselling should also be a feature of the scheme: we propose that in addition to funding private counsellors to work with victims of crime, there should be an expansion of specialist trauma counsellors in public and community health services. Consideration could be given to expanding the health budget to fund these specialist trauma counsellors. This could ultimately result in a reduction in the amount of money Victims Services spends on private counsellors.

We do not know how many applications for compensation relate to victims who were abused in care ran by religious institution and the state. Nonetheless, we advocate that those institutions and the state need to recognise the responsibility for that harm caused and appropriately and adequately fund reparation schemes for those victims. We note the considerable difficulties that victims of sexual abuse by Catholic clergy face when seeking appropriate compensation from the Catholic Church. This is an issue that has been identified by the Upper House Greens Member, David Shoebridge, who is advocating for law reform on this issue.[59] Particularly in the absence of adequate reparation funds being established by religious institutions in relation to sexual assault or other abuse in their care, we support removing any legal barriers to civil action against religious institutions.

We also note that victims of violence while in the care of Community Services (FACS) are entitled to claim under the Victims Compensation Fund, rather than pursue lengthy and costly personal injury claims against FACS. This results in legal and compensation costs being effectively saved by one Government Department, and spent by another. The liability for these claims should be the responsibility of FACS.

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

In 2011/2012 27.4% of women in NSW prisons are of Aboriginal or Torres Strait Islander descent.[60] The reasons for the high numbers of Aboriginal people in custody are complex and the fact remains that Aboriginal people are incarcerated at 13 times the rate of non-Aboriginal people[61] and Aboriginal women are the fastest growing group in NSW prisons.[62]

Aboriginal women in prison and children in juvenile detention centres have experienced high levels of victimization 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. This information is drawn from self-reporting surveys such as the Young People in Custody Health Survey, Inmate Health Surveys and the Inmate Census as well as the 2002 report *"Speak Out Speak Strong"*[63] as well as CLCs (such as Wirringa Baiya) work with women in prison.
These sources of information tell us that:

- 69% of all women and 81% of Aboriginal women report at least one relationship of domestic violence[64]
- 44% of Aboriginal women report victimhood of adult sexual assault[65], and

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[59] 'Roman Catholic Property Church Trust – Property Amendment (Justice for Victims) Bill 2011: Consultation Paper', David Shoebridge, Member of the NSW Legislative Council (2011).
[60] Corrective Services NSW, *Female Offenders: A Statistical Profile* (February 2012).
[61] John Walker and David Macdonald, 'The Over-Representation of Indigenous People in Custody in Australia', *Trends and issues in crime and criminal justice, issue no 47,* Australian Institute of Criminology
[62] *Data on Prisons: Imprisonment rates and proportion of prisoners*, Australian Government: Australian Institute of Criminology, available at http://www.aic.gov.au/en/publications/current%20series/rpp/100-120/rpp107/06.aspx (accessed 20 April 2012).
[63] R. Lawrie and Aboriginal Justice Advisory Council *"Speak Out, Speak Strong"* (2002).
[64] Corrective Services NSW, *Inmate Health Survey 2001* (2003) ['*Inmate Health Survey*'].
[65] Ibid.

- 70% of Aboriginal women report victimhood of child sexual assault[66]
- 81% of girls in juvenile detention centres report at least one form of child abuse or neglect[67]

Only a third (or 29%) of women the subject of the "*Speak Out Speak Strong"* study said that they had previously disclosed their childhood sexual abuse and the overwhelming majority (68%) of these women said that they would like counselling to help address their trauma and abuse. In relation to mental health, people in prison have schizophrenia at 3 -5 times the rate of the general population[68] and Aboriginal girls in in juvenile justice centres have on average 4.8 separate mental health diagnoses[69]

Very often, women and children who have been victims of violence have self-medicated their mental health and trauma with drugs and alcohol which inevitably results in adding to the chaos of their lives and increases their contact with the criminal justice system.

People in prison should have access to a suite of mental health and support services and this is consistent with their human right to access counselling and rehabilitation services. Unless inmates can get help with their trauma, their offending behaviour is likely to continue (such as drug use) and the cycle goes on.

Currently access to mental health services in prison is scant and hard to access. Psychologists are provided by Corrective Services within the prison setting and these workers are over-loaded and stretched. In the community, we note that Corrective Services is seeking to employ more psychologists to access clients on community service orders or otherwise under the order of Corrective Services.

We commend the initiative taken by Correctives Services and Victims Services to provide a victims counselling trial in two women's prisons. However, we recommend expanding the Victims Counselling trial into every women's prison and if other services are going to be developed, we would recommend prioritizing these services for the most vulnerable in the community and in prison – women and children.

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

The current Victims Compensation scheme already provides for considerations for the deduction of compensation pursuant to Section 30 of the VSRA.
We have made recommendations about section 30 above (see Question 1 & 2, 16, 17 and 35).

In addition, we are strongly opposed to any other move towards a contributory negligence scheme. We note above, that the ACT allows for deductions to compensation for contributory negligence such as intoxication. We cannot comprehend any situation in which a victim of violence could be found to contribute to the act of violence nor to their injuries. We note that

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[66] *Speak Out Speak Strong*, above n 49, p. 48.
[67] D. Indig, C. Vecchiato, L. Haysom, J. Carter, U. Champion, C. Gaskin,
e. Heller, S. Kumar, N. Mamone, P. Muir, P. van den Dolder and G. Whitton, *2009 Young People in Custody Health Survey: Full Report*, Justice Health and Juvenile Justice, Sydney (2011).
[68] *Inmate Health Survey.*
[69] Ibid.

almost all of our clients are victims of domestic violence and sexual assault and we find the suggestion that an intoxicated woman may have somehow encouraged or provoked an act of violence to be unjustifiable and an appalling proposal.

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

Please refer to suggestions through this submission, for example in relation to Questions 6.

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

We are not clear what this question is asking.

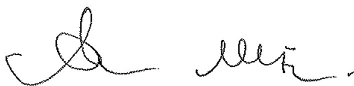
Support and rehabilitation of victims of crime by the Scheme overlaps with services provided by Medicare, and the (yet to be implemented) National Disability insurance Scheme.

Conclusion

Thank you for taking the time to consider this submission.

If you require any further information about CLCNSW or our submission, please do not hesitate to contact Roxana Zulfacar, Advocacy & Human Rights Officer, ph: (02) 92127333.

Yours sincerely,
Community Legal Centres NSW



Alastair McEwin
Director