

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

Victims Compensation at Elizabeth Evatt Community Legal Centre

Elizabeth Evatt Community Legal Centre (**EECLC**) is a non-government organisation that provides free legal advice and limited representation to disadvantaged members of the community living in the Blue Mountains, Greater Lithgow, Bathurst and Oberon regions of NSW. EECLC also provides community legal education and engages in law reform activities in areas of significance to the community.

EECLC has run an extensive victims compensation practice since 2006, providing clients with victims compensation advice and representation. Since 2008, EECLC has utilised general centre funding to employ a part-time paralegal to work on victims compensation matters in recognition of the clear need for victims compensation assistance and the suitable role Community Legal Centres (**CLCs**) have in meeting that need.

As a result of a strategic review of legal needs in its catchment area in 2007/2008, EECLC has focused its victims compensation assistance on representation for survivors of domestic violence and sexual assault. The majority of applicants represented by EECLC are primary victims of these offences and are mostly women. All have suffered psychological harm to varying degrees from the acts of violence that are the subject of their claims. Many have also suffered serious physical injuries. Many have filed applications that are out of time for acts of violence which occurred when they were children under the age of 18. Many have multiple claims for acts of violence from different offenders that date back to their childhood.

Most applicants represented by EECLC experience significant barriers in terms of their capacity to trust others and to talk about the acts of violence. They experience increased vulnerability to homelessness, poverty, drug and alcohol use and further acts of violence as a result of lasting psychological harm from prior acts of violence. Most have experienced disruption to their employment and/or education, an unstable or dangerous home environment, and little or no family support as a result of acts of violence from family members or partners. Many have children of their own, and may also struggle with disabilities. These applicants usually subsist on fortnightly Centrelink payments without immediate hope of improving their own or their family's financial situation. Most applicants represented by EECLC regularly engage with counsellors under the Approved Counselling Scheme for Victims of Violent Crime, and in some cases counselling is the only extra support they receive to recover from the acts of violence that have resulted in debilitating psychological trauma.

Since 2006, EECLC has represented in the vicinity of 150 victims compensation applicants resulting in only two dismissals in that time. EECLC has accepted referrals for victims compensation assistance from the Women's Domestic Violence Court Advocacy Service (**WDVCAS**), counsellors, medical practitioners, community workers and private law firms.

Since 2011, EECLC has been unable to represent new clients in new victims compensation matters. This is due to a backlog of claims at EECLC yet awaiting determination by the Victims Compensation Tribunal (**the Tribunal**) and to an overwhelming demand for victims compensation assistance which EECLC, with limited resources and restrictive government funding, has been unable to meet. Although EECLC continues to provide clients with initial victims compensation advice, clients are now referred to others for victims compensation representation. These include the pro bono departments of Clayton Utz and Ashurst (formerly Blake Dawson Waldron) for the most complex matters. Clients are also referred to several local firms, based in Bathurst, Lithgow and Katoomba, as well as to Victims Services for assistance.

Submission

EECLC is grateful to the NSW Department of Attorney General and Justice and Price Waterhouse Coopers for the opportunity to provide submissions on the Review of the NSW Victims Compensation Scheme (**the Scheme**) as provided for under the *Victims Support and Rehabilitation Act* (NSW) 1996 (**the Act**). We note, however, that the notice of Issues under consideration and the deadline for the provision of submissions to the Review was too brief and restrictive. We regret that this has limited a more comprehensive response to the questions raised in the Issues Paper.

If there are any models for amendment to the Scheme that are currently being considered, it would be of great benefit to the Review process if these would be provided to stakeholders for comment prior to final implementation of any changes.

We invite representatives from Price Waterhouse Coopers to contact EECLC to discuss at greater length the issues addressed in the Review and our ideas about

the ways in which the Scheme might be improved for the benefit of compensation applicants without compromising efficiency and cost-effectiveness.

Current challenges

EECLC notes the Chairperson's statement that the 25 month waiting period between lodging of a claim and determination is too long for victims. We agree with this statement for the reasons also given by the Chairperson in his 2010/2011 report (**the Chairperson's Report**).

The 2010 amendments to the Scheme, which came into effect on 1 January 2011, have also produced problems contributing both to delay and unfairness in the application process. Requirements imposed on victims under Section 23A of the Act have meant that a greater number of EECLC's applicants have been forced to adjourn existing claims in order to lodge claims for earlier acts of violence prior to determination of their original claim. Any economic rationale that may have been behind the introduction of Section 23A has been undermined by an increase in pending claims that seem unlikely to be determined for another two years, according to current time frames. Furthermore, this places unnecessary and inappropriate pressure on traumatised and financially disadvantaged victims to lodge claims for earlier acts of violence before they are emotionally or psychologically ready to do so. It is not clear what might constitute 'exceptional circumstances' under Section 23A. No guidelines have been provided in this regard. Ultimately, victims have been disadvantaged by this amendment, with no obvious benefit to the efficiency or cost-effectiveness of the Scheme.

A further challenge posed by the Scheme and made worse by the 2010 amendments is the limitation placed on solicitors' costs. The costs awarded for successful claims are regarded by most solicitors in EECLC's catchment area to be too inadequate to make victims compensation an economically sound area of law in which to practice. EECLC has found only a handful of firms in its catchment area that offer victims compensation representation. Those victims whose matters are particularly complex, involving multiple claims that date back to childhood, and who suffer from psychological barriers that require time and patience on the part of practitioners in order for instructions to be taken, are those victims particularly disadvantaged by the low financial incentive offered to solicitors under the Scheme. Legal Aid NSW offers victims compensation representation in only very limited circumstances. CLCs and firms that offer pro bono assistance are regularly at capacity and are frequently unable to accept new referrals of victims compensation matters. Unless victims compensation representation is adequately funded and supported, the Scheme will continue to fail to fulfil the purpose of support and rehabilitation for victims.

The Issues Paper

We take this opportunity to address the matters raised in The Issues Paper, as well as to provide EECLC's recommendations for change to the Act and the Scheme.

In response to questions posed in the Issues Paper, we make the following statements:

2.1 Purpose of Scheme

1) We believe the objectives of the Act are still appropriate in meeting the needs of victims of violent crime.

We also believe that Section 3 of the Act should include a provision to the effect that the objects of the Act are to promote justice for victims of violent crime.

It is EECLC's experience that applicants are most motivated by the possibility of receiving a sense of justice as a result of a successful application for victims compensation. In some cases, full rehabilitation is not possible. The practical support that lump sum payments and counselling provide are valuable. However, typically the most important outcome for applicants assisted by EECLC is the sense of justice they receive from the government's acknowledgement of the crimes committed against them and their resultant suffering.

This is so particularly for those applicants who have experienced frustration and disappointment as a result of their engagement with the criminal justice system. It is also particularly important for those applicants who have suffered throughout their lives from long-term, damaging psychological effects of acts of violence committed in their childhood.

2) Counselling and compensation are of the utmost value in assisting victims to recover from the acts of violence and to rebuild their lives. Many of EECLC's clients have clearly benefited from the support of Approved Counsellors. Compensation has been used by EECLC clients to pay for necessary ongoing medical and psychological treatment, to relocate away from an offender and re-establish a household, to discharge debts and expenses accumulated for damage to property by an offender, or to purchase household items that may otherwise have been unaffordable, remembering that most of EECLC's victims compensation applicants subsist on Centrelink benefits. Lump sum compensation promotes financial security and independence for applicants. It encourages a fresh start for victims of trauma. Compensation is also a tangible expression of justice for applicants.

3) The existing benefit and support structure of the Act, as it is intended to operate, does achieve the Act's objectives of 'support and rehabilitation'. However, in its current operation, the enormous delays between lodging of an application and determination do more to hamper these objects of the Act, leading to increased financial uncertainty and demoralisation for applicants.

4) We believe compensation is intrinsic to the support and rehabilitation the Act is intended to promote, that it may be used towards treatment or the practical rebuilding of applicants' lives and offers a concrete expression of the objects of support and rehabilitation, compensation must be considered at the core of the benefits it provides to victims.

5) We believe it is appropriate to impose a levy on convicted offenders. We also welcome further ways of funding the Scheme through the contribution of offenders and philanthropic donation and partnership, where possible. This idea is explained further in our submission, in our response to Question 49.

6) We believe it is appropriate to require convicted offenders to pay compensation to any victim of the crime. However, we also recommend that the Scheme be amended so that victims themselves may decide whether restitution will be sought from the offenders in their particular matter. Many EECLC clients welcome the prospect of offenders paying for the crimes they commit. In many other cases, however, clients have chosen not to proceed with compensation claims due to the risk of retaliation by offenders. In one instance, restitution prompted acts of violence by the same offender against the same victim, which in turn prompted a further claim for victims compensation by that victim. These outcomes not only undermine the purpose of the Scheme, but also directly lead to further harm and trauma for victims. We also endorse CLCNSW's proposition that restitution may place an undue administrative burden on Victims Services with little economic gain to justify such a use of resources.

7) We strongly concur with CLCNSW that any amendments to the Scheme that would be disadvantageous to applicants should not be retrospectively applied. We also endorse CLCNSW's recommendation that the Scheme receive an injection of one-off funding to clear the existing backlog of claims prior to the introduction of any amendments to the Scheme.

We believe victims of violent crime should continue to have the right to access free counselling, to apply for compensation and to have the crimes and the suffering caused to them acknowledged by the NSW government in each case where acts of violence and injuries are proven.

2.2 Eligibility

8) We believe the current limitation periods could be extended for all the reasons noted by CLCNSW in its submission to the Review. EECLC has represented a number of applicants who have suffered severe psychological trauma from assault and home invasion which typically prevent lodging of claims within the 2-year time limit. Concerns about restitution and retaliation from the offender also influence a victim's decision to wait to apply for compensation.

We believe victims of domestic violence, sexual assault and child abuse should continue to be granted leave to make late claims, given the intimate nature of these crimes and the devastating impact on victims.

9) We agree with CLCNSW that there should be no absolute upper limit on eligibility for the reasons set out in CLCNSW's submission to the Review. Many victims are so scarred by acts of violence that it may take several decades before they feel ready to file applications with the Tribunal. Indeed, in EECLC's experience, usually the longer a victim has waited to lodge a victims compensation claim for domestic violence, sexual assault or child abuse, the more traumatised by the violence such a victim remains. Such a victim may typically have been subject to further abuse and violence throughout their lives as a result of the psychological damage suffered from earlier acts of violence. Such a victim may have tried to blot out all memory of the violence, either by drug and alcohol self-medication, or by avoiding engagement with counselling. Victims compensation for such victims represents a later stage in their healing and is a process these victims are only ready for after much time has passed since the acts of violence.

To deny compensation as an avenue of justice to such victims is discriminatory and inappropriate. To exclude those most affected by acts of violence from accessing the Scheme by imposing an upper limit on eligibility would be to undermine the Act's objectives of 'support and rehabilitation'. It is our belief that support of victims needs to be provided when victims are ready to come forward to seek that support. Pressuring victims to apply before they are ready and effectively punishing them if they do not would severely compromise the objects of the Act and lead to a system that was unjust for the most vulnerable of victims, an outcome that would serve to perpetuate, even reinforce, the harm and suffering that the Act is otherwise intended to mitigate.

10) We believe the current time limit could be extended to 3 years. Out of time applications concerning domestic violence, sexual assault and child abuse should continue to attract the presumption that they will be granted leave with no absolute upper limit on eligibility.

11) The current offences covered should continue to be covered by the Scheme. We recommend that the Scheme also recognise acts of domestic violence incited by another person. An example of this type of incident is a situation involving a young person committing acts of violence against another family member at the instigation of an older family member with influence over the offender. In cases of this nature dealt with by EECLC, the victim will usually want to claim for acts of violence encouraged by the older family member, realising that the younger family member was acting out of fear or due to parental influence. Incitement is recognised at common law in the NSWCCA case of *Eade* [2002] NSWCCA 257. Allowing incitement to be covered by the Scheme would be an appropriate means of redress for survivors of these circumstances.

We also agree with CLCNSW that convicted inmates should be allowed to apply for compensation for acts of violence committed in NSW prisons and that their exclusion from the Scheme is discriminatory.

12) Counselling and medical expenses should be provided for primary, secondary, family and/or support persons of victims, with the option of applying for compensation open to primary and secondary victims and family members of homicide victims, as is currently the case.

We endorse the recommendation of CLCNSW that 'Psychological/Psychological Disorder, Category 1' be expanded to include secondary victims.

We also agree with CLCNSW that children who are secondary victims of acts of domestic violence or sexual assault be allowed to apply as second primary victims of these offences, or that they be merely required to demonstrate harm. We regard as inappropriate the requirement that a secondary victim who is a child be required to endure an ARW assessment towards any claim for compensation. ARW assessments are, according to EECLC's adult clients, gruelling and deeply affecting. Furthermore, it can take many years before the full extent of a child's exposure to violence is capable of being discerned, even by those closest to them. To expect a child to be able to articulate this adequately as part of an ARW assessment is unrealistic and unjust.

13) We believe members of a victim's immediate family and household should be able to claim expenses or compensation in respect of a homicide.

14) We agree with CLCNSW that the current threshold of \$7500 should not be further increased. It is a minimal amount of compensation at best.

15) We believe secondary victims or support persons should be covered for witnessing acts of violence or being aware of the committing of acts of violence. It is our belief, furthermore, that the current restriction, where a secondary victim is only eligible for 'Psychological/Psychiatric Disorder, Category 2' is too restrictive, and particularly unjust for children who have witnessed acts of domestic violence but would struggle to cope with assessment by an Authorised Report Writer (**ARW**). We believe compensation should be available for such victims at various rates consistent with the varying degree of suffering secondary victims experience, but without the onerous obligation of an ARW assessment as a requirement for eligibility for any award.

16) In the absence of a police report, acceptable evidence for proving an act of violence has occurred should include statutory declarations from the victims and support persons, counselling reports and medical reports where the causal link between an act of violence and injury is established. We do not believe victims should be prejudiced for not reporting to the police where they make clear the factors that prevented them from doing so, including fear of retaliation by the offender, psychological trauma and their age at the time of the offences concerned. We also endorse the recommendation of CLCNSW for the issuing of guidelines as to the evidence required for establishing a claim.

17) We do not believe a police report should be required as part of the application process for eligibility. This would exclude those victims made most vulnerable by the fear of retaliation by the offender, by their age or disability, or by the nature of any psychological injury from eligibility for the Scheme. Again, this would undermine the Act's objects of providing 'support' to victims in these circumstances. Police reports do not often tell the whole story of all the acts of violence suffered by a victim, particularly in cases of domestic violence or sexual assault where acts of violence have occurred on multiple occasions and over a number of years, or where the victim was silenced by her fear of the offender at the time police responded to a report of violence.

18) We believe applicants should be required to show evidence of their injuries and associated recovery costs and that Victims Services be available to assist self-represented applicants with this requirement.

2.3 Compensation and services

Compensation

19) We believe the aim and purpose of compensation payments is twofold:
a) In practical terms, payments can be used to rebuild a victim's life, to pay off debilitating debt, to purchase furniture or afford housing or transport. In other words, to contribute to a victim's financial capacity given most victims are unable to work for at least some time after an act of violence is committed against them.

We also agree with comments made by CLCNSW and Wirringa Baiya Aboriginal Women's Legal Centre that domestic violence and childhood sexual assault contribute to victims never having had the opportunity to achieve paid work, due to psychological injury or difficult domestic circumstances. Compensation redresses the negative effect of violence on a victim's personal potential and the ongoing barriers to realising this potential.

b) Compensation payments are also an expression of the government's acknowledgment of the crime committed against the victim and therefore serve the function of providing tangible justice to victims.

20) We believe lump sum payments are the most appropriate way of providing compensation and serve to promote the financial independence and self-sufficiency of victims. We do not believe it is appropriate for victims to be 'managed' through services intended for their rehabilitation, as a substitute for lump sum payments. This could well lead to disengagement by victims, thus rendering the Scheme a redundant exercise, and might merely reinforce victims' dependence on other bodies and the government for ongoing support. A lump sum payment is a symbolic statement of redress for the injuries suffered by a victim and of individual empowerment. In EECLC's experience, lump sum payments are of both profound practical and psychological benefit to victims.

21) Compensation should be provided for physical and/or psychological harm in acknowledgment of the fact that victims of violent offences typically suffer both effects, to varying degrees. Compensation should be provided to primary and secondary victims who can establish injury as a result of the acts of violence. We agree with CLCNSW that compensation should be provided to victims with non-transient injuries and that 'Psychological/Psychiatric Disorder, Category 1' should be broadened to include other offences and secondary victims.

We strongly agree with CLCNSW that the parameters defining those eligible to receive compensation should be broadened to encompass those who suffer pregnancy, loss of a foetus or damage to reproductive organs as a result of violent crime. Compensation should also be available to those victims who contract non-curable sexually transmitted diseases as a consequence of acts of violence.

We also agree with CLCNSW that the current Scheme devalues the harm arising from acts of domestic violence, and believe that awards to victims of domestic violence should be granted on a varying scale according to severity of injury that may well include the maximum amount of compensation available under the Scheme. Physical injuries, such as bruising, arising from acts of domestic violence should not be discounted as not meeting the threshold, due to the psychological damage which invariably accompanies an act of domestic violence. The often permanently damaging psychological effects of domestic violence should be considered equivalent to injuries resulting in permanent physical disability.

We strongly recommend that awards under the category of 'Domestic violence' be made consistent with those made under the category of 'Sexual assault'. Victims of repeated domestic violence that may have occurred over a longer period should be eligible to prove harm according to a similar scale and range of award to victims of 'Sexual assault' without being subjected to ARW assessment, but on the basis of

other appropriate supporting evidence. ARW assessment can be particularly gruelling and traumatic for a victim who has suffered years of horrific abuse by a family member or intimate partner. It is not a requirement for proving harm from 'Sexual assault'. Nor should it be for victims of domestic violence. Guidelines for the determination of claims on this basis might be provided to Tribunal assessors and applicants so as to dispel uncertainty as to evidentiary requirements and promote transparency and equity in the determination process.

The same reasoning should be applied to acts of violence that under Section 5(3) might well be deemed 'related acts'. Where a victim has suffered years of abuse by one or more offenders, or has been gang raped by a group of offenders, he or she should be entitled to an award of compensation which adequately reflects the increased severity of those acts of violence and their resultant harm. Grouping such acts of violence as 'related' disqualifies a victim from making separate claims for compensation and, in practice, diminishes the amount of compensation to which a victim may be entitled. If an award of compensation in such instances is to truly compensate for the suffering caused to a victim of such circumstances, then the Tribunal should remain free to use its discretion to grant an award at the higher end of the maximum amount of compensation available without the restrictions currently imposed by acts being considered 'related' under the offence-based categories.

22) We note in our response to the previous question the problems we perceive with the Schedule in its existing form.

We agree with CLCNSW that the focus of the Scheme should be on domestic violence, sexual assault, psychological and psychiatric disorder, serious long-term or permanent injury/disability and family members of homicide victims. We also advocate for adequate coverage of out-of-pocket expenses for medical and dental treatment, including mental health treatment.

23) If the Scheme is to be made fairer across the range of claims, then the level of compensation available to victims of domestic violence should be increased to be consistent with the levels and ranges offered to victims of sexual assault.

Any change to amounts of compensation awarded under the Scheme should not preclude victims applying for out-of-pocket medical and dental expenses for any necessary treatment up to a maximum of \$10 000, as currently exists under the Scheme.

24) We recommend that the current maximum award of \$50 000 not be reduced until every other avenue for increasing the cost-effectiveness of the Scheme has been properly investigated.

In the years since 2006, EECLC has known of only one applicant that has been awarded the maximum amount of \$50 000. This award was for a matter that spanned over twenty years of horrific domestic violence involving the client sustaining loss of all her front teeth and a chronic psychiatric disorder that had entailed numerous admissions to the local mental health unit. In short, \$50 000 compensated one client for the loss of a chance of a normal life as a result of violence and chronic, detrimental harm that is likely to prevent her ever gaining employment or psychological wellbeing. To award anything less than this amount for such acts of violence would be grossly unjust. However, very few awards come close to the maximum amount, even where injuries resulting in permanent physical

and/or psychological disability are concerned and even where these are noted by assessors as adequately supported by evidence provided by EECLC to the Tribunal. We stress that other ways of increasing the fund's resources or decreasing its administrative burden must be found before compensation amounts are ever decreased under the Act.

25) Victims should have to establish an act of violence and resulting injury before compensation is paid and compensation should be paid according to the severity of the injury suffered. Permanent injury should not be a prerequisite for the awarding of compensation for the reason that this would mean that the objects of the Act to provide 'support and rehabilitation' to victims would remain unfulfilled in many instances where injury was nevertheless serious enough to warrant the redress and justice that compensation represents. To offer justice to victims, the Scheme must include recognition of the fact that psychological injury, while not necessarily permanent, can be the most debilitating of all injuries and may also manifest over time, rather than be immediately apparent.

Services

26) Any services provided under the Scheme and accessed by victims should not mean a diminution in compensation payments, but should be provided in addition to compensation for victims.

The Scheme should compensate victims for the loss or damage to any property inflicted by offenders in the course of acts of violence. It is frequently the case that domestic violence perpetrators will damage victims' vehicles, doors, walls and belongings in their attempts to hurt, terrify and disadvantage their victims. In cases where victims have been unable to recover the costs of replacement or repair, they have suffered loss of transport, loss of rental bonds, and also psychological harm resulting from the loss of personal property and financial security. Currently, the Victims Assistance Scheme (**VAS**) does not cover damage to vehicles and the amount of \$1500 is often too limiting in cases where there has been extensive property damage. Furthermore, property damaged by offenders often includes children's property. Consequently, children can suffer the loss of personal items that their parent, also the victim, does not have the financial capacity to replace.

Counselling expenses should be covered to provide for a significant amount of counselling hours. Adequate counselling for the primary victim could also in the long run reduce the risk of secondary or referred trauma to any children of the primary victim.

Medical and dental out-of-pocket expenses should also be covered, as should income replacement up to a certain amount. EECLC understands that translation and interpreting services for victims compensation representation have been funded in the past by Legal Aid under pilot projects. These expenses should be covered by the Scheme itself. Relocation expenses would also be welcomed in situations concerning victims of domestic violence. EECLC would also welcome the increased availability of all services, including counselling, to convicted inmates.

If the amount of compensation available to victims is to be lowered, then both levels of government need to commit to covering the above expenses as a matter of social

justice and in order to stem the drain on the government's health and social security resources as a result of not properly addressing these expenses soon after the occurrence of acts of violence. To not do so, would be to undermine the objects of the Act to support and rehabilitate victims.

27) The main gaps in service are supports to assist victims of domestic violence and sexual assault in completing claims. As was stated earlier in the report, many victims of domestic violence and sexual assault are so traumatized by their experiences that face-to-face contact needs to be available to support victims in making their claims. This not only reduces the risk of secondary trauma but also means that claims are done well.

28) We stress that counselling remains an invaluable and essential component of the support and rehabilitation provided to victims. One of the main therapeutic benefits of trauma counselling following acts of violence is the opportunity to be heard, particularly as many victims of domestic violence and sexual assault experience being silenced through violence and intimidation as an aspect of their abuse.

We recommend the Scheme make provision for therapeutic group work to be run by appropriately qualified services, funded under the Scheme. We also endorse CLCNSW's recommendation that public and community health centres receive funding to provide services to victims, in acknowledgment of the strategic place they occupy in being able to offer related services or ongoing support to victims of violence.

29) Brochures containing detailed, pertinent information for victims about services and compensation are valuable, particularly if they are able to be given to victims at court or at health centres.

We believe, however, that there is no substitute for the provision of face-to-face information at information sessions where victims can ask questions about services and compensation. This is particularly so for Aboriginal women and women of culturally and linguistically diverse (**CALD**) background.

30) Centralised phone lines, such as the Victims Access Line, have been shown by services using them to operate in EECLC's catchment area to not be effective in increasing connections with target groups. Long wait times, the need to select options from numerous menus and pre-recorded information would be added barriers to traumatised victims of violent crime.

31) Victims living in rural and remote areas may benefit from a mobile unit of Victims Services, operating in a similar fashion to Centrelink's Mobile Service Units. This would give victims in remote areas access to information about support services and compensation and would allow face-to-face contact with Case Managers who may be able to assist with information about compensation or referral of more complex matters.

Counselling services in remote areas need to be supported.

CLCs representing applicants in remote areas should also be supported to continue representation, perhaps with an increase in solicitors' costs in cases where travel across extensive geographical areas is required.

32) EECLC welcomes any efforts to integrate and share referral pathways across the services offered to victims of violent crime. If this is to be the role of appropriately trained and experienced Case Managers at Victims Services, then EECLC believes this is an appropriate use of resources. It is neither feasible nor fair to expect those traumatised by acts of violence to negotiate services with only minimal assistance.

We would also welcome any initiative that would fund CLCs to provide 'in house' case workers who might assist in referring victims to appropriate services or in providing information and advice in relation to claims, particularly in rural and remote areas where travel might be required. CLCs are best placed to form local partnerships with services that are most able to directly assist victims in their recovery. Their potential could be utilized under the Scheme, thereby alleviating the strain on Victims Services staff and resources.

We also note the inconsistency in legal representation for victims compensation matters. With long-standing experience in acting in victims compensation matters, CLCs would be best-placed to offer training in victims compensation representation to private practitioners, thus reducing the need for appeal following determination and encouraging greater participation by legal practitioners in victims compensation representation. CLCs should therefore be funded to provide information, education and resources to practitioners, as well as to potential applicants.

33) We acknowledge that witness expenses are available to witnesses and that there are services to support victims at court in most areas, including WDVCAS at most local courts and the Witness Assistance Scheme at district courts. We therefore believe funds under the Scheme would be more appropriately directed towards the provision of other services.

34) We believe the \$10 000 limit that currently operates in respect of expenses might also apply to the services available to victims (e.g. coverage for property damage, relocation expenses, loss of income expenses) with the condition that the decision to offer more on request should be at the Tribunal's discretion, depending on the severity and need of the victim in each case.

35) Barriers to utilisation of services and benefits may typically include geographic isolation, psychological trauma and lack of easily accessible information as to the services available to victims of violent crime. For those of non-English speaking background this last point would be particularly relevant. Shortage of available legal representation for victims compensation is also a barrier across rural and remote areas along with a lack of Approved Counsellors.

36) We believe interim payments should be available in cases of financial hardship and should be capped at a level that enables a victim to pay for immediate expenses whilst still not being so huge as to limit that victim's capacity to pay back any interim payment, should their claim ultimately be deemed unsuccessful by the Tribunal. We believe that one form of evidence proving the act of violence (police report/statutory declaration) and one form of evidence linking the act of violence to a resulting injury (counselling report/medical record) should be enough to establish the requirements for interim payment. The reason for this is that interim payments are usually required under urgent circumstances and most victims in those

circumstances will not be able to afford the often lengthy periods of time involved in collecting further evidence in support of their claim.

37) We do not consider it appropriate that funds from the Scheme be allocated to programs for the benefit of offenders.

We also believe that Victims Services should not, in providing assistance to victims in making straightforward claims, stray into the provision of legal advice to victims in these circumstances. We consider legal advice to constitute advice as to the category of compensation under which the victim should claim or the types of evidence the client should provide. Such advice constitutes a conflict of interest, given the role of Victims Services is to administer the Scheme in a climate of budgetary constraint and in the context of a backlog of claims. The role of Victims Services in these instances should be limited to providing information as to the different questions on a compensation application form and as to the services available to a victim, with the capacity to refer a victim to an appropriate service, when required.

38) We believe that a Scheme that does not support victims to gain medical treatment or rebuild their lives after violence is not fulfilling its objectives of support and rehabilitation. While we recognise the importance of lump sum payments to victims of violence, we also endorse the funding of essential services and expenses that have the potential to help victims recover from violence. We reiterate our recommendation, however, that the comprehensive funding of services should not entail a decrease in lump sum payments. All other avenues for the increase of funding and better integration of resources should be investigated before cuts to any forms of support are entertained.

3.1 Administration

39) It is more usual for EECLC to represent clients in complex matters, in which the acquiring of evidence is more challenging. 12 to 18 months would be a sufficient waiting period for such a claim, allowing enough time for the gathering of further relevant evidence, the completion of ARW assessments and the drafting of submissions.

We agree with the Chairperson that a 25 month waiting period is far from ideal. During that time, a victim's personal and financial situation inevitably deteriorates without the relief the Scheme is supposed to offer through lump sum payments and an accompanying sense of justice. Furthermore, the work increases on claims pending, as more evidence of harm accrues, thereby increasing the documentation before the Assessor and adding to the time and effort involved in determining a claim. Such a long waiting period undermines the Act's objects and reduces community confidence in the government's commitment to the victims whom it professes to support.

We stress that the waiting times for claims would be ameliorated by increased support for CLCs undertaking victims compensation representation. Typically, it is CLCs which act in more complex matters, where solicitors' costs under the Scheme do not adequately reimburse for the amount of work involved and where psychological barriers for clients are more profound. If CLCs were supported with an

increase in costs for more complex matters, more workers might be employed to assist with the work involved on each claim.

Nevertheless, we would argue that even more than the waiting period for claims, the lack of available legal representation, the stress of ARW assessment, the pressure of Section 23A, the unfairness of Section 5(3) and the uncertainty surrounding the future of the Scheme have contributed to the anxiety of those clients with whom EECLC has been in contact.

This anxiety would most likely be mitigated if applicants were given a listing date at the time an application is lodged, allowing for a 12 to 18 month time frame. Doing so would go some way to dispelling some of the uncertainty and frustration applicants experience as a result of existing practice. It would also allow practitioners to plan yearly caseloads more effectively.

40) We believe, that to be effective, services need to be available to victims within days of their request, remembering that most victims of violent crime suffer from financial destabilisation and psychological stress as a result of the acts of violence for which they seek services, treatment and compensation. One fortnight without enough money to cover basic expenses as a result of having to seek medical treatment, may be enough to give rise to potential homelessness or crippling debt for a victim unable to work and in dire financial straits as a result of violent crime.

41) Since Victims Services adapted its application form to be more accessible to self-representing applicants, EECLC has encouraged victims to complete the application themselves. Nevertheless, the nomination of injuries still represents an administrative stumbling block to applicants unfamiliar with the Schedule and its implications for their claims. We note that the Application Form now contains very little reference to the Schedule. While this may initially simplify the application process, it means applicants remain largely uninformed as to the likely outcome of their claim. We maintain that this constitutes a lack of transparency for victims. In more complex matters in which multiple acts of violence and multiple injuries are concerned, applicants require legal representation as a matter of access and equity. This is so particularly in the case of an applicant suffering from a psychological or psychiatric disorder. It seems to us problematic that the Service funded to administer the Scheme might in such a situation be involved with the nomination of injuries in a complex matter. This represents a conflict of interest, especially given the existing constraints on the funding of the Scheme and the pressure on Victims Services to operate within those constraints. One might question whether victims' entitlements to compensation are diminished by such an approach to the administration of the Scheme.

The problem of obtaining legal representation in victims compensation matters exists from the outset. As previously discussed, we believe this is due to the solicitors' costs which are awarded for claims. While for a straightforward claim, these costs might be considered reasonable at best, they are certainly inadequate when it comes to the more complex, time-consuming and difficult claims. The solicitors' costs awarded for a successful claim are no incentive to private lawyers to offer victims compensation as part of their practice, nor do they encourage the highest standard of service on the part of victims compensation practitioners. Finding legal representation for potential applicants is difficult in the current climate. Without legal representation, many clients are either unable or unwilling to self-represent. Self-representing puts an unfair onus on traumatised applicants to collect

their own evidence. Without any information on their role and responsibilities, we are also not convinced that case management by Victims Services is likely to lead to the best outcome for applicants, especially in the more complex matters.

3.2 Disputes

42) We believe applicants should be entitled to appeal a determination by the Tribunal on both errors of law and errors of fact. In any situation where evidence may have been interpreted incorrectly, an applicant should have the right to appeal. An applicant should also have the right to appeal in cases where the amount of the award is under dispute. An applicant should also have the right to legal representation, funded by the Scheme, where an appeal is deemed to have merit. We endorse the recommendation of CLCNSW that an internal review system be adopted to safeguard unnecessary and time-consuming appeals.

43) We believe the current dispute process is adequate. We note, however, our concern that approximately 36% of appeals to the Tribunal have been successful, according to the Chairperson's Report. This would suggest that claims are regularly not being awarded at the correct level by assessors. It represents a worrying development, given that it is well known that Victims Services is struggling to meet its commitments to the payment of compensation. Victims are being directly and unfairly disadvantaged by this situation and by the fact their matters are prolonged unnecessarily, it would seem, by the subsequent appeals process.

44) We have no reason to challenge the current dispute resolution process. We would, however, welcome the regular publication of decisions by the Tribunal, in the interests of encouraging transparency in the decision-making process.

3.3 Other

45) In cases where a victims compensation matter is complex, involving a highly traumatised applicant and/or multiple historical claims, we believe legal representation is essential and should be adequately funded by the Scheme. We also believe that CLCs are well-suited to representation of applicants who experience disadvantage and barriers as a result of violent crime. CLCs are also proactive in developing local and pro bono partnerships and facilitating representation by partners for their clients.

We propose a change to the system whereby Victims Services works in partnership with CLCs and refers victims whose need for representation is apparent to CLCs for ongoing representation or connection with local practitioners.

We are opposed to a situation in which private law firms profit from victims compensation matters. This was not and should not be the intention of the Scheme. However, for the Scheme to continue to fulfil its objects, representation for applicants needs to be more cooperatively coordinated and more adequately funded. If Victims Services and CLCs were to partner in coordination of legal representation for clients, we believe the Scheme would be alleviated in terms of solicitors' costs being more appropriately directed towards more complex matters run by those well-practised in the representation of victims compensation matters.

46) Restitution is often welcomed by applicants as a way of reinforcing to perpetrators of violence that they cannot get away with their crimes. However, restitution can also be problematic for applicants, who may fear retaliation or be concerned that child support they receive from an offender may be adversely affected by the obligations a restitution order imposes. We believe applicants should have the option of selecting whether or not they would prefer a restitution order to be made to an offender. We also advocate alternative funding strategies, such as seeking philanthropic donations, and perhaps even corporate partnership and sponsorship of the Scheme by appropriate organisations supportive of the Scheme's aims and objectives. In any case, it is clear that funding to the Scheme must be increased if it is to operate effectively.

47) We believe convicted inmates should also have the right to receive counselling under the Approved Counselling Scheme and to apply for compensation and the reimbursement of medical expenses, even if any compensation awarded is used to pay any restitution order previously served on the inmate. To treat convicted inmates as a category on their own, as exempt from the support and rehabilitation otherwise provided to victims of violent crime, is discriminatory and in violation of basic human rights.

48) We believe the adjusting of benefits and compensation due to contributory negligence is a decision that should be made at the discretion of the Tribunal. We also believe that any determination made in this regard should be open to challenge under the appeals process. We advocate strongly against the reduction of compensation in situations of domestic violence where a victim does not report to police or attempt to escape a relationship typified by acts of violence. Thus far, the Tribunal has evinced an understanding of the dynamics of power and control in domestic violence relationships. We applaud this and trust that this approach to applications of this nature will continue, even as the Scheme undergoes change.

49) We believe philanthropic partnership, sponsorship and donation is the most appropriate alternative funding model for the Scheme. The tendering of Victims Services to a private contractor, as has been adopted in other states, would diminish the perception that the NSW government is committed to its support of victims. It may result in the provision of services that are out of touch with the needs of victims. We maintain that Victims Services is a core part of the government's responsibility to its community and should remain with the government, working in close partnership with the community sector and drawing, as far as possible, on community support for the fulfillment of its objectives of support for victims. Most members of the community have been affected in some way by violent crime, especially by the crimes of sexual assault and domestic violence. Appeals for support of the fund from the general public through donation may well have success in boosting funding to the Scheme.

50) We have already mentioned that Victims Services could partner with CLCs to coordinate representation for victims. We would encourage Victims Services to adopt the approach taken recently by the NSW Department of Family and Community Services in terms of coordinating

services within the community sector to best meet its clients' needs. This would mean connecting victims with local services and potentially sharing information with these services to best assist in supporting victims on their road to recovery. This may involve implementing a system of local service delivery, in which Victims Services case managers are allocated to distinct geographical areas. We believe this is a model more in keeping with the objects of the Act and the aims of the Scheme and would bring Victims Services to the community it is intended to serve. It would also result in better coordination of existing services and thus ultimately alleviate some of the strain on Victims Services resources.

Recommendations

1. Section 23A should be repealed and claims involving 'related acts' under Section 5(3) should be awarded at a higher rate to compensate for the increased severity of acts of violence.
2. The 'Domestic violence' category under the Schedule should be amended so that it is consistent with the range of awards offered under the category of 'Sexual assault'.
3. Lump sum payments of compensation should be retained under the Scheme and considered essential to the provision of support and rehabilitation to victims eligible to receive them.
4. There should be no absolute limit on out of time claims for offences which have resulted in lasting and debilitating psychological harm.
5. Philanthropic donation, partnership and sponsorship should be sought from committed organisations towards increasing funding of the Scheme.
6. Victims Services should work in partnership with community services at a local service delivery and case management level to best support victims in their road to recovery from violence, including in the provision of counselling.
7. Case management by Victims Services should be limited to the provision of information and support to victims and should also be offered face-to-face across NSW.
8. Victims Services should work in partnership with CLCs in the coordination and facilitation of appropriate, best practice representation for clients in the more complex victims compensation matters and CLCs should be funded accordingly.
9. The rights of convicted inmates as victims should be recognised and supported under the Scheme.
10. Claims should be determined within a twelve to eighteen month waiting period, depending on the complexity of the matter and still allowing for adjournment where required. Listing dates should be provided at the time of lodgment of an application.

11. Reimbursement for medical and other essential expenses should be processed within a week of their request. Dental expenses and damage to property should also be adequately reimbursed by the Scheme.

12. Decision-making should be made more transparent and consistent by the publication of guidelines and decisions concerning claims.

Thank you for considering EECLC's submission to the Review of the Scheme.

We invite you to contact EECLC on 02 4782 4155, should you have any questions about EECLC or the recommendations in this submission, or should you wish to discuss any issues in greater depth.

Yours faithfully

ELIZABETH EVATT COMMUNITY LEGAL CENTRE