



The Hon. John Hatzistergos  
Attorney General of NSW  
GPO Box 5341  
SYDNEY NSW 2000

Cc: Mr. David Mitchell  
Legislation and Policy Division

Dear Attorney-General,

**RE: RECOMMENDATIONS MADE BY THE CHAIRPERSON OF THE VICTIMS  
COMPENSATION TRIBUNAL IN HIS ANNUAL REPORT FOR 2007/2008**

The Combined Community Legal Centres' Group (NSW) Inc ("the Combined Group") is the peak organisation for community legal centres in New South Wales. Community legal centres provide legal advice, casework, referral, education, law reform and support for disadvantaged clients and communities throughout the State.

We refer to our correspondence to you dated 16 December 2008 that raised our concerns about your Government's recent announcement to streamline the process for victims' compensation. We understand that Victims Services is in the process of developing recommendations for that streamlined process. We have asked to take part in the consultation process for these changes.

We have recently become aware of the Annual Report of the Chairperson of the Victims Compensation Tribunal for 2007/2008 ("the Report"). In the Report, the Chairperson makes a number of recommendations to amend the *Victims Support and Rehabilitation Act 1996* ("the Act").

We are concerned about the Chairperson's recommendations. Our concerns are outlined below.

**Chairperson's recommendations**

1. **Family victims: There should be an amendment to section 26 excluding family victims from section 26 (2). Section 29 (1B) should be deleted.**

Children of a homicide victim, where the children are under the age of 18 years of age, may not have a suitable tutor to lodge an application for victims' compensation on their behalf within the two-year time limit. Any amendment to section 26 (2) of the Act, with respect to family victims, must make an exception for children under the age of 18 years of age.

Combined  
Community  
Legal Centres'  
Group (NSW) Inc

C17/99 Jones St  
Ultimo NSW 2007  
ph 02 9212 7333  
f 02 9212 7332  
[www.nswclc.org.au](http://www.nswclc.org.au)

2. **Secondary victims: Sections 15 and 16 should be amended to add a subsection similar to section 14(2) providing that claims do not survive the death of secondary or family victims.**

We do not have an opinion about this recommendation.

3. **Victims Assistance Scheme: The Victims Assistance Scheme should be easier to apply for and category of expenses expanded.**

We agree with this recommendation.

4. **Limitation of Periods: The time limit for lodging claims for sexual assault should be limited.**

We strongly disagree with this recommendation. This recommendation disproportionately affects women, as the majority of victims of child sexual assault and adult sexual assault are women.

Child sexual assault and adult sexual assault are hidden and secret crimes. These crimes are rarely disclosed until many years later. Children and women face significant barriers in reporting sexual assaults perpetrated on them. It is important in the process of healing that the State acknowledge the crime.

We refer you to the considerable literature in this area that can be located through the Australian Centre for the Study of Sexual Assault (Australian Institute of Family Studies) and the Domestic Violence Clearinghouse.

Aboriginal women and children face the same and more barriers than non-Aboriginal women and children in reporting sexual assault. Aboriginal women and children do not report sexual assault because they feel shame, fear and embarrassment. These barriers were even more pronounced when the sexual abuse took place twenty or thirty years ago, when institutional racism and forced removal of Aboriginal children were common practice.

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 their sexual abuse. The barriers to reporting this crime were described and clearly acknowledged in the *Breaking the Silence: Creating the Future* (2006) report, commissioned by the NSW Attorney-General's Department.

Victims of adult and childhood sexual assault experience significant psychological trauma as a result of the sexual assaults perpetrated on them. These victims are likely to experience an exacerbation of that trauma if they are denied the opportunity to make an application for victims' compensation. Victims are likely to feel their experience and the crime is minimised, that they are not believed and they are discriminated against simply because they have taken some time to:

- understand that what happened to them was a crime;

- become aware of support for victims;
- receive appropriate psychological intervention;
- become strong enough to disclose the assaults to police and family, and
- obtain advice about victims compensation.

**5. Multiple claims: Section 5 (3) be amended to provide that an act is related to another act if the acts were committed against the same person by the same perpetrator or perpetrators.**

We strongly disagree with this recommendation. This recommendation will disproportionately affect women and children, who are the significant majority of victims of domestic violence and sexual assault.

Victims of domestic violence can experience multiple acts of domestic violence over a number of years, suffering multiple injuries. The acts of violence may vary in the nature of the violence, degree of the violence, the site of the violence, the time it occurred, during and after separation and the injuries inflicted. Victims of domestic violence are unable to leave the relationship or stop the violence for many reasons, including fear of retribution by the perpetrator.

Victims of sexual assault, particularly children, can also experience multiple acts of sexual assault over a number of years. The acts of violence may vary in the nature of the violence, degree of the violence, the site of the violence, the time and the physical and psychological injuries inflicted. The perpetrator of the sexual assaults is usually known to the victim and in a position of authority and trust. There is little or no opportunity to escape from the perpetrator.

It is incomprehensible to assert that sexual assaults perpetrated on a child from, for example, 5 to 15 years of age are all part of the one act simply because the perpetrator is the same. The circumstances of the sexual assaults will vary, the nature of them will differ, and importantly, the impact on the victim will be different, partially due to the developmental process and understanding of the victim.

Preventing victims of sexual assaults from being able to make separate claims for different assaults or periods of assaults, where there is one perpetrator, has the effect of the state perpetrating a further injustice on particularly vulnerable victims, especially where they were child victims.

It is grossly unfair and unjust that a victim of multiple acts of violence, where the perpetrator is the same person, is disadvantaged compared to a victim who has been assaulted and injured on **different** occasions by **different** perpetrators.

Victims of domestic violence are frequently victims of sexual assault by the same perpetrator, being their partner, or ex-partner. It is grossly unfair, inappropriate and sexist to assume that these two acts of violence are the same and should be treated the same. These crimes are

treated and prosecuted differently under the *Crimes Act 1900 (NSW)* and should be prescribed in the Act as unrelated.

It is grossly unfair that a victim, who has been the victim of a domestic violence and sexual assault by **different** perpetrators, is entitled to separate awards of compensation, whereas a woman who was physically assaulted and sexually assaulted by the **same perpetrator** will not receive separate awards.

However, we add that under the Act, the Tribunal frequently finds that a sexual assault and a domestic violence assault are related and only makes the one award, which in itself is an ongoing concern to us.

We cannot comment on the Chairperson's assertion that generally multiple claims are historic and poorly presented. However, even if this is the case, this is not relevant to whether an act of violence is related or not.

**6. Compensable injury-chronic psychological or psychiatric disorder category 2:  
That the range of compensation for this category be broadened from \$20,000.00 to \$50,000.00.**

It is difficult for many victims to satisfy the criteria used by the Tribunal to determine if an injury is chronic and severely disabling. Many of the assessors' decisions do not explain why an award is made at the lower or higher end of the current range for this category.

We are concerned that a reduction of the threshold will be used to award less money for victims in this category as a cost-saving measure. However, if the Tribunal is able to make more awards to victims in this category, where their injury is at the lower end of the spectrum in this category, then this benefits victims.

**7. ARW report and offence-based compensable injuries: Applicants must nominate at the earliest opportunity whether they wish to proceed with an offence-based compensable injury (see section 11) and once this election is made it cannot be altered.**

We strongly disagree with this recommendation. The offence-based claims are domestic violence and the categories of sexual assault. This recommendation disproportionately affects women and children who are the overwhelming victims of these crimes.

Under the Act and Rules an applicant is entitled to claim reimbursement for disbursements to the amount of \$1100.00 in total (plus GST). Even if an applicant did not seek a report from an Authorised Report Writer, a report from a clinical psychologist or psychiatrist is usually needed to address and establish injury. The cost of this report will be reimbursed provided it is within the allocated budget set by the Rules.

It is our experience that the extent and severity of the psychological injury is not known until a report from a suitably qualified expert, such as a clinical psychologist or psychiatrist, is received. It would be seriously unjust to deny an election of injury to change as a result.

We are not clear if this recommendation is suggesting that an applicant cannot argue in the alternative in submissions at the determination stage. If this is the case we are equally concerned about this implication.

**8. Professional costs: Section 35 be amended to mandate that professional costs be only awarded in successful claims.**

We disagree with this recommendation. It is our experience that applications for victims' compensation are rarely straightforward, especially for clients who have experienced domestic violence, sexual assault and child sexual assault. These types of criminal violence, by their very nature, are complicated, hidden and messy.

It is our experience that 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) and sometimes involving multiple offenders, and
- frequently do not disclose or talk about these crimes until many years after they occurred.

**To ensure the best outcome for an applicant for victims' compensation** all of the above issues must be considered carefully and extensively when:

1. providing initial advice to a client regarding their eligibility for compensation;
2. assessing the types of claims that can be made, including a detailed analysis of the facts and legislative provisions;
3. drafting and submitting the initial applications for lodgement, and
4. drafting the final submissions to the Victims Compensation Tribunal prior to determination.

In addition, many of our clients:

- 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 physical, intellectual and psychiatric disabilities which hamper their ability to provide detailed instructions about their history of violence without significant time and support;
- have low-rates of literacy;
- have out of time applications, and
- possibly have multiple applications relating to various acts of violence and / or multiple offenders.

### **Conclusion**

We submit that the Government widely consult relevant stakeholders about the significant amendments to the *Act* recommended by the Chairperson.

We are able to provide further information about our concerns and representatives of the Combined Group of Community Legal Centres' Group would like meet with the Attorney-General to further discuss our concerns.

Please contact Rachael Martin at Wirringa Baiya Aboriginal Women's Legal Centre on (02) 9569 3847 or Pip Davis at Hawkesbury Nepean Community Legal Centre on (02) 4587 9599 to organise such a meeting.

Yours faithfully,  
**Combined Community Legal Centres Group (NSW)**



**Helen Campbell,  
 Director.**