



Note No. 15/2015

The Australian Permanent Mission to the United Nations and other international organisations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on violence against women, its causes and consequences.

The Australian Permanent Mission has the honour to refer to the joint communication sent from the Special Procedures Mandate Holders of the United Nations Human Rights Council of 19 December 2014 concerning the *Victims Rights and Support Act 2013* (New South Wales).

The Australian Government hereby provides information on the Victims Rights and Support Act to assist the Special Mandate Holders. The Australian Government regrets the minor delay in providing the submissions.

**OHCHR REGISTRY**

**17 FEB 2015**

Recipients : SPD.....

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The Australian Permanent Mission avails itself of the opportunity to renew to the Special Mandate Holders and the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.



Geneva  
17 February 2015

## **Australia's Response to the United Nations Joint Communication from Special Procedures**

Australia provides the following information on the *Victims Rights and Support Act 2013* (New South Wales) to assist the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on violence against women, its causes and consequences.

### **1. Victims support and compensation in New South Wales**

1.1 The Government of the State of New South Wales believes that victims of crime should be treated with courtesy, compassion and respect for their rights and dignity. It is committed to providing a compensation scheme for victims of crime that meets the needs of victims and that is sustainable.

1.2 On 7 May 2013, the New South Wales Government established the Victims Support Scheme. The Victims Support Scheme replaced the existing Victims Compensation Scheme with the aim of delivering faster and more effective practical, emotional and financial support to victims of violent crime. The establishment of the VSS was accompanied by the enactment of the Victims Rights and Support Act, and similarly named regulation, both of which came into force on 3 June 2013.

### ***Independent Review of Victims Compensation Scheme***

1.3 The Victims Support Scheme was introduced in response to an independent, comprehensive review and report on victims' compensation undertaken by consulting firm Pricewaterhouse Coopers.<sup>1</sup> The review included face-to-face stakeholder consultations; a publicly released issues paper inviting submissions; a survey of over 6,000 victims accessing compensation; data analysis; and a literature review. The independent report identified a number of difficulties with the Victims Compensation Scheme, including delays in providing support; limits on financial compensation; complications in evidence required to support the claim; the impact of the restitution process on victims; and the scheme's financial sustainability.

### ***Delays in providing support***

1.4 One issue identified was that claims were taking, on average, more than 34 months between lodgement and determination. This had resulted in a significant backlog of claims, which in turn undermined the compensation scheme's objectives of providing prompt support and rehabilitation to victims of crime.

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<sup>1</sup> The report is available at:  
<[https://www.parliament.nsw.gov.au/prod/la/latabdoc.nsf/30d097ada2f32772ca256e84007f076b/98b88e7f64fb1cc9ca257b64002e91e4/\\$FILE/VCFReview\\_FINAL\\_120712.pdf](https://www.parliament.nsw.gov.au/prod/la/latabdoc.nsf/30d097ada2f32772ca256e84007f076b/98b88e7f64fb1cc9ca257b64002e91e4/$FILE/VCFReview_FINAL_120712.pdf)>

*Limits on financial compensation*

1.5 Difficulties were also identified with the Victims Compensation Scheme's emphasis on financial compensation, determined according to the nature and scale of the injury/ies received. A victim could apply for a compensation payment for injuries sustained during, or as a direct result of, a violent crime, provided that the total quantum exceeded a threshold level of AU\$7,500. Many victims were ineligible for an award because their injuries did not reach the requisite threshold. The compensation mechanism also failed to address many of the needs of victims identified in the review survey, such as prompt reimbursement for expenses incurred, such as medical and dental expenses or relocation costs, security measures and counselling.

*Evidence to support claims*

1.6 The evidence required to support claims under the Victims Compensation Scheme was also complicated for victims. Victims were unable to rely on reports from their own counsellor in claims for compensation for psychological injury or psychiatric disorder and instead were required to retell their story to an Authorised Report Writer. This was a lengthy and onerous task for many victims. Additional reports were also required from specialist medical providers if the injury claimed was serious, long lasting or permanent. In 2012-13, approximately 12 per cent of claims for compensation under the Victims Compensation Scheme were dismissed because there was no medical evidence supporting the injury claimed.

*Restitution*

1.7 A mandate existed under the Victims Compensation Scheme to pursue restitution from convicted offenders where an award of compensation was made. There was no discretion provided under the Scheme not to pursue restitution on account of the safety or concerns of victims. A victim could only prevent restitution being pursued if the victim did not accept an award of compensation or refunded the award.

*Financial sustainability*

1.8 The review also found that the Victims Compensation Scheme was financially unsustainable. It had an escalating number of victims pursuing compensation. The effect of funding not meeting the demand meant that victims were waiting longer for their compensation claim to be finalised and this timeframe was increasing each year. As a result, the needs of victims were not being met. Between 2005-06 and 2009-10, demand for the Victims Compensation Scheme grew by 83 per cent and the backlog of claims increased by 188 per cent. As at 30 June 2012, the accumulated liability with respect to lodged but unresolved claims was estimated by Pricewaterhouse Coopers to be AU\$392

million. It was estimated that this liability would continue to grow and would reach AU\$430 million by 30 June 2013.

### *Victims Support Scheme*

1.9 The Victims Support Scheme is underpinned by the following key principles:

- (a) an appropriate prioritisation of funds to meet the immediate needs of victims of violent crimes, provide financial assistance and rehabilitation, and recognise and acknowledge the trauma suffered
- (b) consistency with the United Nations General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and
- (c) financial viability, to ensure that victims receive timely support.

1.10 Victims of gender-based violence, that is domestic and family violence and sexual assault, have benefited with the introduction of the Victims Support Scheme in a number of areas, including:

- (a) the establishment of a Commissioner for Victims Rights
- (b) the allocation of Support Coordinators to provide ongoing support and assistance to victims after an act of violence, including financial and practical assistance, psychological support, and assistance to navigate the criminal justice system
- (c) practical and immediate assistance to assist victims with a range of immediate needs, such as relocation and safety
- (d) a faster determination of claims
- (e) a reduction in the complexity of the claim application process through assistance in lodging a claim and a reduction in the medical evidence needed
- (f) an expanded Approved Counselling Service resulting in more choice of counsellors for victims and counsellors available in more rural and remote areas, and
- (g) an opportunity to request that restitution is not pursued with the offender.

### *Commissioner for Victims Rights*

1.11 The role of the Commissioner for Victims Rights was established on 3 June 2013. That role includes advising the NSW Government on issues regarding victims rights, advancing victims rights and assisting victims in their interactions with government agencies and organisations.

1.12 The Commissioner has promoted and raised awareness about victims entitlements through an extensive round of roadshows. The Commissioner has also worked with the New South Wales Government and non-government agencies to ensure support for victims of crime. The Commissioner also encourages collaboration both across justice agencies and the whole of the New South Wales Government.

1.13 The Commissioner is also responsible for the administration of the Victims Rights and Support Act and is responsible for the implementation and promotion of the New South Wales Charter of

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Victims Rights<sup>2</sup> and the associated Code of Practice for the Charter of Victims Rights, which sets standards for the provision of service and support to victims of crime.

1.14 Finally, since the establishment of the role, the Commissioner has either participated in consultations or provided submissions on numerous New South Wales law reform papers including:

- (a) Encouraging Early Guilty pleas
- (b) Victim Impact Statements for Family Victims
- (c) Sentencing for child sexual assault offenders
- (d) review of the *Child Protection (Offender Registration) Act 2000*
- (e) Parole, and
- (f) Standard minimum non-parole periods.

*Support Coordinator*

1.15 PricewaterhouseCoopers's review indicated that victims did not want to have to repeat their story to numerous agencies, as this added to the trauma experienced by them. The purpose of establishing a support coordinator under the Victims Support Scheme is to ensure that victims are not re-traumatised by having to liaise and deal with multiple agencies following a violent incident.

1.16 Support coordinators conduct a comprehensive assessment of each situation, develop a tailored plan and guide victims through the criminal justice and human services systems. Assistance is not limited to legal assistance. Rather, support coordinators holistically assist a victim to access available services and support. The support coordinator develops a package of care that may include emotional and crisis intervention, information, referrals and advice; financial support; a recognition payment; and/or counselling. The coordinator will assist victims in all aspects of their lives following a violent incident including in relation to mental health; drug and alcohol issues; homelessness, court processes; and/or parenting concerns. The coordinator also assists victims with the preparation of claims, including obtaining medical reports.

1.17 Support coordinators are trained on the Victims Rights and Support Act to ensure that they can provide information to victims regarding their eligibility and evidentiary requirements. Support coordinators are also trained in trauma informed practice, sexual assault awareness and domestic violence awareness. The decision to award of compensation is made by an Assessor, meaning that the support coordinator can simply focus on supporting the victim.

*Range of financial support*

1.18 The Victims Support Scheme provides a range of financial support to victims of crime and their families, namely:

- (a) Immediate assistance for victims of up to AU\$5,000

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<sup>2</sup> Victims Rights and Support Act, section 6.

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- (b) Economic loss assistance for victims of up to AU\$30,000
- (c) Recognition payments for victims of up to AU\$15,000, and
- (d) Funeral costs of up to AU\$8,000 for family members of homicide victims.

1.19 A key feature of the Victims Support Scheme is the provision of immediate assistance to address urgent needs and to ensure the victim's safety, health and wellbeing. Such assistance includes relocation costs, security upgrades, medical treatment and therapy. Providing immediate assistance has been particularly important to victims of domestic and family violence. In 2013-14, awards under this category were made to 310 victims of domestic violence. The majority of these victims (60 per cent) have required financial assistance to relocate to a safer location followed by expenses related to security of their home (18 per cent) and medical expenses (17 per cent). Victims of sexual assault have also benefited from financial assistance for immediate needs. In 2013-14 awards for financial assistance for immediate needs were made to 51 victims of sexual assault. The majority of these victims (51 per cent) have required financial assistance to relocate to a safer location, followed by assistance with medical expenses (29 per cent), and related to security of their home (17 per cent).

1.20 Assistance for economic loss provides additional support to victims, covering expenses such as travel, child care, justice-related expenses for attendance and participation in criminal and coronial proceedings, loss of earnings and out of pocket expenses. In 2013-14, 91 victims of domestic violence claimed financial assistance for economic loss, including 38 per cent claiming cost of living expenses, 24 per cent medical (including counselling) expenses and 19 per cent claiming other expenses such as clothing. Victims of sexual assault received 44 payments for financial assistance for economic loss in 2013-14 with most related to justice-related expenses, medical expenses and loss of earnings.

1.21 In addition to financial support for immediate needs and economic loss, recognition payments provide victims with moderate lump sum amounts to acknowledge the violence and trauma suffered. There are five award categories based on the offence and nature of the violent act. Psychological injury is implicitly included in the recognition payment. The categories are as follows:

- (a) CAT A AU\$15,000 – financially dependent family of a homicide victim
- (b) CAT A AU\$7,500 – non-financially dependent parents of a homicide victims
- (c) CAT B AU\$10,000 – sexual assault: long term, involving serious bodily injury; multiple offenders; or use of an offensive weapon
- (d) CAT C AU\$5,000 – sexual assault; assault with grievous bodily harm; pattern of child abuse, and
- (e) CAT D AU\$1,500 – indecent assault; attempted sexual assault; robbery; assault.

1.22 In 2013-14, 360 victims of domestic violence received recognition payments. Sixty-four per cent of these payments were Category D and 36 per cent were for Category C. Victims of sexual assault received 187 recognition payments. Of these, 15 per cent were for Category D, 23 per cent



were for category C and 62 per cent were for Category B, recognising the serious nature of the sexual assault unfortunately experienced by victims.

*Documentary evidence*

1.23 The Victims Support Scheme also simplifies the process for victims needing supporting medical evidence. Only one medical or counselling report is needed to support a claim for financial assistance or a recognition payment and victims claiming psychological harm can rely on a report from their own counsellor.

*Fast determination of claims*

1.24 As at 31 December 2014, it was taking on average 31 working days to finalise claims for financial support and 156 working days to finalise claims for a recognition payment. There has also been an increase in the success rate of applications for support, from 51 per cent under the previous Victims Compensation Scheme, to 78 per cent under the new Victims Support Scheme.

*Counselling*

1.25 The Approved Counselling Service was first established in 1997. It is monitored to ensure counsellors treat victims according to the Charter of Victims Rights, are qualified and experienced to provide services to victims of crime and adhere to professional standards. Victims of crime are presently provided with free counselling up to 22 hours. For victims with complex issues, such as victims of sexual assault and domestic violence, further hours are granted on request from their counsellor by the Commissioner of Victims Rights.

1.26 The independent review by Pricewaterhouse Coopers found that the Approved Counselling Service is highly regarded by stakeholders and should be continued and expanded under the Victims Support Scheme. Under the Victims Support Scheme, if a victim is receiving counselling privately, their counsellor can now request to become an interim Approved Counsellor to continue seeing that client and be paid under the Approved Counselling Service. The payment rates for Approved Counsellors have also been increased, resulting in more psychologists and social workers applying to become Approved Counsellors. The Approved Counselling Service now has over 550 counsellors, compared to approximately 300 counsellors under the previous Victims Compensation Scheme. Payment rates for travel incurred by Approved Counsellors have also been increased, resulting in more counsellors willing to travel to victims living in remote and rural communities.

1.27 In 2013-14, counselling applications were received from 3,362 victims of domestic violence, 49 per cent of all applications. Victims of sexual assault also benefited from counselling and 1,732 (25 per cent) applications were received.



*Timeframes for lodging claims*

1.28 The current time limits under the Victims Support Scheme were developed with consideration given to the age of the victim and the type of offence, as follows:

- (a) no time limits apply to victims that require information, support and referral from a support coordinator
- (b) no time limits apply for victims requiring counselling under the Approved Counselling Service
- (c) financial assistance claims need to be lodged within 2 years from the date of incident and stay open for five years to assist with ongoing or new expenses not apparent when the application was lodged
- (d) for victims of sexual assault who were a child at the time of the violence, there is no time limit for applying for recognition payment or justice-related or out-of-pocket expenses
- (e) for victims of adult sexual assault, domestic violence, or child abuse (aside from sexual abuse) claiming a recognition payment, claims need to be lodged within 10 years, or within 10 years of turning 18 for children, and
- (f) all other claims need to be lodged within two years of the incident or within two years of turning 18 for children.

*Restitution*

1.29 The Victims Support Scheme allows the Commissioner of Victims Rights the discretion not to proceed with restitution proceedings against an offender either before or after financial support has been awarded. This is particularly important to victims of domestic violence who may fear an offender may harm them in retaliation for lodging a claim for financial support.

*Internal Review and External Reviews*

1.30 Section 49 of the Victims Rights and Support Act allows 28 days for the lodging of an internal review. The legislation specifies that the internal review needs to be in writing; however it does not specify a prescribed form. The grounds of review and full particulars do not need to be provided by the victim within the 28 days, but rather can be provided at any time before the internal review is finalised. In practice, victims may simply send an email within the 28 days to indicate their intention to lodge a review. The victim has a right to provide new evidence for the review, and is not required to make any submissions to justify why the evidence could not have been provided to the initial decision maker.

1.31 By contrast, while victims had 3 months to lodge an appeal under the previous Victims Compensation Scheme, the victim was required to fill in a prescribed form and also to specify the grounds of appeal and any particulars at the same time. Further additional evidence could not be submitted by victims as of right. Rather, leave had to be sought to submit fresh evidence.

## **2. Funding**

2.1 The NSW Government continues to look at ways to strengthen and expand the funding available to provide assistance to victims. This includes continuing the current restitution scheme outlined above, as well as a court awarded compensation scheme. The court awarded compensation scheme allows the courts to make a compensation order when a person is convicted of any offence referred to in the Victims Rights and Support Act. Compensation is paid to the Victims Support Fund, which in turn covers payments with respect to victims support. Fifty per cent of funds obtained under recent amendments to proceeds of crime legislation will be directed into the Victims Support Fund.

## **3. Transitional claims**

3.1 Compensation claims not determined when the Victims Support Scheme was introduced on 7 May 2013 became 'transitional claims'. In its independent review, Pricewaterhouse Coopers recommended assessing transitional claims under the Victims Support Scheme's new recognition payment pillar, with an extra grant in lieu of payment for expenses. That approach, which was adopted by the New South Wales Government, ensured transitional claims were processed as quickly as possible for victims who on average had already been waiting 34 months to gain access to financial support. By contrast, Pricewaterhouse Coopers estimated that continuing to process transitional claims under the Victims Compensation Scheme would result in long delays for all victims in receiving benefits.

3.2 It was estimated that it would take two years to finalise all transitional claims. With only approximately 1,500 (as at 31 January 2015) transitional claims remaining (out of the original 24,000) it is expected that these claims will be now finalised by March 2015.