

Mandates of the Special Rapporteur on violence against women, its causes and consequences; the Independent Expert on the enjoyment of all human rights by older persons; and the Working Group on discrimination against women and girls

REFERENCE:
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8 October 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on violence against women, its causes and consequences; Independent Expert on the enjoyment of all human rights by older persons; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 41/17, 42/12 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **changes to the Victims Support Scheme of New South Wales that would allegedly hinder victims' access to compensation or support services, disproportionately impacting women and girls, indigenous peoples, persons with disabilities and older persons.**

According to the information received:

On 7 May 2013, the New South Wales Victims' Rights and Support Act was introduced, replacing the 1987 Victims Compensation Scheme with a Victims Support Scheme. The same Act introduced the role of the Commissioner of Victims' Rights and a Victims Advisory Board. The Victims Support Scheme includes: counselling, financial assistance (including immediate needs and economic loss) and recognition payment.

Announcement of changes and consultations with stakeholders

On 20 April 2020 the Commissioner of Victims' Rights announced to stakeholders changes to the procedures for victims to access compensation and support services, meant to commence from 27 April 2020. The changes were announced during the restrictive measures established to combat COVID-19, and were not submitted to prior consultation with the Victims Advisory Board or other relevant stakeholders.

On 22 April 2020, a group of over 35 civil society organisations wrote an Open Letter¹ to the New South Wales Attorney General and Minister for Prevention of Domestic Violence, calling for consultations on the proposed changes. On 24 April, a two-week delay in implementation was announced, and a meeting was held on 30 April 2020 between civil society organisations and the Commissioner of Victims' Rights, after which they also provided

¹ Open letter to NSW Attorney General calling for proper consultation with victims-survivors and their advocates, 22 April 2020 accessed at: <https://www.wlsnsw.org.au/wp-content/uploads/Open-Letter-in-response-to-proposed-changes-to-NSW-Victims-Support-Scheme-fa.pdf>

written comments. They also recommended further consultations to be carried out on the proposed changes, with government and non-government bodies.

In response to that request, further consultations were carried out, with a meeting between the Commissioner of Victims' Rights and the Victims Advisory Board, the Victims of Crime Interagency and Community Legal Centres on 18 May 2020.

On 29 May 2020, when written feedback was due in the consultation process, an open letter² signed by 90 organisations and hundreds of individuals called for the changes not to be implemented and instead for the statutory review of the Victims Rights and Support Act, with meaningful participation of victims-survivors, specialists and service providers, which was supposed to take place anytime from May 2019 to May 2021, to be carried out. During the review, any issues with the current arrangements of the Victims Support Scheme could be discussed and addressed in a longer and more in-depth consultation process.

On 26 June 2020, the Commissioner of Victims' Rights announced to stakeholders that the announced reforms, with some amendments, would enter into force from 1 July 2020. The Commissioner also announced that a review of the changes would be carried out within six months of their implementation.

The changes to the Victims' Support Scheme

We would in particular like to highlight three of the changes introduced. The first one is connected to requests for recognition payments. Such payments are meant to acknowledge the commission of a crime against the victim, and can be made to the victims themselves, parents and guardians or financially dependent family members of the victims.

Beneficiaries have up to two years after the crime to claim a recognition payment; for children, up to two years after turning 18; for victims of domestic violence, sexual assault and child abuse, within 10 years (or within 10 years of turning 18 for children). There is no time limit for victims of sexual assault who were victimised as children. To receive a recognition payment, victims or their family members must provide two forms of evidence – one to establish the act of violence and also medical evidence to establish injury to the victim.

Before the changes, victims could request Victims Services to obtain the necessary evidence to support their application on their behalf. Now, victims are asked to seek and present supporting evidence of injury to support a recognition payment. Taking into account feedback received, a final decision was made to accept evidence up to 12 months after filing a complaint, instead of requiring all evidence to be made available in the moment of filing. Costs for obtaining such evidence, such as attending a health service or therapy provider for the purpose of completing a Certificate of Injury would no longer be covered by Victims Services and must be met by the victim-survivor.

² Open Letter Commissioner Victims Rights, 29 May 2020 accessed at: <https://www.clcnsw.org.au/open-letter-proposed-changes-nsw-victims-support-scheme>

The Commissioner of Victims Services has claimed that these changes will expedite recognition payments, cutting back the processing time by nine months on average. Civil society organisations have expressed their concern over the impact of requiring victims of complex trauma to collect their own evidence, citing the potential of re-victimisation in having to engage with these services; the impacts of trauma on memory and the obstacles to obtain evidence; the challenges that victims that lack language or literacy skills, or have a disability, may face; and the financial burden of having to cover such costs upfront, at risk of not being reimbursed if an application is rejected. There is also concern about the ability of victim-survivors in closed institutions to gather evidence while in custody. Finally, organisations have raised doubts about the feasibility of meeting the deadlines to obtain the evidence considering the time limits set in legislation. According to them, the 12-month period limit for obtaining evidence after filing a complaint was not justified according to experience or data.

The second change among the reforms is the requirement that all applications to Victims Services be accompanied by a government issued identification document, which was not previously the case. There is concern among civil society organisations that this will have a disproportionate negative effect on indigenous victims, in particular Aboriginal and Torres Strait Islander women who are victims of domestic violence, and women and their children who are fleeing domestic violence or are homeless. There is also lack of clarity as to what type of identification documents will be accepted by Victims Services. In addition, victim-survivors have been asked to provide bank details upfront. Before, these were only asked when a determination regarding payment had been made. It is likely that some victims may not be able to provide such information (for instance, when a victim has a joint account with a perpetrator) or it may not be relevant, for those seeking only counselling. If an application is unsuccessful, Victims Services would hold private information that would not be used; the bank details could also become out of date during the 12-month period victim-survivors will have to collect evidence.

Finally, victims will no longer be allocated a counsellor, but will instead be required to select and contact the counsellor of their choice from a list of over 600 entries on the Victims Services website. According to the Commissioner of Victims Services, this change will empower victims-survivors to take up counselling at a time that works for them, putting more control in their hands. However, civil society organisations have expressed concern that not being able to opt for Victims Services to allocate a counsellor in their geographical area could represent a barrier to accessing and taking up counselling services for victims. Some victims have reported that the process can be overwhelming as they may be presented with a list of over 100 counsellors from which to choose. While the counsellors may be listed as available, some have waiting lists up to a few months, which is not clear until the victim calls the counsellor's office. In addition, victims who are older, illiterate or lack access to the internet may have their access to counselling hindered by this procedure.

We express our concern at the possibility that the reforms, whilst implemented in the interests of efficiency, may hinder victims-survivors access to the Victims Support Scheme. We are particularly concerned that the reforms may have a disproportionate impact on women and girls, indigenous peoples, persons with disabilities and older persons. We are also concerned that the reforms were implemented during a period of restrictive measures related to combating COVID-19, which may have prevented a more meaningful participation of victims, civil society organisations and relevant stakeholders in the consultation process.

The changes to evidence collection procedure and counsellor allocation may disproportionately impact people who have suffered complex trauma, such as domestic violence, sexual violence, child abuse and child sexual abuse, who tend to be majority women, including indigenous women. 74% of those who seek recognition payments³ and 76% of those who seek counselling are women.⁴ Victims of child abuse are also disproportionately female, and it takes them on average 22 years to disclose the abuse.⁵ The significant delays in reporting and seeking help to recover means that victim-survivors may be older persons. Almost one in three survivors who attended private sessions with the Royal Commission into Institutional Responses to Child Sexual Abuse in Australia were aged 60 years or older at the time of their private session.⁶ Older persons and persons with disabilities, including those with cognitive impairments, may face significant barriers to meet the new evidence collection requirements, thereby being disproportionately affected by the reforms.

In connection with the above-alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned information.
2. Please provide information on the rationale for the reforms to the Victims Support Scheme, keeping in mind Australia's obligations under international human rights law.

³ Victims Services NSW Department of Justice, *Victims Support Data Profiles 2017-18: Applications for Victims Support*, p2, accessed at:

https://www.victimsservices.justice.nsw.gov.au/Documents/profile_2017-18_support-summ.pdf

⁴ Victims Services NSW Department of Justice, *Victims Support Data Profiles 2017-18: Counselling applications*, p 1 accessed at: https://www.victimsservices.justice.nsw.gov.au/Documents/profile_2017-18_counsel.pdf

⁵ Royal Commission into Institutional Responses to Child Sexual Abuse, *Interim Report Volume 1* (2014), p6 (13) accessed at: https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/interim_report_volume-1.pdf

⁶ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Private Sessions, Volume 5*, Table N.7, accessed at: https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_5_private_sessions.pdf

3. Please provide information on the measures taken to avoid revictimisation and remove obstacles to access to compensation and services, with a particular view on victims of domestic violence, sexual violence, child abuse and child sexual abuse; women, indigenous peoples, persons with disabilities as well as older persons who are victims of violence, maltreatment, abuse and neglect.
4. Please provide information on the measures taken to promote participation in the reform process of the Victims Support Scheme, in particular of victims-survivors, as well as on the review process expected to take place in six months time. Please provide details as to how victims-survivors and stakeholders will participate. I
5. Please provide information on the statutory review of the Victims Rights and Support Act, due to take place from May 2019 to May 2021.
6. Please provide information on the steps taken to evaluate the impact of these measures on access to Victims Support Scheme, including the collection and publishing of relevant data with particular reference to women, indigenous peoples, older persons and peoples with disability.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, call upon your Excellency's Government to ensure that any changes to the support scheme for victims take into account the relevant international human rights standards in order to ensure women and girls' full access to reparations and support services, considering the particular needs of indigenous peoples, persons with disabilities and older persons. We also urge your Excellency's Government to promote full and meaningful participation of victims, civil society organizations and other stakeholders in any decision-making processes, taking into account the specific restrictions due to the COVID-19 context.

Please accept, Excellency, the assurances of our highest consideration.

Dubravka Šimonovic
Special Rapporteur on violence against women, its causes and consequences

Claudia Mahler
Independent Expert on the enjoyment of all human rights by older persons

Melissa Upreti
Vice-Chair of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the Convention on the Elimination of Discrimination against Women, ratified by Australia in 28 July 1983, and in particular the obligation regarding women's rights to non-discrimination and the enjoyment of de jure and de facto equality laid out in article 2. As laid out by the Committee on the Elimination of Discrimination against Women (CEDAW Committee) in its General Recommendation no. 35, States parties to the Convention on the Elimination of All Forms of Discrimination against Women must provide effective reparations to victims/survivors of gender-based violence against women. Reparations should include different measures, such as monetary compensation, the provision of legal, social and health services, including sexual, reproductive and mental health services for a complete recovery, and satisfaction and guarantees of non-repetition, in line with general recommendation No. 28, general recommendation No. 30 and general recommendation No. 33. Such reparations should be adequate, promptly attributed, holistic and proportionate to the gravity of the harm suffered. Priority should be given to the agency, wishes, decisions, safety, dignity and integrity of victims/survivors.

Also in General Recommendation No. 35, the CEDAW Committee has recommended that all measures to eliminate gender-based violence should be implemented with an approach centred on the victim/survivor, acknowledging women as right holders and promoting their agency and autonomy, including the evolving capacity of girls, from childhood to adolescence. In addition, the measures should be designed and implemented with the participation of women, taking into account the particular situation of women affected by intersecting forms of discrimination.

Moreover, we would like to bring to Your Excellency's attention Article 4 (g) of the United Nations Declaration on the Elimination of Violence against Women which notes the responsibility of States to work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation.

Furthermore, we would like to refer to the Secretary-General's Policy Brief of May 2020 on the Impact of COVID-19 on Older Persons and to the report of the Independent Expert on the full enjoyment by older persons of their rights which refers to the need for accessible juridical mechanisms to redress rights violations and to ensure protection from abuse, violence, maltreatment and neglect of older persons. Ensuring access to justice requires not only effective remedies, but also enhanced awareness by older persons of their rights and the availability of legal aid. It is also essential that the specific needs of older persons in terms of accessibility be adequately taken into account. Measures in that regard should include preferential treatment of older persons in judicial proceedings, the provision of adequate

information in an age-friendly manner. (A/75/205 paras. 68-70). Finally, we would draw your Excellency's Government attention to the United Nations Principles for Older Persons (General Assembly resolution 46/91 of 16 December 1991), stressing, inter alia, that older persons should have access to social and legal services to enhance their autonomy, protection and care.