

Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse

Issues Paper 7: Statutory Victims of Crime Compensation Schemes

1. INTRODUCTION

knowmore is a free legal service established to assist people engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse. Advice is provided through a national telephone service and at face to face meetings, including at outreach locations. **knowmore** has been established by the National Association of Community Legal Centres Inc, with funding from the Australian Government, represented by the Attorney-General's Department. **knowmore** has offices in Sydney, Melbourne, Brisbane and Perth.

Our service was launched in July 2013 and since that time we have provided over 4,000 client advices. Many of the clients we have assisted have sought legal advice about their options, if any, to obtain financial and other redress in relation to childhood sexual abuse they suffered in institutional contexts. Many of these clients have had direct experience with the various Australian statutory victims' compensation schemes (statutory victims' schemes).

Statutory victims' schemes form part of the suite of compensatory options potentially available to survivors of institutional childhood sexual abuse, including internal institutional redress schemes; civil applications for compensation through the courts; compensation through statutory sentencing legislation;¹ and crimes compensation applications through dedicated tribunals. However, the statutory victims' schemes are the least attractive option for survivors because of the very limited financial awards which are available.

In our submissions to Issues Papers 5 (Civil Litigation) and 6 (Redress Schemes), **knowmore** set out the problems associated with Australia's civil litigation systems and internal redress schemes, in the context of providing justice for survivors of institutional child sexual abuse, and made the case for the introduction of a national redress scheme. This submission will respond directly to the questions posed by the Royal Commission in Issues Paper 7. This submission should be read in conjunction with our submissions to Issues Papers 5 and 6, in terms of the overall recommendations made by **knowmore** that will help survivors of childhood sexual abuse to obtain justice.

¹ See for example s 85B of *The Sentencing Act 1991* (Vic) which permits a court upon conviction of offence to compensate a person who has suffered an injury in an amount it thinks fit

In summary, **knowmore** maintains its position as set out in its previous submissions, that:

- civil litigation should remain as an option for survivors, with accompanying reform of Australia's existing civil litigation systems to make them more accessible for survivors of childhood sexual abuse; and
- a national redress scheme should be implemented, as an additional means for survivors to obtain redress.

It is considered that if a suitable and effective national redress scheme is implemented, as recommended in **knowmore's** submission in response to Issues Paper 6, survivors of institutional childhood sexual abuse would have no need to access statutory victims' schemes. It is difficult to anticipate any circumstances in which survivors would need or wish to access such schemes as an alternative to an effective national redress scheme, and/or exercising their common law rights.

Nevertheless, in this submission **knowmore** identifies, from our work with our clients, some of the inadequacies of the current statutory victims' schemes and changes that might be made to improve their functioning. While it is hoped that an effective national redress scheme and enhanced common law rights will result from the Royal Commission's work and recommendations, it is recognised that the adoption of such reforms cannot be a matter of certainty, and any implementation of reforms (assuming that occurs), will inevitably take some time.

Accordingly, much of the commentary that follows in this submission is directed towards improvements that could be made to statutory victims' schemes to better assist survivors of institutional childhood sexual abuse to obtain justice:

- a. pending the implementation of civil law reforms and a national redress scheme; or
- b. if an effective national redress scheme is not implemented at all; or
- c. if an effective national redress scheme is not implemented as a permanent means of obtaining redress (i.e. is implemented only for a limited period).

Further, **knowmore** submits that many of the issues identified with current statutory victims' schemes, as a result of our work with survivors, are not solely applicable to the context of claims arising from childhood sexual abuse in institutional contexts, but are highly relevant to survivors of childhood (and also adult) sexual abuse in other contexts and, more generally, other victims of violent but non-sexual crimes. Therefore, even if a national redress scheme is introduced for survivors of institutional childhood sexual abuse, these statutory schemes could still be reformed to cater more effectively for survivors of sexual abuse in other contexts, and other victims of violent crimes who will not have access to that national redress scheme.

In particular, we recommend that the statutory victims' schemes could be reformed to recognise and accommodate the unique features of crimes involving child sexual abuse, such as delayed complaint-making and difficulty in obtaining historical records. We also recommend the establishment of specialist tribunals which operate within a trauma informed framework.

2. LIST OF RECOMMENDATIONS

- i. The amounts of financial awards available under statutory victims schemes to victims of childhood sexual abuse perpetrated in institutional contexts must be increased to reflect community standards about such crimes.
- ii. Existing statutory victims' schemes should be amended to remove disparities of access and in awards, arising solely from the timing of the relevant crimes.
- iii. Limitation periods in statutory victims' schemes should be removed for claims relating to sexual offences committed against children.
- iv. Processes relating to the proof of claims should recognise the inherent 'evidentiary' difficulties that exist for claims based on historical child sexual abuse.
- v. Statutory victims' schemes should not compel, as an eligibility requirement, victims of sexual offences to report those crimes to police (particularly within mandated time limits), or to otherwise co-operate with police investigations.
- vi. In dealing with claims arising from crimes of institutional child sexual abuse, decision-makers must have regard to the trauma victims will have experienced, in considering issues of 'character' and the relevance of subsequent criminal offending.
- vii. All statutory victims' schemes should include the capacity for claims by secondary victims.
- viii. Claimants under statutory victims' schemes should have access to a merits review, as of right.
- ix. Administrators of the current statutory victims' schemes should review their accessibility, paying particular attention to less visible groups of victims.
- x. Claims made under statutory victims' schemes relating to sexual crimes should be dealt with and determined by a specialist arm of the relevant tribunal, which should operate within a trauma-informed framework. Decision-makers and staff should be trained in the impact of child sexual abuse and in complex trauma.
- xi. In claims arising from survivors of childhood sexual abuse in institutions, statutory victims' schemes should provide for awards of compensation or services that specifically recognise the context of institutionalisation and its impacts, and the needs of this group of survivors in relation to:
 - a. Medical needs
 - b. Counselling support
 - c. Educational needs
 - d. Family location and unification and cultural identity needs
 - e. Home help issues

3. SPECIFIC QUESTIONS

(1) What are the advantages and disadvantages of statutory victims of crime compensation schemes as a means of providing redress or compensation to those who suffer child sexual abuse in institutional contexts?

From information provided by our clients, we would identify the following advantages and disadvantages as being significant.

Advantages

Ease of process and cost

Proceedings are relatively informal. Legal costs are lower, and in some jurisdictions an amount for legal costs may be included in the Tribunal's award. Cases are usually finalised within a year, which compares favourably to timeframes involved in other compensatory options (although that length of time can in itself be traumatising for applicants, as discussed below). There are no filing fees. There is no risk of incurring the other party's legal costs in the event of an unsuccessful application.

Non adversarial

The non-adversarial nature of proceedings presents several advantages for survivors, including providing a greater sense of control over the proceedings, and "levelling the playing field" where the resources available to the respective parties are unequal. As our earlier submissions have explained, many survivors of institutional child sexual abuse have suffered complex trauma and are likely to be re-traumatised by lengthy, adversarial proceedings where their experiences are challenged.

Targeted towards victims of crime

Redress options afforded by the statutory victims' schemes are obviously tailored towards victims of crime and include, for example, specific provision for ongoing counselling or other measures to restore the survivor's sense of personal safety. The schemes, in theory, have a restorative or therapeutic goal, with a focus on acknowledgement of the wrongdoing, and the provision of forms of assistance to help victims recover.

Acknowledgment of a survivor's experience of abuse, listening to that experience and being believed are, in **knowmore's** experience, very significant issues for survivors of institutional child sexual abuse. The majority of our clients who have attended private sessions with the Royal Commission have provided very positive feedback about that opportunity, speaking about the feeling of validation they had from their participation and the Commissioners' approach, and how they felt that they had been listened to and believed. For many clients the concept of a person in an official capacity bearing witness and acknowledging the wrongdoing they have experienced is a very important outcome. One **knowmore** client, a survivor of child sexual abuse, explained that he had made an application for compensation under a statutory victims' scheme following a police complaint that was investigated but did not lead to charges, for the sole reason of having *"some official acknowledgment that a crime had been committed against me."*

Disadvantages

There are however a number of significant features of the existing Australian statutory victims' schemes which adversely impact on their suitability and capacity to deliver satisfactory outcomes for survivors of institutionalised child sexual assault who make claims against those schemes. These disadvantages include:

Inadequate awards of financial assistance

Financial assistance awards made under the existing statutory victims' schemes to survivors of institutional childhood sexual abuse cannot be reconciled with compensation obtainable through other means such as civil claims for damages, or claims made under institutional redress schemes (where those claims are properly prepared and effectively negotiated). The Royal Commission will be aware of the history of recent legislative reform in this area which has led to a general lowering of the financial awards available under statutory victims' schemes. Financial awards made under all of the schemes are very small. In New South Wales and Victoria recognition payments are capped at \$10,000. The Royal Commission will well understand that many survivors of institutional childhood sexual abuse have suffered debilitating and life-long trauma as a consequence of the crimes committed against them and, for these survivors, adequate financial compensation is important, both as recognition of the wrongdoing that occurred, and as a means to enable them to pursue their recovery. The importance of awards that allow survivors to do something significant, such as buy a house or to access education or to provide for their own children, cannot be underestimated. A sum as low as \$10,000 is perceived by some survivors as a message that the crimes committed against them, and the devastating impacts of those crimes, are not regarded by the law and our society as being significant. None of the existing schemes provides for the awarding of amounts of financial assistance that could be considered to be life changing.

In Victoria, for example, the maximum compensation one can receive as a victim of the crime of rape, including when the circumstances involve sexual penetration of a minor, is \$10,000. Such a sum is considerably below that which might be obtained now if the crime occurred in circumstances affording access to an existing institutional redress scheme, such as the "Melbourne Response" scheme of the Catholic Church, with such an amount again contrasting very unfavourably with a likely award of damages following a successful civil claim.

The caps on financial awards, particularly those on special payments recognising the adverse effects of sexual offending, are most noticeably troublesome in the context of some of the extremely serious child sexual abuse offences that found claims. Such offences, such as rape, are rightly regarded as among the most serious criminal offences and routinely carry heavy penalties of imprisonment upon conviction, including up to 25 years imprisonment per offence,² or even life imprisonment.³

The devastating effect of institutional child sexual abuse is well catalogued. This impact is usually overlayed with the impact of institutionalisation and loss of family, along with, in many cases, physical and emotional abuse. Many survivors, and particularly Indigenous Australians and those brought to Australia under former Child Migration schemes, also suffer a loss of

² See for example persistent sexual abuse, s.47A Crimes Act (Vic) 1958

³ Queensland, Criminal Code, s 349

culture as well. The cumulative impact of this complex trauma is significant, life-long and usually devastating.

In this context, it must be acknowledged that statutory victims' schemes purport to be notional schemes and are not truly compensatory in nature. It must be asked whether the current maximum awards available under the existing statutory victims' schemes appropriately reflect community standards in relation of offences of sexual violence against children.

To illustrate this point, we note that on 30 July 2014 the Queensland Law Society advised its members⁴ of a recent Federal Court decision relating to the awarding of general damages in cases of sexual harassment, providing the following commentary:

An appeal to the Federal Court of Appeal has set a strong precedent, with general damages for sexual harassment increased from \$18,000 to \$100,000.

Anne Andersen of the Anti-Discrimination Commission Queensland has advised that, in *Richardson v Oracie Corporation Australia Pty Limited* [2013], [FCAFC82](#), 15/7/14, the traditional level of damages in cases of sexual harassment was found to be "manifestly inadequate" to compensate victims.

Under the Queensland Anti-Discrimination Act 1991, there is no monetary limit in compensation for loss or damage (see section 209 (1)(b)), so this case will also apply in Queensland. The same principles should also apply across the board for all discrimination-type matters, as the case shows that the damages should properly reflect the level of harm done as assessed by today's community standards.

Without in any way seeking to diminish the harm that arises to victims of sexual harassment or other forms of discrimination, and the need to recognise and compensate that wrongdoing in a way reflective of community standards, the decision stands as an obvious point of comparison highlighting the inadequate level of financial awards that are currently available under statutory victims' schemes for victims of criminal offences of sexual violence.

An inevitable consequence of the reality of grossly inadequate awards is that a survivor who wishes to obtain meaningful financial compensation is forced into exploring or engaging in multiple legal actions, each inherently re-traumatising.

Disparity

The Royal Commission will also be aware of the inconsistencies in financial awards across the existing schemes, and at times within individual schemes. It is **knowmore's** experience that many survivors, especially family members, are painfully aware of the detail of each other's awards and find the disparity in outcomes hurtful and often insulting.

Financial outcomes for like offences across the country vary significantly. Additionally, in some states there are sliding scales of maximum awards payable depending on when the crime was committed. For example, in Western Australia a maximum of \$2000 is payable for crimes committed before 17 October 1976⁵; \$7,500 between that date and 31 December 1982; \$15,000 between that date and 31 December 1985; \$20,000 between that date and 30

⁴ 'QLS Update' email to members of 30 July 2014

⁵ Although only for crimes committed after 22 January 1971

June 1991; \$50,000 between that date and 31 December 2003, and from that date to present, \$75,000. There are similar sliding scales in some other States and Territories.

It is simply unfair that the setting and timing of the criminal offending dictates, quite arbitrarily, the sum of compensation available under a statutory victims' scheme. As we noted in our submission to Issues Paper 6 regarding the 'piece-meal' availability of redress schemes for survivors, our clients have often experienced immense disappointment and further trauma upon learning that they have no effective right to make a claim against a statutory victims' scheme because the relevant offending conduct occurred prior to a specific date set in legislation.

Responsibility

Despite the existence of recovery provisions relating to individual offenders, to an extent State and Territory funded redress schemes remove the responsibility of the offending from relevant institutions. This is a disincentive to institutions from building systems, policies and procedures that protect vulnerable children; awards under the schemes have little specific or general deterrent effect on offenders and particularly upon institutions.

Our earlier submissions have addressed the types of outcomes many survivors see as necessary for them to obtain 'justice', including non-monetary outcomes such as acknowledgment, system reform and deterrence. The lack of linking between the responsibility for meeting awards under statutory victims' schemes and relevant institutions can even operate as a disincentive for survivors to pursue claims against the schemes. One client told **knowmore**:

I'm not interested in a victims compensation claim if the government pays it. They weren't the ones who abused me and they shouldn't have to pay for it.

Limitation Periods

Limitation periods applying to the bringing of claims vary across the States and Territories. Timeframes for bringing applications vary across jurisdictions, from one crime "type" to another, and depending on the age of the survivor at the time of the offence. This creates further arbitrary disparity and unfairness in survivors accessing justice.

In Victoria, a claim must be made within two years from the date of the crime, unless there are exceptional circumstances.⁶ While in some instances relevant legislation periods can be extended through the demonstration of such circumstances, the imposition of limitation periods in respect of claims arising from institutional childhood sexual abuse is, in **knowmore's** submission, inappropriate. All of the observations we have made in our previous submissions about the existence and application of limitation periods for civil claims, and 'cut-off' dates for redress schemes, are apposite.

The Royal Commission's work to date has uncovered the cultures of sadism and violence that pervaded many of the institutions in which children were sexually abused. Children in institutions are particularly isolated and vulnerable. By definition they have no, or very little, effective family support. These survivors have often been abused by the very people who are responsible for their welfare, and to whom the abuse should, in a properly functioning

⁶ Section 29 *Victims of Crime Assistance Act 1996* (Vic). The age of the victim at the time of the offence is a relevant consideration under that provision, as is the question of whether the perpetrator of the crime was in a position of power over the victim.

structure, be reported - the very framework of institutions works against early exposure of this offending. It is **knowmore's** experience that historically many institutions have not had transparent frameworks to safeguard against child sexual abuse or to ensure its early detection and reporting. On the contrary, it is the experience of **knowmore** that institutions have more generally had an embedded culture of covering up abuse and punishing children who complained about it, with the perpetrators employing methods of control and intimidation to ensure that the abuse is not disclosed.

It is therefore not surprising that reports of childhood sexual abuse are routinely not made until well into adulthood, and often then only after a further period of some decades have elapsed. This reality has been recognised and discussed in the recently released Interim Report of the Royal Commission.

Statutory victims' schemes for child sexual abuse cases should not have time limits. An effective statutory victims' scheme should recognise that delay in reporting and disclosing is intrinsic to child sexual abuse cases, especially in an institutional context.

Lack of supporting documentation

As noted in our previous submissions, in the context of child sexual abuse, proof of the offending can be problematic, especially in historical cases. Even if a person did report the offence to the police, there are often difficulties in locating any historical police, medical or other records that may assist claims. Even records to establish the fact that a child lived at a certain institution at the relevant time often cannot be found. Where an institution's records are in existence, they are unlikely to document the sexual abuse.

These realities can affect the prospects of successfully claiming an award under a statutory victims' scheme. **knowmore** is presently assisting a survivor whose application was dismissed. The reasons for the dismissal were a delay in making the complaint and a lack of corroborating material. The offences are about 40 years old. **knowmore** has endeavoured to obtain records from the relevant institution but has been informed they are no longer in existence.

Police Reporting

Most schemes require that the crime is reported to the police. Some schemes go further than this and require full cooperation with the police in prosecution action.⁷ Enforced disclosure to the police is not necessarily best practice when dealing with people who have suffered complex trauma arising from crimes of sexual violence perpetrated against them as children. The reality of the significant level of non and under-reporting by victims of childhood sexual offending is beyond dispute. Several jurisdictions have now established alternative mechanisms for enabling victims to report information about sexual offences to police, which do not compel victims to disclose their identity or participate in formal investigations.⁸

Statutory schemes should have alternate avenues for proving claims, such as a psychological or medical reports or other forms of documentary evidence. Forcing people to recount their experience to the police as a pre-requisite to making a claim can be counter-productive and re-traumatising, and will inevitably remove the capacity of a considerable number of survivors

⁷For example, the South Australia scheme provides that an award must not be made where an applicant failed to give evidence in a trial or failed to cooperate with an investigation, without reasonable excuse; sections (7)(c) and (7)(d) of the *Victims of Crime Act 2001* (SA).

⁸ See, for example, the Sexual Assault reporting Options (SARO) process used by the New South Wales Police Force

to access a scheme. **knowmore** appreciates the value of intelligence to police forces about sexual offenders, especially in the context of prosecuting those who have offended against multiple victims; however, as noted above, there are alternate ways of making information available to the police in circumstances where the survivor does not want a prosecution to ensue in their particular case. Additionally, from its work to date the Royal Commission will be well aware that for many survivors, their recovery from the trauma of experiencing childhood sexual abuse is fundamentally linked to empowerment and obtaining the ability to make informed choices about courses of action relevant to their experiences and their own healing. It is counter-productive and damaging to compel survivors to take steps, such as reporting to police and participating in investigations and prosecution processes, where they do not wish to.

An additional problem is that the existing schemes generally call for a police complaint to be made within what are very limited time frames, having regard to what is known about the context of reporting sexual offending. In Victoria, the report to the police must be made within a reasonable time.⁹ In South Australia also, a report to police within a reasonable time is required, and the applicant must provide police with whatever information they need.¹⁰ Similarly, in Western Australia the applicant must report and fully cooperate with the police.¹¹ In the Northern Territory applicants usually need to report the crime.¹² Queensland requires police reporting but will accept reporting to a doctor, counsellor or psychologist for some primary victims.¹³ These special primary victims include victims under the age of 18 years and victims of sexual offending.¹⁴

As discussed earlier, delay in making any formal disclosure or complaint is intrinsic to child sexual offences. Having time frames around reporting to police as preconditions to making applications for awards under statutory victims' schemes is simply misconceived for these cases.

Relevant character evidence

Most schemes provide for the court to take into account the criminal history of the applicant, either before or after the crime for which an award is sought. In the context of institutionalised child sexual abuse, this concept of relevant character evidence¹⁵ is problematic. Survivors commonly present with complex trauma, psychiatric and substance abuse issues. It is well established that people who have suffered these outcomes as a result of child sexual abuse interact with the criminal justice system more frequently than those who have not; for example, research indicates that the incidence of women in Australian prisons who have suffered child sexual abuse varies from 57% to 90%.¹⁶

It is unfair to preclude or reduce financial awards because of other conduct which in many cases has its origins, to a significant degree, in the offending perpetrated against the claimant.

⁹ *Victims of Crime Assistance Act 1996* (Vic) s 52

¹⁰ *Victims of Crime Act 2009* (SA) s 20(7)

¹¹ *Criminal Injuries Compensation Act 2003* (WA) s 38

¹² *Victims of Crime Assistance Act* (NT) s 32

¹³ Section 81(1)(a)(ii) *Victims of Crime Assistance Act 2009* (Qld)

¹⁴ Section 81(2)(a) *Victims of crime Assistance Act 2009* (Qld)

¹⁵ Usually prior convictions; see for example, *Victims of Crime Assistance Act 1996* (Vic) s 54(a)

¹⁶ *Addressing women's victimisation histories in custodial settings*, Mary Stathopoulous, Australian Centre for the Study of Sexual Assault, p 3. Viewed at <http://www.aifs.gov.au/acssa/pubs/issue/i13/>

Privacy and safety

Notification to alleged perpetrators of the application is also a problem with existing schemes. While few perpetrators actually attend hearings, the mere prospect of one appearing may be enough to deter a survivor from applying.

Timeliness

While the time taken to determine proceedings under statutory victims' schemes compares favourably to other options available to survivors, it must be recognised that existing timeframes still pose challenges for many claimants, and exacerbate their trauma.

Many current claims still take at least a year to resolve. This can have an enormous impact on survivors. One client recently told **knowmore** *"I can't deal with my trauma until this application is over. Every time I talk about it I am re-traumatised."*

Secondary victims

Schemes vary in eligibility to apply for assistance, the amount of awards available, and the time limitations applying to applications for pain and suffering payments for secondary victims (such as family members of the primary victim).

In Western Australia, secondary victims are ineligible for compensation. In New South Wales a secondary victim must apply within two years of the offending.

Schemes should properly recognise the impact on child sexual abuse on the entire family. **knowmore** has assisted a number of clients who are family members of victims of institutional child sexual abuse, in circumstances where the primary victim is no longer alive. Tragically, in many of these cases the primary victim took their own life, as a result of that abuse and the consequent trauma.

Interaction with other schemes and awards

Most statutory victims' schemes have provisions requiring repayment of awards in the event of obtaining subsequent other compensation for the same injury. Consistent with the commentary in our earlier submissions, this position is appropriate as one of general principle (that is, in considering damages or redress scheme payments regard should be had to compensation or awards obtained from other sources). As noted earlier in this submission, if an effective national redress scheme for institutional child sexual abuse claims was to be introduced there would be little need for survivors to seek to access statutory victims' schemes.

However, the present situation does present some difficulties for claimants under statutory schemes. Our clients' experiences establish that claims are routinely adjourned by decision makers where another compensation application is on foot. **knowmore** recently saw a client who was negotiating with an institution under a redress scheme and who had also applied for statutory victims' compensation. The Tribunal notified the institution, which briefed counsel to attend a directions hearing to discuss the status of the redress scheme claim. Our client instructed us that his confidential materials were discussed before the Tribunal. Our client had no notice of this and was very distressed about it.



Lack of a consistent trauma-informed approach

An effective statutory victims' scheme should operate within a trauma-informed framework and decision-makers and staff should be trained in the impact of child sexual abuse and in complex trauma.

While statutory victims' schemes victims' proceedings are relatively short and informal compared to many other forms of legal proceedings, they still have the potential to re-traumatise survivors. **knowmore** is aware of cases where applicants have had very negative experiences before tribunals. Not all decision makers have an appropriate understanding of the complexities of institutional child sexual assault cases and the impacts of such offending on survivors and their capacity to engage effectively with legal processes and those they perceive as the representatives of authority.

knowmore is assisting a woman who was repeatedly sexually abused as a child in an institution. She became addicted to illegal drugs and took up prostitution to support her drug habit. In her claim for statutory victims' compensation the decision maker refused to categorise the drug addiction and the client's participation in prostitution as compensable injuries, finding that there was no causal link between the offences and the claimant's subsequent drug use and prostitution.

Some schemes have a schedule of injuries which calls upon the survivor to identify his or her particular injury.¹⁸ This is a confronting and traumatising process for survivors.

In the context of child sexual assault cases, the proving of a specific injury is in our experience often difficult and inappropriate. It is beyond argument that a child who has been subjected to sexual abuse in an institutional context will have sustained trauma. Any redress process needs to recognise that.

knowmore also recommends that an "on the papers" option be available for those claimants who want it. This would presumably be fast tracked and would spare some survivors the trauma of attending a hearing.

Lack of specialisation

Our clients' collective experiences demonstrate that many legal practitioners who work with people who have suffered child sexual abuse are not conversant with victims' compensation laws. Legal fees in this field are by necessity low, given the awards available, and the work is not attractive to most legal practitioners, unless perhaps done on a large-scale basis, that has other implications for client care.

We have previously outlined the barriers many clients face in engaging with lawyers, particularly where those lawyers are unaware of appropriate and trauma-informed practices. Many not for profit organisations who practice in related fields such as the criminal law or child protection lack the resources to make sure that people eligible for victims'

¹⁸ For example, the New South Wales *Victims Support and Rehabilitation Act 1996* has categories of injury including quite explicit referencing to serious bodily injury, use of a weapon and burning and scarring

compensation apply, or to run such cases for clients. **knowmore** has previously made submissions about the benefits of a specialist trauma informed, multi-disciplinary legal service to provide free and national legal assistance services to survivors in relation to their compensation options.

Lack of appeal/review rights

There are very limited review rights across the States and Territories for their statutory victims' schemes. In New South Wales and Tasmania only judicial review, based on legal error, is available. This means that applicants have no redress for unfavourable decisions on the facts of their case, as opposed to legal error. Furthermore, this means that there is a lack of superior court authority on the application and meaning of the legislative provisions establishing the schemes and their operation. This leads to inconsistency and lack of certainty at a primary decision-making level.

Claimants under the schemes should have access to a merits review, as of right.

Underutilised

knowmore regularly sees survivors of sexual assault who qualify for the schemes but have not accessed them. Often our clients are unaware of the existence of the schemes. A recent study of the Victorian statutory system found that only 15% of eligible victims make an application to the tribunal.¹⁹ Lack of awareness was cited as the primary reason. The same study also supports **knowmore's** anecdotal experience that many legal practitioners have a lack of understanding of the statutory schemes, or an unwillingness to act in such claims. This is a further impediment to accessibility for survivors.

It is recommended that the administrators of the current statutory schemes review their accessibility, paying particular attention to less visible groups of victims. As an example, consideration should be given to publishing materials in a wider range of languages and in other user friendly forms, and in establishing and refining partnerships with relevant agencies dealing with and supporting victims.

(2) What features are important for making statutory victims of crime compensation schemes effective for claimants?

The disadvantages which have been discussed above should be addressed, in the ways recommended above, to make the existing statutory victims' schemes more effective.

The schemes should retain ease of process by remaining informal, low cost, timely, and non-adversarial and must have a therapeutic focus.

Recommendations

A number of recommendations flow from the issues identified above.

- i. The amounts of financial awards available under statutory victims schemes to victims of childhood sexual abuse perpetrated in institutional contexts must be increased to reflect community standards about such crimes.

¹⁹ VOCAT Discussion Paper, Whittlesea Community Connections, April 2011, p 32

- ii. Existing statutory victims' schemes should be amended to remove disparities of access and in awards, arising solely from the timing of the relevant crimes.
- iii. Limitation periods in statutory victims' schemes should be removed for claims relating to sexual offences committed against children.
- iv. Processes relating to the proof of claims should recognise the inherent 'evidentiary' difficulties that exist for claims based on historical child sexual abuse.
- v. Statutory victims' schemes should not compel, as an eligibility requirement, victims of sexual offences to report those crimes to police (particularly within mandated time limits), or to otherwise co-operate with police investigations.
- vi. In dealing with claims arising from crimes of institutional child sexual abuse decision-makers must have regard to the trauma victims will have experienced, in considering issues of 'character' and the relevance of subsequent criminal offending.
- vii. All statutory victims' schemes should include the capacity for claims by secondary victims.
- viii. Claimants under statutory victims' schemes should have access to a merits review, as of right.
- ix. Administrators of the current statutory victims' schemes should review their accessibility, paying particular attention to less visible groups of victims.

To generalise, beyond the fundamental problem of current schemes providing wholly inadequate financial assistance, those schemes fall short in the areas of accessibility, fairness and safety. The addressing of those problems would, in **knowmore's** view, be facilitated by the establishment of specialist tribunals for determining statutory victims' claims for victims of sexual offences. This concept is discussed in more detail later in this paper.

(3) Are there elements of statutory victims of compensation schemes, as they currently operate, that raise particular difficulties for claims by people who suffer child sexual abuse in institutional contexts?

See the comments made above, in response to Question 1.

(4) What changes should be made to address the elements of statutory victims of crime compensation schemes that raise particular difficulties for claims by people who suffer child sexual abuse in institutional contexts?

National Redress Scheme

In its response to Issues Paper number 6, **knowmore** made the case for a national redress scheme for survivors of institutionalised child sexual abuse. A carefully tailored national

redress scheme would overcome the hurdles and difficulties that statutory victims' compensation schemes present for this group of survivors. It is **knowmore's** principal submission that such a scheme should be implemented. It is difficult to see the need for a statutory scheme for survivors of institutionalised child sexual abuse if an effective national scheme was in place.

In the absence of or pending the introduction of a National Redress Scheme, **knowmore** recommends reform of the current statutory schemes, as outlined above, to address the deficiencies of these schemes for survivors of institutionalised child sexual abuse. Even if a national redress scheme is introduced, these changes could still be implemented to cater for people who have suffered sexual violence that is not related to an institution and who are therefore not eligible to participate in the national redress scheme.

Additionally, **knowmore** contends that there should be a specialised arm of any statutory victims' tribunal which deals exclusively with claims involving child sexual offences, or all sexual offences. It is predicted that such specialisation would assist in addressing the features of current schemes that operate in a way that disadvantages, or raises particular difficulties for, survivors of childhood sexual abuse.

Recent specialist jurisdictions have developed in the area of sexual offending to meet the special needs of complainants in sexual offence prosecutions. These jurisdictions have grown alongside specialised police, prosecution and defence units. They have increased case management efficiencies in sexual offence cases and brought increased knowledge of the impact of sexual offences to the proceedings, the problems associated with evidence retrieved from childhood and with historical offences more generally. A recent review of these specialist services and courts in Victoria found that quality of legal work and the experience of the complainant was significantly enhanced.²⁰

Recommendation

- x. Claims made under statutory victims' schemes relating to sexual crimes should be dealt with and determined by a specialist arm of the relevant tribunal, which should operate within a trauma-informed framework. Decision-makers and staff should be trained in the impact of child sexual abuse and in complex trauma.

(5) What forms of redress, including services and payments, should be offered through statutory victims of crime compensation schemes?

Our previous submissions have addressed at length the needs that survivors of institutional childhood sexual abuse have, and the outcomes they seek, in order to achieve justice. While those outcomes are largely applicable in the context of statutory victims' schemes, it must be noted that the *inter partes* nature of claims, that is victim against individual offender, with the relevant Government usually funding any financial award or other cost (rather than the institution), limit the capacity of the schemes to deliver many of the non-financial and therapeutic outcomes sought by survivors.

²⁰ Sexual Offences Reform Strategy, *Success Works Victoria*, Dept. of Justice, Melbourne, 2011

See also our comments immediately below, relating to Question 6.

(6) To what extent, if any, should those who suffer child sexual abuse in institutional contexts be eligible for additional or different compensation and services, compared to victims of other crimes? Why?

Again, our earlier relevant submissions have addressed the needs of survivors of child sexual abuse in institutional contexts, and the outcomes they seek. Many of those needs and outcomes are consistent with other victims of crime, such as those who are subjected to crimes of physical but non-sexual violence, who similarly will potentially require assistance with meeting medical costs, counselling services, and who may wish to obtain adequate financial compensation for pain and suffering, for loss of earnings and opportunity and other damage. The Royal Commission now well understands the consequences for children who suffer sexual violence and the life-long impacts of their trauma. This reality, coupled with the overarching context of institutionalisation, does raise the need for some different services and forms of compensation for these survivors, as compared to other claimant groups.

Many of our clients report a range of health problems incurred as a result of their ill-treatment in institutions, which involved, but was in no way only limited, to sexual abuse. It was commonplace, in our client's experience, to suffer physical, sexual and emotional abuse. Often these clients have diverse medical needs and cannot access services through the public health system. Counselling and dental services are frequently required. **knowmore** is presently assisting an elderly male client who as a young child was removed from his family in England and later brought to Australia. He was placed in institutions which have featured in a previous Royal Commission Case Study, where he was physically and sexually abused and forced to undertake hard and prolonged manual labour. He never received any dental care, and had many of his teeth broken in beatings meted out by his "carers". All this client wants is to have his teeth fixed.

It must also be recognised that survivors of child sexual abuse often require very extensive counselling. Awards for counselling must be ongoing in recognition of the complex and significant nature of the trauma and injury resulting. As noted, many of our clients experienced repeated, lengthy periods of sexual abuse accompanied by emotional and physical abuse, in environments seemingly devoid of any compassion and support. Such survivors consequently nearly always present with complex trauma and serious psychiatric conditions.

The context of institutionalisation that accompanied the offences of child sexual abuse, as outlined in previous submissions, impacts upon survivors' current needs in three other ways that may differ from the position of other victims of crime.

First, placement in institutions deprived many survivors of access to even a basic education. Rather, many children were forced into manual labouring roles at a very early age. Those who were sent to schools were often discriminated against because they were "homies" or were too traumatised to derive any benefit from their schooling. Many now have literacy problems. For many clients this lack of education has left them with a profound sense of loss and failure. They have been denied the opportunity to reach their potential.

knowmore acts for one client who was brought to Australia as a child migrant. He was in the A class while attending school in England, was always a high academic performer, and had

been streamed to study three languages. His education stopped completely when he arrived at an institution in Australia, where he was involved in hard physical labour from the age of nine years. Now in his 70s, he talks about his love of languages and is still tearful about this lack of opportunity.

Tribunals should have the capacity to award basic costs of tuition and literacy courses for those who require it along with computer and child care costs so that education is realistically accessible.

Secondly, many of **knowmore's** clients talk about the sadness of losing contact with their family and their cultural heritage. This is especially an issue for many Indigenous clients who were removed from their families and placed with white families or in institutions run by non-Indigenous people.

For many survivors removal from their parents was accompanied by ongoing separation from their siblings, with family contact often discouraged. Many survivors do not know who their family is, have incorrectly believed their parents to be dead, or cannot find their relatives. It is critical that survivors be given assistance to locate and reconcile with family members.

This is particularly significant for Indigenous survivors, many of whom were taken from their families under government policy at that time, and are members of the Stolen Generations. **knowmore's** Indigenous clients regularly talk about loss of family, language and culture. **knowmore** is currently assisting an Aboriginal man who was removed from his mother's care at a young age, by the relevant State department, and later sexually, physically and emotionally abused while 'in care'. He ultimately established a life outside Australia, returning decades later 'in search of his Aboriginality':

"I came home to claim my Aboriginality. I was deprived of my Aboriginality. I was culturally dislocated. People don't understand the cultural complexity of Aboriginal life".

Thirdly, many survivors, especially elderly survivors, report loneliness, difficulties in establishing and maintaining relationships and a lack of basic life skills. Many have a real dread of being institutionalised again, in their old age, due to medical needs and/or an inability to care for themselves or to access support from sources that may be available to other people (such as from family members). Tribunals should have capacity to allow payments for ongoing home help support for the elderly.

Recommendation

- xi. In claims arising from survivors of childhood sexual abuse in institutions, statutory victims' schemes should provide for awards of compensation or services that specifically recognise the context of institutionalisation and its impacts, and the needs of this group of survivors in relation to:
 - a. Medical needs
 - b. Counselling support
 - c. Educational needs
 - d. Family location and unification and cultural identity needs
 - e. Home help issues

- (7) Are the levels of verification or proof required under statutory victims of crime compensation schemes appropriate for claims by those who suffer child sexual abuse in institutional contexts?

See the comments made above, in response to Question 1.

