

**Response to the Royal Commission  
Into Institutional Responses to Child Sexual Abuse  
Issues Paper 7 – Victims of Crime Compensation Schemes  
By  
Lutheran Church of Australia**

**Background:**

The Lutheran Church of Australia has a presence in all states and territories. The church is divided into five 'districts': Western Australia, South Australia/Northern Territory, Victoria/Tasmania, New South Wales/Australian Capital Territory and Queensland. There is a Bishop of the Church and a Bishop in each District.

**Introduction**

The Lutheran Church has provided care out of home care for children in the past in institutions and in foster care. Currently, there is a foster care program that is run by Lutheran Community Care in South Australia. The Lutheran Church has programs for children and young people in most congregations.

Camps are run for young people on a regular basis.

Currently all States of Australia have a Victims of Crime Compensation Scheme that covers all areas of criminal activity, including sexual assault, although no direct reference appears to be made to abuse which occurs within institutions.

An underlying principle of this response is that the needs of victims must be paramount at all times.

The essence of any Victims of Crime Compensation Scheme is that the claimant must be the victim and the offence must be of a criminal nature. A crime is committed by a perpetrator who, if found guilty of the offence, is subject to conviction and sentencing – which may include imprisonment.

A victim of child sexual abuse has access to the various Victims of Crime Compensation Schemes irrespective as to whether the offence occurred within or outside an institutional context.

The claims made against institutions are not of a criminal nature – they are the subject of civil litigation, mainly for damages incurred by the claimant due to a failure of duty of care. Therefore, the Victims of Crime Compensation Schemes are not available to victims where they wish to identify the institution as the perpetrator.

**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?**

Advantages

- They are available to all victims of such crimes where there is an identifiable perpetrator.
- The services offered incorporate legal advice and information regarding the victim's rights.
- Being a Statutory body, there is independence for the victim.
- The schemes are designed to cover victims from incurring unnecessary expenses and hardship as a consequence of the crime by providing services and reimbursing costs incurred.

Disadvantages

- As they are designed to manage matters that are of a criminal nature, they provide no access to any claims of a civil nature, i.e. claims against institutions.
- The crime must have been reported to the police before it can be considered by the authority.
- The funding arrangements under the schemes are very prescriptive and require evidence of expenditure – based on reimbursement of actual expenditure incurred and not a lump sum that can be allocated to the victim for the victim's own use.

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

Features include:

- Clear identification that a criminal offence has been committed – e.g. police report.
- The offence is of a criminal nature and subject to criminal justice.
- The claimant has access to the features of the scheme at any time during the course of any trial or afterwards, e.g. counselling.
- By having a process whereby the financial compensation is by way of reimbursement, it keeps up with inflation and does not have an upper limit of reimbursement where the costs can be validated.

**3. Are there elements of statutory victims of crime compensation schemes, as they currently operate, that raise particular difficulties for claims by people who suffer child sexual abuse in institutional contexts? For example:**

**a. some schemes have time limits and discretionary provisions to extend the time limits to make claims;**

The time limit would appear to be a factor. However, the Royal Commission itself set a time limit for matters under its consideration.

**b. all schemes have caps on payments;**

As the payments are based on reimbursement of expenses up to limits, but with discretion to extend the limit should there be ongoing medical and counselling costs, such a provision should cover this issue.

**c. some schemes have lower caps on payments for offences committed earlier in time and one scheme does not apply to offences committed before 1971;**

The whole issue as to a time-limitation needs consideration. As the schemes relate to criminal offences where there are identifiable criminals, by opening up the time-frame could compromise the scheme. The schemes do not pay out lump sum settlements to victims – they are reimbursed actual expenses incurred. For a very old case it would be difficult to validate that a medical account paid in 1956 related directly to the crime and therefore subject to reimbursement.

**d. some schemes require that the act of violence or offence be reported to the police, or require an explanation if not reported to police; and**

This element of any claim should be fundamental as it is a criminal act that has been committed and therefore subject to the police processes with the aim of identifying and bringing the perpetrator to trial and justice.

The requirement for a police report identifies the claim clearly as being related to a criminal offence – not civil.

**e. most schemes require repayment of victims' compensation if the recipient later receives compensation from another source (e.g. via damages or settlement in civil litigation).**

As the current schemes are operated by Government authorities, this is understandable as they are responsible for public funds.

Unless it is clear that any settlement obtained under a civil action does not include any recognition of actual costs incurred, e.g. medical and counselling, any payments made by the scheme for such matters are subject to reimbursement.

At present, when a civil settlement is made and includes consideration of medical expenses, any Medicare payments are to be declared and refunded.

Care needs to be taken in relation to 'double-dipping'.

**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?**

As Victim of Crime Compensation Schemes are operated through government authorities there should be no discrimination as to the type of claimant – institutional or non-institutional.

The only difficulty for a claimant in an institutional context would be that they may have to refund the Scheme any monies reimbursed that are covered by any lump sum settlement by an institution.

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

Services

- Information as to options available to the Claimant for redress.
- Legal advice – particularly pertaining to process.
- Information as to how the Court system works.
- Communication with police and making reports

- Changing locks and emergency home repairs
- Finding emergency accommodation
- Transport and medical services
- Counselling
- Finding lawyers or legal aid
- Making a Victim Impact Statement
- Applying for financial assistance.

**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?**

There should be no additional compensation or services provided to those who suffer child sexual abuse in institutional contexts through any Victims of Crime Compensation Scheme.

Unlike victims who have been subject to abuse outside an institution, those with an institutional context have the ability to seek redress through either a redress scheme or civil litigation.

**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?**

The context in which the crime occurred should have no bearing on the verification of proof requirements of the statutory body. Such schemes pertain to the relationship between the victim and the perpetrator and the impact thereof of criminal activity.

The institution may be subject to a separate claim under a redress scheme or civil litigation.

## **Conclusion**

Thank you for the opportunity to contribute to this discussion.

Should you require further information from us, please contact the Executive Officer, Peter Schirmer by email on [peter.schirmer@lca.org.au](mailto:peter.schirmer@lca.org.au) or by phone on 0409 156 346

Submitted on behalf of the Lutheran Church of Australia



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