

Victims of Crime (Compensation) Amendment Bill 2014

Submission

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Introduction

The vision of the Victim Support Service ('VSS') is that *all* victims of crime ('victims') in South Australia receive the support *they* need. We do this by providing a bespoke response to each victim, combining therapeutic expertise with knowledge of the criminal justice system to help victims both emotionally and practically. Our approach is augmented by a team of volunteers who guide victims through the court process.

The organisation has been working with and for victims in South Australia since 1979. We deliver programs that focus on victim engagement and evidence-based practice in areas such as trauma, crime prevention, homicide, domestic violence and child sexual abuse. To do so, we partner with government, non-government organisations, the wider community, and all agencies of the criminal justice system.

VSS appreciates the opportunity to comment on the Bill.

To ensure victims were heard during the Attorney-General's consultation process, VSS invited a cohort of clients to participate in a consultation forum in Adelaide on the 16 September 2014. Participants were given an overview of the Amendment Bill, and asked to provide responses to the following three questions:

1. What was your initial reaction to the proposed changes to victim compensation and why?
2. If you had one minute with the Attorney-General to talk about the Amendment Bill, what would you say to him?
3. Of all the issues raised by the Amendment Bill, which is the most important to you and why?

The views of victims have informed this Submission, and appear throughout the document.

In order to complete this submission, VSS also requested information from the Attorney-General's Department (AGD) on the following issues:

1. What do you foresee the costs will be per year, as a result of the proposed changes (i.e. what is the projected change in the awards of compensation made annually)?
2. Under the existing system, how many awards of compensation of less than \$3,000 for pain and suffering are awarded annually?
3. Under the existing system, how many awards of compensation are paid for people who attract 25 points or more on the scale of 0-50 for non-financial loss?

It is disappointing that AGD could not provide us with that information as we believe the answers to these questions are fundamental in informing appropriate legislative reform to effectively support victims of crime.

Executive Summary

Compensation for non-economic loss for victims of crime has remained static in South Australia for 21 years. In this context, Victim Support Service ('VSS') welcomes the intent of the South Australian Government to extend the rights of victims of crime to access statutory compensation, as outlined in the Victims of Crime (Compensation) Amendment Bill 2014 ('the Bill'). These changes are long overdue.

The Bill fulfils many of the commitments made by the Labor Party in the lead up to the State Election in March 2014 and, as a package of reforms, compares favourably with other jurisdictions in Australia. Particularly welcome are the intentions to:

- double the maximum pay-out,
- index compensation annually,
- make grief payments available to victims aged under 18,
- double grief and funeral expenses,
- remove the aggregation of grief payments where there are multiple victims, and
- increase legal expenses.

VSS is concerned, however, by the intention to redraw the scale used to determine the level of compensation for non-economic loss. We believe that the level of compensation paid to the majority of victims under the proposed new scale will represent an extremely modest increase, especially in the context of a 21 year hiatus in the level of compensation payments and an ever-growing Victims of Crime Fund. Moreover, we are concerned that the new scale will raise the entry threshold for compensation.

VSS also believes that young victims of crime under the age of 18 years, as well as adults, should be enabled under the *Victims of Crime Act 2001* ('the Act') to access expert support, counselling and information, especially those impacted by homicide.

These issues are explored further in our Submission.

Recommendations

VSS recommendations that:

Amendment to the Act: Eligibility

1. The revised Scale should not raise the threshold for compensation.

Amendment to the Act: Levels of Compensation

2. Rather than replace the existing 50-point non-Financial Loss Scale (the 50-point-scale) with a new and confusing 60-point scale, the existing scale should simply be doubled.
3. The revised 60-point scale should be reviewed to ensure that claimants at the lower end of the scale (i.e. lower than 30 points) are adequately recompensed for pain and suffering.
4. The impact of the proposed 60-point-scale on victims who currently qualify for compensation under the 50-point-scale should be made clear, prior to the proposed amendments being considered by Parliament.
5. The revised 60-point scale should seek to accommodate victims where the impact of psychological harm lasts for less than six months.

Policy decision: Victim Participation

6. The South Australian Government should implement a statewide community education campaign, outlining changes to statutory compensation for victims, with a particular focus on educating victims in regional areas.

Policy decision: SAPOL Training

7. All South Australia Police (SAPOL) officers, particularly patrol, Victim Contact Officers and Police Prosecutors should receive training in the statutory compensation process to enable SAPOL to support victims of crime to make an informed decision about their right to apply for compensation payments at different entry points into the criminal justice system.

Policy decision: Support Services

8. VSS should be funded through the Victims of Crime Fund to provide counselling and support services to victims and witnesses of crime, who are children. [VSS notes that this can currently be achieved by the Attorney-General under s 31(1) of the Act].

Amendment to the Act: Indexation

9. The Bill should confirm whether the Victims of Crime Levy, as well as compensation pay-outs, will reflect annual inflation rates if the draft Bill becomes legislation.

Detailed response

Proposed increases to the maximum amount payable of statutory compensation

“It’s definitely time for an increase.” - VSS Client, 2014

For many VSS clients, statutory compensation is a tangible recognition by the South Australian Government of the financial, social, and psychological impact of crime. For all of our clients, compensation is integral to helping them recover from the impact of crime.

VSS strongly endorses the South Australian Government’s continued commitment to ensuring the impact of crime endured by victims is formally recognised through the Victims of Crime Compensation Scheme.

We strongly support the draft Bill’s proposal to increase the maximum amount of statutory compensation payable to victims of crime. VSS actively advocated on behalf of victims of crime before the State Election, calling on all political parties to increase compensation amounts and expand services for victims.

The Bill proposes increases to the following payment types:

- grief payments (from \$10,000 to \$20,000);
- funeral payments from (\$7,000 to \$14,000); and
- the statutory maximum for non-financial loss (from \$50,000 to \$100,000).

We anticipate some types of victims will benefit from the proposed increases more than others, particularly families of homicide victims. We are pleased the South Australian Government has strengthened its commitment to recognising the profound impact of homicide on individuals and families by increasing the maximum amount of grief and funeral payments.

The impact of losing a parent to homicide can be devastating and life-long for children. VSS commends the South Australian Government’s formal recognition of this impact, and we welcome the proposal to extend the victims of crime compensation eligibility criteria so that minor children of adult victims of homicide are eligible for grief payments.

VSS also welcome the intention to remove the aggregation of grief payment amounts awarded to individual family members of victims of homicide.

VSS expects other beneficiaries of the proposed changes will include children who have been sexually abused and have suffered devastating long-term effects on all facets of their lives, and adults who are no longer able to actively participate in the labour market as a result of serious physical injuries sustained as a result of a crime.

Eligibility to make a claim

Under the proposed 60-point-scale, compensation is payable for non-financial loss only if it has been assigned a value of three or more on the scale.

VSS does not endorse raising the entry level numerical value to three; this places the right to claim compensation out of the reach of many victims whose type of injury will limit their eligibility for compensation.

We understand that under the current 50-point-scale, the average number of points awarded is between 4 and 5. This means that a substantial number of victims are being awarded less than 4 points. With a proposed threshold of three points, this suggests that many victims who currently qualify for payments for non-financial loss, will no longer receive compensation under the proposed 60-point scale.

We are concerned that victims who would have previously qualified for compensation will unfairly miss out. It is our understanding that this cohort is likely to include victims who sustain a broken nose that requires surgery, or lacerations that require stitches, or psychological harm that lasts for less than six months.

VSS is strongly against any amendment that would have the effect of raising the threshold for victim compensation.

Recommendation 1

The revised Scale should not raise the threshold for compensation.

The Proposed 60-Point-Scale

“[I]ncrease the payments for the lower paying incidents.”
- VSS Client, 2014

VSS wishes to highlight that while doubling the maximum amount of compensation is a welcome first step, it does not equate to doubling the amount of compensation payable to every victim of crime who has experienced non-financial loss.

Feedback from our clients calls for a more substantial increase in the amount of compensation awarded to victims whose injury is assigned a score on the lower end of the scale.

From our assessment of the proposed 60-point-scale, whilst much greater compensation is accessible at the top of the scale, the increases for victims that attract less than 30 points on the scale are modest.

VSS understands, based on advice from lawyers who specialise in victims of crime compensation claims, that the majority of claimants currently receive between \$4,000 and \$5,000. If this outcome is translated to the new scale, average payments would increase to \$6,000 or \$7,000.

In the context of a 21 year hiatus in the level of compensation payments and an ever-growing Victims of Crime Fund, VSS considers this unacceptable.

In the alternative VSS recommends that, rather than using a new and confusing 60-point scale, the existing 50-point-scale should be doubled such that any victim of crime who currently qualifies for non-financial loss, would receive double the current amount. Such an approach would also address the threshold issue we have raised above, relating to Recommendation 1.

Based on the information VSS currently has, and in the absence of any clarifying information we requested, VSS understands that this would be achievable within the annual revenue raised by the Victims of Crime Levy.

Recommendation 2

Rather than replace the existing 50-point non-Financial Loss Scale (the 50-point-scale) with a new and confusing 60-point scale, the existing scale should simply be doubled.

Recommendation 3

The revised Scale should be reviewed to ensure that claimants at the lower end of the scale (i.e. lower than 30 points) are adequately recompensed for pain and suffering.

Recommendation 4

The impact of the proposed Scale on victims who sustain injuries similar to those who qualify for compensation under the current points scale, should be made clear by the South Australian Government.

Recommendation 5

The revised compensation scale should recognise and recompense the impact of psychological conditions which last for less than six months.

Victims in Regional South Australia

“People need to be aware they can get help.” - VSS Client, 2014

Our experience in providing support to clients living in regional areas of South Australia tells us that many victims are unaware of their eligibility to claim statutory compensation.

To address this problem, a statewide campaign outlining any changes to statutory compensation for victims should be implemented as soon as any new legislation is enacted.

Clients have also told us that there is a lack of awareness of the compensation process amongst police officers working in regional areas of South Australia. This means that many victims are missing out on vital information during contact with SAPOL about their right to apply for statutory compensation.

To address this issue, all South Australia Police (SAPOL) officers, particularly Victim Contact Officers and Police Prosecutors should receive training in the statutory compensation process so that victims can make an informed decision about their decision to apply for compensation payments at different entry points into the criminal justice system.

Recommendation 6

The South Australian Government should implement a statewide community education campaign outlining any changes to statutory compensation for victims.

Recommendation 7

All SAPOL officers, particularly Victim Contact Officers and Police Prosecutors should receive training in the statutory compensation process so that victims can make an informed decision about their decision to apply for compensation payments at different entry points into the criminal justice system.

Support services for child victims of crime

“People should not be left out.” - VSS Client, 2014

To our knowledge, South Australia is the only state or territory to have a statutory compensation scheme funded by a Victims of Crime Fund. VSS commends the South Australian Government for this initiative and for maintaining the Victims of Crime Levy, which generates a large portion of the Fund. The Victims of Crime Fund has now reportedly reached in excess of \$160 million.

VSS was disappointed to learn that the draft Bill does not contain a proposal to extend support for child victims of crime. While we commend the South Australian Government for extending the eligibility criteria for compensation to children of homicide victims, we strongly believe that all children who experience crime require greater recognition by the South Australian Government.

It is our understanding that the proposed increases to the maximum amounts of compensation payable will be funded by an extra \$3.3 million a year from the Victims of Crime Fund, as set out in the 2014 Budget Papers, a relatively small amount in comparison to the total fund.

The draft Bill is a timely opportunity for the South Australian Government to extend eligibility criteria for compensation and access to support services to child victims of crime.

We believe that all children who have experienced crime should be afforded access to specialised support services, provided by practitioners with expertise in dealing with trauma and the aftermath of crime.

Currently mental health and support services for children, young people and their families are fragmented and difficult to access, with excessive waiting lists for mental health services

in metropolitan Adelaide, and longer in some regional areas of the state. As they stand, mental health services for children lack both the capacity and specific expertise to provide the therapeutic and practical support that young people need to address and recover from crime-related trauma.

“We may be able to walk and talk [after a crime] but what about what goes on up there?” [Pointing to head] - VSS Client, 2014

VSS has been providing help and trauma-informed support to adult victims of crime and their families for 35 years. Our experience and expertise on the impact of crime-related trauma means we are uniquely placed to provide an informed and specialised support service to help children address the impact of crime early, thereby reducing the long-term economic and social cost of untreated trauma to South Australian communities, and mitigating the adverse effects of childhood trauma on individuals’ growth and development.

Recommendation 8

VSS be funded through the Victims of Crime Fund to extend our trauma-informed support services to child victims and witnesses of crime.

Indexation

VSS understands the Consumer Price Index (CPI) to be a measure of the average change over time in prices paid by Australian consumers for a fixed range of goods and services. For over 20 years, the maximum amount payable to victims seeking statutory compensation has remained static, without indexation.

We commend the South Australian Government for its proposal to adjust dollar values of compensation amounts on 1 January each year. We strongly recommend that this proposal is adopted.

However, VSS is still unclear whether the Victims of Crime Levy will also reflect inflation rates should the draft Bill become legislation.

Recommendation 9

The South Australian Government should confirm whether the Victims of Crime Levy will also reflect inflation rates if the draft Bill becomes legislation.

Fees for lawyers

“Knowing that compensation is available makes things easier.”
- VSS Client, 2014

VSS supports the proposal to increase fees for lawyers who specialise in victim of crime compensation claims. VSS understands there has not been an increase to the fees paid to lawyers who counsel victims seeking compensation for at least 15 years.

For many of our clients, navigating the criminal justice system would be near impossible without the assistance of dedicated lawyers who specialise in victims of crime compensation claims. The Victims of Crime Compensation Scheme is legally complex, meaning victims of crime require access to the expert advice that these lawyers can provide.

Unfortunately, relative to the victim population, there are few victim compensation lawyers currently practicing in South Australia. This means that many victims, particularly victims living in country and regional areas of the state, have limited access to legal expertise.

VSS believes increasing the fees paid to victim compensation lawyers will not only ensure the work of current compensation lawyers is properly recognised by the state, but an increase will also help to generate interest from the legal profession to work in this area. Increasing the number of lawyers who counsel victims seeking compensation will increase victims' access to expert legal advice.