

Bravehearts Position Statement



Response to proposed NSW Victims Rights and Support Bill 2013

Bravehearts wish to outline our deep concerns with certain elements of the proposed *NSW Victims Rights and Support Bill 2013* as it applies to survivors of child sexual assault. While we support the Bill as it relates to victims of other crimes and applaud it for some of the initiatives, we have serious concerns around some specific elements and the potential impact on victims/survivors of child sexual assault due to the concepts of 'immediacy' of disclosure as a trigger for qualifying for many of the support options contained in the proposed Bill.

These concerns include that the proposed Bill does not adequately respond to child sexual assault as a separate and distinct crime cohort demanding of a separate and distinct response despite widely published and irrefutable international research that demonstrates the need to do so.

We note that previous to the current Bill, under the *Victims Support and Rehabilitation Act 1996*, Sect.26, leave in relation to the statute of limitations was presumed in matters involving child sexual assault:

(3) The following policies apply to the giving of leave by the Director for the acceptance of an application lodged out of time:

(b) however, leave should be given in cases of sexual assault, domestic violence or child abuse unless the Director is satisfied that there is no good reason to do so.

Under the previous Act, NSW was leading the way in relation to providing for victims of child sexual assault (see Attachment A for jurisdictional comparisons). Under the current Bill this is no longer the case.

It is our position that all Australian governments must **review current statute of limitations legislation** to consider the profound and complex consequences of child sexual assault and to **rescind these restrictions on survivors of child sexual assault to civil recourse**.

In addition to our support for the amendments provided by the NSW Greens to the Legislative Council, we submit the following amendments:

Bravehearts' Proposed Amendments to Victims Rights and Support Bill 2013

Amendment 1: Page 14, Clause 19(5) insert after line 27 "(a) in respect to acts of sexual assault, involving multiple offenders, each offender is to be treated separately, where acts of violence perpetrated by individual offenders are to be treated as related acts".

Amendment 2: Page 14, Clause 19(7) insert after line 31 "(a) excluding acts of sexual assault, where acts committed by more than one person".

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Amendment 3: Page 19, Clause 26(1) insert after line 5 “(i) where that act of violence involved multiple offenders, victims are entitled to support in relation to each separate act”.

Amendment 4: Page 25, Clause 40(1) include in line 16 “Except as provided by subsections (2), (3) and (7)...”.

Amendment 5: Page 26, Clause 40 insert after line 8 “(7) This section does not apply to an application for financial support or a recognition payment for a person who is a primary victim of an act of violence that occurs in the course of a commission of a sexual offence against the person when the person is under 18 years of age. There is no time limit on when such an application can be made”. (as recommended by the NSW Greens)

Amendment 6: Page 36, Clause 59(2) insert after line 19 “(c) This section does not apply to an application for a provision order where the primary victim is the victim of an act of violence that occurs in the course of a commission of a sexual offence against the person when the person is under 18 years of age. There is no time limit on when such an order can be made”.

Amendment 7: Page 51, Clause 94 replace (1), lines 29, 30, 31 with “(1) A court that convicts a person of an offence may (on the conviction or at any time afterwards), by notice given to the offender, direct that a sum be paid out of the property of the offender equivalent to the scale of damages awarded in civil proceedings...”.

Amendment 8: Page 52, Clause 95 insert after line 16 “(c) where that act of violence involved multiple offenders, victims are entitled to compensation in relation to each separate offender”.

Explanatory Notes:

Many of the provisions in this proposed Bill provide for the immediacy of response to victims of crime. We understand and support this as it applies to the more ‘general’ crime types and applaud the Attorney General for many of the Provisions in the Bill that deal with these critical issues. However, we know that for the most part, these provisions will not be available to survivors of child sexual assault because immediacy is the exception rather than the rule in terms of disclosure and response to child sexual assault.

The proposed Bill includes the introduction of a 2 year (Financial assistance) and 10 year (Recognition Payment) Statute of Limitations for survivors of child sexual assault which is in absolute conflict with accepted research clearly demonstrating that this move will unfairly jeopardise access to justice in redress for victims/survivors of child sexual assault.

Child sexual assault was recognised as a crime which requires a different response to other crimes against children due to the specific dynamics involved in Outcome Six of the COAG adopted National Framework for the Protection of Australia’s Children 2008-2020. Research consistently points to the reality that

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survivors/victims of child sexual assault are unlikely to disclose the offending behaviour until many years after the offences have occurred – often decades.

We petition the Government to make amendments to the Bill as outlined above and as they relate to victims/survivors of child sexual assault to:

1. Amend definitions of an 'act of violence' & 'related acts' as it relates to multiple offenders;
2. Increase the access to counselling and support services;
3. Remove the Statutes of Limitations for the making of a claim;
4. Increase the capacity of the Commission and the Courts to order financial compensation from the offenders by removing the Statute of Limitations and funding level for access to redress from the Scheme; and
5. To recognise that these different responses are required for this victim cohort.

1. Meaning of an 'act of Violence'

Division 1 Preliminary

19

(5) An act is not related to another act if, in the opinion of the Tribunal or the Commissioner, having regard to the particular circumstances of those acts, they ought not to be treated as **related acts**. (7) For the purposes of this Act, a series of related acts, whether committed by one or more persons, constitutes **a single act of violence**.

As outlined above, we submit that amendments be made to:

- Amend the meaning of 'related acts' where it involves multiple offenders such that each offenders is treated separately and acts of violence perpetrated by each offender are treated as 'related acts' but not acts by multiple offenders against the same victim being treated as 'related acts';
- Exclude 'acts of violence', where these are acts of child sexual assault, as perpetrated by multiple offenders as 'single acts of violence'.

It is common for many survivors to have been harmed by multiple offenders. Where this is the case we believe it is manifestly unjust to treat these as though there were a single act. Each offender must be made both legally and financially responsible for his or her offending against the victim.

Victims of multiple offenders invariably require greater assistance and therefore require higher levels of support to be provided to them through the operation of the proposed Bill. To do otherwise would be manifestly unjust in our view.

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2. Counselling and Support provided for victims of child sexual assault under the Proposed Bill

Division 3 – Composition of Support

26 Composition of support—primary victims

(1) The support under the Scheme for which a primary victim of *an act of violence* is eligible comprises the following:

(a) approved counselling services with respect to that **act of violence**,

As outlined above, we submit that amendments be made that provide for multiple claims where there are multiple offenders. It is unacceptable in every sense that the composite of all ‘acts of violence’ committed by multiple offenders against a single victim be treated as ‘related acts’ of violence and therefore qualifying only as a single ‘act of violence’.

Again, it is our position that each offender must be made both legally and financially responsible for his or her individual offending against the victim and that the victim is entitled to compensation and/or support in respect to each of his/her offenders.

Division 3 Composition of Support

30 Financial assistance

(1) Financial assistance under this Part may take the form of a grant, allowance, refund of expenditure, direct payment of an invoice, or any other form of financial assistance that the Commissioner may approve generally, or in a particular case or class of cases.

(3) The regulations may make provision for or with respect to any of the following:

(a) the particular kinds of expenses for immediate needs or economic loss for which a person may or may not be given financial assistance under this Part

Division 6 Applications for victims support

40 Time for lodging, and duration of, applications

(1) Except as provided by subsections (2) and (3), an application for financial support must be duly made within 2 years after the relevant act of violence occurred or, if the victim was a child when the act of violence occurred, **within 2 years after the day on which the child concerned turns 18 years of age**.

As outlined above, we submit that the majority of victims of child sexual assault will not qualify for this ‘Financial assistance’ given the majority do not disclose immediately or within 2 years of the victim reaching 18 years of age..

We submit that amendments be made such that where this is the case, this factor be taken into account when calculating financial entitlements under the Recognition Payments and access to support services for this cohort of child sexual assault victims is thus maintained.

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We accept the argument by Mr Brad Hazzard in the second reading of the Bill that *“While those amounts (as proposed under this Bill) are less than the maximum amounts of compensation available the Victims Compensation Scheme, they are in addition to financial assistance available for immediate needs and longer-term expenses. Most importantly, they will be able to be paid up-front rather than victims having to wait for two or three or more years. In general, therefore, victims will be better served by the new Victims Support Scheme, with its emphasis on up-front practical and financial assistance at a time when they need it most.”* However, we note that victims of child sexual assault do not fall into the ‘General’ category and will therefore be disproportionately & unacceptably disadvantaged by the provisions for access to support provided for in this proposed Bill.

We submit that amendments be made that would recognise victims of child sexual assault entitlements to comparatively equal amounts of compensation payable to other victims of crime who would likely benefit from the Financial Assistance component of this Bill.

As such we submit that an agreed value be struck in relation to the ‘Financial assistance’ payments and that this agreed value be added to the entitlements for compensation available under the Recognition payments as it applies to those victims of child sexual assault who forfeit their rights to ‘Financial assistance’ (by virtue of the dynamics of the crime type and for no fault of their own) and that this total compensation sum be available to them under the Recognition Payments in the form of entitlements to counselling and support services. This would be in addition to their lump sum Recognition Payments entitlements.

An example using the amounts provided might be \$40,000 in ‘financial assistance’ to be applied to ‘Recognition Payments’ and added to the value of entitlements to receive counselling and support services.

We note that Victim Assist Queensland sets a limit of \$75,000 for counselling services available to victims of child sexual assault. In Victoria the limit is 60,000 and in WA \$75,000. Therefore, in contrast the proposed changes to the NSW scheme would make it manifestly inadequate.

We ask that the value provided for access to professional support services by victims of crime more generally but specifically for victims of child sexual assault be raised by the NSW Government in line with other States. We note that only 22 counselling sessions are specifically provided for under the ‘Financial assistance’ provisions (Statute of Limitations of 2 years) and none are provided for under the ‘Recognition payments’ provisions which instead only involve the payment of small lump sum payments.

Division 5 Recognition payments

35 Categories of recognition payment

(2) A **category B recognition payment** is a payment given in respect of an **act of violence** of the following kinds:

(b) a sexual assault, indecent assault or attempted sexual assault involving violence that is one of a series of **related acts**.

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36 Recognition payments

(2) Only one recognition payment is payable to a single victim in respect of a series of **related acts of violence** against the victim.

(5) An application for a recognition payment in respect of an act of violence involving domestic violence, child abuse or sexual assault must be duly made within 10 years after the relevant act of violence occurred or, if the victim was a child when the act of violence occurred, **within 10 years after the day on which the child concerned turns 18 years of age.**

(6) Claims may continue to be made under an application that is duly made in respect of an **act of violence** until whichever of the following first occurs:

(a) the **expiration of the period of 5 years** after the application is made,

(b) the total **maximum amount of financial support** that the victim is eligible to receive under this Act in respect of that **act of violence** has been given.

Again our previous submissions in relation to definitions and meanings of 'act of violence' and 'related acts' apply. We reiterate our position that each offender must be made both legally and financially responsible for his or her individual offending against the victim and that the victim is entitled to compensation and/or support in respect to each of his/her offenders.

In addition, the issue of Statute of Limitations as it applies to 'Financial assistance' and 'Recognition payments' is a major concern for Bravehearts.

3. Statute of Limitations

We submit again, it is our position that each offender must be made both legally and financially responsible for his or her individual offending against the victim and that the victim is entitled to compensation and/or support in respect to each of his/her offenders.

In addition, we submit that extra entitlements for those who do not qualify for 'Financial assistance' be made available to victims of child sexual assault - as it applies individually to each offender - such that provision is made for adequate support services to be accessible by the victim of crime.

We also submit that amendments be made to remove the Statute of Limitations, at least for the Primary victims in cases of child sexual assault.

Bravehearts advocates more widely that Australian governments **review current statute of limitations legislation** to consider the profound and complex consequences of child sexual assault and to **rescind these restrictions on survivors of child sexual assault to civil recourse.**

When the *statute of limitations* is considered in the context of child sexual assault, it is often argued, due to the specific dynamics associated with this crime type, that the traditional balance between the rights of the

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alleged offender and the survivor, and those of society, should be altered in favour of the survivor and more particularly that no limitation period should apply.

It is Bravehearts' stance that in cases involving the sexual assault of children, the application of any limitation provisions to deny adult survivors access to redress is theoretically, practically and morally unjustifiable. **It is Bravehearts position that limitations to redress for survivors of child sexual assault should be abolished rather than introduced as proposed in this Bill.**

Survivors of child sexual assault face enormous barriers in disclosing. The impacts of child sexual assault typically mean that the victim does not disclose until they feel safe to do so, and this frequently does not occur until some time has passed, certainly past the 10 year Limitation period proposed in the *NSW Victims Rights and Support Bill 2013*.

In Queensland, the Project Axis survey found that of 212 adult survivors:

- 25 took 5-9 years to disclose it;
- 33 took 10-19 years; and
- 51 took over 20 years.

Where the perpetrator is a relative, research shows an even more prolonged process. A Criminal Justice Commission analysis of Queensland Police Service data found that of 3721 reported offences committed by relatives:

- 25.5% of survivors took 1-5 years to report the acts;
- 9.7% took 5-10 years;
- 18.2% took 10-20 years, and
- 14.2% took more than 20 years.

(Professor Ben Mathews, 2003)

Having been, in many cases, completely disempowered by an offender, the psychological consequences of child sexual assault have far reaching consequences: shame and guilt can often mean that survivors are unable to disclose until parents have passed away; many survivors are simply not ready to disclose as they may still be processing the psychological trauma and impacts of the sexual assault; and victims may experience post-traumatic stress disorder (essentially this means that a victim is aware of the harm they experienced but disassociate themselves from any reminders of the traumatic event, including litigation).

The relevance of these descriptions of the psychological effects is that even if a survivor is aware of the possibility of legal action they may decide that to take such action would revive traumatic memories and may even be destructive and therefore delay proceeding with the matter.

Identifying that it can take many years for victims to be ready to recognise and confront what happened to them, many States in America are currently reviewing statute of limitations laws, with some states such as Arkansas (<http://forward.com/articles/172412/new-york-may-ease-statute-of-limitations-for-decad/?p=all>) and Minnesota

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(http://www.twincities.com/crime/ci_23200129/minnesota-senate-passes-bill-removing-civil-statute-limitation)

eliminating

statutes of limitations for victims of child sexual assault.

As Australian society witnesses an increasing number of revelations of child sexual abuse, and as more cases come before the courts, the question of legal redress for adult survivors of abuse becomes ever more pressing. Due to the psychological sequelae of abuse, adult survivors are often unable to institute proceedings within statutory time limits, and case law demonstrates significant difficulties in obtaining an extension of time in which to proceed. The statutory time limits and the courts' application of extension provisions often operate to deny legal remedies to these plaintiffs. (Associate Professor Ben Mathews, 2003)

4. Financial issues & Court ordered Compensation

Bravehearts understands and sympathises with the reality of a lack of funds to meet the current demand of compensation entitlements of victims of crime. We understand that 'cost blowouts' and 'a growth in demand' are an issue for concern for governments everywhere in this financial climate, however, we do not believe that survivors of child sexual assault should be disproportionately targeted and penalised by changes to regulations specifically targeted at limiting financial exposure to assisting victims of child sexual assault.

We recognise this proposed Bill will reduce the cost of compensating victims of crime. It is untrue to argue that the motivation behind these changes is to benefit victims of crime. It is clearly to save money albeit in a way that has the least impact on general victims of crime, provide immediate support services and target the use of financial resources to provide for the needs of victims of crime.

We also understand and agree with the focus on providing counselling to victims of crime. We would point out however that in most instances it is not just counselling that is required but also advocacy and support. Reducing their financial compensation bulk payment can reduce their capacity to access these services.

Recovery of victims support payments from Offenders

Part 5 Recovery of victims support payments from Offenders

Division 2 Restitution by offenders

59 Commissioner's discretion to make provisional order for restitution by offender

(1) If the Commissioner is of the opinion that, before or after an approval for the giving of financial support or making of a recognition payment is given, a person has been convicted of a relevant offence, the Commissioner may make a provisional order for restitution against the person.

(2) A provisional order may not be made against a person if:

(a) 2 years or more have elapsed since:

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- (i) the end of the period in which a claim may be made under an application for victims support under section 40 (6), or
- (ii) the date on which the person was convicted of the relevant offence, whichever is the later, or

Bravehearts support the provision for 'Restitution by offenders' however we submit the consideration of amendments to 59 (2) (a) which would remove the Statute of Limitation – the 2 year limit in ordering Restitution of both the Financial support and Recognition Payments to the State in matters of child sexual assault in line with our proposed amendments to 40 (1)..

60 Commissioner's discretion to make provisional order for restitution by other person

(1) If the Commissioner is of the opinion that a person against whom a provisional order has been made under section 59 has disposed of property as part of a scheme for the purpose of avoiding a liability (whether actual or potential) under this Division, the Commissioner may make a provisional order for restitution against any person:

(a) who was a party to the scheme, and

(b) who obtained property under the scheme without giving sufficient consideration.

(3) A provisional order may not be made under this section if 2 years or more have elapsed since the provisional order on which it is based was made.

(5) The total amount that may be recovered under an order under this section and under the order under section 59 on which it is based is not to exceed the amount payable under the order under section 59.

Provisions to deal with those who would seek to hide assets and in other ways attempt to avoid financial loss as a result of these provisions is applauded.

Part 6 Compensation awarded by court

94 Directions for compensation for injury

(1) A court that convicts a person of an offence may (on the conviction or at any time afterwards), by notice given to the offender, direct that a sum **not exceeding \$50,000** be paid out of the property of the offender to any:

(a) aggrieved person, or

(b)aggrieved persons in such proportions as may be specified in the direction, by way of compensation for any injury sustained through, or by reason of, the offence or any other offence taken into account (under Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*) when sentence was passed on the offender for that offence.

(2) A direction for compensation may be given by a court on its own initiative or on application made to it by or on behalf of an aggrieved person.

95 Restrictions on court's power to give directions for compensation for injury

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(1) A direction for compensation under this Division must not be given in respect of the conviction of a person for an offence if the aggregate of the sum specified in the direction and of all sums specified in a direction for compensation previously given under this Division:

(a) **on the conviction of any other person for that offence, or**

(b) **on the conviction of that or any other person for a related offence, exceeds \$50,000.**

(3) For the purposes of this section, an offence is **related** to another offence if:

(a) **both of the offences were committed against the same person, and**

(b) **in the opinion of the court, both of the offences were committed at approximately the same time or were, for any other reason, related to each other.**

However, an offence is not related to any earlier offence in respect of which a direction for compensation has been given if it is committed after the direction was given.

97 Directions for compensation for loss

(1) A court that convicts a person of an offence may (on the conviction or at any time afterwards), by notice given to the offender, direct that a specified sum be paid out of the property of the offender to any:

(a) aggrieved person, or

(b) aggrieved persons in such proportions as may be specified in the direction, by way of compensation for any loss sustained through, or by reason of, the offence or, if applicable, any further offence that the court has taken into account under Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999* in imposing a penalty for an offence for which the offender has been convicted.

(2) A direction for compensation may be given by a court on its own initiative or on an application made to it by or on behalf of the aggrieved person.

99 Factors to be taken into consideration

In determining whether or not to give a direction for compensation and in determining the sum to be paid under such a direction, the court must have regard to the following:

(b) **any amount which has been paid to the aggrieved person or which the aggrieved person is entitled to be paid by way of damages awarded in civil proceedings in respect of substantially the same facts as those on which the offender was convicted.**

The NSW Attorney General is to be congratulated for the provisions in the proposed Bill which allow the Court, in which the offender has been convicted and at that same time, to be able to direct compensations payments by the convicted offender directly to the victim/s and also restitution payments to the State.

Logically this is the most cost effective and just way to deal with these matters given it is at this point that the offender's culpability has been established.

Clearly it is far more expedient, humane and cost effective to deal with the issue of victim compensation at the same time. This in itself will reduce the impact of the growing demand and cost blowouts relating to

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victims of child sexual assault crime compensation costs being experienced by government and redirect that burden directly to those who are responsible. Not only will this reduce the State exposure to the financial burden to child sexual assault compensation costs but importantly, it will alleviate the need for victims of crime to pursue separate civil actions to attain compensation and therefore alleviate the trauma on victims exponentially.

We also applaud the inclusion of the ability for victims (aggrieved persons) to be able to apply to the Court for same at the time of sentencing – Clause 94(2) & 97 (2).

Likewise, provisions to deal with those who would seek to hide assets and in other ways attempt to avoid financial loss as a result of these provisions is applauded - Clause 60.

We know from experience that the threat of financial loss can act as a far greater deterrent to many individual offenders and institutions than any other penalty that could be imposed.

As outlined above , we submit amendments be made to 94 (1) that would remove the limitation of \$50,000 and submit for a scale reflecting that which might guide the Civil Courts in determining the amount of compensation payable by the offender to the victim (as indicated in Clause 99 (b)). We understand the \$50k limitation of payment to the State (restitution) given this is the current upper limit payable by the State to the victim but this same rationale should not, in our submission, apply to payments directly to the victim by the offender.

Further, as outlined above , we submit amendments be made to Clause 95 (1) (b) to reflect previous submissions for amendments to definitions and meanings of 'related offence' and 'acts of violence' as they relate to multiple offenders perpetrating against individual victims of child sexual assault.

It is our position that each offender must be made both legally and financially responsible for his or her individual offending against the victim and that the victim is entitled to compensation and/or support in respect to each of his/her offenders.

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Attachment A: Jurisdictional Comparisons

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Upper age limit: 12 months from the date of incident. May apply for an extension of time providing a report to the Police is made.

Legislation: Section 27, *Criminal Injuries Compensation Act 1983*

s27 Application for financial assistance

(1) An application must—

(a) be in writing, supported by a statutory declaration; and

Note The Statutory Declarations Act 1959 (Cwlth) applies to the making of statutory declarations under ACT laws.

(b) be accompanied by a copy of—

(i) any relevant medical report; and

(ii) any relevant statement made to a police officer; and

(iii) any document showing the receipt of an amount payable under another law in relation to the relevant injury or property damage, or that is relevant to a claim for such a payment; and

(iv) any document showing the receipt of any damages for the relevant injury or property damage, or that is relevant to a claim for such damages; and

(v) if special assistance is applied for by a primary victim—a brief statement of any assistance obtained from the victims services scheme, certified as accurate by the commissioner under the Victims of Crime Act 1994, or, if the victim is physically incapable of benefiting from the scheme, a statement explaining why the victim is so incapable.

Note If a form is approved under s 73 (Approved forms) for an application, the form must be used.

(2) An application, together with the required statutory declaration and each accompanying document, must be filed in the Magistrates Court within 12 months after the day when the relevant injury or property damage was sustained.

(3) The Magistrates Court may, on application made at any time (whether before or after the end of the period mentioned in subsection (2)), extend the time for the filing of an application if the court considers it just to do so.

(4) Within 14 days after an application is filed, the registrar must—

(a) forward a copy of the application, statutory declaration and each accompanying document to the government solicitor; and

(b) by written notice to the person for whom financial assistance is sought (or to the person making the application, if that is a different person) and to the government solicitor, fix a date, time and place for deciding the application

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New South Wales:

Previous Legislation: Section 26, *Victims Support and Rehabilitation Act 1996*

s26 Time for lodging applications

(1) An application for statutory compensation must be duly lodged within 2 years after the relevant act of violence occurred or, in the case of a family victim, within 2 years after the death of the primary victim.

(2) An application that is lodged out of time may be accepted with the leave of the Director.

(2A) The Director must not give leave for the acceptance of an application that is lodged out of time if:

- (a) the application is for Victims Assistance, or
- (b) except as provided by subsection (2B), the applicant is a family victim of the relevant act of violence.

(2B) The Director may give leave for the acceptance of an application that is lodged out of time by or on behalf of a family victim if the Director is satisfied that, on the date on which the application was lodged:

- (a) the family victim was under 20 years of age, or
- (b) no more than 2 years had elapsed since it was established (whether or not by a court) that the primary victim through whom the family victim's claim has been made died as a direct result of the relevant act of violence.

(2C) However, the Director must not give leave under subsection (2B) if a total amount of \$50,000 by way of statutory compensation has been awarded in respect of the relevant act of violence to one or more of the following:

- (a) the primary victim,
- (b) any person whose claim was made through that primary victim as a family or secondary victim,
- (c) any person whose claim was made under section 33A in respect of the funeral expenses of that primary victim.

Note: \$50,000 is the maximum amount that the primary victim of an act of violence and any other victims claiming through that victim are together eligible to receive. (See section 19 (3). See also sections 16 (1) and 33A (5).)

(3) The following policies apply to the giving of leave by the Director for the acceptance of an application lodged out of time:

- (a) leave should not be given unless the applicant establishes that there is good reason to do so,
- (b) however, leave should be given in cases of sexual assault, domestic violence or child abuse unless the Director is satisfied that there is no good reason to do so,
- (c) leave should not be given merely because the applicant is unaware of the time within which applications should be lodged,
- (d) the matters taken into account under section 30 (2) for the purpose of determining whether an act of violence was reported to a police officer within a reasonable time should also be taken into account for the purpose of determining whether there is a good reason for giving leave.

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Northern Territory:

Upper age limit: Two years from the date of the offence. Extended time available if victim can provide records substantiating assault

Legislation: Section 31, *Victim of Crimes Assistance Act 2006*

s31 Time limit for lodging application

- (1) An application for an award must be made:
 - (a) for an application relating to a compensable violent act – within 2 years after the occurrence of the violent act; or
 - (b) for another application – within 2 years after the occurrence of the injury or death to which the application relates.
- (2) However, the Director may accept an application made after the expiry of the time limit (a late application) if the Director considers the circumstances justify it.
- (3) In deciding whether to accept a late application, the Director must have regard to the following matters:
 - (a) whether the injury or death occurred as a result of sexual assault, domestic violence or child abuse;
 - (b) the age of the applicant at the time of the violent act;
 - (c) whether the offender was in a position of power, influence or trust in relation to the applicant;
 - (d) any mental incapacity of the applicant;
 - (e) whether the delay in making the application will affect the assessor's ability to make a proper decision;
 - (f) whether the violent act was reported to a police officer within a reasonable time after it occurred or at any time before the application is made.
- (4) If the Director refuses to accept a late application, the Director must give the applicant a notice of the refusal including the following information:
 - (a) the reasons for the decision;
 - (b) details about the applicant's right to appeal against the decision.

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Bravehearts Position Statement



Queensland

Upper age limit: 3 years from the date of the offence. May apply for extended time limit.
Legislation: Section 54, *Victims of Crime Act 2009*

s54 Time limit

- (1) An application for victim assistance for an act of violence must be made within 3 years after—
- (a) the act of violence happens; or
 - (b) for an application by a related victim—the death of the primary victim of the act; or
 - (c) for a victim who is a child—the day the child turns 18.
- (2) The scheme manager may, on application by a person, extend the time for the person making an application for victim assistance if the scheme manager considers it would be appropriate and desirable to do so, having regard to the following—
- (a) the person's age when the act of violence was committed;
 - (b) whether the person has an impaired capacity;
 - (c) whether the person who allegedly committed the act of violence was in a position of power, influence or trust in relation to the person;
- Examples of persons who may be in a position of power, influence or trust in relation to a person— a person's parent, spouse or carer*
- (d) the physical or psychological effect of the act of violence on the person;
 - (e) whether the delay in making the application undermines the possibility of a fair decision;
 - (f) any other matter the scheme manager considers relevant
- (3) The scheme manager must give a person who applies for an extension of time under subsection (2) notice of the scheme manager's decision on the application.
- (4) If the scheme manager decides not to extend the time for making an application for victim assistance, the notice must state the following—
- (a) the decision;
 - (b) the reasons for the decision;
- Note— See the Acts Interpretation Act 1954, section 27B (Content of statement of reasons for decision).*
- (c) the internal review details for the decision.

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South Australia

Upper age limit: 3 years.

Legislation: Section 18, *Victim of Crimes Act 2001*

s18 Application for compensation

- (1) A person who is eligible to claim statutory compensation may, within the initial application period, apply for statutory compensation.
- (2) The initial application period is—
 - (a) for an application by a victim—3 years after the commission of the offence;
 - (b) for an application arising from the death of a victim—12 months after the date of death.
- (3) An application is to be made in the first instance to the Crown Solicitor.
- (4) The following requirements apply to and in relation to the application:
 - (a) the application must—
 - (i) contain the information required by the regulations; and
 - (ii) be accompanied by any medical reports relevant to the injury in the possession of, or accessible to, the claimant; and
 - (iii) be accompanied by any further documents required under the regulations; and
 - (b) the information contained in an application must be verified by statutory declaration; and
 - (c) a copy of the application must be served on the offender unless—
 - (i) the identity of the offender is unknown; or
 - (ii) the Crown Solicitor exempts the applicant from this requirement on the ground that the whereabouts of the offender are unknown and cannot be readily ascertained.
- (4a) If—
 - (a) the claimant is a child or other person who is not of full legal capacity; and
 - (b) the Crown Solicitor and the person acting on behalf of the claimant propose to settle the claim for statutory compensation by agreement; and
 - (c) an application is made to a court for an order or orders in respect of that agreement, the offender must not be joined as a party to the proceedings before the court on that application.
- (5) If a claim for statutory compensation has not been settled by agreement between the Crown Solicitor and the claimant within 3 months after the application is made or a longer period agreed between the Crown Solicitor and the claimant (the "period for negotiation"), the claimant may apply to the court for an order for statutory compensation.
- (6) An application to the court under subsection (5) must be made on or before the later of the following:
 - (a) the end of the initial application period; or
 - (b) the end of the period of 6 months that follows immediately after the end of the period for negotiation.
- (7) The court may, for any proper reason, extend a period of limitation fixed by this section.

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Tasmania:

Upper age limit: 3 years from the date of incident. In under 18 victim has 3 years from the date by turn 18 years. Can apply for extended time which is normal in cases of historic cases of child sexual assault.

Legislation: Section 7, *Victims of Crime Assistance Act 1976*

s7. Procedure for determining applications for awards

(1) An application for an award shall be made to the Commissioner, and regulations under this Act may prescribe the manner in which the application is to be made, and the particulars to be furnished therewith, and may require the application to be accompanied by such statutory declaration as may be prescribed.

(1A) Subject to subsections (1B) and (1C), an application for an award is to be made within 3 years after the date of the relevant offence.

(1B) If a primary victim, secondary victim or related victim is less than 18 years old at the time of the relevant offence, his or her application for an award must be made no later than 3 years after he or she turns 18.

(1C) The Commissioner may extend the 3-year period referred to in subsection (1A) or (1B) if satisfied that there are special circumstances which justify the extension.

(2) In the consideration of an application for an award, the Commissioner is entitled to inform himself as he sees fit.

(3) Proof of conviction of any person for an offence shall, in relation to any application for an award, be taken to be conclusive of the fact that the offence has been committed, unless an appeal against the conviction is pending or a new trial has been directed.

(4) A person applying for an award under this Act, whether for himself or on behalf of some other person, is entitled to appear before and be heard by the Commissioner either personally or by some person approved by the Commissioner.

(5) In his consideration of an application for an award to any person the Commissioner may give directions requiring that person to appear before him in person and he may refuse to make the award if, without reasonable excuse, there is a failure or refusal to comply with the directions.

(6) If he thinks it convenient to do so the Commissioner may, at any time, adjourn his consideration of an application for an award, and, in particular, may adjourn his consideration of such an application while legal proceedings are contemplated or being taken in relation to the criminal conduct to which the application relates.

(7) Without prejudice to the provisions of subsection (6), the Attorney-General may, at any time, apply to the Commissioner for the adjournment of the consideration by the Commissioner of an application for an award on the ground that a prosecution for an offence arising out of the conduct to which the application relates has been, or is about to be, brought; and on such an application, the Commissioner may adjourn the hearing for such period or in such manner as he thinks proper.

(8) An application for an award is to be determined within 3 years of the date of the application.

(9) The Commissioner may extend the 3-year period referred to in subsection (8) if satisfied that there are special circumstances which justify the extension.

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(10) Where the Commissioner makes an award in terms consented to by the applicant, the applicant is nevertheless entitled to be heard by the Commissioner in respect of a matter other than the amount of the award.

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Victoria

Upper age limit: Two years from the date the incident occurred. Can apply for extended time limit which is usual in cases of historic child sexual assault.

Legislation: Section 29, *Victims of Crime Assistance Act 1996*

s29 Time for making application

- (1) An application must be made within 2 years after the occurrence of the act of violence or, in the case of an application by a related victim or a person who has incurred funeral expenses, within 2 years after the death of the primary victim.
- (2) The Tribunal must strike out an application made out of time unless it considers that, in the particular circumstances, the application ought not to be struck out.
- (3) In determining whether to further hear and determine an application made out of time, the Tribunal must have regard to—
 - (a) the age of the applicant at the time of the occurrence of the act of violence;
 - (b) whether the applicant is intellectually disabled within the meaning of the Disability Act 2006 or mentally ill within the meaning of the Mental Health Act 1986;
 - (c) whether the person who committed, or is alleged by the applicant to have committed, the act of violence was in a position of power, influence or trust in relation to the applicant;
 - (d) the physical or psychological effect of the act of violence on the applicant;
 - (e) whether the delay in making the application threatens the capacity of the Tribunal to make a fair decision;
 - (f) whether the applicant was a child at the time of the occurrence of the act of violence and the application was made within a reasonable time after he or she reached the age of 18;
 - (g) all other circumstances that it considers relevant.

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Western Australia

Upper age limit: 3 years after the date of the offence. Can apply for extension of time.

Legislation: Section 9, *Criminal Injuries Compensation Act 2003*

s9 Time limit for making a compensation application

(1) A compensation application must be made within 3 years after the date on which —

(a) the offence to which it relates was committed; or

(b) if it relates to more than one offence, the last of them was committed.

(2) Despite subsection (1), an assessor may allow a compensation application to be made after the 3 years if he or she thinks it is just to do so and may do so on any conditions that he or she thinks it is just to impose.

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