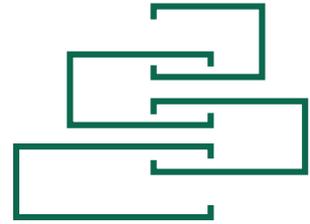


# Homeless Persons' Legal Service

Legal help for the homeless and those at risk of homelessness  
A joint initiative of the Public Interest Law Clearing House Inc  
and the Public Interest Advocacy Centre Ltd



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## REVIEW OF NSW'S VICTIMS COMPENSATION SCHEME

**30 April 2012**

Anastasia Coroneo  
Senior Solicitor  
Homeless Persons' Legal Service NSW  
Public Interest Advocacy Centre

# Introduction

## Homeless Persons' Legal Service

In 2004, following an extensive consultation process, the Homeless Persons' Legal Service (**HPLS**) was established by the Public Interest Advocacy Centre (**PIAC**) and the Public Interest Law Clearing House (**PILCH**) NSW.<sup>1</sup> HPLS is largely funded by the NSW Public Purpose Fund with the support of the NSW Attorney General.

HPLS provides free legal advice and ongoing representation to people who are homeless or at risk of homelessness. It operates ten clinics on a roster basis at welfare agencies in the greater Sydney area.<sup>2</sup> These agencies provide direct services, such as food and accommodation, to people in housing crisis. The clinics are co-ordinated by HPLS and staffed by lawyers acting pro bono from PILCH members.<sup>3</sup> Since its launch in May 2004, HPLS has provided advice to over 4,500 clients. During 2010-2011, HPLS helped 738 clients.

This submission provides case studies from HPLS casework. These case studies have been 'de-identified' so as not to disclose the identity of the people referred to.

HPLS is grateful to the pro bono assistance of Allens Arthur Robinson in preparing this submission. PIAC is solely responsible for the content of this submission.

## PIAC and HPLS's work on Review of NSW's Victims Compensation Scheme

The Homeless Persons Legal Service is grateful for the opportunity to make this submission regarding the NSW Victims Compensation Scheme Review.

## Summary of recommendations

### **Recommendation 1**

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*HPLS recommends that the review of the Victims Compensation Scheme accommodate the needs of people experiencing homelessness, given that these people face a very high likelihood of falling victim to violence and lack the other resources to cope with this. HPLS recommends that the Scheme retain sufficient flexibility to ensure that homeless people are able to reasonably access assistance under the Scheme.*

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<sup>1</sup> Further information about PIAC and PILCH NSW is provided as Appendix A to this document.

<sup>2</sup> The clinics are hosted by the following welfare agencies: Edward Eagar Lodge (Wesley Mission), Matthew Talbot Hostel (St Vincent de Paul Society), Newtown Mission in Partnership with Newtown Neighbourhood Centre, Norman Andrews House (Uniting Care), Parramatta Mission (Uniting Church), Streetlevel Mission (Salvation Army), The Station, Vincentian House (St Vincent de Paul Society), Wayside Chapel (Uniting Church), and Women's and Girls' Emergency Centre. The City of Sydney also hosts the monthly Woolloomooloo Integrated Services Hub, which HPLS attends.

<sup>3</sup> The following PILCH NSW members provide lawyers on a *pro bono* basis to HPLS to provide legal services through the clinics: Allens Arthur Robinson, Baker & McKenzie, Corrs Chambers Westgarth, Dibbs Barker, HWL Ebsworth, Gilbert + Tobin, Henry Davis York, Legal Aid NSW, Minter Ellison, Norton Rose and Thomsons Lawyers.

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**Recommendation 2**

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*Lump sum payments assist clients in gaining a sense of acknowledgement and closure for the violent act. If there is concern that lump sum payments are not being spent in accordance with their intended purpose of providing support and rehabilitation, HPLS recommends that payment by instalments could be a better option, in conjunction with closer case management and co-ordination of services.*

*HPLS recommends increased rehabilitation and support services for victims of violent crimes. However, HPLS recommends that in order to be effective, services be intensively and proactively case managed by Victims Services in an “assertive outreach” service delivery format.*

*HPLS is aware that increasing the capacity of victims services to this extent would necessitate cuts elsewhere in the budget. HPLS suggests that one way of doing so would be to reserve payments of lump sum compensation to cases where the applicant has suffered a permanent injury or ongoing impairment (including Category 1 or 2 psychiatric injury), or to limit the categories of violent crimes that attract a compensation payment (eg, restrict to sexual assault). Alternatively, HPLS suggests that eligibility to receive lump sum payments for non-permanent injuries could include a means test.*

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**Recommendation 3**

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*HPLS recommends that provision be made in the Victims Compensation Scheme for emergency accommodation and transport in appropriate circumstances, to mitigate the ongoing trauma and effects of a violent act. HPLS recommends that assistance with finding and paying for emergency accommodation should be provided by Victims Services as a separate service, rather than being bundled up generally within an “interim” compensation payment.*

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**Recommendation 4**

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*HPLS recommends against the imposition of a 20-year ‘final limitation’ period. However, in the event that such a provision is adopted is imposed, HPLS strongly recommends that some guided discretion should be maintained to grant extensions in exceptional cases.*

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**Recommendation 5**

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*HPLS recommends that the existing discretions in the Act regarding limitation periods (s 26) should be retained.*

*To minimise problems with late applications, HPLS recommends that better access to Victims Services should be provided at early and obvious points of contact, by providing outreach workers in hospitals and police stations.*

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**Recommendation 6**

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*HPLS recommends that the inclusive factors and ultimate discretion provided in s 30(2) regarding reports to police should not be altered. HPLS does not believe a police report should be a mandatory precondition to eligibility to the scheme, as it is in the UK jurisdiction.*

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**Recommendation 7**

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*HPLS recommends that the existing discretions in s 30 of the Act be retained. HPLS strongly recommends against medical records being a mandatory pre-requisite to seeking victims compensation as there may be reasons why a homeless person has not sought medical attention, and there may be other forms of evidence that can establish nature and extent of injury.*

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**Recommendation 8**

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*Any restrictions to assistance from Victims Services on the basis of previous (or future) unrelated criminal convictions would unfairly discriminate against homeless people.*

*HPLS recommends that no other criminal history of the victim should be taken into account in reducing or offsetting the award, beyond what already exists in ss 30 and 31 of the current Act.*

## **Protection of vulnerable victims**

### **Prevalence of violence in our client base**

HPLS accepts that independent assessment of the Victims Compensation Scheme has found that the Scheme is currently financially unsustainable and that a range of significant changes should be considered by the NSW Government.

On the basis of our experience providing legal advice and assistance to people experiencing homelessness, HPLS is aware of the importance of the Victims Compensation Scheme – especially for HPLS’s client group. People experiencing homelessness are disproportionately represented among victims of violent crime; the difficulty in dealing with this experience is exacerbated by the fact that homelessness frequently leaves one with few social supports or financial means. In view of this, any changes to the Scheme should be made with caution and, in particular, the Scheme should ensure that it provides meaningful assistance to people experiencing homelessness.

The level of violence experienced by homeless people is truly shocking. A 2007 study undertaken in Sydney found that 48% of 106 homeless respondents had suffered at least one episode of violence in the previous year.<sup>4</sup> By contrast, among the housed population, 5% had been the victim of violence within that same period of time.<sup>5</sup>

The *Rough Living, Surviving Violence and Homelessness* report, published by UTS and PIAC in 2010, documented the considerable links between violence, trauma and homelessness, and detailed how a range of services (including specialist homeless services) do not understand or seek to address the trauma experienced by these individuals. The Report also examined the impact of this service failure on the individuals interviewed in the study. The Report advocated that services should become better at recognising the effects of violence and trauma on homelessness and perpetuation of that cycle.<sup>6</sup>

Any scaling back of the Victims Compensation Scheme will have an impact on our clients. 13% of HPLS’s current open case files (29 out of 224) relate to Victims Compensation applications. In the last 12 months, HPLS advised in 563 matters, 23 of which related to Victims Compensation. 17 of these became ongoing casework files.

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<sup>4</sup> Study conducted by Larney S, Conroy, E, Mills, K, Burns, L and Teesson, M 2009, *Factors associated with violent victimisation among homeless adults in Sydney, Australia*, Australian and New Zealand Journal of Public Health, vol. 33, no 4, pp. 347-51 at p. 349, referred to by Catherine Robinson, *Rough Living, Surviving Violence and Homelessness*, 2010 at p. 15. Available at <http://www.piac.asn.au/publication/2011/01/rough-living>

<sup>5</sup> Figure recorded by the NSW Crime and Safety Survey (Australian Bureau of Statistics 2007, cat. No. 4509.1 p.3).

<sup>6</sup> Catherine Robinson, *Rough Living, Surviving Violence and Homelessness*, 2010 at p. 15. Available at <http://www.piac.asn.au/publication/2011/01/rough-living>

## **Recommendation 1**

*HPLS recommends that the review of the Victims Compensation Scheme accommodate the needs of people experiencing homelessness, given that these people face a very high likelihood of falling victim to violence and lack the other resources to cope with this. HPLS recommends that the Scheme retain sufficient flexibility to ensure that homeless people are able to reasonably access assistance under the Scheme.*

## **Meeting the Objectives of the Scheme**

### **Compensation payments vs Victims Services**

#### **Lump Sum payments**

While many of our clients apply for interim payments, and 10 hours of free counseling through the Scheme, it is our experience that most clients seek to access the scheme to apply for lump sum payments for injuries. HPLS assists in gathering evidence and making submissions as to what injuries have been sustained, and determining whether the threshold has been reached.

Generally speaking, clients have been satisfied to receive a lump sum through the Scheme. While HPLS does not collect information about how recipients ultimately spend this money, there is no question that, for HPLS clients who are of limited financial means, this money is hugely significant and has real potential to assist them in coping with their experience.

#### **Case study: Lump Sum payments received with gratitude and sense of closure**

An HPLS client obtained 10 hours of free counseling and received an award of approximately \$17,000 for a Category 1 psychological injury sustained from a deprivation of liberty (kidnapping) and assault by her ex-partner. She had been unable to work for a long period following the assault as a result of her ongoing psychological injury. She also received a modest amount from Victims Services for her loss of income.

She stated that she was grateful to receive the award and to receive an acknowledgement of the trauma she had experienced. At the time of receiving the award, she said that she felt she could now move on with her life and that the money she had received would assist her to do so.

HPLS is aware of Paul Sheehan's timely opinion piece citing information from a police insider that drug circles and criminals are using the Victims Compensation Scheme to fund drug debt.<sup>7</sup> We endorse the Attorney General's focus on maintaining the financial probity and efficiency of the Scheme. However, HPLS is aware of no evidence that drug addicts or criminals are deliberately submitting to being shot in the leg by their creditors as a means of obtaining a victims' compensation payment to pay their debt. There is no evidence that any such practice goes beyond a few isolated cases that Mr Sheehan has obtained through his sources. The Scheme's

<sup>7</sup> Sheehan, P "Crooks play the victim for cash – it's a crime", Sydney Morning Herald, 30 April 2012. <http://www.smh.com.au/opinion/crooks-play-the-victim-for-cash--its-a-crime-20120429-1xspx.html#ixzz1tU4ujSdK>

schedule of injuries is highly unlikely to make such an approach financially rewarding and the Act already has provision to exclude payment of compensation in circumstances where the victim's behavior (including past criminal activity) contributed to the injury, and where the victim participated, encouraged or otherwise gave assistance to any person in the commission of the act of violence.<sup>8</sup>

While HPLS supports a prudent approach to the deployment of funds in the Scheme, any further measures designed to address the problem suggested by Mr Sheehan should be very carefully tailored to ensure that they do not have unintended negative consequences in respect of vulnerable and deserving victims.

### **“Support and Rehabilitation”**

HPLS submits that the objectives of the Act would be best achieved by a greater emphasis on “support and rehabilitation” than is provided by the current scheme. It would be beneficial for our clients to have the opportunity to be linked in with services to assist them with mental health, drug addiction, housing and other social services. However, it is also HPLS's general experience that homeless clients have difficulty engaging and staying with services without intensive support.

HPLS is mindful of the capacity constraints of many services and the limitations in their mode of service provision. HPLS would support the establishment of a designated unit within Victims Services to case manage payments of assistance and co-ordinate the provision of necessary services, to ensure that the scheme is fulfilling its legislated purpose of assisting with support and rehabilitation of victims. We would strongly urge any such designated unit to be resourced to provide intensive assistance and assertive outreach work.

#### **Case Study: Need for greater coordination of service delivery and case management**

An HPLS client was the victim of an armed robbery at his workplace. He was subsequently diagnosed with severe post-traumatic stress disorder. His application to Victims Services has been put on hold until he finalises his lump sum claim for workers' compensation. He can only receive that lump sum payment once he reaches “maximum medical improvement”. His psychiatrist has formed the view that he has not reached this point and has recommended that he continue treatment sessions with his psychologist. However, he has not been attending those treatment sessions, and therefore both his workers' compensation lump sum claim and

<sup>8</sup> *Victims Support and Rehabilitation Act 1996 (NSW) Section s. 30* Reasons for not making award or for reducing amount of compensation payable  
(1) In determining whether or not to make an award of statutory compensation and in determining the amount of compensation to award, the compensation assessor must have regard to the following:  
(a) any behaviour (including past criminal activity), condition, attitude or disposition of the primary or secondary victim concerned that directly or indirectly contributed to the injury or death sustained by the victim,  
(b) whether the act of violence was reported to a police officer within a reasonable time,  
(b1) whether the act of violence was reported to a relevant health professional or practitioner, or a relevant agency,  
(c) whether that victim participated in the commission of the act of violence, encouraged another person to commit the act of violence or otherwise gave assistance to any person by whom the act of violence was committed

his victims compensation claim are at a stalemate.

### **Case Study: Need for more intensive support services**

HPLS is assisting a homeless man who was violently attacked by an unknown person while he was sleeping. He suffers from severe depression. On two occasions, HPLS lawyers have arranged counselling appointments for him with a counsellor allocated by Victims Services. Despite his lawyers advising him of the date, time and location of the appointments, he has not attended the appointments. He has not answered his phone when his lawyers have attempted to call him the day before to remind him of his next appointment.

### **Recommendation 2**

*Lump sum payments assist clients in gaining a sense of acknowledgement and closure for the violent act. If there is concern that lump sum payments are not being spent in accordance with their intended purpose of providing support and rehabilitation, HPLS recommends that payment by instalments could be a better option, in conjunction with closer case management and co-ordination of services.<sup>9</sup>*

*HPLS recommends increased rehabilitation and support services for victims of violent crimes. However, HPLS recommends that in order to be effective, services be intensively and proactively case managed by Victims Services in an “assertive outreach” service delivery format.*

*HPLS is aware that increasing the capacity of victims services to this extent would necessitate cuts elsewhere in the budget. HPLS suggests that one way of doing so would be to reserve payments of lump sum compensation to cases where the applicant has suffered a permanent injury or ongoing impairment (including Category 1 or 2 psychiatric injury), or to limit the categories of violent crimes that attract a compensation payment (eg, restrict to sexual assault). Alternatively, HPLS suggests that eligibility to receive lump sum payments for non-permanent injuries could include a means test.*

### **Emergency accommodation and transport**

HPLS submits that it would be very beneficial for the Victims Compensation Scheme to provide for emergency accommodation and transport in appropriate circumstances following violent acts – as is the best practice in some other jurisdictions. For example, in Victoria, financial assistance may be awarded for safety-related expenses that are reasonably likely to be incurred in the future.<sup>10</sup> These include relocation costs and the costs of emergency accommodation. In Queensland, a victim may be eligible for “special assistance in relation to an act of violence”,<sup>11</sup> which can cover the costs associated with emergency accommodation in limited circumstances (such as domestic violence cases).

### **Case Study: Need for emergency accommodation following an act of violence**

HPLS assisted a man who was stabbed multiple times at a residence where he was couch-surfing. The perpetrator was charged with attempted murder. The attack caused not only

<sup>9</sup> The Victorian Victims Compensation scheme allows for payment by instalments to the applicant themselves or to another person (eg, counsellor): *Victims of Crime Assistance Act 1996* (Vic) s 55(1).

<sup>10</sup> *Victims of Crime Assistance Act 1996* (Vic) s 8(2)(e).

<sup>11</sup> *Victims of Crime Assistance Act 2009* (Qld) s 39(h).

life-threatening physical injuries, but also post-traumatic stress disorder. He had nowhere to stay after his assault and didn't feel safe anywhere. The assault had caused him to lose trust for other people and his mental health suffered. He was eventually asked to leave a crisis accommodation service after making threats to harm others, and he had nowhere else to go.

#### **Case Study: Need for emergency accommodation for victims of domestic violence**

HPLS assisted a man who suffered domestic violence by his female partner over a period of several years. The abuse was physical and also involved stalking and harassment, and several (but not all) incidents had come to the attention of the police. When the man finally left the abusive relationship, he was rendered homeless. As a result, he lost a number of useful documents and records, which would have been necessary to support his victims compensation application. He is now in the process of gathering evidence, such as payslips and letters from former employers about time taken off work to substantiate his claim for economic loss. Emergency accommodation and a place to store his belongings would have assisted him in a number of ways, including to retain the essential paperwork that he needed in support of his application to Victims Services.

#### **Recommendation 3**

*HPLS recommends that provision be made in the Victims Compensation Scheme for emergency accommodation and transport in appropriate circumstances, to mitigate the ongoing trauma and effects of a violent act. HPLS recommends that assistance with finding and paying for emergency accommodation should be provided by Victims Services as a separate service, rather than being bundled up generally within an "interim" compensation payment.*

## **Eligibility criteria**

HPLS does not support any further constriction of the eligibility criteria to the Scheme. Many of HPLS's clients do report the act of violence to police straight away, assist with prosecution of the offender, and seek prompt medical assistance and timely legal advice. However, for a variety of reasons (some wholly out of the control of our clients), many do not.

Many HPLS clients often have trouble satisfying the current requirements of the Scheme as they tend to live chaotic lives, are wary or anxious about dealing with the police, are unlikely to keep records, and have minimal knowledge of their rights and obligations under statutory schemes such as Victims Compensation. For those with serious underlying medical conditions, this can also make it difficult to navigate the Scheme's administrative arrangements.

It is particularly difficult for many HPLS clients to meet the Scheme's current requirements in:

1. making applications within the two-year statutory time limit;
2. reporting matters to police and assisting with the prosecution of the offender;
3. obtaining medical records; and

4. attending hospital and follow-up appointments for assessment, treatment and stabilisation of their injuries.

## Limitation periods

### 20-year “final limitation” date

HPLS does not support the Chairperson’s recommendation in respect of the 20-year “final limitation” date. HPLS notes that no “final limitation” date exists in Victoria, Queensland, or the Northern Territory.

HPLS submits that exceptions to any proposed 20-year limitation period should be allowed in certain circumstances, such as when evidence of the violent act is still obtainable (through medical records, court records and/or police reports), where the person demonstrates ongoing impairment as a result of the violent act, or where exceptional personal circumstances justify the extension. HPLS submits that this would not place undue strain on Victims Services’ resources as the number of potential applicants in these categories would be very few.

### Links between childhood abuse and homelessness

HPLS notes the recent reported preliminary findings of the *Journeys Home Project*, conducted by the Melbourne Institute of Applied Economic and Social Research, commissioned by the Federal Government.<sup>12</sup>

That study has found that two-thirds of people in a national study of homelessness suffered physical or sexual violence as children or had been neglected or emotionally abused. About one-third had been sexually assaulted.<sup>13</sup>

HPLS submits that the far-reaching and long-term effects of violence perpetrated upon children, manifesting in chronic homelessness in later life, should be recognised by the Victims Compensation Scheme. As the main objective of the Scheme is to provide support and rehabilitation for victims of crimes of violence, HPLS submits that the Victims Compensation Scheme should not create any further obstructions or restrictions to such victims in accessing the scheme. The essential problem of homelessness (not having stable accommodation) is frequently partnered with addiction, mental illness, and disengagement from services. In our experience, people experiencing homelessness have different priorities of need, which means that they struggle to address longer-term issues including legal matters.

HPLS strongly urges NSW not to follow the UK in intentionally restricting claims for childhood sexual assault that occurred within families before 1979.<sup>14</sup>

### **Recommendation 4**

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*HPLS recommends against the imposition of a 20-year ‘final limitation’ period. However, in the event that such a provision is adopted is imposed, HPLS strongly recommends that some guided discretion should be maintained to grant extensions in exceptional cases.*

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<sup>12</sup> [http://www.melbourneinstitute.com/journeys\\_home/](http://www.melbourneinstitute.com/journeys_home/)

<sup>13</sup> Horin, A “Abuse as a child linked to longer term homelessness”, Sydney Morning Herald, 19 April 2012. <http://www.smh.com.au/opinion/political-news/abuse-as-a-child-linked-to-longer-term-homeless-20120418-1x7hx.html#ixzz1sulkjKpr>

<sup>14</sup> Criminal Injuries Compensation Scheme (2008), paragraph 6.

## **General 2-year limitation period**

HPLS submits that current legislative provisions relating to the general two-year limitation period to lodge applications should be retained. HPLS does not support any removal of the existing discretions to grant extensions of time. Many clients who experience homelessness have suffered family breakdown and domestic violence. HPLS has assisted several clients to claim assistance for domestic violence injuries outside the two-year limitation period. Further, as stated above, the personal circumstances of people who experience homelessness may give rise to several good reasons why an extension under s 26 of the Act may be appropriate.

### **Case study: Why existing discretions regarding extensions to limitation period should be retained**

A homeless man sought legal advice about a number of matters, including victims compensation, a year after having had his hip broken in an assault by a group of people. After that initial consultation, the lawyers lost contact with him. Their letters to him were returned to sender. As a last attempt to find him, HPLS contacted Sentence Administration, who confirmed that he was in custody. HPLS then corresponded with the client in prison, assisting him to submit his form just within the two-year limitation period. He was subsequently awarded \$18,000 in compensation.

While this man was lucky to have made an initial inquiry and to have had a creative, proactive lawyer, others in similar circumstances may not be so fortunate.

### **Recommendation 5**

*HPLS recommends that the existing discretions in the Act regarding limitation periods (s 26) should be retained.*

*To minimise problems with late applications, HPLS recommends that better access to Victims Services should be provided at early and obvious points of contact, by providing outreach workers in hospitals and police stations.*

### **Reporting acts of violence to police within “reasonable time”**

There are many reasons why HPLS clients may not report an act of violence to police. Some of our clients have a poor relationship with police as a result of their own criminal history or activity. Other clients have reported that they do not think that the police take their complaints seriously, as violence is unfortunately a common event on the streets. Still others may not have known about the Victims Compensation scheme at the time, and the importance of reporting the act of violence to police as a prerequisite to accessing it.

### **Case Study: Difficulties in reporting acts of violence to police**

An HPLS client was assaulted in Sydney. His award was reduced on the basis that he delayed reporting the assault to police. On appeal, the client claimed the reason for the delay was because the first time he went to the police station to report the assault, the police told him to “bugger off”. He was successful in his appeal.

## **Recommendation 6**

*HPLS recommends that the inclusive factors and ultimate discretion provided in s 30(2) regarding reports to police should not be altered.<sup>15</sup> HPLS does not believe a police report should be a mandatory precondition to eligibility to the scheme, as it is in the UK jurisdiction.<sup>16</sup>*

### **Medical records and medical treatment**

Homeless people often have trouble obtaining their own medical records. This can be due to poor organisational skills and a different priority of needs. Some clients may not recall where they were treated for their injuries following a violent act, nor the precise nature of their injuries. There are instances where patients have absconded from hospital without a thorough diagnosis and treatment plan being implemented. This is often due to their decision-making skills being compromised by addiction or mental illness. In such cases, HPLS has had to seek evidence from other sources to establish the nature, cause and extent of the injury.

#### **Case Study: Limitations of medical records**

HPLS is assisting a man (Peter) who was assaulted in his sleep. Peter was unable to provide specific details about the injuries he sustained as a result of the violent act. He was admitted to hospital following the assault. The record states that a bystander reported that an unknown attacker had kicked and stomped on Peter's head while he was sleeping and had punched him several times. The medical record noted head and facial injuries. However, Peter absconded from hospital before any thorough or extensive testing so the medical records do not document the extent of his injuries.

## **Recommendation 7**

*HPLS recommends that the existing discretions in s 30 be retained.<sup>17</sup> HPLS strongly recommends against medical records being a mandatory pre-requisite to seeking victims compensation as there may be reasons why a homeless person has not sought medical attention, and there may be other forms of evidence that can establish nature and extent of injury.*

<sup>15</sup> *Victims Support and Rehabilitation Act 1996 (NSW) Section 30(2):* In determining whether a matter relating to a [victim](#) was reported to a police officer within a reasonable time, the compensation assessor may have regard to such matters as the assessor considers relevant, including the following:

- (a) the age of the [victim](#) when the [act of violence](#) is alleged to have occurred,
- (b) any intellectual or psychiatric disability to which the [victim](#) is subject,
- (c) the nature of the relationship between the [victim](#) and the person or persons by whom the [act of violence](#) is alleged to have been committed,
- (d) any fear of retaliation by any such person or persons to which the [victim](#) is subject,
- (e) the nature of any injury alleged to have been sustained by the [victim](#).

<sup>16</sup> UK Criminal Injuries Compensation Scheme (200\*) para 13(1)(a) and 13(1)(b).

<sup>17</sup> *Victims Support and Rehabilitation Act 1996 (NSW) s 30(1)* states:  
In determining whether or not to make an award of statutory compensation and in determining the amount of compensation to award, the compensation assessor must have regard to the following:  
...  
(b) whether the act of violence was reported to a relevant health professional or practitioner, or a relevant agency, ...  
(d) whether that victim failed to take reasonable steps to mitigate the extent of the injury sustained by the victim, such as seeking appropriate medical advice or treatment, or undertaking counselling, as soon as practicable after the act of violence was committed,  
(e) such other matters as the compensation assessor considers relevant.

## Criminal history

It is our experience that homeless people often have criminal histories. HPLS notes with concern that in Victoria and the UK, an assessor may restrict or reduce victims' compensation payments where the victim has a criminal history, including history of previous non-violent offences.<sup>18</sup> HPLS submits that non-violent criminal history should be an irrelevant consideration in administering this legislation, which is specifically established to assist victims of violent crime. Whether the victim has previously been convicted of offences (especially non-violent ones) is completely beside the point in this analysis.

Such an amendment would disproportionately impact on people who are homeless. The links between trauma, abuse, poverty, homelessness, addiction and minor criminal offending are all well recognised. Data gathered from the minor criminal matters conducted by the HPLS Solicitor Advocate in 2010-2011 showed that:

- 53% of clients disclosed that they had a mental illness
- 62% disclosed they had drug or alcohol dependency
- 76% said they had either mental illness or drug/alcohol dependency
- 38% disclosed they had both a mental illness and drug/alcohol dependency
- 45% indicated they had previously been in prison.

HPLS notes that the NSW legislation already has a provision for off-setting victims compensation awards where the victim themselves is the subject of a restitution order,<sup>19</sup> and where the victim's criminal conduct directly or indirectly contributed to their injury.<sup>20</sup> HPLS does not take issue with any of those provisions.

### **Recommendation 8**

*Any restrictions to assistance from Victims Services on the basis of previous (or future) unrelated criminal convictions would unfairly discriminate against homeless people.*

*HPLS recommends that no other criminal history of the victim should be taken into account in reducing or offsetting the award, beyond what already exists in ss 30 and 31 of the current Act.*

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<sup>18</sup> Victims of Crime Assistance Act 1996 (Vic) s.24 states that the Tribunal must have regard to any relevant circumstances in determining whether to award, and what amount, including any past criminal activity of the victim and the number and nature of any findings of guilt or convictions; Criminal Injuries Compensation Scheme (UK) (2008) para 13(1), whereby the applicant's character as shown by their criminal convictions, or by other evidence, makes it inappropriate that a full award or any award be made.

<sup>19</sup> *Victims Support and Rehabilitation Act 1996* (NSW) s31.

<sup>20</sup> *Victims Support and Rehabilitation Act 1996* (NSW) s30 (1) In determining whether or not to make an award of statutory compensation and in determining the amount of compensation to award, the compensation assessor must have regard to the following:  
(a) any behaviour (including past criminal activity), condition, attitude or disposition of the primary or [secondary victim](#) concerned that directly or indirectly contributed to the injury or death sustained by the [victim](#), ... and (c) whether that [victim](#) participated in the commission of the [act of violence](#), encouraged another person to commit the [act of violence](#) or otherwise gave assistance to any person by whom the [act of violence](#) was committed, and section 30(4A) (4A) The compensation assessor may postpone the determination of a person's application for statutory compensation pending the determination of another application for statutory compensation if the person has been convicted of an offence that is a "relevant offence" under section 46 in relation to that other application.

# Appendix A

## The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only, broadly-based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC receives funding from Industry & Investment NSW for its work on energy and water, and from Allens Arthur Robinson for the Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

## The Public Interest Law Clearing House

The Public Interest Law Clearing House (PILCH) NSW was established in 1992 by the Law Society of New South Wales, the Public Interest Advocacy Centre and the private legal profession to respond to the growing incidence of unmet legal needs within the community. Underlying the establishment of PILCH is the commitment from lawyers that the provision of legal services on a *pro bono publico* ('for the public good') basis is intrinsic to legal professional responsibility.

The aims of PILCH are:

- to identify matters of public interest that warrant legal assistance *pro bono publico*;
- to identify the legal needs of non-profit organisations;
- to match disadvantaged and under-represented individuals, groups and non-profit organisations with a need for otherwise unavailable legal assistance with PILCH member firms and barristers;
- to utilise the diverse skills and resources of lawyers in a broad range of public interest matters;
- to expand the participation of private practitioners in the law reform process;
- to seek the integration of *pro bono* work with legal practice;
- to encourage co-operation between private practitioners and public interest lawyers: and

- to establish/coordinate public interest projects which seek systemic reform.

PILCH provides services to community organisations and individuals for free. It is a membership-based organisation with members including small, medium and large private law firms, corporate law departments, individual barristers, barristers' chambers, law schools, accounting firms, Legal Aid NSW, the Law Society of NSW, the NSW Bar Association, and PIAC.