

Policy Briefing Paper: Putting Victims First

Victims' Rights

SUMMARY OF POLICIES

The National Party's proposals to enhance victims' rights include:

- Establish a Victim Compensation Scheme, which will be funded by a levy on all offenders.
- Direct compensation paid to prisoners into the Victim Compensation Scheme.
- Establish a Victims Services Centre within the Ministry of Justice.
- Upgrade the Victim Notification Register.
- Review the Victims Rights Act 2002.

Establishing a Victim Compensation Scheme

In 1999, some 91.8% of voters agreed with the citizens initiated referendum proposition which, among other things, asked if there should 'be a reform of our justice system placing greater emphasis on the needs of victims, providing restitution and compensation for them'.

Victims of crime can be compensated for loss or damage to property through insurance. Some personal injuries are covered by ACC, including provision for rehabilitation, counselling, earnings-related compensation for time off work, and lump-sum compensation for significant and permanent incapacity. Where the victim has been killed, funeral benefits and earnings-related compensation are available for dependents. Since 2002, victims of sexual offences have also been eligible for compensation for 'mental injury'.

Since 2000, there has also been a presumption that courts would require offenders to pay reparation to victims if they are not entitled to ACC. Yet the amount of reparations owed to victims that is projected to remain outstanding by the end of 2007/08 is \$73.6 million, up by 54% on the \$47.7 million unpaid in 2002/3.¹ Unfortunately, that increase is not simply due to more reparations being imposed, but also the slow rate at which victims are being paid. In 2006/07 there was \$69 million owing in outstanding reparations, but the Government collected only \$17.9 million, while a further \$1.1 million was actually written off. The fact is that there

¹ Ministry of Justice, Responses to the 2007/08 Estimates Examination Additional Supplementary Questions for Vote Courts, answer 66.

are still 206 people who are owed reparations from the 1980s.² Justice is hardly being served when punishment and restoration are being avoided in this way.

At the same time, victims of serious violent crimes often face significant costs to assist their participation in the justice process or to help them to recover from injuries that are not covered by these sources.³ To help cover these expenses, a number of jurisdictions have established victim compensation schemes, including the United Kingdom, Canada, California, New South Wales, Victoria, Queensland, South Australia, Tasmania and the Northern Territory. The Australian schemes are state-funded, with the ability to recover the money from offenders, but victim eligibility does not require a successful prosecution and conviction.

National proposes that a Victim Compensation Scheme be funded by a levy imposed on all offenders at the point of sentencing, as occurs in the United Kingdom and Canada.⁴ This levy would be over and above any fines or reparation imposed, and set at a modest amount (e.g. \$50) so as to facilitate immediate payment at the point of sentencing. In 2006 there were 100,521 convicted cases, which would yield \$5,026,050 in offender levies.⁵ As is currently the case with reparations, payment of the levy would be prioritised over the payment of any fines owed. However, where reparations are also imposed, the levy would be

2 Ministry of Justice, Responses to the 2006/07 Financial Review Questionnaire, answers 114, 116, 118, 128.

3 Victim Support currently administers a modest victims' assistance scheme for services such as counselling, discretionary grants for families of homicide victims, assistance with travel and accommodation costs for attending parole or court hearings, and the installation of secure locks for low-income victims of repeat burglaries.

4 Since 1999, Canada has imposed a victim surcharge of \$50 on those convicted of summary offences and \$100 for those who have committed indictable offences. On 1 April 2007, the UK introduced a similar system, imposing a £15 surcharge on anyone fined by the court after being convicted of a criminal offence. After six months over £1 million had been collected, but when the surcharge is eventually added to other sentences the target is £16 million.

5 Case statistics offer a better indication than charges of the number of people dealt with by the courts, by grouping all charges heard against a single person at the same time. In 2006 there were 112,774 "convicted cases", but the figure used above excludes 1,233 cases that resulted only in court costs and 11,020 that did not result in a sentence.

paid only once an equivalent (or greater) amount of reparations had been paid.

The purpose of this fund is to assist with expenses faced by victims of serious crimes that are not covered by ACC or other state help. This could extend to help with travel to court and Parole Board hearings, additional counselling, etc.

Victims would be made aware of the scheme through Victim Support and other frontline justice agencies, which would in turn assist them in making an application. Grants would be approved on a periodic basis (e.g. monthly) by a panel consisting of representatives from the Victims Services Centre (see below) as well as relevant NGOs such as Victim Support.

The size of the fund is likely to be modest to begin with, and may require some seed money from the government until it builds a critical mass. However, over time it is likely to provide a significant boost to the assistance currently available through discretionary grants administered by Victim Support.

Directing Prisoner Compensation to Victims

Following several instances whereby prisoners received significant compensation payments for unfair treatment while incarcerated, the Labour Government passed the Prisoners' and Victims Claims Act 2005. This allowed victims to claim against any payouts received by those who had offended against them. The Act originally had a sunset clause that caused it to expire in mid 2007, but has since been extended to 2010.

However, it is still possible for inmates to receive compensation payments under this Act. To date, there have been five cases where inmates have been paid out under the Act, because there were no victims' claims or debts owed, totalling \$35,081.94.⁶

6 Response to parliamentary question for written answer 1785(2008)

Two victims have been successful in making claims, amounting to \$19,960.67 or 36% of the total paid out.⁷ Yet, at the time Labour passed the legislation, Phil Goff predicted it 'will restrict compensation for inmates to exceptional cases... Where payments are made, it maximises the prospect that victims will be the beneficiaries, and I make no apology for that'.⁸

Clearly, there is reluctance on the part of victims to claim against an offender's payout, and that is working to the benefit of offenders. If that reluctance is caused by fear or an unwillingness to re-live what was probably a very traumatic event in their life, then it will likely be the most vicious offenders who will benefit.

It was also predicted that the Act would be a deterrent to further compensation claims by inmates 'as there will be no financial incentive for them to do so if this House reforms the law so that the first call on any damages given to any prisoner who is wronged goes to the victims the offender has wronged'.⁹

Yet, between the time the legislation came into force, on 1 October 2005, and 29 June 2007 there have been 33 claims for compensation awaiting adjudication totalling \$4,015,500, or an average of \$121,681 per inmate.¹⁰

Although National wants any instances of cruel and inhuman punishment of prisoners to be thoroughly investigated, we believe there are a number of other remedies available to them. We believe that a significant number of claims are financially motivated, and that the best deterrence to spurious claims is to ensure prisoners cannot receive compensation payouts.

⁷ Response to parliamentary question for written answer 1784(2008)

⁸ Hansard, 15 December 2004

⁹ Hansard, 26 August 2004

¹⁰ Department of Corrections, Responses to the 2006/07 Financial Review Questionnaire, answer 197

Accordingly, National proposes that any money remaining in the Victims Claims Trust account after victims have been paid out should be directed into the new Victim Compensation Scheme.

Establishing a Victims Services Centre

Despite the sterling work of Victim Support, which is largely a volunteer organisation, New Zealand lacks any centralised or co-ordinated approach to advising victims of their rights and entitlements, as well as opportunities to avoid re-victimisation.

One of the difficulties appears to arise from the range of agencies that may potentially be in contact with victims throughout the process, such as the Police, Victim Support, district health boards, ACC, courts, lawyers, Legal Services Agency, CYF, and the Parole Board. Even if all these agencies are trained to provide information to victims about their rights, the advice may only ever be specific to their particular role. There is no over-arching agency with responsibility for ensuring that responses to victims are co-ordinated or consistent in approach.

National proposes establishing a Victims Services Centre to co-ordinate support for victims. This is not intended to supplant the work of Victim Support or other agencies, but rather to co-ordinate and support the work of those agencies.

This is consistent with the recommendation of the select committee inquiry into Victims Rights for 'the establishment of an agency to oversee all matters related to victims' issues, including co-ordinating and monitoring agencies that victims may be required to deal with'.

New South Wales, Victoria and the Northern Territory of Australia have all established centralised victims' services units to act as a single point of access to support and rehabilitation services for the victims of violent crime. The Northern Territory Crime Victims Services Unit operates a victims

register to inform victims of an offender's status in the criminal justice system, such as when the offender is eligible for parole.¹¹

The Victims Services Centre would be a small unit within the Ministry of Justice, but working closely with frontline agencies like Victim Support. Its proposed roles would include:

- Monitoring and co-ordinating those agencies that come into contact with victims.
- Providing an initial point of contact for victims to obtain information and to be referred to support services.
- Maintaining the upgraded Victim Notification Register.
- Administering the Victim Compensation Scheme.
- Disseminating information on victims' rights.
- Receiving and addressing feedback from victims about their treatment by justice agencies.

Upgrading the Victim Notification Register

The Victim Notification Register is intended to ensure that victims of serious offences are kept informed about an offender's passage through the criminal justice system, but it has periodically failed to do so.

In September 2007, the victim of pack rapist Peter McNamara was not told about his Parole Board hearing, and found out afterwards that he had been granted home detention two years into his seven-year sentence. The Parole Board re-heard the application, and reversed its decision after hearing a submission from the victim. The board said 'no one... could fail to be moved by what had happened to the victim' and that it 'was compelled to give her

views and concerns their due weight'.¹² It was the victim, and not the Department of Corrections, who informed the board that McNamara had fathered a child while inside.

In November 2007, a convicted murderer was paroled to the house next door to his victim's daughter. Two subsequent moves had him placed near the workplace of his victim's daughter and next door to a friend of another victim. In this case the problem appeared to be that the victim's daughter, who was very young at the time of the murder, was not on the VNR.

The problem of a lack of enrolment on the register is backed up by a 2006 report from Audit New Zealand, which found that only one third of eligible victims have registered since 2002.¹³ This reluctance on the part of victims may be explained either by a lack of awareness of the register; an unwillingness to re-live the offence, or a lack of confidence in the efficacy of the system. The Audit Office report also found that within agencies there was inconsistency in awareness of obligations to inform victims of their right to register. It is also noteworthy that the total number of applications for the VNR have declined by 20% from 2004-2007,¹⁴ despite an increase in violent crime.

To resolve some of these issues, National proposes upgrading the VNR to provide victims with the option of being on either an "active" or on a "silent" register. Those on the "active" register would be contacted on all developments relating to their case, such as parole hearings, as should currently be the case with those on the VNR. Those who do not want to have that level of involvement can opt for the "silent" register, which would record their contact details so agencies can make appropriate decisions about where to parole offenders.

¹² NZ Parole Board Hearing for Peter Mana McNamara, 28 August 2007

¹³ Audit New Zealand, Victim Notification System Review, 2006, p.7

¹⁴ Response to parliamentary question for written answer 20323(2007)

¹¹ <http://www.safercommunities.nt.gov.au>

Currently, the Police are required to advise victims of their right to request to be on the register, but it is up to the victim to apply. Responsibility for advising the Police Victim Notification Co-ordinator of a change of address also lies with the victim, and the Police advise the Department of Corrections or the Ministry of Health whenever this occurs.

National proposes shifting responsibility for maintaining the register to the new Victims Services Centre (as is the case with the Crimes Victims Services Unit in the Northern Territory), since this agency will be responsible for co-ordinating services for victims. The McNamara case, outlined above, revealed the failure by the Department of Corrections (as the secretariat for the Parole Board) in advising the victim of the impending parole hearing. As the caretaker of the VNR, the Victims Services Centre will be in a position to ensure that other agencies are fulfilling their obligations to victims.

The Victims Notification Register will also be pro-actively managed. Contact details for victims, particularly those on the silent register, would be regularly updated through information-sharing with other government agencies. Current use of the register tends to be driven by phases in the offenders' passage through the criminal justice system, rather than necessarily being responsive to victims' needs. National would use the register to ensure that victims were receiving the support they need, and enable victims in turn to approach the Victims Services Centre to inquire into developments in their particular case.

Reviewing the Victims Rights Act 2002

National acknowledges the work of the current Government in passing the Victims Rights Act in 2002. However, it is somewhat surprising that six years later, the workings of the Act in practice have not been reviewed.

The danger that the Government's concern with victims' rights may have abated with the passage of the Act is supported by the conclusion of last year's select committee inquiry into victims' rights, which found that the criminal justice system 'appears to be focused heavily upon the needs of prosecutorial agencies and defence counsel, and too often victims' rights are considered only as an afterthought.'

Recent events suggest that victims' rights are indeed under threat. The value of victim submissions to parole hearings is exemplified by the re-hearing of the McNamara case last year. Yet several months earlier, the Government almost succeeded in removing the right of victims to make an oral submission to the Parole Board unless it was by invitation and only if it was relevant to the question of whether the offender presents an undue risk to society. Fortunately, National's opposition to this clause in the Criminal Justice Reform bill ensured its demise.

In another example, in May 2007, the son of murdered Tokoroa school teacher Lois Dear was asked to 'tone down' the victim impact statement that he wanted to read to the court because it included comments about the offender and the justice system.¹⁵

On a broader level, there are significant elements of the Victims Rights Act 2002 that do not apply to the Youth Court. Under the Children, Young Persons and their Families Act 1989, victims are not even entitled to attend a Youth Court hearing as of right. Even if the judge allows the victim to be present, they are not entitled to address the court as of right. It doesn't make sense that victims should have fewer rights in the Youth Court than in the adult jurisdiction, yet victims are central to the kind of restorative justice that will have more impact in reducing re-offending for younger offenders than

¹⁵ New Zealand Herald, 16 May 2007

older, more hardened offenders.¹⁶

In order to iron out these kinds of anomalies, National will review the Victims Rights Act 2002 to ensure that victims' rights are recognised across the court system. This review will result in concrete amendments to the Act that will enhance victims' rights. For example, National will amend section 17 of the Victims Rights Act 2002 to strengthen the ability to make a victim impact statement without censorship.¹⁷

However, the review will also deal with the administrative outcomes of the legislation. Both the select committee inquiry and a position document released by Victim Support on 5 February 2008 included a number of recommendations pertaining to improving the provision of information for victims about their rights, as well as the availability of support services.¹⁸ Since the Act already addresses access to services and information, National will consider these matters in the context of the review of the Victims Rights Act.

¹⁶ Although the Children, Young Persons, and Their Families Amendment Bill No.6, currently before the House, amends the law to give victims the right to attend the Youth Court, the Bill appears to be silent on giving victims the right to address the Court.

¹⁷ The Select Committee Inquiry into Victims' Rights also noted that 'A recurring area of concern was the role of victim impact statements, with submitters complaining that judges had disregarded their statements, or that their content had been diluted'.

¹⁸ Included amongst the key recommendations of the select committee inquiry were proposals for:

- the provision of comprehensive information to victims on the criminal justice system, their rights, and the services available to them
- the establishment of services for victims within court precincts
- a review of the services available for victims, to identify gaps
- the allocation of sufficient resources to fill service gaps and to carry out the recommendations contained in this report.

Victim Support's position document on victims' rights entitled 'Commitment of Parallel Justice' recommended that 'victims have greater standing in the criminal justice system, through strengthening the Victims' Rights Act 2002, with particular reference to the Youth Court'