



19 January 2017

Dr Dubravka Šimonović
Special Rapporteur on Violence Against Women
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais des Nations
CH-1211 Geneva 10, Switzerland

By email: vaw@ohchr.org

Dear Dr Šimonović,

Special Rapporteur Country visit to Australia: Violence against women

Kingsford Legal Centre welcomes the opportunity to provide a submission in response to the Special Rapporteur's call for information on violence against women in Australia.

About Kingsford Legal Centre (KLC)

KLC is a community legal centre that has been providing legal advice and advocacy to people in the Randwick and Botany Local Government areas in New South Wales since 1981. KLC provides advice and representation on a wide range of legal issues, including domestic violence, sexual harassment, sex discrimination, victims compensation, and housing. KLC also has a specialist employment law service, a specialist discrimination law service (NSW wide) and an Aboriginal Access Program. In addition to this work, KLC undertakes law reform and policy work in areas where the operation and effectiveness of the law could be improved.

Note on terms

The term domestic/family violence is used throughout this submission to refer to both domestic and family violence. KLC acknowledges that the term family violence is a term used to reflect kinship structures and extended family relationships within Aboriginal and

Torres Strait Islander communities. Some people who have been subjected to violence prefer the term victim, others prefer survivor. This submission uses the term victim which is intended to be inclusive.

Domestic/family violence is prevalent in Australia

Domestic/family violence remains an alarming issue in Australia. One in three Australian women has experienced physical violence, and one in five Australian women has experienced sexual violence¹. Domestic/family violence is the leading preventable cause of death, disability and illness for Australian women under 45 years of age². Alarmingly, on average, at least one woman a week is killed by a partner or former partner in Australia³. Aboriginal and Torres Strait Islander women experience higher rates of domestic/family violence and more severe forms of domestic/family violence as compared to other women, and are 34 times more likely to be hospitalised as a result of domestic/family violence⁴. Further, it is estimated that violence against women and children will cost the Australian economy \$15.6 billion by 2021-2022 unless the rate and extent of violence is reduced⁵.

Cuts to Community Legal Centres' Funding

Despite the Productivity Commission's recommendation that the Government provide an additional \$200 million in funding to legal assistance services to meet demand, the Federal Government has proposed funding cuts of 30% to community legal centres (CLCs) that will take effect in 2017/18. Community Legal Centres provide integral free legal services to clients experiencing domestic/family violence, including on apprehended violence orders to address domestic/family violence through the court system, victims compensation and related legal issues including debt and housing. CLCs provide holistic services, often working

¹ Peta Cox, *Violence against women: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey 2012*, Horizons Research Report, Issue 1, 2015, Australia's National Research Organisation for Women's Safety, available at: <http://anrows.org.au/publications/horizons/PSS>

² VicHealth, *The Health Costs of Violence: Measuring the burden of disease caused by intimate partner violence*, 2004, Victorian Health Promotion Foundation, at 10.

³ Australian Institute of Criminology, *Homicide in Australia: 2010-11 to 2011-12, National Homicide Monitoring Program Report*, 2015, available at: <http://www.aic.gov.au/publications/current%20series/mr/21-40/mr23.html>

⁴ Steering Committee for the Review of Government Service Provision (2014).

⁵ National Council to Reduce Violence Against Women and their Children, *The Cost of Violence Against Women and Their Children*, 2009, at 4.

in coordination with Women’s refuges and support services to ensure that women fleeing domestic/family violence get the support they need.

In 2015, CLCs struggled to meet demand, turning away 160, 000 people seeking legal assistance. The funding cuts will have a devastating impact on KLC’s ability to service the most vulnerable members of our community, and we will no longer be able to provide our domestic/family law clinic, domestic/family violence casework or carry out preventative work with schools. It will also greatly reduce our ability to provide outreach legal services.

Recommendation

1. That the government reverse the funding cuts and adopt the Productivity Commission’s recommendation to immediately invest \$120 million per year additional into the legal assistance sector, including a minimum of \$14.4 million per year to Community Legal Centres.

Victims Compensation Scheme in NSW

In New South Wales there is a victims compensation scheme administered through the Victims Services and Support government agency. The *Victims Rights and Support Act 2013* (NSW) (**VRS Act**) introduced a new scheme for supporting victims of crime. The stated objective of the new scheme was to deliver faster and more effective support to victims of violent crime. KLC submits that to meet that objective the VRS Act must adequately reflect the experiences and needs of victims of violent crime. KLC is concerned that the experience of women and girls experiencing domestic/family violence and sexual assault are not adequately reflected in the provisions and remedies in the VRS Act.

A number of provisions of the VRS Act have the potential to disadvantage victims of domestic violence, sexual assault and child sexual abuse.⁶

A victim of crime who suffers harm as a direct result of an act committed, or apparently committed, by another person in the course of a criminal offence can claim for a range of

⁶ Refer to Appendix 1 (VRS Act - Section 35) and Appendix 2 (VRS Regulation – Regulation 12).

benefits including counselling, financial assistance and a recognition payment. For financial assistance for economic loss and recognition payments, a police report or report from a government agency is required. The VRS Act fails to recognise that most incidents of domestic/family violence and sexual violence are not reported to police (or any other government agency), that domestic/family violence is most commonly a pattern of violence and coercion committed over a period of time, and that the harm caused by domestic/family violence and sexual violence is broader and more pervasive than the definition of harm in the VRS Act. Furthermore, the way in which the VRS Act frames violence, as discrete acts, fails to consider the cumulative and long running nature of domestic/family violence. Under the VRS Act, domestic violence is classified as either an assault or assault resulting in grievous bodily harm, with compensation available only in the range of \$1,500 - \$5,000.

'Related acts' and domestic violence victims

Case study – inadequacy of Victims Compensation Recognition Payments

Fei was in a relationship with Alan for 5 years. The relationship was violent from the beginning, with Alan constantly subjecting Fei to verbal abuse at home. He would also push her around the home and physically restrain her whenever he felt jealous of her socialising with other people. Fei did not report this early abuse to the police or to her doctor, as they had a young child together early in the relationship, and she felt that she did not want to split up the family. On one occasion Alan became enraged that Fei had started hanging out with some old friends and he punched her in the face at home and smashed her mobile phone against a mirror, causing damage significant damage to their rental property. Fei had a bruised and swollen face for weeks. A neighbour called the police, and they attended and took out an apprehended violence order to protect Fei. Fei and Alan remained together for another 6 months. At that point Alan again physically assaulted Fei causing bruising to her face while they were on an interstate holiday. Fei left the family home with their child shortly afterwards.

Fei received a Victims Compensation recognition payment of \$1,500. The only injuries she could prove were the bruises that resulted from the incident attended by the police. The

assault that took place interstate could not be taken into account, as it happened outside of NSW.

This is clearly inadequate compensation for such a long period of sustained violence by the perpetrator. It also in no way compensates the victim for the psychiatric harm caused by the domestic violence.

The disadvantaging effect of the VRS Act for women is further heightened by the definition of 'related acts' which limits recognition payments where a victim has been injured on more than one occasion by the same perpetrator. Once again, this framing of payments by individual and discrete acts of violence has the effect of privileging some types of violence over others. It has the practical effect of providing only one recognition payment to victims of long running domestic violence, when the impact of that violence negatively pervades all aspects of a victims life, including their economic security.

The Australian Law Reform Commission, New South Wales Law Reform Commission and the recent Victorian Royal Commission into Family Violence have identified that provisions in victims compensation schemes have the potential to discriminate unfairly against victims of domestic/family violence because of the way in which the law frames acts of violence by criminal law definitions and the emphasis on physical rather than psychological harm.⁷

Domestic violence also impacts on social and economic wellbeing with domestic violence one of the leading causes of homelessness in Australia.⁸ Victims compensation schemes play a crucial role in protecting women from future harm - helping them to rebuild their lives and keep their children safe. The small amounts of recognition payments available to women who have experienced domestic violence (usually \$1,500) is a lost opportunity to provide the effective support which is an object of the VRS Act. The women that KLC assists use their recognition payments to help establish new homes, buy their own car so they can take their children to school or to pay debts incurred when escaping violence. The small amounts

⁷ Australian Law Reform Commission, NSW Law Reform Commission, *Family Violence – A National Legal Response* ALRC 114 p 1389

⁸ Australian Institute of Health and Welfare, *Clients experiencing domestic and family violence*, available at: <http://www.aihw.gov.au/homelessness/specialist-homelessness-services-2014-15/domestic-violence>

available under the scheme minimise the extent to which victims compensation can help women start again.

Recommendations

2. Improve recognition of the impact of the trauma that is caused by domestic violence, sexual assault and child abuse;
3. The VRS Act be amended to take account of the nature and effect of domestic/family violence and sexual violence. Category A recognition payments should be available to victims of sexual assault who are currently eligible for a Category B payment;
4. The VRS Act be amended so that Category B recognition payment be available to victims of a series of related acts of domestic violence, and to victims of domestic violence, sexual assault or child abuse who suffer serious psychological harm;
5. The VRS Act be amended so that a Category C recognition payment be available to victims of domestic violence who suffer psychological harm;
6. Acts of choking, suffocation, strangulation or attempts to do those acts should be included in Category C of the VRS Act;
7. The definition of harm for victims of domestic violence, sexual assault and child abuse should be expanded to include vocational, cultural, social, behavioural and interpersonal harm in the VRS Act; and
8. The VRS Act should recognise that sexual abuse and domestic/family violence are inherently harmful, and be amended to remove the requirement for a victim of sexual assault, child sexual assault or domestic violence to prove injury, unless the victim chooses to pursue a category of recognition payment which requires proof of specific injury such as grievous bodily harm.

Domestic/family violence leave should be introduced into the National Employment Standards

Given the prevalence of domestic/family violence in Australia, the way in which domestic/family violence is dealt with in the workplace is a pressing issue. Currently, there is no entitlement to domestic/family violence leave in Australian employment law. KLC

believes that it is integral to provide victims of domestic/family violence with support to remain in and enter the workforce. Often, domestic/family violence victims have difficulty maintaining employment, and the accompanying financial independence to enable them to flee a domestic/family violence relationship when they are unable to attend work due to injury, visible bruises, or are required to attend court appearances.

We submit this issue needs to be addressed through government action, rather than the discretion of individual employers. KLC has strongly advocated for legislative action to provide women experiencing domestic/family violence with domestic/family violence leave to enable them to remain in employment.

KLC recommends that the government amend the *Fair Work Act 2009* (Cth) to introduce a requirement on employers to provide 10 days of paid domestic/family violence leave to both men and women experiencing domestic/family violence. We note that despite sustained advocacy from civil society, the government has failed to do this.

We note that the Commonwealth Minister for Women and Minister for Employment, Senator Michaelia Cash, has previously stated that paid domestic/family violence leave would act as a 'perverse disincentive' for employers to not hire women. We submit that it is in the public interest for domestic/family violence leave to be introduced, and employers deciding not to hire women on the basis of such leave would amount to discrimination under the law. Furthermore, many employers in the private and public sector have voluntarily introduced domestic/family violence leave into their enterprise agreements, which reflects growing community acceptance of the role workplaces have to play in assisting domestic/family violence survivors in remaining in employment.

Recommendation

9. The *Fair Work Act 2009* (Cth) National Employment Standards should be amended to require employers to provide 10 days of paid domestic/family violence leave to both men and women experiencing domestic/family violence.

Protections against discrimination on basis of domestic/family violence status

Case studies – domestic/family violence discrimination

Brenda, a young woman experiencing ongoing violence from her ex-boyfriend, was dismissed from her workplace after he turned up at the office, threatened her, and caused a scene in front of clients.

Silvia, a university student, missed a final exam after her husband prevented her from leaving the house. Her faculty told her she would not be eligible for a supplementary exam as she was not sick on the exam date and there were no 'special circumstances'. Silvia received a fail grade for the unit and dropped out of the course, she felt that no one believed her.

Mary was in a violent relationship and her application for private rental accommodation was denied due to 'personal issues'. She eventually found accommodation elsewhere from a landlord who didn't know about the domestic/family violence.

Teresa had been a victim of domestic/family violence in the past, and had great difficulty trying to obtain public housing. Everyone she dealt with believed that she would return to her violent ex-partner or enter into another abusive relationship and so they said there was no point in assisting her with accommodation or reunification with her children. Fortunately, Teresa obtained the support of a local government member who was able to advocate for housing for her.

Currently, Australian anti-discrimination legislation fails to protect women experiencing domestic/family violence from discrimination. Specific protection on the ground of status as a domestic/family violence victim is consistent with Australia's international human rights obligations.⁹ In particular, the CEDAW Committee has recognised that gender based violence against women is both a manifestation and a cause of discrimination against women under article 1 of CEDAW. The Committee has recognised that discrimination seriously inhibits women's ability to enjoy and exercise their human rights and fundamental

⁹ *Convention on the Elimination of All forms of Discrimination against Women*, CEDAW General Recommendations 12 and 19, ICCPR Articles 2, 3, 7 and 26, and ICESCR Articles 3 and 10. Further, in its 2010 review of Australia, the Committee on the Elimination of Discrimination against Women recommended that Australia develop strategies to prevent homelessness resulting from domestic violence.

freedoms.¹⁰ The CEDAW Committee has also recommended that Australia ‘develop strategies to prevent homelessness resulting from domestic violence’.¹¹ It is therefore consistent with Australia’s obligations under CEDAW to protect victims and survivors of domestic/family violence from discrimination.

KLC recommends including in anti-discrimination legislation an additional protected attribute of ‘status as a victim or survivor of domestic of family violence’.¹² We note that the issue of domestic and family violence in the anti-discrimination context is a broader issue than just workplace discrimination, and recommend that this protected attribute apply to all areas of public life.

Protection from discrimination is necessary to facilitate social inclusion; it plays a normative role in discouraging negative stereotyping and prejudice and would empower people who experience domestic/family violence to seek support where needed.¹³ Protection from discrimination is also necessary to enhance economic participation: it would enable people who experience domestic/family violence to obtain and maintain jobs by making it easier to disclose information about domestic or family violence, where relevant, without fear of repercussion.¹⁴

Recommendation

10. That the government amend federal anti-discrimination laws to include status as a victim or survivor of domestic or family violence as a protected attribute in all areas of public life.

¹⁰ CEDAW Committee, *General Recommendation No. 19: Violence against Women*, UN Doc A/47/38 (1992) and CEDAW Committee, *General Recommendation No. 28: Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc CEDAW/C/GC/28 (2010).

¹¹ Committee on the Elimination of Discrimination Against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women –Australia*, 30 July 2010, CEDAW/C/AUL/CO/7 at paragraph 29, available at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

¹² ‘Victim or survivor’ is preferred in order to indicate that domestic/family violence is a process of victimisation, but that those who experience it – mainly women – can also survive it and move on with their lives. ‘Domestic or family violence’ is preferred due to variation among state and territory legislation (e.g. *Crimes (Domestic and Personal Violence) Act 2007* (NSW); *Family Violence Protection Act 2009* (Vic)), and because while ‘domestic violence’ is the older term, many Aboriginal and Torres Strait Islander people and members of CALD communities prefer the term ‘family violence’.

¹³ Tashina Orchiston and Belinda Smith, ‘Empowering Victims of Family Violence: Could Anti-Discrimination Laws Play a Role?’ *Australian Review of Public Affairs*, March 2012.

¹⁴ Australian Human Rights Commission, *Independent Interim Report on CEDAW*, August 2012 at 12.

Intersectional discrimination

Case study - Stacy

Stacy is a young Chinese woman who was sexually harassed by a colleague when working in a kitchen. Stacy was on a working holiday visa. The colleague made a number of inappropriate sexual comments to Stacy, and also frequently followed her into the coolroom at work where he would grope her breasts and bottom. When Stacy complained to her manager, he said "I thought you Chinese girls liked being treated like this". Stacy came to Kingsford Legal Centre for advice. We advised her that as intersectional discrimination is not expressly recognised in Australian law, she would have to claim sexual harassment and race discrimination as separate grounds.

KLC believes that discrimination law in Australia fails to adequately recognise and deal with the way in which individuals may experience complex forms of discrimination. The failure of anti-discrimination law to address this type of discrimination has meant that the law has not been utilised by the most disadvantaged people in our community - that is, people experiencing complex forms of discrimination.

The current approach in Commonwealth anti-discrimination law is to identify a 'ground' of discrimination in an 'area' of public life. Where an individual seeks to claim more than one form of discrimination, they must take action where each ground and each form of discrimination is examined in isolation with a comparator without that characteristic. In the absence of an explicit discriminatory comment about one of these attributes, it can be an impossible task to prove that the discrimination was linked to any one attribute in isolation of the others.

In order for Commonwealth anti-discrimination law to adequately protect and promote the rights of persons and groups experiencing complex forms of discrimination, it should recognise intersectional discrimination as a separate ground of discrimination. Anti-discrimination law should aim to look at the 'whole person' when considering discrimination and not artificially segment the experience of people experiencing discrimination.

In order to achieve this, KLC submits that the federal anti-discrimination laws be amended to include intersectional discrimination as a distinct ground of discrimination.

Finally, KLC recommends that as intersectional discrimination often impacts on individuals who are facing systemic disadvantage, a finding of intersectional discrimination should have a positive impact on the awarding of damages to reflect the impact of intersectional discrimination on individuals and to further prohibit such conduct.

Recommendations

11. Commonwealth anti-discrimination laws to recognise intersectional discrimination as a separate ground of discrimination.
12. A finding of intersectional discrimination should have a positive impact on the awarding of damages

Access to housing

Case study- Martha

Martha is 66 years old and had been living in public housing for the past 25 years with her abusive husband. Her husband was the tenant and she was an authorised occupant. After Martha's husband left her, she found out that he was running several businesses. Martha doesn't have any access to profits from the businesses. Her sole source of income is the aged pension. Martha applied to remain living in the property, however her request was denied because Housing NSW's recognition as a tenant policy does not apply in circumstances of family breakdowns. Martha was not eligible to be housed elsewhere either because her husband ran a business, even though she did not have access to any of the profits of the business and could not afford to rent in the private market.

Domestic/family violence is one of the leading causes of homelessness in Australia, and among women. It is essential that women escaping domestic/family violence can access affordable and safe housing, and that the barriers towards doing this are removed. We

often see women clients who are escaping domestic and family violence and are urgently looking for a safe home for them and their children. Even women who rely solely on a social security payment are unlikely to be eligible for priority housing, unless they or their children have multiple disabilities.

One such barrier is the excessive documentary evidence of domestic violence that Housing NSW (the government agency that administers the NSW public housing scheme) often requires of victims seeking to access priority housing. For example, Housing NSW has required our clients to provide evidence that the perpetrator has been charged with a domestic violence offence before approving priority housing, even though their policy, which sets out the evidence requirements for priority housing, does not require evidence of charges or convictions. These evidentiary expectations are inconsistent with the common understanding that victims of domestic/family violence are often reluctant to report violence to the police because they fear the violence will escalate.

We have also advised victims of domestic/family violence who have difficulty sustaining their public housing tenancies due to Housing NSW policies that do not allow them to apply to be recognised as a tenant.

Recommendations

13. The eligibility criteria for social housing should not be restricted to include only those currently eligible for the priority wait list;
14. The Government should provide more social housing in order to offer greater housing affordability and security, and in turn provide tenants with greater independence and opportunities; and
15. The Government should make social housing more accessible to victims of domestic violence.

Five Step Guide to safety first in family law

Women's Legal Services Australia has developed a five step guide to safety first in family law.¹⁵ We recommend implementing this system to create a family law system that keeps women and children safe.

The guide can be summarised as follows:

1. **Develop a specialist pathway for domestic violence cases in family courts.** This involves: placing a domestic violence specialist in family court registries to undertake risk assessment at the earliest stages and provide recommendations; emphasising early decision making, triaging and case-management; engaging court-based support services to assist families in crisis; and removing the language of 'equal shared time' and 'equal shared parental responsibility' from the Family Law Act 1975 to shift culture and practice towards a greater focus on safety and risk to children.
2. **Reduce trauma and support those who are most at risk of future violence and death.** This involves: implementing the recommendations from the Family Law Council's 2012 reports on improving family law for Aboriginal and Torres Strait Islander and culturally and linguistically diverse clients; undertaking a comprehensive audit of the barriers in the family law system for women in other high risk groups such as women with disabilities or from rural communities; introduce legislative provisions to stop a victim being directly cross-examined by their abuser by amending the Family Law Act 1975; and strengthening the support of child protection in family law cases for 'protective carers' in family law proceedings.
3. **Intervene early and provide effective legal help for the most disadvantaged.** This involves: implementing a mediation model with specialist domestic violence lawyers and social workers based on the highly effective 2012 Co-ordinated Family Dispute Resolution Pilot; expanding family law services by funding community legal centres; and creating a specialist legal aid funding pathway for domestic violence family law cases.

¹⁵ Women's Legal Services Australia, *Safety First in Family Law*, 2016, available at: http://www.womenslegal.org.au/files/file/SAFETY%20FIRST%20POLICY%20PLATFORM.MAY%202016_FINAL.pdf

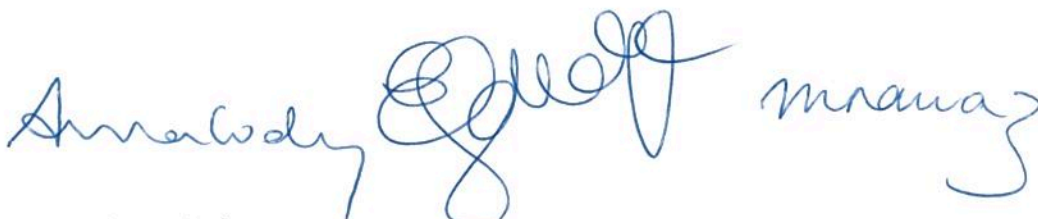
4. **Support women and children to financially recover from domestic violence.** This involves: promoting early resolutions of small property disputes under \$100,000 through; amending the Family Law Act to require courts to consider family violence when determining a property division in accordance with the Family Law Council's 2001 advice to the Attorney General; and simplifying court processes and forms in the family courts.
5. **Strengthen the understanding of all family law professionals on domestic violence and trauma.** This involves: establishing a national accreditation and monitoring scheme with mandatory training on domestic violence; cultural competency and working with victims of trauma for all family report writers; developing a comprehensive professional development package for all family law judicial officers on domestic violence; cultural competency and working with victims of trauma; and developing a comprehensive domestic violence training program for family law legal professions and work with state and territory law institutes and bar associations to implement the training.

Recommendation

16. That the Government implement the Women's Legal Services Australia five step guide to safety first in family law.

KLC would welcome the opportunity to meet with you and/or provide further information during your country visit. Please do not hesitate to contact us at legal@unsw.edu.au or at (02) 9385 9566.

Yours faithfully,
KINGSFORD LEGAL CENTRE



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APPENDIX 1

VICTIMS RIGHTS AND SUPPORT ACT 2013 - SECTION 35

Categories of recognition payment

35 Categories of recognition payment

(1) A

"category A recognition payment" is a payment given in respect of an act of violence that apparently occurred in the course of the commission of a homicide.

(2) A

"category B recognition payment" is a payment given in respect of an act of violence of the following kinds:

- (a) a sexual assault resulting in serious bodily injury or which involved an offensive weapon or was carried out by 2 or more persons,
- (b) a sexual assault, indecent assault or attempted sexual assault involving violence that is one of a series of related acts.

(3) A

"category C recognition payment" is a payment given in respect of an act of violence involving any of the following:

- (a) a sexual assault other than one referred to in subsection (2) (b),
- (b) an attempted sexual assault resulting in serious bodily injury,
- (c) an assault resulting in grievous bodily harm,
- (d) physical assault of a child that is one of a series of related acts.

(4) A

"category D recognition payment" is a payment given in respect of an act of violence involving any of the following:

- (a) an indecent assault,
- (b) an attempted sexual assault involving violence other than one referred to in subsection (3) (b),
- (c) a robbery involving violence,
- (d) an assault (not resulting in grievous bodily harm).

APPENDIX 2

VICTIMS RIGHTS AND SUPPORT REGULATION 2013 - REGULATION 12

Recognition payments

12 Recognition payments

The following are the prescribed amounts of recognition payment for the purposes of section 36 of the Act:

- (a) for a category A recognition payment referred to in section 36 (1) (a) of the Act-\$15,000,
- (b) for a category A recognition payment referred to in section 36 (1) (b) of the Act-\$7,500,
- (c) for a category B recognition payment-\$10,000,
- (d) for a category C recognition payment-\$5,000,
- (e) for a category D recognition payment-\$1,500.