



Coffs Harbour

Port Macquarie



Policy, Reform and Legislation
Dept of Communities & Justice
Locked Bag 5000
Parramatta 2124

11 July 2022

By email:



Dear Madam/Sir,

Re: Submission to the Review of the *Victims Rights and Support Act 2013* (NSW)

We are grateful for the opportunity to provide a submission to the Review of the *Victims Rights and Support Act 2013* (NSW). Mid North Coast Legal Centre (MNCLC) is a program of Advocacy Law Alliance Inc.

MNCLC provides free civil law assistance to residents of the Mid North Coast of NSW. This region is one characterised by high levels of socio-economic disadvantage including people living with disabilities, Aboriginal and Torres Strait Islander communities, CALD communities and people reliant on Centrelink income. We provide services to survivors of domestic and family violence as a priority group.

In the current financial year to date (since 1 July 2021), 28.7% of legal services we have provided have been to people experiencing, or at risk of, domestic and family violence. A large proportion of that work is assisting people with Victims Services applications. MNCLC has developed considerable expertise in supporting people in their interactions



with this scheme. We also provide high level advocacy through our participation in the NSW Victims of Crime Interagency and the CLCNSW Domestic Violence Network.

Our submission addresses key issues in the Statutory Review and makes a number of recommendations. We would be happy to meet with anyone in the Review Team to discuss specifics or answer any questions you may have as a result of our submission.

Yours sincerely,



Principal Solicitor

Mid North Coast Community Legal Centre



Preamble: the need to support victim-survivors

Mid North Coast Legal Centre recognises the value of the NSW Victims Support Scheme (*'the scheme'*) to provide support for victim-survivors on their path of recovery. Our Centre supports victims accessing the scheme and we have a particular focus on supporting domestic violence survivors. We wish to acknowledge the introduction of the Immediate Needs Support Package and the benefit this package provides our clients to ensure their safety.

However, in our view the scheme requires a greater emphasis on trauma informed practice and a change in some processes given the complex needs of many applicants.

Mid North Coast Legal Centre endorses the recommendations below as developed with input from various community legal centres led by Women's Legal Service and Mid North Coast Legal Centre, DV NSW and its member organisations, NGO members of the Victims of Crime Interagency, Women's Health NSW, Full Stop Foundation, People with Disability Australia, NSW Women's Alliance members, Western Sydney University Justice Clinic and other organisations supporting victim-survivors.

We also endorse the joint recommendation to remove the requirement to separately prove injury in NSW Victims Support applications by the end of 2022.

We endorse the phased approach to the introduction of the remainder of the recommendations.

The recommendations below include a range of case studies which have been drawn from our experience supporting people to access the scheme over many years. Names and details have been changed to maintain confidentiality.

Recommendations for the *Victims Rights and Support Act 2013* (NSW) Review

Recommendations that the NSW Government implement by end of 2022

Adopt a trauma-informed, survivor centric, culturally safe approach and increase accessibility.

1) Legislate the removal of the requirement to separately prove injury in Victims Support applications.

- a) The requirement to prove injury is an unnecessary burden on victim-survivors. Since July 2020 Victims Services has required applicants to independently obtain evidence showing that they suffered harm/injury as a direct result of the violence they suffered. Applicants without the support of a service will often struggle to do this. Obtaining evidence of injury can be an immensely re-traumatising event. Not all applicants wish to engage with a Victims Services counsellor to obtain evidence of harm, particularly where they have made their own journey of recovery. Obtaining or providing evidence of harm can be a barrier to applicants accessing the scheme.

Case Study: Jenny

Jenny is an aboriginal woman who came to our Centre for advice after surviving domestic violence. She has not disclosed the violence to anyone besides a few trusted support workers and police. Her physical injuries were documented in a couple of police reports. The perpetrator was convicted of multiple offences including AVO breaches, intimidation, and assault. Our solicitor advised Jenny about her eligibility to apply for a recognition payment. Jenny did not want to proceed with an application as she was not comfortable disclosing her experience of violence to a counsellor and there were no aboriginal counsellors available in her region. She was not comfortable disclosing her past injuries to an aboriginal medical centre as she was fearful her disclosure would get back to the perpetrator. She had never received medical treatment for her injuries due to her fear of the perpetrator.

Case Study: Tim

Tim is a survivor of childhood sexual assault who came to our Centre seeking support. Tim was homeless and struggled with drug use due to traumas that occurred in his early life. We assisted Tim to apply for a copy of his medical and counselling records from around the time of the abuse for his Victims Services application. After many requests for these records, the health agency provided Victims Services with a brief 'Certificate of Injury' which they did not provide to Tim or his lawyer before lodging. This report was written by someone who had never met him nor been involved in his care. Victims Services dismissed Tim's application on the basis that there was insufficient evidence to establish he suffered harm due to the sexual assault when he was young. Tim then had to quickly find other records and we assisted him to lodge a review. Tim expressed that the process of being denied his records and then his application for support being declined as a result was extremely distressing and traumatising for him.

Recommendations that the NSW Department of Communities and Justice implement by end of 2022

Adopt a trauma-informed, survivor centric, culturally safe approach and increase accessibility.

2) Improve access to counselling.

- a) Increase the number of suitably qualified Victims Services Approved Counsellors available, including in regional, rural, and remote areas. This includes counsellors who provide services which are culturally safe, disability aware, LGBTIQ+ aware, trauma informed, with an expertise in working with particular priority populations and expertise on particular issues.

Case Study: Layla

Layla sought advice from our Centre regarding a recognition payment and with our assistance lodged an application for support, including counselling. Layla then experienced further domestic violence which delayed her opportunity to access counselling. By the time she was in a position to make an appointment with a counsellor, only two counsellors were available in our region and both had extensive waiting times. The other five counsellors had closed their books for three months. We advised Layla to withdraw her application for a recognition payment as it was unlikely she would be able to get the evidence she needed from her counsellor within the 12-month time frame imposed by Victims Services.

- b) Provide more information to victim-survivors about the expertise of counsellors and Victims Services to assist victim-survivors to access a counsellor when they request this help.
- c) Provide access to culturally safe healing.

- d) Open approval applications to suitably qualified 'organisations' that have the required values, skills and accreditations which would automatically qualify their employed counsellors. The primary relationship would remain with the organisation not the individual staff members but would increase the availability of counselling to Victims Services.
- e) Develop policy and procedures that recognise the need to provide extended hours of counselling (up to 44 hours) where appropriate with further extensions as required and a presumption in favour of approving the application.

Case Study: Alex

Alex is a survivor of multiple child sexual assaults and later, a survivor of domestic violence. Alex only felt comfortable making two applications for support through Victims Services as they found disclosing the other episodes of violence very traumatic. Alex was able to access counselling for the first time through Victims Services. They established a good rapport with their counsellor and was despondent to learn the counsellor could not continue to offer Alex counselling beyond 44 hours (the total counselling available through their two applications for support). Alex was unable to fund continued counselling because of their limited income.

- f) Victims Services review approved models of counselling philosophy to ensure holistic approaches are employed along with the other values and requirements for appointment. This is to ensure appointed counsellors do not insist clients only talk about the part of their reaction that the counsellor has perceived as being in relation to the "crime event". Trauma informed practice and models of counselling philosophy understand reactions to trauma are complex.
- g) Adequately remunerate Victims Services Approved Counsellors.

- h) Reinstate funding for group work in NSW. Individual counselling is not a substitute for victims wishing to benefit from facilitated peer support group work.
- i) Increase access to counselling for victim-survivors of crime while they are in custody.
- j) Victims Services to provide professional support (including vicarious trauma support) to counsellors and opportunities for professional development and training.
- k) Remove the two session “no show rule” so that victim-survivors who are unable to attend appointments for reasons beyond their control are able to continue to receive counselling.

3) Victims Services to return to collecting evidence or fund services to undertake this work and reimburse services for associated costs.

Case Study: Julie

Julie lives with physical disability and sought help from our Centre for personal loans she had due to domestic violence. Whilst speaking with a lawyer, Julie disclosed that she was also sexually abused when she was 7. MNC Legal Centre agreed to help Julie apply for recognition payment and counselling. Julie asked the lawyer to help her access her childhood medical records through the Local Health District. After paying a fee, Julie was provided with only a few pages of her medical records. These did not include the counselling records which would have established that she had suffered an injury as a result of the abuse. After further correspondence over the next 6 months, Julie was instead provided with a brief letter written by a health administrator that had never met Julie. The Local Health District was resistive to providing Julie or her lawyer with her complete record. Julie spoke with a new counsellor and re-told her story to get further evidence to ensure she complied with the evidentiary requirements of the Act. Julie was not refunded the fees she paid despite not receiving her records.

4) Remove the requirement to provide banking details in the application form consistent with recommendation 3.6 of the final report of the Second Year Review of the National Redress Scheme.

5) Simplify identity checks.

- a) Victims Services adopt a more flexible approach to identity documents by accepting a wider range of identity documents and enabling applicants to provide these documents at a later time rather than at the time of application.
- b) Victims Services allow the requirement for identity documents to be waived in appropriate circumstances. For example, for Aboriginal and Torres Strait Islander people, people experiencing homelessness and members of the LGBTQIA+ community. In particular, members of the trans community, people who identify as non-binary and people who were born in NSW and have not undergone gender affirmation surgery or cannot otherwise update their gender markers on identity documents. Challenges can arise where a person does not have identity documents which do not match their gender experience.

6) Ensure procedural fairness.

- a) Victims Services informs applicant/legal representative/advocate in writing of the earliest date by which a matter will be determined.
- b) Applicant/legal representative/advocate has access to all evidence upon which Victims Services relies to make a decision.
- c) Victims Services adopts a more trauma informed approach to auditing of the Immediate Needs Support Package – Domestic Violence (**INSP- DV**).

7) Increase transparency and accountability.

- a) Require Victims Services or its managing agency or Minister to publish all policies and guidelines which they rely on to make decisions.

- b) Require Victims Services or its managing agency or Minister to publish comprehensive data annually about the operation of the Victims Support Scheme as occurred under the Victims Compensation Scheme and provide quarterly reports.

8) Improve consultation.

- a) Commissioner of Victims Rights to improve consultation mechanisms by requiring that proper consultation is undertaken before Victims Services makes change. These consultation processes should include ensuring the Victims Advisory Board (VAB) works collaboratively with the Victims of Crime Interagency (VoCI) and other appropriate mechanisms with avenues for community organisations to raise issues at VAB meetings and the publishing of VAB and VoCI minutes.
- a) Ensure proper consultation in this review to hear about the experiences of priority populations, including:
 - i) Aboriginal and Torres Strait Islander peoples,
 - ii) migrants,
 - iii) refugees,
 - iv) people on temporary visas experiencing violence,
 - v) people living with disability,
 - vi) members of the LGBTIQ+ community,
 - vii) people experiencing homelessness,
 - viii) people with lived experience of incarceration,
 - ix) people in regional, rural and remote areas,
 - x) older people,
 - xi) younger people,
 - xii) priority populations and the services supporting them,to have input into proposed solutions and be consulted on proposed solutions.

Recommendations that the NSW Government implements by 2023

Adopt a trauma-informed, survivor centric, culturally safe approach and increase accessibility.

- 9) Remove all time limits for victim-survivors of sexual, domestic and family violence as well as victim-survivors of modern slavery in relation to Victims Support applications.**
- a) Remove upper time limits on recognition payments for victims of domestic violence, sexual assault and child abuse as well as victim-survivors of modern slavery.
 - b) Remove the 2-year time limit for financial assistance for victims of domestic violence, sexual assault, child sexual abuse and child abuse as well as victim-survivors of modern slavery including for loss of actual earnings and medical and dental expenses.
- 10) Provide greater recognition of domestic violence, including child abuse, sexual violence and modern slavery through higher recognition payments. These payments should increase in value with the current categories shifted to higher categories:**
- a) Choking, suffocation, strangulation or attempts to choke, suffocate or strangle should be specifically included at a minimum as a Category C recognition payment.
 - b) Category B recognition payments should be expanded to include domestic violence involving violence that is one of a series of related acts.
 - c) Better recognition of modern slavery through higher recognition payments.
 - d) Acts of violence currently resulting in a Category B recognition payment should be elevated to Category A (\$15,000).
 - e) Payments need to be indexed annually and should not ever decrease despite indexation (there has been no increase in these payments since the Victims Support Scheme was introduced in May 2013).

11) Amend the definition of “victim of crime” and “act of modern slavery” in the *Victims Rights and Support Act 2013 (NSW)* to include all forms of modern slavery. This requires:

- a) The definition of “victim of crime” in s5(1) of the *Victims Rights and Support Act 2013* specifically referring to sections 5(1)(a) and 5(1)(b) of the *Modern Slavery Act 2018 (NSW)*.
- b) The definition of “modern slavery” in s19A of the *Victims Rights and Support Act 2013* be amended so an “or” exists between s19A(1)(a) and s19A(1)(b) rather than an “and” or it reads “and/or”.

12) Legislate the standard of proof of a “reasonable likelihood” test consistent with the National Redress Scheme for people who have experienced institutional child sexual abuse.

13) The form of evidence to support a Victims Support application should not be prescribed.

14) Improve access to economic loss payments.

- a) Victim Services actively supports victim-survivors to evidence claims of economic loss or provide appropriate referrals when they are unable to do so.
- b) Improve access to economic loss payments for victim-survivors engaged in casual work.
- c) Clarification and simplification of the calculation of loss of actual earnings and that the method of calculation is embedded in the victims support legislation. Further consultation specific to this issue is required.
- d) The type of evidence is not stipulated as this can be a barrier to access, for example, where the employer is the alleged perpetrator (e.g. modern slavery).

15) Improve access to the Victims Support Scheme for family victims where there has been a homicide.

- a) Remove time limits on funeral payments to accommodate matters where the victim's body has not been found or where the victim's body has not been released for any reason.
- b) Remove time limits for justice related expenses to accommodate matters that do not get resolved within the current period.
- c) Allow additional justice related payments over and above the current limit to accommodate matters that go to retrial and multiple appeals.
- d) Remove time limits on applications for justice related expenses for family victims. In the alternative, though less preferred, the time limit should start from the day charges are laid in relation to the homicide. Justice related expenses for family members should be available for all homicide related court matters - including mentions, trials, appeals and Coronial Inquests, Mental Health Review Tribunal hearings and State Parole proceedings.
- e) Improve access to Victims Support Approved Counsellors in rural areas, especially where family victims choose to have face to face counselling or may not have access to adequate online services. This will require active recruitment of counsellors by Victims Services.
- f) Reinstate option for payment of support person expenses for court or other related needs.
- g) Remove time limits or hours restrictions on counselling for family victims who will need to return to counselling at other stages in their life e.g., appeals, retrials, parole hearings etc.

16) Legislate amendments to enable Victims Services to pay third parties for Government Information (Public Access) Act 2009 (access to information) expenses and other evidentiary requirements such as medical reports separate to financial assistance.

- 17) Add a new Victims Support payment called a Disability and Domestic and Family Violence Crisis payment.
- 18) Introduce Immediate Needs Support Payment – sexual violence.
- 19) The independent Commissioner Victims Rights and Victims Services regularly consult organisations to ensure cultural safety and to remove barriers to accessing Victims Support with the independent Commissioner Victims Rights publishing an annual report which reports on such issues.
- 20) A discretionary process for victim-survivors under 18 years old to be able to receive their recognition payment rather than have it held in trust.
- 21) Victims Services to advocate to Services Australia for amendments to the Social Security Guide that will protect recipients of Special Benefit and allow them to get the full benefit of Victims Support (or equivalent) payments without their Special Benefit being affected. This is particularly important for victim-survivors of domestic violence, sexual violence, child abuse, child sexual abuse and modern slavery.
- 22) Expand eligibility for Victims Support to people who are victims of crime whilst incarcerated.
- 23) Strengthen the Charter of Victims Rights

Restitution.

- 24) In circumstances of sexual, domestic and family violence and modern slavery, legislate a presumption not to pursue restitution unless the victim-survivor elects Victims Services pursue restitution.

25) Prohibit use of Victims Support payments to service debt.

- a) Immediate Needs payments are intended to help victim-survivors with urgent immediate needs for their safety and recovery. Financial assistance for economic loss also assists with recovery. Financial assistance for Immediate Needs payments, including Immediate Needs Support Package, as well as for economic loss must not be used to offset or pay off any kind of debt, including an order of restitution.
- b) A recognition payment is made to acknowledge a traumatic and violent experience. Recognition payments must not be used to offset or pay off any kind of debt, including an order of restitution. The only exception should be when a victim-survivor requests this to occur.

26) If a person makes an application to Victims Services for a recognition payment and they have an existing order for restitution (debt), Victims Support must notify them about the debt at the time of them lodging the application. Victims Services should also advise as to whether that debt has been transferred to Revenue NSW and provide information about Work Development Order programs available, so the applicant has the opportunity to reduce any debts by that scheme.

27) Uniformity of processes within Victims Services and Revenue NSW about debt collection.

28) Victims Services and Revenue NSW provide a list of Work Development Order programs available in the area where the person lives when advising about enforcement / debt.

Ensure procedural fairness.

29) Amend the Act to provide out of time provisions for internal review for all aspects of Victims Support or alternatively remove the time limit for internal review altogether.

30) Amend the Act to ensure external review is available for all claims for financial assistance, including immediate needs and economic loss.

31) Section 41A (lapsing provision) be reviewed and, if it continues, there be a legislative presumption that people applying for more time to provide evidence will be granted more time, particularly victim-survivors of domestic violence, sexual violence, child abuse, child sexual abuse, modern slavery as well as family victims.

32) Legislate the requirement for Victims Services to note all evidence considered and provide reasons for their decisions ensuring that decision-makers provide applicants with detailed information to justify their decision in plain English, and that the reasons outline the evidence relied upon to reach the decision.

Increasing transparency and accountability.

33) Appoint an independent Commissioner of Victims Rights.

Recommendations that the NSW Department of Communities and Justice implement by 2023

Increasing transparency and accountability.

34) Ensure all supports available to victim-survivors of crime are promoted via a centralised website.