



Shoalcoast Community Legal Centre Inc
ABN 85 989 128 796

11 July 2022

Department of Communities and Justice



To whom it may concern

Re: Statutory Review of the Victims Rights and Support Act 2013

1. This submission is made on behalf of Shoalcoast Community Legal Centre ("Shoalcoast").
2. Shoalcoast is a generalist legal service assisting regional, rural and remote clients on the South Coast and Southern Tablelands of New South Wales. Our services are delivered to residents residing in the Shoalhaven, Eurobodalla, Bega Valley, Snowy Monaro, and Queanbeyan-Palerang Local Government Areas. We acknowledge and pay respect to the traditional owners of these lands.
3. We primarily provide advice on family and civil law matters, including advising on victims compensation matters. We regularly assist victims of crime to submit applications to Victims Services for counselling, financial assistance for immediate needs, financial assistance for economic loss and recognition payments.
4. Shoalcoast solicitors offer advice and assistance over the phone and face to face at outreach centres. We offer limited court representation to clients. We offer duty solicitor services at Nowra, Milton and Bega local court on DV list days.
5. We thank the Department of Communities and Justice for the opportunity to put forward our views and experience of the Victims Rights and Support Act 2013 ('VRSA').
6. Shoalcoast has openly endorsed the joint position statement signed by many community legal centres which seeks the removal of the requirement to separately prove injury in NSW Victims Support applications by the end of 2022.

7. Shoalcoast has also endorsed the broader joint submission to the review of the VRSA spearheaded by the CLC NSW DV VC Subcommittee and signed by many other CLCs.
8. We are making this submission to highlight some of the issues that we have experienced in our dealings with Victims Services and the VRSA. The major issues of concern are:
 - a. Applicants having their VS applications dismissed because they have not furnished enough evidence
 - b. Applicants and their representatives not having access to all the evidence upon which VS relies to make a decision
 - c. The decisions being made by Victims Services Assessors are not consistent
 - d. The VS decisions do not give detailed reasoning for how they award recognition payments
9. We have included de-identified case studies to illustrate our concerns.

Applicants having their VS applications dismissed because they have not furnished enough evidence

10. Often a client will come to Shoalcoast after their VS recognition payment application has been dismissed because they have not submitted the requisite evidence to VS. Either the client submitted the initial application themselves or a community service agency submitted the application for the client. Neither the client nor the community service provider understood that they had to submit evidence of the act of violence and/or evidence of injury within 12 months. Often, by the time the client is seeking assistance from Shoalcoast, the client is out of time to submit an internal review and therefore cannot claim compensation for that act of violence.
11. We support the recommendation that VS return to collecting the evidence or fund services to undertake this work and reimburse services for associated costs. Placing the burden on victim-survivors is contrary to the practice of trauma-informed practice. Many of our clients who have valid VS claims simply cannot gather the evidence together for their claims.
12. At the very least, the VS application, when asking the applicant whether they want a recognition payment, should clearly state that the application will be dismissed if no evidence of act of violence and evidence of injury are submitted. The application form should encourage clients to get advice and assistance from community legal centres and community service providers with experience in making VS claims.

Applicants and their representatives not having access to all the evidence upon which VS relies to make a decision

13. We assisted Alice to make a claim for a category C payment after a home invasion in which she suffered grievous bodily harm. In the application the date of the act of violence was different from the date in the COPS system. The application was rejected by VS. While Shoalcoast could have made a GIPA application prior to the VS application to verify the date of the home invasion, GIPA applications cost CLCs money. It would be procedurally more fair and transparent if the Police would allow Victims Services to share police reports with the applicant/legal representative/advocate at no charge, as Victims Services used to do. This would allow the applicant and their representative to see all the evidence upon which VS will rely to make their decision.

The Decisions being made by VS Assessors are not consistent

14. Shoalcoast has found that some assessors will accept there has been an act of violence even though the strict requirements of s39 VRSA are not complied with, while other assessors will not.
15. In Henry's case, he was sexually abused as a child. Despite not submitting a police report, or a report by a government agency or any other agency that provides support to victims of crime, the assessor accepted the clinical psychologist's report as evidence of the act of violence and evidence of injury. Henry was awarded \$10,000. In contrast, Mary was denied a category B payment because, although the assessor found that *'there is medical evidence which confirms that [Mary] was injured as a direct result of the incidents complained'*, Mary did not satisfy the requirements of s39(2)(b)(i) VRSA in that she did not report the matter to the police or a government agency or any other agency that provides support to victims of crime.
16. Clearly Henry's decision is the more sensible and equitable decision. Strictly adhering to s 39 VRSA when there is clearly evidence of the act of violence and evidence of injury seems non-sensical.
17. Furthermore, having two very similar fact situations being determined in utterly different ways is concerning.

The VS Decisions do not give detailed reasoning for recognition payment decisions

18. Anita suffered domestic violence at the hands of her partner. She was given a provisional diagnosis of 'post-traumatic stress disorder with mixed anxiety and depression, generalised anxiety disorder and panic disorder'. Shoalcoast assisted Anita to submit evidence and we made detailed submissions explaining why Anita should receive a Category C payment. In a 2-page decision the assessor determined that the client was entitled to a Category D payment, saying only *"To determine the category of recognition payment, I have considered the nature of the violence committed against (client) and the medical evidence. Based on the supporting evidence, I approve [Category D – an assault not*

resulting in GBH)]” The Assessor did not give any more detailed reasoning. Shoalcoast then submitted an Internal Review arguing that the evidence that had been submitted was sufficient to warrant a finding of a Category C Payment. No further evidence was submitted for the Internal Review. Fortunately, the decision of the Internal Review was that Anita should receive a Category C payment. In the decision, a Senior Assessor found that “Based on the seriousness of the physical violence, the severity and longevity of the [client’s] psychological symptoms, and that she has attended counselling over an extended period of time to treat her condition, I am satisfied her injuries are grave, and therefore amount to grievous bodily harm.”

19. Isabelle suffered domestic violence at the hands of her partner. Shoalcoast assisted Isabelle to make a VS application for DV and to gather the relevant evidence. Shoalcoast made detailed submissions for why Isabelle should receive a Category C payment. In a two-page decision the assessor determined that the victim was entitled to a category D payment, despite the fact that there were 2 separate Diagnoses of PTSD. In the decision all the assessor said was “*To determine the category of recognition payment, I have considered the nature of the violence committed against (client) and the medical evidence. Based on the supporting evidence, I approve [Category D – an assault not resulting in GBH)]”* Not surprisingly our client has instructed us to seek an internal review of the decision.
20. Lorna suffered domestic violence at the hands of her partner. Shoalcoast assisted Lorna to make a VS application for DV and to gather the relevant evidence. Shoalcoast made detailed submissions for why Lorna should receive a Category C payment, submitting medical evidence from a GP and the local hospital. In a two-page decision the assessor determined that the victim was entitled to a category D payment, saying “*To determine the category of recognition payment, I have considered the nature of the violence committed against (client) and the medical evidence. Based on the supporting evidence, I approve [Category D – an assault not resulting in GBH)]”* Again our client has instructed us to seek an internal review of this decision.
21. The above 3 recent case studies are disturbing because Victims Services seems not to understand how distressing a finding of a Category D payment is to a client as compared with a finding of Category C payment. Clients have been diagnosed with severe psychological conditions and yet Victims Services deems that these do not amount to grievous bodily harm. Clients feel extremely let down by Victims Services, as if their suffering is not severe enough to warrant a payment of an extra \$3500. The fact that the assessor, in the initial decision, does not take the time to explain why they have only been awarded a Category D payment when the client has requested a Category C payment is also galling to clients. Furthermore, it is a waste of resources for CLCs to have to make internal review applications when all the evidence has already been submitted in the initial application. It is as if the Assessor did not take the time to read the initial application, or alternatively, the VS Assessor default is to award Category D payments for domestic violence and see if an applicant will seek an Internal Review, at which point VS will make a more considered decision.

22. We recommend that there needs to be a clear definition of grievous bodily harm (GBH) and details about the evidence that is necessary to prove GBH.
23. We also recommend that VS assessors give detailed reasons for deciding that an injury does not amount to grievous bodily harm.
24. Finally we recommend that Victims Services increase its transparency and accountability and publish policies and guidelines which they rely on to make decisions.
25. Thank you for taking the time to consider this submission. [REDACTED]

Yours faithfully

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Principal Solicitor