

11 July 2022



Sent by email: policy@justice.nsw.gov.au

To whom it may concern.

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

ACON provides this submission to the review of the *Victims Rights and Support Act 2013*. Thank you for the opportunity to provide input into this review.

This letter and the recommendations within are also endorsed by the HIV AIDS Legal Centre (HALC), a NSW based not-for-profit, specialist community legal centre that provides legal assistance, community legal education and law reform activity related to HIV and Hepatitis.

ACON is NSW's leading health organisation specialising in community health, inclusion and HIV responses for people of diverse sexualities and genders. ACON has had a dedicated domestic and family violence project since 2004. Our primary activities in this area include client support, counselling and referrals, research, policy and resource development, and advocacy for the needs of LGBTQ+ people experiencing violence. ACON both refers clients into Victims Services and has counsellors within our teams who are approved counsellors with Victims Services.

We write to endorse and support all recommendations developed collaboratively by NGO members of the Victims of Crime Interagency, NSW Women's Alliance, and other organisations supporting victim-survivors. These recommendations have been reproduced in full below.

ACON recognises the importance of the NSW Victims Support Scheme in providing support for victim-survivors to recover from trauma and abuse. Access to Victims Services can be particularly important for sexuality and gender diverse victim-survivors, as the majority of domestic and family violence services are only able to provide supports to women (cis and trans) and are often not safe or welcoming for trans women. This leaves GBQ cis men, and trans people (binary and non-binary) with limited support options. Victim Services is one crucial state-wide service option for people we support. However, as the recommendations below reflect, there are many current barriers to victim-survivors' ability to access Victims Support.

We believe that the below recommendations will improve the experiences of and outcomes for sexuality and gender diverse victim-survivors. Each of the recommendations listed within this submission is important and should be implemented. We would also like to highlight the particular importance of a number of the recommendations for the communities we support:

2a. Increase the number of suitably qualified Victims Services Approved Counsellors available, including in regional, rural and remote areas. This includes counsellors who are culturally safe, disability aware,

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LGBTQ+ aware, trauma informed, with expertise in working with particular priority populations and expertise on particular issues. We know that, particularly in regional areas, our communities often struggle to find affirming, safe supports. If access to these counsellors was improved through Victims Services, this would enable those in our communities who are most in need to access support.

2d. 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. Enabling applications at the organisational level would support community-controlled organisations like ACON to register our employed counsellors. Many LGBTQ+ people feel safest at LGBTQ+ specific services, and with LGBTQ+ counsellors. Enabling victim-survivors to effectively access Victim Services through ACON would support the cultural safety of LGBTQ+ victim-survivors

2h. Reinstate funding for group work in NSW. Individual counselling is not a substitute for victims wishing to benefit from facilitated peer support group work. In our research and work with community, we often hear from people that what they have found most valuable in recovery is connecting with LGBTQ+ peers who have also experienced sexual, domestic and family violence. The invisibility of violence against LGBTQ+ people in conversations and education about DFV means that people often feel isolated and struggle to make sense of their experiences. Community connection and sharing experiences through programs such as ACON's survivor group, has been a tool for healing and recovery from trauma for community. Enabling funding for group work in NSW would increase the capacity of many LGBTQ+ victim-survivors to engage in this important form of work.

5b. Victims Services allow the identification documentation requirement to be

waived in appropriate circumstances. Trans people (binary and non-binary) who were born in NSW and who have not undergone gender affirmation surgery cannot update their gender markers on certain identity documents. This can cause challenges in having ID documents that match their gender experience. It can be traumatic for trans people to need to provide identity documents that do not match their name or gender, and having these documents on file can use cause the person to be misgendered in future communications (for example if letters are auto-populated with information from identification documents).

8b. Ensure proper consultation in this review to hear about the experiences of priority populations, including First Nations people, refugee and migrant communities including people on temporary visas experiencing violence, people with disability, LGBTQ+ communities, people who are homeless, people with lived experience of prison, people in regional, rural and remote areas, older people and younger people and for priority populations and the services supporting them to have input into proposed solutions and be consulted on proposed solutions. LGBTQ+ people have unique experiences of both violence, including experiences of identity based abuse, and of barriers to accessing affirming and trauma

informed support. It is important that our communities are consulted with about potential changes and solutions related to Victims Services so that solutions address our communities' needs and experiences.

Full Recommendations for the *Victims Rights and Support Act* review

Recommendations that the NSW Government implements 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.

Recommendations that the NSW Department of Communities and Justice implements 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 are culturally safe, disability aware, LGBTQ+ aware, trauma informed, with expertise in working with particular priority populations and expertise on particular issues.
 - b. Provide more information to victim-survivors about expertise of counsellors and Victims Services assists 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 apply extended hours of counselling allocation up to 44 hours where appropriate with further extensions as required and there be a presumption in favour of approving the application.
 - f. Victims Services reviews 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 returns to collecting evidence or funds services to undertake this work and reimburses services for associated costs

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. Simplifying identity checks:
 - a. Victims Services adopt a more flexible approach to identity documents, accepting a wider range of identity documents and enabling applicants to provide identification documentation at a later time rather than at the time of application.
 - b. Victims Services allow the identification documentation requirement to be waived in appropriate circumstances.
For example, for First Nations people, for homeless people, for trans people (binary and non-binary) who were born in NSW and who have not undergone gender affirmation surgery, cannot update their gender markers on identity documents. This can cause challenges in having ID documents that match 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 on to make a decision.
 - c. Victims Services adopts a more trauma informed approach to auditing of 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 policies and guidelines they rely on to make decisions.
 - b. Require Victims Services or its managing agency or Minister to regularly publish comprehensive data annually about the operation of the Victims Support Scheme as occurred under the Victims Compensation Scheme and also provides quarterly reports.
8. *Improve consultation*
 - a. Commissioner Victims Rights improves consultation mechanisms by requiring that proper consultation is undertaken before Victims Services makes change. These consultation processes must 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.
 - b. Ensure proper consultation in this review to hear about the experiences of priority populations, including First Nations people, refugee and migrant communities including people on temporary visas experiencing violence, people with disability, LGBTQ+ communities, people who are homeless, people with lived experience of prison, people in regional, rural and remote areas, older people and younger people and for 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 and 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* 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* 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* 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 (eg 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. These expenses should be made 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 it being held on trust.
 21. The Act explicitly states that a victim-survivor's welfare benefits will not be impacted by payments made to the victim-survivor through the Victims Support Scheme, and a clear policy or agreement established between Victims Services NSW and Centrelink that the recipient's entitlement to social security benefits is not affected by any payment under the Victims Support Scheme.
 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.

Increasing transparency and accountability

33. Appoint an independent Commissioner 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 in a centralised website.

Kind Regards

[Redacted Signature]

[Redacted Name]

Chief Executive Officer