



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: HRC/FLC/CLIC:SSsb080722

8 July 2022

Policy, Reform and Legislation
NSW Department of Communities and Justice
Locked Bag 5000
Parramatta NSW 2124

By email: policy@justice.nsw.gov.au

To whom it may concern,

Statutory Review of the *Victims Rights and Support Act 2013*

Thank you for the opportunity to contribute to the statutory review of the *Victims Rights and Support Act 2013* (NSW) (**the Act**). The Law Society's Human Rights, Family Law and Children's Legal Issues Committees have contributed to this submission. We have also benefited from discussions with the Women's Legal Service NSW and the Western Sydney University Justice Clinic in the preparation of this submission.

At the outset, we emphasise that the NSW Victims Support Scheme (**VSS**) has a very important role in providing practical assistance to victim-survivors (through counselling, financial assistance for immediate needs and economic loss, and recognition payments) which is supported by the Law Society. When operating as intended, such a scheme goes beyond providing practical assistance to assisting victim-survivors in their recovery through formal recognition of their experiences and trauma.

We are of the view that while the policy objectives of the Act remain valid, there are some barriers to victim-survivors accessing support in NSW that should be addressed as part of this statutory review.

Requirement to prove injury in Victims Support applications

The definition of 'act of violence' under s 19(1)(c) of the Act and the definition of 'act of modern slavery' under s 19A(1)(c) of the Act require the victim-survivor to have suffered an injury. Further, the documentary evidence to be provided under s 39 of the Act requires the victim-survivor to provide a medical, dental or counselling report verifying the victim-survivor 'has actually been injured as a result of an act of violence or act of modern slavery'.

We are concerned that this requirement may have a harmful effect on victim-survivors, who are required to prove injury resulting from an act or acts of violence towards their person that would naturally have a negative effect on their physical and mental wellbeing. It is probable that this requirement may heighten trauma for victim-survivors and may deter them from accessing what is envisaged as a beneficial scheme to recognise and promote the rights of victim-survivors of crime. We therefore suggest consideration of removing the requirement to prove injury under the VSS.

Recognition Payments

The Law Society considers that recognition payments under ss 35 and 36 of the Act and s 14 of the *Victims Rights and Support Regulation 2019 (NSW)* should be indexed annually. While we appreciate that it is a difficult task to categorise awards, consideration should be given to further acknowledging the impacts of domestic violence and modern slavery through higher recognition payments.

Definition of modern slavery

We are pleased that the Act has been amended from 1 January 2022 to specifically include victim-survivors of modern slavery. However, we draw your attention to some problematic aspects of the definition of 'modern slavery' under ss 5 and 19A of the Act that are restricting the cohort of modern slavery victim-survivors that can make a claim under the VSS.

It is problematic, for example, that the definition of 'victim of crime' under s 5 only captures those persons who have suffered harm as a result of conduct of a kind referred to in s 5(1)(b) of the *Modern Slavery Act 2018 (NSW) (MSA NSW)*, namely 'any conduct involving the use of any form of slavery, servitude or forced labour taking place in the supply chains of organisations'. We consider that the definition of 'victim of crime' should be expanded to also include section 5(1)(a) of the MSA NSW, which refers to 'any conduct constituting a modern slavery offence'.

Similarly, s 19A(1) of the Act defines 'act of modern slavery' as an act or series of related acts committed in NSW 'that has apparently occurred in the course of commission of an offence or other conduct constituting modern slavery within the meaning of the MSA NSW' and 'that has involved subjecting one or more persons to any form of slavery, servitude or forced labour of a child within the meaning of section 93AB of the *Crimes Act 1900*'. We suggest the definition be amended so that an act of modern slavery is constituted by either of 19A(1)(a) or 19A(1)(b). In our view, it is not appropriate to restrict access to the VSS to only those victim-survivors of modern slavery who fall within the remit of s 93AB of the *Crimes Act 1900 (NSW)*.

Time limits

Consideration should be given to removing the upper time limits on recognition payments and financial assistance payments for victim-survivors of an act of violence or act of modern slavery involving domestic violence, child abuse or sexual assault. This is in light of the fact that it is now well-recognised that it may take many years for victim-survivors to find themselves in a position to report what has occurred and access support.

Further, we are concerned about reports from our members practising in this area that despite there being nothing in the Act to prevent victim-survivors of modern slavery from accessing the VSS for acts that occurred within the relevant periods in s 40 of the Act, Victims Services NSW will only accept applications in relation to modern slavery where the act of modern slavery has occurred since 1 January 2022. This does not appear to be in keeping with the intention of the scheme to recognise past acts.

Collection of Evidence under s 39

The process by which victim-survivors are required to collect documentary evidence for the purposes of s 39 can be onerous for many victims. Whereas we understand that, before changes introduced in July 2020, Victims Services assisted in accessing this evidence, including police evidence, it is now incumbent on the victim-survivor to make a request through the *Government Information (Public Access) Act 2009 (NSW) (GIPA)*. We understand that even in circumstances where Victims Services does have access to documentary evidence/supporting material, this is not routinely provided to the victim-survivor, which can lead to confusion about what documentary evidence remains outstanding. While not necessarily a matter which requires legislative reform, this is a key

aspect of the Scheme which should be reviewed to consider whether the Scheme is supporting victim-survivors as effectively as possible.

Restitution

The object of Part 5 of the Act is to enable financial support paid and recognition payments made under the Scheme to be recovered from persons found guilty of the crimes giving rise to the payments. In our view, a victim-survivor of sexual, domestic and family violence and modern slavery should be entitled to elect whether Victim Services pursues restitution in this way. In our view, it may put victim-survivors at further risk of renewed violence or retribution by the perpetrator and should not be undertaken without the victim-survivor's approval.

Thank you for the opportunity to contribute to this submission. [REDACTED]
[REDACTED]
[REDACTED]

Yours faithfully,

[REDACTED]

Chief Executive Officer