

Redfern Legal Centre



NSW Department of Communities and Justice
93 George Street
PARRAMATTA NSW 2150
By email: policy@justice.nsw.gov.au

8 July 2022

Dear Committee Secretary

Please find attached our submission in response to the statutory review of the *Victims Rights and Support Act 2013 (NSW)* submission.

We would welcome the opportunity to meet with you to discuss our submission. [REDACTED]

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[REDACTED]

[REDACTED]

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Redfern Legal Centre



STATUTORY REVIEW OF THE *VICTIMS RIGHTS AND SUPPORT ACT 2013 (NSW)*
SUBMISSION



DATE: 8 July 2022



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1. Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal organisation with a prominent profile in the Redfern area.

RLC has a particular focus on human rights and social justice. Our specialist areas of work are financial abuse, tenancy, domestic violence, credit and debt, employment, discrimination and complaints about police and other governmental agencies. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

2. RLC's work in Victims Support

RLC has a long history of providing advice, assistance and advocacy to victims of crime. We regularly make applications on behalf of victims of crime to Victims Services. Our clients are predominantly people experiencing vulnerability who have experienced multiple traumatic incidents. Many of the clients we lodge Victims Support applications for are Aboriginal or Torres Strait Islander.

3. RLC endorses the Womens Legal Service NSW submission and submits as a member of the Economic Abuse Reference Group NSW

RLC endorses the submission provided by Womens Legal Service NSW reviewing the *Victims Rights and Support Act 2013 (the Act)*.

RLC has also made a joint submission as a member of the Economic Abuse Reference Group NSW.

4. Recommendations

- 4.1 Amend *section 19* of the Act to delete “injury” as an element of the “act of violence”.
- 4.2 Section 43 of the Act should include that Victims services notify applicants, advocates or legal representative of the earliest date on which the decision will be determined.
- 4.3 Applicants, advocates and lawyers should have access to all of the evidence that Victim’s services relies on to make their decision.
- 4.4 Amend *section 40* of the Act, removing the 2 year limitation on making applications for recognition payments and financial support.
- 4.5 Recognition payments should be increased for domestic, violence child abuse, sexual violence and modern slavery.
- 4.6 Introduce Immediate Needs Support Payment (INSP) for victims of sexual violence.
- 4.7 Create a central website for all victims support services.
- 4.8 Payments under the Victims Support Scheme cannot be used to offset outstanding Restitution Orders without informed consent from the applicant.
- 4.9 If an applicant has an outstanding Restitution Order, that they be notified at the time of making an application for Victims Support. Victims Services should also advise as to whether that debt has been transferred to Revenue NSW and provide information about Work and Development Order programs available so the applicant has the opportunity to reduce any debts by that scheme.
- 4.10 Uniformity of processes within Victims Services and Revenue NSW about debt collection

5. RLC’s responses to specific issues

5.1 Legislate the removal of the requirement to separately prove injury in Victims Support applications

The current law in relation to victims compensation requires applicants to obtain evidence that injury was sustained as a result of the violent act/s, usually by way of a Certificate of Injury. This requires applicants to relay the details of the violent act/s to a health professional. This can potentially re-traumatise clients as they have to re-tell their story for a non-therapeutic purpose. A trauma informed response should limit the requirements to prove eligibility to evidence which is absolutely necessary (that is, evidence of the act of violence).

At the very minimum the requirement to prove injury should be removed for childhood sexual assault and domestic violence. This would make the victims services process less onerous on applicants, and recognise the harm that flows from all acts of violence. In our experience, RLC have not advised or represented victims of crime who have not suffered harm as a result of the act of violence. However we do see first hand how traumatic it is for our clients to have to re-tell their story in order to obtain a Certificate of Injury.

Reducing the need for victims to repeat their story may also encourage more victim survivors to come forward and apply for victims support, as the essential requirements of the process would be less onerous.

Case Study: Applications for sexual assault – proof of injury

Susan* attended Redfern Legal Centre and disclosed to staff about a sexual assault that happened several decades ago when she was still a minor. Apart from telling staff at RLC, she has only disclosed this one occasion to her counsellor, very recently. Susan communicated that she has been too traumatised to talk about or disclose what had happened to her previously. The acts of violence significantly impacted many aspects of her life including her relationship with her family, who are not aware of what happened to her. Susan would like to make an application with Victims Services. She is yet to speak with any medical professionals about the sexual assaults and is apprehensive of the need to relay again what happened to her to get her certificate of injury to lodge with her application.

** Not the client's real name.*

Recommendation:

1. Amend section 19 of the Act to delete "injury" as an element of the "act of violence".

5.2 Ensure procedural fairness

Victims Services should notify applicants, advocates or lawyers in writing of the earliest date on which the decision will be determined, to allow applicants to provide any and all relevant evidence that would be critical and relevant to the decision and what category of compensation they may be entitled to.

Case Study: Notifying of determination of matter and opportunity to provide evidence

Erica* submitted an application as a child victim of domestic violence and received a notice of decision within three weeks. Erica had submitted the notice of reporting and certificate of injury. She had intended to provide extensive medical evidence to prove the ongoing domestic violence she had experienced. However, due to the very brief timeline in which she received the decision, she was unable to provide all of the evidence she intended and was granted the minimum category for a recognition payment. She may be eligible for a higher category based on the evidence she was intending to provide, and now plans to lodge an internal review so that she can lodge all of her supporting evidence.

** Not the client's real name.*

Applicants, advocates and lawyers should have access to all of the evidence that Victims Services relies on to make their decision, so that there is full transparency and the applicant is able to adequately respond to any issues which arise in that evidence, and consider any potential review of the decision.

In our experience, applicants do not always have the opportunity to obtain copies of police documents that Victims Services has access to, creating an unfairness in the process. In order to properly respond to any issues raised in these documents, applicants need access to all of the information relied on by Victims Services.

Recommendations:

2. Section 43 of the Act should include that Victims Services notify applicants, advocates or legal representatives of the earliest date on which the decision will be determined.

3. Applicants, advocates and lawyers should have access to all of the evidence that Victims Services relies on to make their decision.

5.3 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

The current restrictive time limits imposed on victim-survivors can be difficult to comply with due to the complexities of trauma, especially in situations of sexual assault, domestic violence and modern slavery. Often potential applicants need long periods of time to process the act/s of violence that they were subject to and applying for compensation may not be a priority. Many clients of RLC seek advice about acts of violence perpetrated against them many years, in some cases, decades ago. Victim survivors should not be penalised for needing time to process their trauma before considering access to compensation. Removal of time limits should apply to both recognition payments and financial assistance payments.

Recommendation:

4. Amend section 40 of the Act, removing the 2 year limitation on making applications for recognition payments and financial support.

5.4 Provide greater recognition of domestic violence, including child abuse and sexual violence and modern slavery through higher recognition payments

There has been no increase in victims compensation payments since 2013. Indexation should be applied to the payments and they should not effectively decrease.

There are also anomalies in the compensation amounts that should be remedied. We consider that:

- acts of choking, suffocation, strangulation or attempts of the aforementioned should be included in a minimum recognition payment of category C, due to the severity of these acts;
- domestic violence that is a pattern or a part of a series of acts should be included in Category B recognition payments; and
- Category B recognition payments should be elevated to Category A (\$15,000).

Recommendation:

5. Recognition payments should be increased for domestic, violence child abuse, sexual violence and modern slavery.

5.5 Introduce Immediate Needs Support Payment for sexual violence

Victim-survivors of sexual assault can benefit significantly from the support of an Immediate Needs Support Payment (**INSP**). Concerns of safety and wellbeing are crucial and immediate practical assistance such as rent assistance, household items and funds to improve household security can play a key role in ensuring that victim-survivors of sexual assault are safe and secure.

We see clients who have these same concerns and needs, who are not victims of domestic violence, but of sexual violence perpetrated outside of domestic relationships. We consider that these benefits should not be limited to victims of domestic violence, but should be extended to all victims of sexual violence.

Recommendation:

6. Introduce Immediate Needs Support Payment (INSP) for victims of sexual violence.

5.6 Ensure all supports available to victim-survivors of crime are promoted in a centralised website

Access to information on all support services assists victim survivors to navigate the compensation process and what they may be entitled to. In our experience, many clients who access victims find accessing information challenging. Having a centralised website where an applicant can access all Victims Services supports would break down and simplify the process for our clients. The website should be promoted and accessed through the Victims Services website.

Recommendation:

7. Create a central website for all victims support services.

5.7 Victims Support payments should not be used to offset or pay off outstanding Restitution Orders without informed consent.

Economic abuse is not considered by the *Crimes (Personal and Domestic Violence) Act 2007* (NSW).¹ All other state jurisdictions in Australia have a definition of domestic and family violence that includes forms of abuse such as emotional, psychological, coercive or financial abuse.

¹ Barwick, K., McGorrrery, P., and McMahon, M. (2020) 'Ahead of Their Time? The Offences of Economic and Emotional Abuse in Tasmania, Australia' in Marilyn McMahon and Paul McGorrrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal Law* Springer, 135, 155.

Case Study: Economic abuse

Sandra is an Aboriginal woman who lives in remote NSW. She is a long-term victim of domestic violence at the hands of her ex-partner. She was in and out of a relationship with her abusive ex-partner for several decades, and experienced domestic violence including financial abuse, where her ex-partner controlled finances in the relationship and she had to ask for money for basic necessities. She suffered sexual violence in the relationship. On one of the occasions her ex-partner sexually assaulted her, she responded and was wrongly charged and found guilty of the offence, which led to a Victims Restitution Order being made against her.

Due to the complex feelings of shame and the trauma of what she had gone through as well as systemic issues faced by Aboriginal and Torres Strait Islander people, Sandra did not disclose to the police at the time that her ex-partner had sexually assaulted her. She continues to carry shame about her experience of sexual assault and has to date not disclosed this to her family.

For similar reasons, Sandra did not challenge the Victims Restitution Order as she was not in a position to seek or obtain legal advice about her options at the time. In the 20 years since, she had been paying off the debt through Work and Development Orders, and has paid off approximately half of the total debt, however she found it increasingly difficult to participate in her Work and Development Orders due to her challenging personal circumstances.

Sandra was in significant financial hardship and this was compounded by living in a remote area. When she tried to leave the relationship, her ex-partner would find her and bring her back. As well as stalking her, he also limited her access to economic opportunities and independence including her access to a car.

We are assisting Sandra to request that Revenue NSW write off the outstanding balance of her Victims Restitution Order so that she can move forward without this decades-old debt hanging over her head.

** Not the client's real name .*

This case study clearly indicates the impact that the Victims Support Scheme can have on someone experiencing DFV, particularly where a victim survivor has been misidentified and charged as a perpetrator, and how Victims Restitution Orders can further compound and perpetuate financial abuse.

It is not uncommon for victim survivors of DFV to have outstanding restitution debts arising in similar circumstances. If they seek support under the Victims Support Scheme at the time of leaving an abusive relationship, or afterwards, they face the risk that any Victims Support payments they receive will be used to offset or pay off their restitution debt. Some victim survivors decide not to apply for Victims Support for this reason, denying them access to much-needed financial support.

Victims Support payments – including Immediate Needs payments and financial assistance for economic loss – are intended to help victim survivors to meet their immediate needs in escaping or recovering from an abusive relationship. It is inappropriate for these payments to be redirected to pay off an existing order of restitution, particularly as that order may be historic and related to a different relationship. It is also inappropriate for recognition payments to be redirected to pay off restitution orders or any other debts, given they are intended to acknowledge a victim survivor's traumatic experience.

Victim survivors should be notified of any outstanding restitution orders at the time of lodging a new Victims Support application, and should be able to make an informed choice as to whether they use any successful payments to pay off their debt. They should also be notified of whether their restitution order has been transferred to Revenue NSW, and given information about Work and Development Order programs and other opportunities to reduce their debt, including applying for a write-off.

Recommendation:

- 8. Payments under the Victims Support Scheme cannot be used to offset outstanding Restitution Orders without informed consent from the applicant.***
- 9. If an applicant has an outstanding Restitution Order, that they be notified at the time of making an application for Victims Support. Victims Services should also advise as to whether that debt has been transferred to Revenue NSW and provide information about Work and Development Order programs available so the applicant has the opportunity to reduce any debts by that scheme.***
- 10. Uniformity of processes within Victims Services and Revenue NSW about debt collection.***