



Statutory Review of the
Victims Rights & Support Act 2013 (NSW)

Submission to the NSW Department of Communities
and Justice on behalf of the
Homicide Victims' Support Group (Aus) Inc.

July 2022

Background

The Homicide Victims Support Group (Australia) Incorporated (**HVSG**) was founded in June 1993, at the Institute of Forensic Medicine in Glebe.

HVSG was established when the parents of murder victims, Anita Cobby and Ebony Simpson, were introduced to each other by the staff of the Institute. From their lived traumatic experiences, both families recognised the very real need for an organisation that could offer counselling, support and information to families and friends of homicide victims throughout NSW.

The aims of HVSG are threefold:

- (a) Offering support, counselling and advocacy to families;
- (b) Educating the general public, professional bodies and government agencies about the needs of homicide affected families; and
- (c) Reform of legislation that impacts on family victims.

HVSG has a working partnership agreement with Victims Services within the Attorney General's Department and the NSW Police Force that enables HVSG to receive notification of every homicide in NSW within 48 hours of a homicide occurring. This then enables HVSG to offer services to the surviving family members.

HVSG is grateful for the opportunity to make this submission to the Department of Justice for the statutory review of the Victims Rights and Support Act 2013 (NSW) (the Act), which replaced the Victims Support and Rehabilitation Act 1996 (NSW) (the 1996 Act)

- **Recognition Payments for Family Victims**

Currently a family victim of a homicide is entitled to a maximum recognition payment of \$15,000 in respect of an act of violence that occurred in the course of the homicide of the primary victim, **where that family member is financially dependent on the victim**

Also,

A current spouse, defacto partner, parent, step-parent or guardian of the primary victim is entitled to a lesser recognition payment of \$7,500, without any need to establish financial dependence.

As a result, where a family victim of a homicide is not financially dependent upon the primary victim, they are not entitled to any form of recognition payment, unless they fit the categories above.

These provisions concern HVSG as they suggest that the only family members affected by homicide are the spouse, defacto partner, parents of the victim and the financially dependent family members. HVSG considers that this results in unfair distribution of payments and does not adequately recognise the effects of the homicide upon the other non-dependent members of the victim's immediate family. Nor does it recognise the sometimes complex kinship structure of Indigenous family victims or the family care traditions in non-Western cultures. In fact, the growing worldwide phenomenon of grandparents with shared childcare responsibilities is not acknowledged by the current Act. The problem with this restriction on payments is illustrated in a case study where the grandmother of a five-year-old victim was denied a recognition payment despite being his significant family member and being his shared primary carer for his first five years of life.

HVSG submits that these provisions of the Act place an unnecessary requirement of financial dependence upon the victim's family members and fails to acknowledge the far-reaching effects of a homicide on families. We recommend that the eligibility for a recognition payment without establishing financial dependence be expanded to include other family members who have a shared primary carer role of the homicide victim, rather than being limited to the categories above.

HVSG submits that the recognition payment be raised to \$15,000 for non-financially dependent family victims – and to \$25,000 for financially dependent family victims.

- **Financial Assistance for Funeral Expenses**

Families of victims of homicide saw a significant reduction in their funeral expenses entitlements under the 2013 Act.

Under the 1996 Act, payments of up to \$12,000 were payable to the families of victims to cover funeral expenses whereas under the current Act, a maximum payment of \$9,500 for actual or likely funeral expenses is available. The reduction of \$2,500 is significant; especially when you consider that, the cost of a funeral has been steadily increasing at a rate of between 6% to 11% since 2011.

According to the Australian Seniors Cost of Death Report 2019, the average costs in NSW (the most expensive state for funerals) metropolitan areas are:

Basic cremation (no service or attendance, ashes delivered) - \$3,360

Basic burial (simple funeral with the essential services) - \$15,244

Standard / Premium cremation (with service, flowers, celebrant etc.) - \$6,188 / \$7,872

Standard / Premium burial (with service, flowers, chapel service, memorial book etc.) - \$16,243 / \$18,946

**These prices are now 3 years old and of course do not include the cost of a headstone, memorial plaque etc.

The maximum payment of \$9,500 represents less than the median cost of a funeral with burial. This reduced entitlement has left many families with a significant shortfall in planning for a suitable funeral. In fact, those families who require a burial for religious reasons or family tradition – or needing a permanent memorial for a loved one taken so cruelly and prematurely – may be disadvantaged by not having an entitlement meet their needs, compared to others choosing cremation.

HVSG recently supported a family who planned a funeral for their loved one in keeping with their orthodox faith. The cost of this funeral was over \$20,000 and they had to borrow from other relatives to pay for it all.

HVSG have also supported families struggling with additional expenses for further interment of their loved ones' organs that had been retained for forensic purposes but returned much later. In these circumstances, families have had to cover the expenses of the "reopening of the grave" so that the victim could be buried with all of their organs.

HVSG submits that the maximum reimbursement for funeral expenses should be raised to \$15,000 as a more realistic figure.

- **Financial Assistance for Immediate Needs**

HVSG recommends that consideration of the allocation of financial assistance for immediate needs to be reassessed.

Currently, s29(1)(b) of the Act provides that a family victim is eligible for financial assistance to "*cover expenses of measures that need to be taken urgently, as a direct result of that act of violence, to secure the victim's safety, health or wellbeing*". This immediate needs payment is set at a maximum of \$5,000.

The application for immediate needs payment is limited to the primary victim's immediate family. Therefore, there is no financial assistance available under this provision for the needs of family members outside of the definition of immediate family. This excludes grandparents, aunts, uncles, cousins etc. Approximately 50% of homicides occur within a domestic environment,¹ where one parent is murdered and the other parent is arrested for the offence, resulting in the extended family members being left to manage the crisis and to care for any children. However, in its current form, the Act makes no provision for financial assistance to extended family members with bona fide immediate needs. In light of this, HVSG recommends a payment of financial assistance for the immediate needs be available to any family member who demonstrates that they have taken on a carer's role of the murdered victim's dependents.

HVSG submits that the definition of immediate needs is to include accurate guidance as to what does and does not constitute an immediate need under the legislation. We note that previously, family victims have been ineligible to claim financial assistance for expenses they have incurred that they legitimately believed they had an entitlement to, only to be left severely out of pocket. Further, many families fail to realise the scope of assistance that they are entitled to and in turn, do not seek the available financial assistance.

Case study – *Following the murder of her father (her sole parent), a 15-year-old girl had to go to live interstate with her father's cousin. The cousin was able to be mostly reimbursed for the funeral, although costs came in above the allocated \$9500, which she had to meet herself. However, she was considerably out of pocket for return airfares to collect the teenager and bring her to her home. Other expenses included making changes and adjustments to their home in order to accommodate the teenager, arranging school transfers, uniforms, travel to psychologist appointments etc.*

Case study – *the father of a boy whose infant half sibling had been murdered by their mother took his child to live with him. As he was not related to the infant himself, the father was unable to claim assistance for the many expenses he faced in setting up his son in his new home, school etc. With the detention of his*

¹ Stephanie Ramsey, Intimate Partner Homicides in NSW: 2005 to 2014, (NSW Bureau of Crime Statistics and Research: Crime and Justice Statistics Bureau Brief, 2015, Issue Paper no. 111).

son's mother, he suddenly became the sole provider of his son's emotional and financial needs.

- **Immediate Needs Payments for Security Measures**

It has been of great relief to many family victims that they are able to claim for security measures following a homicide. It is normal for family victims of homicide to become hypervigilant and have a changed view of the world as they knew it. In many cases their fears are valid and they may be at some risk. However, HVSG has found inconsistency in the acceptance of applications which seem to depend on which assessor has made the decision. For example, payment was approved for security doors and a camera system for a couple whose son was murdered at another person's house 20 kms away, but rejected for a young woman who was terrified of being left on her own in the home she shared with her father who was killed just a few hundred metres away when he was attacked in the street while walking the dog.

HVSG submits that applications for security measures must be looked at thoroughly and consistently across the board with consideration of the ongoing trauma being experienced by the applicant and their need to feel safe being the highest concern, rather than arbitrary safety assessments from a distance.

- **Financial Assistance for Justice-Related Expenses**

The Act currently entitles family members of homicide victims to a one-off payment of up to \$5,000 for justice related expenses, which includes expenses incurred in the course of court hearings, coronial inquests, making statements to police and the preparation of victim impact statements.

The financial assistance for justice related payments provided under the Act appears to be based on the assumption that there will be a single, efficient trial of reasonable duration, and that the family victim will have no further legal proceedings in the future. The Act fails to provide for contingency payments in the event of:

- Complex matters that are set down for extended time estimates
- Matters with multiple accused persons that are granted separate trials
- Matters that are set multiple times following aborted trials and hung juries
- Appeals in the Court of Criminal Appeal and High Court

Also, there is no provision for further financial assistance for family members who need to attend Mental Health Review Tribunal hearings, which are usually held twice a year until the forensic patient is unconditionally released - or for State Parole Authority hearings when the offender in their matter has completed their non-parole period. Again, in the case of multiple offenders, there will be multiple parole hearings.

Case study – A mother and father whose only son, a teenager, was murdered in 2010 by a group of 6 youths, faced multiple court hearings, 4 separate trials and 2 appeals over a period of 2 years and 5 months. They have since faced multiple parole hearings and still have more to face in 2022.

Case Study - The parent of one of the victims of the Lindt Café siege, resided in Melbourne whilst the coronial inquest into the siege was being heard in Sydney. This coronial inquest commenced in May 2015 and lasted for 18 months with the findings being handed down in May 2017. Throughout the inquest, he incurred significant justice related expenses, much greater than the maximum assistance he was entitled to under the Act, of \$5,000. As a result, the victim's father had to look at other financial alternatives to be able to attend the inquest into his son's murder.

It is the view of HVSG that the families of homicide victims need to be financially supported when the matter is complex or involving multiple offenders. Equally, families should not suffer a financial disadvantage when they incur more expenses as a result of procedural delays or an appeal.

HVSG considers that the restriction on payments to the immediate family is unfair and that the Act should provide for financial assistance to family members, including but not limited to, the grandparents, grandchildren, aunts and uncles. It is the experience of HVSG that often these are the only, or most appropriate, family members that can attend the trial. It seems irrational that grandparents are able to provide a Victim Impact Statement but are not eligible to any financial assistance for attending Court to tender the statement they prepared.

It also seems irrational that the Act currently states that a child under 18 years of age would be eligible for financial assistance for justice related expenses, regardless of the fact they would be unlikely to attend the trial, whilst the grandparents or aunt and uncle, who are left to care for the child under 18 years of age, would not be entitled to any financial assistance. We consider that this is an issue within the Act and recommend that the eligibility criteria for those who are entitled to financial assistance of justice related expenses is expanded to include those persons outside of the immediate family.

Case study – Following the cruel murder of a 3-year-old boy by his mother and stepfather, a harrowing 8 week trial took place. In attendance were the 2 grandmothers, the 2 uncles, and 1 aunt who had jointly raised the little boy from birth until he was reluctantly returned to his birth mother just 51 days before his tragic death. The only family members entitled to justice related expenses were 3 older estranged half siblings - and the victim's younger half-sister who obviously did not claim them. The Judge recognised the significance of the family relationships and allowed them to give Victims Impact Statements to the court. The Victims Right & Support Act allowed no such discretion.

Case Study - Following *the murder of their older brother, the remaining children, aged 9 and 11, were entitled to recover any justice related expenses, despite the fact they would not be attending any part of the trial and would not be preparing any statements for the Court. In comparison, the victim's Grandmother and two Aunts, who would be attending the trial and providing victim impact statements, were not entitled to claim any financial assistance related to their justice related expenses.*

HVSG submits that the maximum entitlement of \$5,000 is inadequate in many matters and should be increased. Further, that the eligibility for the allowance should be expanded to relieve the financial burden of extended family members who need to participate in the legal process. HVSG submits that a daily allowance should be made available to family victims for every day of a court/tribunal proceeding related to the homicide of their loved one, without limit until all legal processes have been completed.

A daily allowance should include expenses indexed to the cost of living to cover travel, accommodation, meals, parking fees, childcare etc. as required by the individual family victim.

In addition to this, in 2021 Victims Services stopped allowing family victims the choice to claim 50% of costs for a support person out of the family victim's own allowance. This has prevented the family victim having a support person of their choice. **HVSG submits that this option should be reinstated for family victims.**

- **Time Limits for Payment of Financial Assistance**

Under the current Act, there is a 5 year time limit on payments to family victims once an application has been made. Once again, the Act appears to be based on the assumption that a homicide will be dealt with from the actual homicide to the sentence in the neat administrative period of 5 years. HVSG submits that this is **not reasonable** when it comes to homicide matters. This time limit does not make provision for situations such as:-

- Unsolved homicides
- Protracted complicated investigations
- Matters where the victim's body has not been found
- Matters where the victim's body has been retained for extensive forensic purposes
- Matters which rely on DNA testing that is sent overseas
- Matters where the person of interest has to be extradited from overseas
- Delayed trials, retrials, repeated appeals, appeals that occur years later

None of these situations are in the family victim's control and they should not be disadvantaged by them.

Case study – A mother whose murdered son’s body has not been found, received a letter from Victim Services to say that she only had 6 months left in which to claim for his funeral. When they were reminded that his body had not yet been found, the assessor replied, “if a funeral quote is submitted before the expiry, the funeral expense will be deferred. If the body is found after the expiry date, the assessor will then be able to reconsider the deferral as the expense was submitted before the expiry. If the invoice or quote for the funeral expenses claim is made after the expiry date it’ll be dismissed”. This required a grieving mother, who found her son’s missing body one of the hardest aspects to cope with, to have to contact a funeral director she may never use to get a quote for a funeral that she may never get to have. She was very distressed by this treatment from the very government organisation that is supposed to provide trauma-informed services to victims in NSW.

Case study – In 1999, a teenage girl’s body was found at the side of a road – she had been sexually assaulted and murdered. After years and years of a high profile investigation, mass DNA testing, multiple public appeals and reward offers, an arrest was made in 2020. A trial is set down for early 2023, estimated to go for 8-10 weeks. The young girl’s parents and brothers will not be entitled to any justice related expenses.

In the light of this last case study, HVSG further submits that the time limits on applications for all justice related expenses should either be removed completely or start from the day charges are laid in relation to the homicide. This will become more important as the work of the Unsolved Homicide Unit results in further historical homicides being solved and prosecuted.

- **Approved Counselling Scheme**

HVSG recommends that financial assistance be provided for the travel costs of counsellors across NSW. In our experience, families in rural and regional locations face great difficulties in accessing appropriate counselling services. Some families travel hours for each 50-minute counselling session. As a result, we have seen rural families forego the opportunity to receive counselling as they cannot endure the excessive travelling.

We note that there is a shortage in rural areas of counsellors with the requisite skills and experience in dealing with homicide victims. By way of example, the daughter of a victim was referred to the only counsellor in her area. However, this counsellor had previously been the counsellor of her brother, who was the offender in the murder. Due to this conflict of interest and the lack of alternative counsellors in her area, she was not able to receive any counselling.

We note too, that since the advent of Covid19, a large number of counsellors on the Victims Services website list of Approved Counsellors show as available for online counselling. This does not take into consideration many rural families who do not have access to adequate internet connections – or understandably prefer to see someone face to face.

HVSG recommend that further assistance be provided to counsellors, to allow them to travel to their clients and provide counselling services in an area that is comfortable to the client. This would also alleviate the level of stress and fatigue that family victims in rural areas face when they are required to travel long distances to receive counselling.

HVSG further recommends that the cap of 22 counselling hours be removed for family victims. It is not immediately made clear that they can apply for further hours when this allocation runs out. Consequently, we have found that family victims then “save them up” for times when they know they will be in greater need e.g. court proceedings.

- **Financial Assistance for the Economic Loss of Family Victims**

HVSG submits that the financial assistance available to family members of a homicide victim be extended to provide cover for the economic loss suffered by family members of the victim. It is HVSG's experience that many family members are so debilitated by grief after the murder of a loved one, that they cannot go back to work for a period of time following the homicide, if at all.

In its current form, the Act only provides financial assistance for economic loss to primary victims and this financial assistance does not extend to the family members of victims of homicide. HVSG submits that financial assistance for economic loss ought to be expanded to family victims.

Case study – *In a recent case, a family victim from Northern NSW needed to attend the 3 week trial in Sydney of the man who murdered his brother. As he and his wife were the owner/operators of their building business, they had to close down for the duration. Their 2 apprentices had to be laid off as they could not legally work without supervision. Their business losses for this period were estimated at just under \$10,000. The cost of travel, hotels, diesel, taxis, and food for a family of four (fortunately their two children could stay at their grandparents home at no cost) came in at just under \$6,000. Despite his justice related expenses allowance of \$5,000 (his wife was not eligible), their estimated loss was around \$11,000.*

Case Study - *The sister and sister-in-law of the victim had to take several days of leave without pay so they could attend Court, whilst the victim's self-employed brothers had to reject work so that they could attend. Other members of the family were unable to take any time off work and were subsequently unable to attend the hearing as they needed to keep their business running.*

- **Interpreters for Assistance to Family Victims**

HVSG submits that the cost of interpreters should be covered for family victims and paid for by Victims Services as a separate entitlement for as long as they need this assistance, e.g. interview with police, justice related proceedings, counselling, and any other requisite interaction that a family member may have to undertake due to the homicide of their loved one.

- **Appointment of an Independent Commissioner for Victims Rights**

HVSG submits that the role of a Commissioner for Victims Rights should be one of independent advocate and voice for victims in the style of the Victims' Commissioner in the UK. It was distressing and demoralising for victims, and their advocates, to read that the person who should be their champion had officially opposed the dollar value of a victim's claim in the Civil & Administrative Tribunal. A Commissioner for Victims Rights should not be in the position of denying victims financial assistance or services – this is a direct conflict of interest. HVSG notes that the Executive Director of Victims Services is also the Chairperson of the Victims Advisory Board and the Commissioner for Victims Rights. HVSG submits that these three important roles should be held by three different people independent of each other.

- **Improved Consultation with Victims Groups**

HVSG notes that the relationship between the members of the Victims of Crime Interagency members, the Commissioner and the Victims Advisory Board has deteriorated since the opportunity for meaningful information exchange and raising of issues affecting victims has been limited at the quarterly meetings. **HVSG submits that proper consultation is undertaken by Victims Services before services and procedures affecting victims are changed in future. Further, HVSG proposes a return to the consultative process between the Victims of Crime Interagency and the Victims Advisory Board that existed previously.**

- **Recognition Payments held by NSW Trustee & Guardian**

HVSG requests that a review be undertaken of how recognition payments awarded to dependents under the age of 18 years are managed and paid out to them once they are of age. It has come to our attention in a number of cases that unreasonable fees and taxes are being charged on final payment, leading to young adults losing out on thousands of dollars. **HVSG submits that payments invested and managed for children who have lost parents/guardians through homicide are protected from exorbitant management and handling fees.**

Conclusion

To summarise, HVSG submits the following proposals:-

- Recognition payments eligibility be expanded to include other family members who have had a significant role in the homicide victim's life
- Funeral payments cap be increased to \$15,000
- Immediate needs payments be more clearly defined in what they will or will not cover.
- Immediate needs payments be expanded to include other family members who have met expenses related to the homicide of a loved one
- Resumption of immediate needs payment being made available for a support person if required by the family victim in the knowledge that it comes from their own allocation
- Immediate needs payments for security measures be paid consistently and with regard to the trauma experienced by the family victims
- Justice related expenses eligibility be expanded to include other family members who will be attending court.
- Justice related expenses to be made available for every day that an eligible family victim needs to attend court/tribunal without capping.
- Daily allowances for family victims to be commensurate with those paid to non-expert witnesses
- Removal of time limits for justice related expenses and funeral payments
- Increase availability of Victims of Crime counsellors with on site capacity, especially in country NSW
- Remove 22 hour cap on counselling hours for family victims of homicide
- Financial assistance for economic loss be expanded from only primary victims to include family victims of homicide
- Provide payment for interpreter services to family victims
- Appoint an independent Commissioner for Victims Rights
- Restore and improve consultative processes between Victims Groups, Victims Services and Victims Advisory Board
- Recognition payments held in trust for child family victims be exempt from excessive fees and taxes

Finally, HVSG suggests that additional financial supports as proposed in this submission would not cause the state of NSW a sudden drastic increase in costs. Rather, it would provide relief for the relatively small amount of family victims that are currently disadvantaged by their often unique circumstances. As many full entitlements must currently go unclaimed e.g. justice related expenses for children, it would not be an overwhelming cost for the State to bear.

HVSG would like to thank the Department for the opportunity to contribute to this review and we would be very happy to provide any further assistance.

Should you have any further questions, please contact the Executive Director on the contact details below.

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