

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

Submission from NSW Police Force

NSW Police Force welcomes the opportunity to provide input into the review of the *Victims Rights and Support Act 2013* (the Act). NSWPF notes that, amongst other matters, the Act:

- Recognises and promotes the rights of victims
- Codifies a Charter of rights of victims of crime
- Establishes a Commissioner of Victims Rights
- Supports victims of acts of violence by establishing the Victims Support Fund and the Victims Support Scheme
- Establishes the Victims Advisory Board

The NSWPF also notes that this legislation is an element underpinning the NSW Police Force *Victims Policy Statement* and *Guidelines for the NSW Police Force Response to Victims of Crime*.

NSWPF has highlighted some situations where the Victims Support Scheme is arguably failing to secure the policy objectives of the Act in terms of providing support for victims of acts of violence, specifically victims of domestic violence.

Accordingly, NSWPF makes the following comments:

1. Recognition Payments may not reflect the full extent of trauma experienced by domestic violence victims

Under the current legislation a victim who has experienced several or more years of domestic violence, including multiple physical assaults is only entitled to a single Recognition Payment (likely Category D) as the incidents of domestic violence are defined as a series of related acts constituting a single act of violence.

By contrast, a victim of a series of indecent assaults is eligible for a higher category of Recognition Payment (Category B) than a victim of a single indecent assault (Cat D).

The current situation does not necessarily reflect the true nature and extent of the violence that domestic violence victims have experienced. Although the Act allows for beneficial discretion to be applied, in practice it is rarely able to be applied.

It is submitted that a victim of a series of related acts of domestic violence should, like a victim of a series of indecent assaults, be considered for a higher category of Recognition Payment.

2. Definition of injury under section 18

Under section 18 of the Act, "injury" is defined as actual bodily harm, grievous bodily harm or psychological or psychiatric harm. However, any injury arising from loss or damage to property is explicitly excluded from the definition of "injury".

This is inconsistent with the *Crimes (Domestic and Personal Violence) Act 2007* which recognises malicious damage to property as a domestic violence offence. Property damage can be used as a method of control or as a proxy threat to the victim's welfare.

The below case studies illustrate situations where victims of domestic violence have not been eligible for financial assistance under the Act:

• Case study 1

A young single mother from a rural community was attempting to leave ongoing domestic violence from her partner. She was physically assaulted and had her car and other belongings

damaged. Although she was able to be approved financial assistance for relocation costs and a Recognition Payment, she was unable to be supported to repair the damage to her car despite the offender being convicted of malicious damage. As she was unable to afford the repairs herself, she was unable to access private transport which was required for daily function in a rural community.

- **Case study 2**

A young woman, the victim of ongoing domestic violence, received a Category D Recognition Payment. However, her claim for financial assistance for property damage was not able to be approved even though the offender was found guilty on charges of domestic violence related malicious damage. She was unable to pay the property damage bill herself due to her financial circumstances, and as the primary tenant after the offender was removed, remained liable for the debt. As a result her tenancy was terminated and she was made homeless.

- **Case study 3**

A victim of domestic violence at the hands of her son was faced with eviction due to property damage caused by her son. As her homelessness was a result of a tenancy breach, and not able to be considered a result of the domestic violence, she was not eligible for financial assistance for relocation costs.

Although civil compensation is an option, and the Act provides for court compensation, there are barriers to victims successfully pursuing these options. Moreover, there will often be no private insurer to assume traditional responsibility for property compensation due to a range of external considerations (including socio economic status and financial hardship).

3. Timeframes

Domestic violence is typically under-reported and subject to delays in reporting due to issues around guilt and shame. The Act already recognises these issues in the case of historical child sexual assault, where there is no time limit to apply for counselling, financial assistance for out of pocket and justice related expenses and recognition payments.

Although s40 (5) of the Act allows a generous provision of 10 years from the act of violence for domestic violence, it still excludes a vulnerable minority of victims who are unable to apply for support other than ongoing counselling. This includes groups of victims who already face external challenges in accessing timely support or information by reason of disability, culturally diverse backgrounds or living rurally.

It is submitted that the Act should include a discretionary provision in the case of domestic violence, in which the Commissioner can accept an out-of-time application if extenuating circumstances are provided.