



12 July 2022

Policy, Reform & Legislation Branch
Department of Communities and Justice

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

Dear Policy, Reform & Legislation Branch,

Statutory Review of the Victims Rights and Support Act 2013

1. Youth Law Australia thanks the Department of Communities and Justice for the opportunity to contribute to the Statutory Review of the Victims Rights and Support Act 2013.

About Youth Law Australia

2. Youth Law Australia (YLA) (formerly the National Children's and Youth Law Centre) is an accredited community legal centre dedicated to helping children and young people under the age of 25 years and their supporters to understand their legal rights and find solutions to their legal problems. YLA is Australia's only national, technology-based community legal service, providing legal services through options including email, phone and live chat.
3. We have significant experience and expertise in advising children and young people and their advocates on issues including domestic and family violence, child sexual abuse, child abuse, sexual assault and victims support. We acknowledge the disproportionate, ongoing and intergenerational harm experienced by First Nations children and young people. We also acknowledge the many young victim-survivors who have been courageous in sharing their experiences with us.

Overview of Submission

4. We note that the scope of our submission is primarily focussed on the experiences of children and young people as victims of personal violence offences and the barriers that they face in gaining earlier access to victims support to facilitate their recovery.



Youth Law Australia

Bedegal Land, Level 1, Law Centres Precinct
Law Building, UNSW Sydney 2052
T: (02) 9067 6510
W: yla.org.au

5. In summary we recommend¹:

Recommendation 1: That Victims Services publish data sets that cross reference the date of birth of the applicant, the date of the act of violence and the date of the application in order to assess how many applications for victims support are made by children and young people within a timeframe proximate to the act of violence they have experienced.

Recommendation 2: That Victims Services establish children and young person friendly victims support pathways and resources, to be developed by co-design with children and young people victim-survivors, aimed at increasing earlier access to victims support and enhancing the opportunity for recovery at a younger age.

Recommendation 3: That Victims Services establish partnerships with specialist legal and support services working with children and young people to provide an independent accessible and integrated pathway to recovery.

Recommendation 4: That Victims Services establish and publicise a best interests discretionary process for all victims-survivors under 18 years of age to independently apply for victims support.

Recommendation 5: That Victims Services establish and publicise a best interests discretionary process to assess the circumstances and capacity of victims-survivors under 18 years of age to receive payments awarded to them rather than having the payment held on trust.

Recommendation 6: The removal of all upper time limits for claims relating to acts of violence including domestic and family violence, child sexual abuse, child abuse, sexual assault and modern slavery.

Children and young people as victims of crime

6. Children and young people experience disproportionately high rates of personal violence offences, and particularly sexual violence, especially for girls and young women.
7. Historically Victims Services provided data profiles annually on their website setting out a range of statistical information relating to the content of applications for support received by victims. These data sets have not been made publicly available in recent years.
8. Referring to data from the last publicly available data sets in 2016/17², children and young people experience sexual, domestic and family violence and child abuse at very high rates:
 - 42% (30% F and 12% M) of all applications for financial assistance related to acts of violence where the age at act of violence was 25 years and under, of which 15% were aged 12 years or younger.

¹ See also a brief list of additional recommendations not specific to children and young people at paragraph 30.

² This is no longer available on the Victims Services website, but a copy can be made available on request.

- 54% (38%F and 16% M) of all applications for recognition payments related to acts of violence where the age at act of violence was 25 years and under, of which 28% were aged 12 years or younger.
 - 56% (40%F and 16% M) of all applications for counselling related to acts of violence where the age at act of violence was 25 years and under, of which 31% were aged 12 years or younger.
 - 83% of applications for sexual assault counselling related to sexual violence where the age at act of violence was 25 years and under, noting 72% of the victims were aged 17 years and under at the time of the act of violence.³
9. The *NSW Sexual Assault Strategy 2018-2021* highlights that in NSW in the 12 months to March 2018, 13,309 incidents of sexual offence were reported to the NSW Police, women and girls were nearly four times more likely than males to be a victim of reported incidents of sexual offence and two-thirds (65.7 per cent) of victims were children.⁴
10. The *Background Paper for the Statutory Review of the Victims Rights and Support Act 2013* also notes:

“In the 12 months to September 2021, there were 15,262 incidents of sexual offence reported to the NSW Police Force. Two-thirds of the reported victims were children, with young female victims reporting sexual offences at more than three times the rate of young male victims.”⁵

Children and young people as applicants for victims support

11. It is unclear how many applications for victims support relating to violence experienced as a child or young person are lodged within a timeframe proximate to the occurrence of the act of violence. In response to a question during the 2020-2021 Budget Estimates, which asked for the number and percentage of applications for victims support...by gender and age, Minister Speakman stated:

“I am advised: The Department of Communities and Justice does not hold this information in a readily accessible format.”⁶

12. Despite the lack of available data, there is a general understanding that many victim-survivors of violence experienced as a child, particularly child sexual abuse, do not engage with justice or therapeutic responses until many years after the violence occurred.

³ It is noted that there may be higher number of younger victims in this reporting period due to increased awareness of support arising from the *Royal Commission into Institutional Responses to Child Sexual Assault*.

⁴ *NSW Sexual Assault Strategy 2018-2021*, accessed at: <https://dcj.nsw.gov.au/children-and-families/family-domestic-and-sexual-violence/sexual-violence/nsw-sexual-assault-strategy.html>

⁵ *Background Paper for the Statutory Review of the Victims Rights and Support Act 2013* April 2022 at 7.

⁶ NSW Legislative Council, *Budget Estimates 2020-2021 Supplementary Questions, Attorney General and Prevention of Domestic Violence*, Question 49 accessed at: <https://www.parliament.nsw.gov.au/lcdocs/other/15383/Answers%20to%20supplementary%20questions%20-%20Minister%20Speakman.pdf>

13. We believe that young victim-survivors are missing out on opportunities to make trauma informed and supported decisions at an earlier stage in their recovery due to a lack of resources and options specifically aimed at children and young people.
14. We recommend that Victims Services publish data sets that cross reference the date of birth of the applicant, the date of the act of violence and the date of the application in order to assess how many applications for victims support are made by children and young people within a timeframe proximate to the act of violence they have experienced.

Participation of children and young people

15. The Royal Commission into Institutional Responses to Child Sexual Abuse highlighted the failings of governments, organisations, communities and individuals to protect and nurture children and young people from child sexual abuse. It also recognised the limited opportunities for children and young people to participate in the decisions being made about them.
16. Whilst we commend steps taken to prevent sexual violence against children and young people, including the recent reforms to the laws relating to consent, additional vulnerable witness protections and the development of a diverse range of education programs, there appears to continue to be a limited focus on increasing the participation of children in young people in their own lives.
17. The exclusion of children and young people from involvement in the legal and psychosocial issues that impact them is something that YLA observes and responds to every day. Children and young people who are victim-survivors can be excluded and further harmed in a range of ways including:
 - assumptions that the people with parental responsibility or care responsibilities for them are safe, nurturing and making decisions in their best interests.
 - assumptions that they do not have capacity to participate in decision making about them.
 - not being provided with children and young person friendly information to facilitate their opportunity to participate in decision making about them.
 - by being told that they must have a person with parental responsibility or another responsible adult involved, without any assessment of their capacity to make decisions about things like reporting harm or accessing services including therapeutic care.
 - being unable to access monies received through victims support or other forms of compensation until they reach 18 years of age.
18. We also note that the values identified in *the National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030* include:
 - Children and young people's voices and views, experiences and participation are central to the decisions we make.
 - The views and experiences of victims and survivors are a priority, and their needs shape our efforts.

- We hear and value the diverse views and experiences of all Australians. The work we do to prevent and respond to child sexual abuse is:
 - culturally safe
 - developmentally and age appropriate
 - trauma-informed
 - accessible and meets diverse needs and circumstances.⁷
19. We have conducted a review of the content on the Victims Services website and could only locate one publication specifically aimed at children and young people, which relates to having someone missing from their lives, *In the Loop: Young people talking about missing*.⁸
20. We recommend that Victims Services establish children and young person friendly victims support pathways and resources, to be developed by co-design with children and young people victim-survivors, aimed at increasing earlier access to victims support and enhancing the opportunity for recovery at a younger age.
21. We also recommend that Victims Services establish partnerships with specialist legal and support services working with children and young people to provide an independent accessible and integrated pathway to recovery.

Discretion to accept applications for victims support from independent young people

22. We understand that the policy position of Victims Services is that only young people aged 16 years or older are permitted to lodge an application for victims support on their own. This is information that we have received when communicating with Victims Services in relation to individual client matters. We have asked to be directed to the relevant information on the Victims Services website or provided with a copy of a policy but have been advised that this is not information that is public.
23. There are a small cohort of independent young people, who due to complex and often abusive circumstances, are not being cared for by anyone holding parental responsibility. This at times, includes young people under the care of the Minister pursuant to the *Children and Young Persons (Care and Protection) Act 1998*. It would be very beneficial, and trauma informed for Victims Services to have discretion to assist any young person in this situation quickly. The process and forms should also be promoted clearly on the Victims Service website along with a list of specialist independent services who can assist children and young people.

⁷ Commonwealth of Australia, Department of the Prime Minister and Cabinet, *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030* (2021), at 21, accessed at:

<https://childsafety.pmc.gov.au/sites/default/files/2021-10/national-strategy-2021-30.pdf>

⁸ <https://victimsservices.justice.nsw.gov.au/documents/how-can-we-help-you/programs-and-initiatives/ffmps/in-the-loop.pdf>. We understand that previously a child friendly version of the Charter of Victims Rights was published on the Victims Services website.

24. We recommend that Victims Services establish and publicise a best interests discretionary process for all victims-survivors under 18 years of age to independently apply for victims support.

Discretion to assess capacity of young people to receive payments before they are 18 years old

25. We recognise that for many children and young people there will be benefits in having compensatory financial awards held on trust until they turn 18 years old. This can include preventing the money being misappropriated by parents or carers or protecting potentially vulnerable young people from being manipulated about how to spend the money.
26. However, many young people who are victims and survivors of acts of violence have often experienced other significant and complex life events, including family breakdown, out of home care and homelessness. This group of young people can be significantly disadvantaged by the current approach of Victims Services to arrange for all financial awards to be held on trust until the young person turns 18 years old.
27. We recommend that Victims Services establish and publicise a best interests discretionary process to assess the circumstances and capacity of victims-survivors under 18 years of age to receive payments awarded to them rather than having the payment held on trust.

Remove all time limits for victim survivors of sexual, domestic and family violence

28. It is accepted that victim-survivors may take many years to disclose the harm that they have experienced due to factors such as fear, shame and lack of agency or opportunity. Children and young people, in particular face a wide range of barriers to disclosing the harm that they experience, particularly harm perpetrated by family members.
29. We recommend the removal of all upper time limits for claims relating to acts of violence including domestic and family violence, child sexual abuse, child abuse, sexual assault and modern slavery.

Additional recommendations

30. We also make the following recommendations which are aimed at making the NSW Victims Support Scheme more trauma-informed, survivor focused, culturally safe and accessible:
- Legislative reform to remove the requirement to separately prove injury in Victims Support applications. This is outdated, insensitive and interpreted by many clients as victim blaming. The harm caused by sexual, domestic and family violence is well understood.
 - Improved access to specialist counselling, including increasing the number of suitable qualified counsellors in all areas of NSW who provide culturally safe, and trauma informed therapeutic care and with expertise working with priority populations and with intersectionality.
 - Stop victim-survivors from being re-traumatised by the requirement to collect their own evidence.

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- Increase the amounts paid for recognition payments to better recognise the impact of violence and abuse.
- Introduce an Immediate Needs Support Payment for sexual violence.
- Appoint an independent Commissioner Victims Rights.

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Yours faithfully,

Youth Law Australia

[Redacted name]

Principal Solicitor (Harm Practice)