

ALS SUBMISSION TO THE STATUTORY REVIEW OF THE VICTIMS RIGHTS AND SUPPORT ACT 2013

11 July 2022

I. Introduction

The Aboriginal Legal Service (NSW/ACT) Limited ('ALS') is a proud Aboriginal community-controlled organisation and the peak legal services provider to Aboriginal and Torres Strait Islander adults and children in NSW and the ACT. Our vision is to achieve social justice and equity for Aboriginal and Torres Strait Islander people, families and communities.

With more than 200 staff and over 20 offices across NSW and the ACT, the ALS assists Aboriginal and Torres Strait Islander people through representation in court, advice and information, as well as providing broader community support programs. We also undertake vital policy and advocacy work to reform the systems that disproportionately impact Aboriginal lives.

The ALS provides legal representation and advice in criminal law, children's care and protection law, and family law. The ALS is also increasingly providing legal assistance to women experiencing violence. The ALS has received short-term funding over the next two years to support vulnerable Aboriginal women and families experiencing domestic, family and sexual violence in the ACT and in NSW's South Coast. We've also been allocated funds to provide a similar service in the Hunter Region. The ALS embraces feedback from community that solutions need to be led by Aboriginal communities with a focus on Aboriginal women and is focussed on contributing to the work of achieving intergenerational change.

Legislation Victims Rights and Support Act 2013 No 37		
Provision	<p>s10 Functions of Commissioner</p> <p>(1) The Commissioner has the following functions—</p> <p style="padding-left: 20px;">(a) to provide information to victims of crime (and members of the immediate family of missing persons) about support services and assistance for victims of crime and such persons, and to assist victims of crime in the exercise of their rights,</p>	<p>The ALS is aware that few applicants have the benefit of support services or legal assistance to submit the required documents and claim forms.</p> <p>By way of anecdotal evidence, we note that several Aboriginal and Torres Strait Islander clients (particularly those with low literacy skills, disability, or in remote communities) do not understand how to collect and submit evidence and they have expressed that they would not apply for Victims Support without culturally appropriate support/support services.</p>



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		<p>There are also real barriers to Aboriginal and Torres Strait Islander clients accessing the internet or having access to printers and scanners, which is a common obstacle for the elderly, homeless or those in prison.</p> <p>Recommendation: Implement measures such as support staff within Victim Services to reduce the burden of work to complete applications from victim- survivors and the organisations supporting them.</p>
<p>Provision</p>	<p>s19 Meaning of “act of violence” (4) Except as provided by subsections (5) and (6), a series of related acts is two or more acts that are related because— (a) they were committed against the same person, and (b) in the opinion of the Tribunal or the Commissioner— (i) they were committed at approximately the same time, or (ii) they were committed over a period of time by the same person or group of persons, or (iii) they were, for any other reason, related to each other.</p>	<p>Domestic and family violence, and child abuse cases often involve multiple offences committed over several years leaving victims suffering complex long-term trauma and creating high needs. The classification of a series of related acts as a single act of violence is not only unjust but does not adequately capture the nature of a victim’s experience. It is unreasonable to compensate a victim of multiple acts of violence the same amount as a victim of a single act of violence.</p> <p>Compensation amounts are not commensurate with other schemes or similar schemes in other jurisdiction (i.e. workplace injury, MVA etc) which in essence minimises victim- survivors suffering. The small payment does not adequately reflect the impact of the long-term effects of act/s of violence on victims-survivors.</p> <p>Recommendation: In matters where victims experience a series of related acts, remove the assumption that it constitutes a single act and provide the commissioner with discretion to consider paying victims a higher rate of payment</p>
<p>Provision</p>	<p>s31 Approved counselling services (1) The Commissioner may— (a) approve professional counsellors who may provide approved counselling services for the purposes of this Act</p>	<p>There are excessively long wait times for counsellors in remote, rural and regional communities. There is a lack of diversity in relation to culturally appropriate Victims Services approved counsellors. The limited availability of counsellors who are culturally appropriate is problematic for Aboriginal and Torres Strait Islander victim- survivors. This has been partly addressed</p>



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		<p>by providing virtual appointments, however our clients have reported their preferences is to see a counsellor face to face rather than virtually.</p> <p>Requests for further counselling (over the initial 22 hours) can be applied for in “exceptional circumstances”, we understand there can be long delays in the processing of applications and that a separate claim for further counselling needs to be made for each individual act of violence. The basis of the claim for exceptional circumstances needs to specifically relate to the clients’ recovery. This seems unnecessarily difficult for clients to establish exceptional circumstances and creates a further roadblock for the victim-survivors recovery journey.</p> <p>Recommendation: removing barriers to accessing additional counselling hours and ensure there are and culturally and linguistically diverse counsellors on the panel.</p>
Provision	<p>s39 Documentary evidence (1) An application for victims support is to be accompanied by such documentary evidence as may be required by the approved form.</p>	<p>The costs involved in obtaining documentary evidence are prohibitive for many victims.</p> <p>Consideration should be given to the need for an alternative pathway (such a fee waiver or costs covered under the act) for people who are experiencing financial hardship.</p>
Provision	<p>s39 Documentary evidence (1) An application for victims support is to be accompanied by such documentary evidence as may be required by the approved form.</p> <p><i>Provision of bank details and identification at the time of application for Victims Support</i></p>	<p>The requirement that all applicants must provide bank account details at the time that the application for Victims Support is submitted (other than for the Immediate Needs support payment) is a prohibitive barrier to accessing Victims Support. Providing details at the time of the application can be problematic for victims-survivors who are escaping family and domestic violence and share a joint bank account with the perpetrator. It is also difficult for applicants in jail or mental health facilities to provide bank account details.</p>



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		<p>The requirement that all applications must provide a form government certified identification at the time that the application for Victims Support is submitted, affects victim-survivors who have lost their identification when fleeing a domestic and family violence situation without their property. It takes considerable time to replace these documents and a number of administrative steps that victim-survivors must take before applying for support.</p> <p>Recommendation: We recommend the requirement to provide bank details and government certified identification be removed from the application. These can be submitted later (i.e.- when a claim has been approved).</p> <p>We endorse the recommendations of Women’s Legal Services NSW regarding the provision of identity for victim-survivors in custody, or those who have been in custody.</p>
<p>Provision</p>	<p>s41A Lapsing of application if evidence to support application not provided</p> <p>(1) An application for victims support lapses if—</p> <p>(a) 12 months has passed since the applicant was first requested to provide evidence to support the application, and</p> <p>(b) the applicant has, during that 12-month period, been requested on at least 3 separate occasions to provide that evidence, and</p> <p>(c) the Commissioner decides that the applicant does not have a valid reason for failing to provide that evidence.</p>	<p>Victims Services now require claimants to collect and submit evidence within 12 months. Victim-survivors who are experiencing trauma can have difficulty meeting this timeframe.</p> <p>The impact that trauma can have on a victim- survivors memory is significant, and ALS clients have reported that “it’s too hard” and “too confusing” to try and recall dates of acts of violence and the details of the organisation that the violence was reported to.</p> <p>Victim-survivors have reported compounded trauma and “reliving” the act/s of violence by having to obtain, collate and read the evidence of the violence that they were subjected to.</p> <p>We submit that many victim-survivors and particularly victim-survivors of domestic and family violence, sexual assault, child abuse and child sexual assault need comprehensive support to collect and collate evidence.</p>



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		Recommendation: to remove the burden from victim-survivors to independently collect evidence and extend the 12month time limit.
Provision	<p>s59 Commissioner’s discretion to make provisional order for restitution by offender</p> <p>(1) If the Commissioner is of the opinion that, before or after an approval for the giving of financial support or making of a recognition payment is given, a person has been convicted of a relevant offence, the Commissioner may make an order for restitution against the person.</p>	<p>Seeking restitution from perpetrators is a barrier for Aboriginal and Torres Strait Islander clients making a claim. Victims are often fearful of relation and the fear of further violence from the perpetrator or the perpetrators family if restitution is sought.</p> <p>Recommendation: Victims Services apply discretion to making restitution orders where the circumstances are such the this would prevent a victim-survivor from making a claim. Or where the victim-survivor has expressed fear of retaliation from the perpetrator or associated persons.</p>

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Yours sincerely,

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[Redacted name]

**Principal Legal Officer
Aboriginal Legal Service(NSW/ACT) Limited**