



# Statutory Review of the Victims' Rights and Support Act 2013

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## About VOCAL

Victims of Crime Assistance League - Hunter (VOCAL) is an incorporated charity that assists any person, including children, who are victim-survivors of crime in NSW.

Since 1998, VOCAL's Victim Support Unit has been funded by the NSW Department of Communities and Justice via Victims Services ('The Department'). The Victim Support Unit provides a free service to victim-survivors in the NSW Hunter Region. Crime types include, but are not limited to;

- Homicide
- Assaults with a weapon
- Physical assaults
- Sexual violence
- Child abuse
- Family and Domestic violence
- Criminal road deaths and accidents
- Stalking, intimidation, harassment;

Staff are well versed in legislative requirements independent of the Victims' Rights and Support Act 2013 ('the Act') including:

- National Redress Scheme
- NSW State Insurance Regulatory Authority
- Motor Accidents Compensation Act 1999
- Mental Health and Cognitive Impairment Forensic Provisions Act 2020, and;
- State Parole Authority

We welcome the opportunity to provide feedback on the objectives and relevance of the Act.

## Objectives of the Victims' Rights and Support Act

This statutory review asks whether the policy objectives of the Act remain valid. Such objectives include:

- Recognising and promoting the rights of victims of crime,
- Establishing the role of the Commissioner of Victims' Rights and the Victims Support Fund,
- Establishing a scheme for the provisions of support for victims of acts of violence,
- Enabling paid financial support and recognition payments made under the Victim Support Scheme ('VSS') to be recovered from persons found guilty of the crimes giving rise to the payments,
- Giving effect to an alternative scheme under which a court may order the person found guilty to pay compensation to any victim of the crime,
- Imposing a levy on persons found guilty of crimes for the purpose of funding the Victim Support Scheme,
- Establishing the Victims Advisory Board including its membership and statutory functions, and
- Prescribing other miscellaneous provisions related to the operation of the Act.

## Key Recommendations

- An independent Commissioner be appointed.
- The Commissioner chairs the quarterly Victims of Crime Interagency meetings.
- Increase funding to victim support agencies who assist clients with administration processes specific to the VSS.
- Comprehensive data be provided to the Interagency, as well as published annually, on Charter complaints, restitution orders and court compensation payments.
- Remove the restrictions placed on accessing extended counselling hours and extend the current 22 hour provisions to 44 hours, with the option of further hours, if required.
- Reinstate funding for group work.
- Create an INSP to cover crime that occurs in the home, including sexual violence, home invasion and break & enter.
- Remove the time limits on funeral payments to accommodate matters where the victim's body has not been found.
- Allow for special circumstances to justice related payments that go above the current limit to accommodate matters that go to retrial, appeals, coroners court and/or mental health review tribunal.
- Remove the provisions that mandate victim-survivors having to exhaust all annual leave entitlements before accessing economic loss payments.
- Improve access to economic loss payments for victim-survivors engaged in casual, contract and self-employed work.
- Greater recognition for domestic violence victim-survivors, with specific consideration given to matters involving choking, suffocation, strangulation or attempts to choke, suffocate or strangle.
- A thorough overview of the assessment process to ensure consistency and procedural fairness.

## The role of the Commissioner of Victims' Rights

VOCAL recommends that consideration be given to create an independent, full or part-time, Commissioner of Victims' Rights ('The Commissioner') role, whose position is separate from the Executive Director of NSW Victims Services. An independent position will increase transparency in matters relating to victims' rights and also give stronger voice to victim's issues, while maintaining impartiality and accountability required to protect victims' rights. This particular issue has been discussed with and agreed on by a number of Interagency stakeholders.

### **Improve consultative mechanisms**

The NSW Victims of Crime Interagency is made up of approximately 30 Government and Non-Government stakeholders who provide service and support to victim-survivors. These meetings are held at the Commissioner's place of work (Victims Services, Parramatta), and four meetings are scheduled per calendar year.

The Interagency meetings provide a forum for Government and non-government consultation, discussion, information sharing on the service delivery of the VSS, new legislation, and updates complaints under the Charter of Victims' Rights ('The Charter'). Prior to 2018, these meetings were chaired by the Commissioner. This allowed for streamlined information sharing and consultative practice. Questions and issues were raised and resolved in a timely manner.

We are concerned that since 2019, that the quality of consultative mechanisms and information sharing has deteriorated. Interagency meetings have been chaired by various Victims Services employees leading to questions and issues often being left with no resolution. Minutes of the meetings are often not taken. Practice changes, directly impacting victim-survivors, have been implemented without consultation or prior notice given to stakeholders. This includes restrictions to counselling hours and the auditing process of immediate needs support payments. In addition, stakeholders were not notified of new legislation pertaining to victims' rights, such as the Modern Slavery Scheme or the Bereavement Support Scheme.

### **Administration of The Victim Support Fund**

Section 10 of the Act sets out specific functions of the Commissioner, which include:

- providing information and co-ordinating the delivery of victims support services;
- considering and determining applications for the VSS; and
- overseeing the implementation of the Charter<sup>1</sup>.

### **Providing information and co-ordinating the delivery of victim support services**

VOCAL's Victim Support Unit is funded from the Victim Support Fund. Our annual reports to the Department show that we are not adequately funded to meet the demand for support required for victim-survivors in the Hunter Region. The Department acknowledges that State wide there has been a 131% increase in applications to VSS over the past six years. The Department has not increased VOCAL's funding for the past six years, and despite repeated requests for additional funding it remains at the 2016 level. The implications this creates are raised in our annual reports.

In July 2020, the process involved in submitting an application to the Victim Support Scheme was changed, shifting responsibility from the Department onto victim-survivors to gather and collate evidence for their application. This has put overwhelming pressure on our service. Our preferred recommendation is to give victim-survivors the option of collating their own evidence, or that Victims Services do this on their behalf. Failing that, we strongly recommend adequate funding is provided to victim support agencies who assist clients with administration processes specific to the Scheme.

### **The Charter of Victims' Rights**

Providing information for this submission on matters relating to the Charter was difficult, as information on the number and natures of complaints and outcomes is not shared with the Interagency, nor published online. Pre 2019, information regarding the number of Charter complaints and outcomes was provided to stakeholders at Interagency meetings. Since 2019, no updates have been given.

The following information has been published in the Department's annual reports:

- 2020–21: Victims Services received 41 complaints under the Charter of Victims' Rights. Thirty-nine complaints were resolved as of 30 June 2021."<sup>2</sup>

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<sup>1</sup> NSW Government (2022) Background Paper: Statutory Review of the *Victims' Rights and Support Act 2013*.

<sup>2</sup> NSW Government (2022) Department of Communities and Justice 2020-21 Annual Report.

- In 2019–20, Victims Services received 192 complaints. Complaints related to services (109), Approved Counsellors engaged under the Approved Counselling Services (35), and Charter complaints (48)<sup>3</sup>
- 2018 -2019 Victims Services received and assisted to resolve 42 complaints under the Charter, made about various agencies and organisations funded to provide services to victims of crime<sup>4</sup>

This limited information makes it difficult to comment on whether the objectives of the Charter are being met. VOCAL recommends comprehensive data is provided to the Interagency, as well as published annually, relating to complaints and outcomes of Charter complaints.

Recommendations:

- An independent Commissioner be appointed.
- The Commissioner chairs the quarterly Victims of Crime Interagency meetings.
- Victim-survivors are given an option on the application form of collating their own evidence, or requesting Victims Services do this on their behalf.
- The Victim Support Fund provides increased funding to victim support agencies who assist clients with administration processes specific to the Scheme
- Comprehensive data be provided to the Interagency, as well as published annually, on Charter complaints.

## The Victim Support Scheme: Counselling

### Approved Counselling Scheme:

For some victim-survivors, the allocated 22 counselling hours is sufficient to address the impact crime. However, our experience shows that for violent crimes such as homicide, long term domestic violence, child sexual abuse, abduction, physical assaults with weapons and sexual assault, more than 22 hours of counselling is required.

In 2020, without consultation with stakeholders, tighter restraints were placed on accessing extended counselling hours. It has become increasingly difficult for victim-survivors to be granted extended counselling hours. This causes significant distress for many victim-survivors. Feedback from counsellors and victim-survivors includes:

- *“I feel that Victims Services acted very irresponsibly in reducing the hours without any warning or any consultation. That information – so poorly timed- was a trigger to increased suicidal risk for my client”. Counsellor – Regional NSW*
- *“I am reluctant to offer further counselling under the Scheme when they act so irresponsibly in dealing with such highly vulnerable clients. Victims Services have caused my client, and myself, a great deal of stress as we try to manage this reduction in available hours”. Counsellor – Regional NSW*

<sup>3</sup> NSW Government (2020) Communities and Justice 2019-20 Volume 1 Performance and activities report.

<sup>4</sup>NSW Department of Justice (2019) *Annual Report 2018-2019*.

- *“A warning to therapists and clients regarding the intention to reduce hours would have shown respect to both the clients and the therapists”. Counsellor – Regional NSW*
- *“The very system designed to help me recover has now made decisions contrary to its mandate to support victims of crime”. Victim-Survivor – Regional NSW*

The Background paper outlines other Government initiatives that offers support to victim-survivors, and it is our experience that accessing these initiatives is limited due to strict guidelines and lengthy waitlists. For example, access to counselling through NSW Health Sexual Assault Services in regional and rural areas is limited, with wait times can be up to 3 months. When the service can be accessed, brief intervention counselling is available for children and adults of recent sexual assaults only. Historical sexual abuse survivors are turned away from NSW Health counselling services, and therefore rely on the Victim Support Scheme. An experienced therapist notes;

*“I have worked in public health for 13 years in the areas of child & family, infant mental health and violence prevention, and recently transitioned to Victim’s Services accreditation. NSW Health has specialised a lot of their services to be hard to access unless you have a referral from another service or you fit some specific criteria. The wait times for to access these programs is significant and many survivors fall through the gaps. Victims of Crime counselling scheme is a primary care model of service delivery that is unique in the spectrum of Government funded available”.*

We recommend urgently removing the current restrictions on accessing counselling, as well as increasing available hours from 22 to 44, with the opportunity to extend if required. It is important that the Scheme recognises people may need extended counselling hours to coincide with justice related processes, including mental health review tribunals, parole hearings, criminal court appeals and coroner’s inquests.

### **Accessing Counsellor Qualifications:**

VOCAL recommends that registered qualifications (for example, psychologist, social worker or counsellor) be added to their profile on Victims Services website. This issue was raised with the Department on 1 May 2020 but we were informed that the “back end of the website can’t hold that much data”. If this is a genuine concern it should be addressed as a priority. Qualifications should be listed so victim-survivors have all the information available to make informed choices for their support options.

### **Group-work:**

VOCAL recommends funds are reinstated to victim support agencies who provide group work. Many victim-survivors choose to participate in group work rather than individual counselling. For example, many culturally and linguistically diverse people, as well as Aboriginal and Torres Strait Islanders, prefer a collective approach to healing and therapy. One on one counselling may not be culturally appropriate for many First Nations victim-survivors and many seek to engage in culturally sensitive and trauma-informed group therapy<sup>5</sup>. Research demonstrates that group work with people impacted by trauma supports victim-survivors to be empowered, have a voice and take control over their lives.<sup>6</sup> The

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<sup>5</sup> Yunkaporta, T., & Kirby, M. (2011). *Yarning up Indigenous pedagogies: A dialogue about eight Aboriginal ways of learning*.

<sup>6</sup> Rosenwald, M., & Baird, J. (2020). *An integrated trauma-informed, mutual aid model of group work. Social Work with Groups*, 43(3), 257-271.

sudden and unexplained withdrawal of funds for victim support agencies to provide group work has been detrimental to the recovery of many.

### **Availability of counsellors:**

Regional and rural areas in NSW continue to experience a deficit in registered counsellors. We surveyed victim-survivors in the Hunter Region about their experience accessing Victims Services counselling, and responses included;

- *“Many had their books closed. One Psychologist told me they had informed Victims Services numerous times that their books are closed, but the website does not get updated”.*
- *“The only difficulty was finding a counsellor who had availability”.*
- *“I did not find this process useful as there are so few accredited with Victims Services. I already had my own psychologist and I think that Victims Services should offer to cover these sessions. It takes a long time to build up a therapeutic relationship with someone and it is not trauma informed or reasonable to expect a victim to start again.” (VOCAL informed the psychologist about becoming an interim counsellor for the client, but was told the rate of pay was “too low”.)*
- *“It was difficult to access counselling. There is no filter on the website that allows you to see their qualifications or to differentiate between types of counsellors (psychologist or social worker)”.*
- *“Most therapist books were closed, which was very frustrating. When I could get an appointment, the counsellor did not seem to understand the trauma I had experienced (domestic violence and coercive control) and I found the sessions unhelpful. I finally found a suitable therapist that was best suited to my situation, but it took a very long time”.*
- *“The Victims Services counsellor I was seeing was unprofessional. She would cut the 1 hour sessions to 20-30 minutes on many occasions. At times it appeared she was not listening to me, she was often on her phone, she talked about her own experiences and I later found out that much of what I spoke about was not documented”.*
- *“My daughter was murdered and the only option available through Victims Services was phone counselling, given my location and lack of approved counsellors. I chose to access counselling via other means.”*

The limited support available to victim-survivors in regional and rural areas exacerbates trauma and creates significant barriers to healing and rehabilitation. This issue has been repeatedly raised through annual reports and at interagency meetings, with no outcomes.

### **Adequately Remunerate Registered Counsellors:**

Anecdotal evidence tells us that registered counsellors limit appointments within their practice for Victims of Crime counselling. The reasons are that the rate of remuneration is below industry standard. Our recommendation is to adequately remunerate registered counsellors so that payment is in line with industry standards. Consideration should also be given to providing incentives for rural and regional counsellors to participate in the scheme.



### Recommendations for Counselling:

- Remove the restrictions placed on accessing extended counselling hours.
- Extend the current 22 hour provisions to 44 hours, with the option of further hours, if required.
- Add the qualifications of registered counsellors to profiles on the Victims Services website.
- Reinstate funding for group work.
- Adequately remunerate registered counsellors to be in line with industry standard.
- Provide incentives specific to regional and rural counsellors to offer onsite counselling.

### The Victim Support Scheme: Financial Assistance - Administration

On 30 May 2013, the NSW Parliament passed the *Victims' Rights and Support Act 2013*, which included the creation of the Victim Support Scheme (VSS), which replaced the NSW Victims Compensation Scheme. The VSS is designed to provide support to victims of crime when they need it most and addresses support holistically, with a focus on immediate and ongoing support and treatment of victims and minimal reliance on lump sum payments<sup>7</sup>.

For many reasons, people who have experienced physical and psychological trauma from violent crimes are unable to access support. Many victim-survivors report they were unaware that Government assistance was available to them. Restricting applications to within a two-year time period from the date of violence is inconsistent with promoting victims' rights and is not inclusive of a trauma informed response. Our recommendation is to extend the current two-year time limit to 10 years, or at least a minimum of five years. We also advocate for a special circumstance clause for out of time applications.

In July 2020, changes to the application process were implemented requiring victim-survivors to collect and submit evidence of harm in order for their VSS application to be processed. This procedure is not survivor centric, nor trauma informed. The burden this places on victim-survivors has been significant, and in turn has put added strain on victim support services.

Recommendation for administrative processes:

- Provide adequate funding to victim support agencies who are bearing the costs of the administrative changes.
- Removing the essential requirement to provide bank details on the application form. This provides false hope to victim-survivors that their claim will be successful.
- Failing the above, amend the application form to include an *option* to provide bank details on the application form.
- Amend the application form so that it is an *option* to upload Government ID, as opposed to an essential requirement to lodge an application.
- Remove, or increase, the current two-year time limit that applies to accessing support. Physical and psychological trauma can prevent people from accessing the support they are entitled to, within this two year mandated time period.
- Amend the Act to allow for out of time (or special circumstances) provisions for all applications, including internal reviews.
- Legislate the standard of proof of a "reasonable likelihood" test consistent with the National Redress Scheme for people who have experienced child sexual abuse.

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<sup>7</sup> NSW Government (2018) *Department of Justice Annual Report 2018-19*.

## The Victim Support Scheme: Immediate Needs Support Package (INSP) DV

The background paper states that “households affected by domestic and family violence may be able to access the full range of housing assistance options available through the NSW Government. These include Link2Home and women’s refuges.”<sup>8</sup> In regional and rural areas, such programs and supports are difficult to access. Link2Home offers very limited support, and has at times housed victim-survivors in the same accommodation as offenders released on parole. Women’s refuges are often at capacity, while Staying Home Leaving Violence programs and specialist homelessness services are faced with high demand and limited accommodation and home security options. Victim-survivors in regional and rural areas rely on the VSS as their only available option to address physical safety.

The improved INSP-DV process has created significant, positive change to many lives. With faster assessment times and the inclusion of accepting Government Funded Organisational Reports, victim-survivors are able to quickly access funds that directly address personal safety needs.

The success of the INSP- DV shows that allocated funds are used to improve home security (change locks, security screens, CCTV) or to address relocation needs (removal costs, rent assistance) in an effective time frame. Given the success of the INSP-DV, VOCAL recommends creating additional INSP processes tailored to other crimes, including:

- Sexual assault
- Home invasion
- Break and enter

Despite the positive aspects already outlined we believe the auditing process of INSP-DV needs to be re-evaluated and trauma-informed. For victim-survivors of coercive control and financial abuse, this process has caused re-traumatisation. In one case, an INSP-DV decision for a security package would not be determined until a victim-survivor provided a receipt for \$180 that was previously awarded under a separate application two years earlier. The receipt was already on file at Victims Services, but assessors had not checked or cross-referenced details with the previous application.

Recommendations for INSP:

- Create an INSP to cover crime that occurs in the home, including sexual violence, home invasion and break & enter.
- Develop a trauma-informed approach to auditing INSP-DV.

## The Victim Support Scheme: Economic Loss

Our experience is that there is a barrier to people accessing economic loss, specifically loss of earnings, as administrative process puts significant stress on victim-survivors. Staff are spending considerable time in assisting clients with collating and completing paperwork to prove loss of earnings.

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<sup>8</sup> NSW Government (2022) Background Paper: Statutory Review of the *Victims’ Rights and Support Act 2013*.

Recommendations for economic loss:

- Remove the provisions that mandate victim-survivors having to exhaust all annual leave entitlements before accessing economic loss payments.
- Improve access to economic loss payments for victim-survivors engaged in casual, contract and self-employed work.
- Clarification and simplification of the calculation of loss of actual earnings, allowing this information to be easily accessible to victim-survivors.

### The Victim Support Scheme: Recognition Payment

Our experience is that assessors are making determinations too quickly, at times within a 4-week period of the application being submitted. This means that many applications, that do not meet the requirements of s.39, are being dismissed within a short time frame. There must be a greater awareness from assessors of the implications the change in application and evidence submitting process is having on victim-survivors. Procedural fairness must be provided to victim-survivors.

*Example:*

*A lady disclosed to hospital midwives that she was experiencing domestic violence and sexual coercion from her husband. This disclosure was recorded in a hospital assessment, and submitted to Victims Services as evidence for her financial assistance claim. Victims Services dismissed her application, stating:*

*“I have read the application form and supporting evidence in the form of the medical progress report provided. Unfortunately, I have been unable to locate any relevant reporting or medical evidence provided with this application”.*

The above matter is not an isolated incident. A more appropriate response would be to inform the victim-survivor and/or their representative that more evidence is required before an informed decision can be made.

Since July 2020, VOCAL has noticed Category D payments being awarded for matters that, in the past, by comparison, have been awarded Category C or B payments.

*Example:*

*A lady applied for recognition payment for child sexual assault. A police report and certificate of injury from a sexual assault service was provided as evidence but she was only awarded, Category D, \$1500.*

This example provided is not an isolated incident. It is unclear whether decisions are being made to award the lowest category payment, with the onus put back on the victim-survivor appeal to the decision for a higher award. Our experience is that the majority of these decisions are upgraded on appeal, some of which submit additional supporting evidence, while others do not.

Recommendations for recognition payments:

- A thorough overview of the assessment process to ensure consistency and procedural fairness.
- The victim-survivor and/or agency representative is informed of the earliest date in which a matter will be determined.
- The victim-survivor and/or agency representative has access, upon request, to all evidence that Victims Services assessors rely on to make a determination.
- Legislate the requirement for Victims Services to note in their decision all evidence considered in the determination and clearly state what specific evidence was lacking.

### **Certificate of injury**

The process of getting survivors to repeat their story to a medical professional and/or counsellor to prove injury is not trauma informed. For example, a survivor may have reported to police/Government agency and be linked with a support agency. To insist they retell their experience to a GP and/or counsellor in order to complete the certificate of injury goes against trauma informed practices and places significant pressure of victim-survivors. Our recommendation is to remove the provision for a certificate of injury to be provided.

It is our experience that certificate of injury forms appears to be of benefit only when detailing a physical injury. It is our experience that they are used as supplementary evidence when relating to psychological injury.

Example:

*A domestic violence survivor submits police event numbers and a certificate of injury from her psychologist. The certificate of injury details prolonged exposure to physical and psychological abuse. Police reports detail physical assaults (common assault and strangulation), yet the victim-survivor only receives a recognition payment of \$1500.*

In this matter, NCAT overturned the Victims Services decision and the victim-survivor was awarded \$5000.

Recommendations for certificate of injury:

- Remove the provisions to submit a certificate of injury.
- If the certificate is to remain mandatory, we recommend victim-survivor's and/or their representatives be contacted in writing informing them that Victims Services are leaning towards an *adverse decision* if further evidence is not provided.

### **Increasing award payments**

The most common feedback we receive from people who are awarded Category D (\$1500) recognition payments is that the payment is “insulting”, “unjust” and “a waste of time”. Understanding that the Scheme is not a compensation scheme, VOCAL recommends increasing the Category D payments to a minimum of \$5000 to adequately recognise the harm that crime creates.

Recommendation for increasing award payments:

- Greater recognition for domestic violence victim-survivors, with specific consideration given to matters involving choking, suffocation, strangulation or attempts to choke, suffocate or strangle.
- Category B recognition payments to be expanded to include domestic violence that are a series of acts over a prolonged period of time. This will encompass all forms of coercive control, physical and non-physical, as well as economic abuse and systems abuse. It will also provide greater recognition to the psychological damage that this crime causes.

### **Homicide matters**

There are several amendments to the Act that would benefit families of homicide. Given the amount of variables present in a homicide matter that can influence and impact a family member's need for support, we recommend the following:

- Remove the time limits on funeral payments to accommodate matters where the victim's body has not been found.
- Remove time limits for justice related expenses to accommodate matters that do not get resolved within the current period.
- Allow for special circumstances to justice related payments that go above the current limit to accommodate matters that go to retrial, appeals, coroners court and/or mental health review tribunal.
- Remove the time limits on applications for justice related expenses for family victims, or as an alternative, the time limit should start from the day charges are laid.

## Restitution and Court Compensation

Providing comment on the effectiveness of restitution payments and the court compensation process is difficult, as published information on the two schemes is limited. The Department's annual reports provide only consolidated figures for both expenditures and without some breakdown further comment is not possible. It is our experience that court compensation costs are minimal and have low success rates in reimbursing victim-survivors for damages.

VOCAL recommends comprehensive data be provided to the Interagency, as well as published annually, on the two separate matters – restitution payments and court compensation costs.

## Conclusion

It is our submission that many of the objectives of the Act are not valid and require legislative improvements. Victim-survivors have a valid expectation that the Victim Support Scheme will provide them with the necessary and relevant support options. VOCAL trusts that our recommendations are seriously considered for implementation, thus ensuring the support needs of victim-survivors are met through improved trauma-informed policies and processes.

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