



Statutory review of the *Victims Rights and Support Act 2013* (NSW)

Submission to NSW Department of Justice on behalf of the Homicide Victims' Support Group (Australia) Incorporated

August 2016

HVSG

1 Background

- 1.1 The Homicide Victims Support Group (Australia) Incorporated (**HVSG**) was founded in June 1993, at the Institute of Forensic Medicine (**Institute**) in Glebe.
- 1.2 HVSG was established when the parents of Anita Cobby and the parents of Ebony Simpson were introduced to each other and they, with the staff of the Institute, recognised the very real need for an organisation which could offer counselling, support and information to families and friends of homicide victims throughout NSW.
- 1.3 The aims of HVSG are threefold:
 - (a) Offering support, counselling and advice to families;
 - (b) Educating the general public, professional bodies and government agencies about the needs of homicide affected families; and
 - (c) Reform of various laws that impact on family members.
- 1.4 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, the Police and other services to put into place a comprehensive plan focussed on supporting the surviving family members.
- 1.5 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**)

2 Recognition Payments for Family Victims

- 2.1 The Act provides that:
 - (a) Pursuant to s36(1)(a), 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; and
 - (b) Pursuant to s 36(1)(b), each parent, step-parent or guardian of the primary victim are entitled to a lesser recognition payment of \$7,500, without any need to establish financial dependence.
- 2.2 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 are a parent, step-parent or guardian of the primary victim.
- 2.3 These provisions concern HVSG as they suggest that the only family members effected by homicide are the 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. The problem with this restriction on payments is illustrated in a case study where the grandmother of a young victim was denied a recognition payment despite being his significant family member and being his primary carer for his first five years of life.

- 2.4 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 to a recognition payment without establishing financial dependence be expanded to include other family members, rather than being limited to the victim's parents, step-parents or guardians.
- 2.5 HVSG reinforces that the current recognition payment of \$15,000, pursuant to s36(1)(a) of the Act, for persons who are financially dependent upon the primary victim must be maintained and not reduced.

3 Inadequacy of funeral expenses

- 3.1 Families of victims of homicide have seen a significant reduction in their funeral expenses entitlements under the new Act.
- 3.2 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 \$8,000 for actual or likely funeral expenses is available. The reduction of \$4000 is significant.
- 3.3 Accordingly to ASIC's MoneySmart Guide,¹ Funerals in Australia can cost anywhere from \$4,000 to \$15,000. The maximum payment of \$8,000 represents less than the median cost of funeral. This reduced entitlement has left many families with a significant shortfall in planning for a suitable funeral.
- 3.4 HVSG recently supported a family, who planned a modest funeral for a homicide victim. The cost of this funeral was \$12,000, leaving the victim's family with an unexpected shortfall of \$4,000.
- 3.5 HVSG have also supported families struggling with additional expenses for further internment of their loved ones' organs. 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.
- 3.6 HVSG submit that the maximum reimbursement of \$12,000, under the 1996 Act should be reinstated to provide families with more realistic payments for funeral and burial expenses.

4 Victims immediate needs

- 4.1 HVSG recommends that consideration the allocation of financial assistance for immediate needs to be reassessed.
- 4.2 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 well being*". This immediate needs payment is set at a maximum of \$5,000.

¹ Australian Securities and Investments Commission, Money Smart, *Paying for your funeral*, <https://www.moneysmart.gov.au/life-events-and-you/over-55s/paying-for-your-funeral>

- 4.3 Pursuant to s22(3) of the Act, 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 and uncles. Approximately 50% of homicides occur within a domestic environment,² 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 that the Commissioner have the power to approve a payment of financial assistance for the immediate needs of *any family member* who demonstrates that they require a carer's payment.

Case Study 1

Following her murder, the victim's mother, grandmother and aunt all flew from China to Sydney, however only her mother was entitled to financial assistance in relation to their immediate needs, despite the significant connection between her and her grandmother. In China, it is a common cultural practice that children are raised by their grandparents whilst their parents return to work. The failure for the Act to provide financial assistance to her grandmother was stressful for the whole family.

- 4.4 HVSG submits that the definition of immediate needs is to include guidance as to what does and does not constitute an immediate need. We note that previously, family victims have been denied financial assistance for expenses they have incurred that they legitimately believed they had an entitlement to, only to be left severely out of pocket once their request for financial assistance was rejected. Further, many families also fail to realise the scope of assistance that they are entitled to and in turn, do not seek the available compensation.

5 Justice related expenses

- 5.1 The Act currently entitles family members of homicide victims to payments 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.³ HVSG submit that the maximum entitlement of \$5,000 is inadequate and that the Commissioner should have the power to provide further financial assistance in appropriate circumstances.

Case Study 2

The parent of one of the victims of the Lindt Café siege, currently resides in Melbourne whilst the coronial inquest into the siege is being heard in Sydney. We note that this coronial inquest commenced in May 2015 and as at August 2016, is still some weeks away from completion. Throughout the inquest, he has incurred significant justice related expenses, much greater than the maximum assistance he is entitled to under the Act, of \$5,000. As a result, the victim's father has had to look at other financial alternatives to be able to attend the inquest of his sons murder.

² 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).

³ The Act s 29(1)(d)

- 5.2 The financial assistance for justice related payments provided under the Act appears to be based on the assumption that there will be a single, and efficient, trial. The Act fails to provide for contingency payments in the event of cases that are appealed to the NSW Court of Criminal Appeal and the High Court nor does the Act provide for additional assistance for the expenses related to acquittals that are later retried, hung juries or where a trial is aborted partway through and later reheard. Further, there is no provision for further financial assistance for family members who attend Mental Health Review Tribunal hearings, which are usually held on average twice a year, or State Parole Authority hearings, after the initial justice related expenses have been expended at the time of the criminal trial going through the higher courts.
- 5.3 Similarly, there is no additional assistance for justice related expenses in murder trials where multiple offenders are granted separate trials, which carry much higher expenses for the family victims.
- 5.4 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.
- 5.5 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.
- 5.6 It also seems irrational that the Act currently states that a minor 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 minor, 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 3

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.

6 Daily allowances for family members

- 6.1 HVSG submits that the daily allowance for family members must be increased to accurately reflect the actual costs associated with attending a trial. In particular, we recommend that the per day allowance for families living within 100km be raised to \$50 per day.
- 6.2 In our experience, there are few waiting areas for families at the Supreme Court and if they do not want to wait near the Court itself, in full view of media or near the accused's supporters, they are usually required to wait at a local café.
- 6.3 Further, we note that non-expert witnesses are currently entitled to a maximum daily allowance of \$86.20, whilst they are also provided a travel allowance and are eligible to claim a separate meal allowance for each meal, regardless of the distance they have to travel to attend Court.
- 6.4 HVSG submits that this discrepancy between the allowances provided to family victims and non-expert witnesses is too large, and that the daily allowance provided to family victims is a minimum of \$50 per day but could be more if a reasonable explanation is given..

7 Counselling Scheme

- 7.1 HVSG recommends that financial assistance is 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.
- 7.2 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.
- 7.3 HVSG recommend that further assistance be provided to counsellors, to allow them to travel to their clients and provide counselling services in an area which is comfortable to the patient. 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.

8 Financial assistance for the economic loss of family members

- 8.1 HVSG submits that the financial assistance available to family members of a homicide victim is 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.
- 8.2 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 4

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.

9 Homicides committed with a motor vehicle as a weapon

- 9.1 HVSG submits that where a motor vehicle is used as a weapon in a homicide, the related victims support payments should be provided under the Act, rather than the *Motor Accidents Compensation Act 1999* (NSW) (**the Motor Accidents Act**). The Motor Accidents Act does not provide family members of the victim with the same level of financial assistance or support as the Act, resulting in unfair and unjust compensation for these family victims. We note that there are no provisions within the Motor Accidents Act for recognition payments, justice related payments or financial assistance for funeral expenses.

Case Study 5

In February 2014, the victim was murdered after he was deliberately hit with a motor vehicle following an altercation in a Western Sydney pub. The offender deliberately used his motor vehicle to collide with the victim and in August 2016 was convicted of his murder. As the murder weapon in this instance was a motor vehicle, the family members of the victim have not been entitled to any form of compensation, recognition or financial assistance pursuant to the Act as none of them were dependent on the victim.

In contrast, if an alternate murder weapon was, the victim's family would be entitled to recognition payments, approved counselling services, financial assistance for funeral expenses and financial assistance for their immediate needs and justice related expenses.

- 9.2 HVSG submit that the exception of acts of violence and homicides that are committed with a motor vehicle as a weapon, is an arbitrary distinction that should be removed from the Act. Where an offender is charged and convicted of either manslaughter or murder, the respective murder weapon should not determine whether or not financial assistance should be available to the families who are still left to grieve their loss and still face the same level of financial stress and difficulty, regardless of the murder weapon used .

HVSG submit that the Commissioner for Victims Rights be given further discretion to approve payments and benefits to family members of homicide if required on a needs basis and of course for reasons that can be proven to be causing the family member of homicide further trauma.

10 Interpreters for assistance for family members of homicide

Should be made available to family members right throughout the process and financially paid for by victims services as a separate entitlement for as long as they need this assistance, eg interview with police, justice related, counselling, and any other interaction that a family member may have in dealing with the homicide.

11 Conclusion

- 11.1 This completes the submission prepared on behalf of HVSG. HVSG acknowledges the pro bono assistance it received in preparing this submission.
- 11.2 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.
- 11.3 Should you have any further questions, please contact Martha Jabour on the contact details below.

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