



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

**28 July 2016**

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**Table of Contents**

- 1 Introduction ..... 1**
- 2 Summary of recommendations ..... 1**
- 3 The Public Interest Advocacy Centre ..... 3**
  - 3.1 PIAC’s work on victims’ compensation..... 3
- 4 Background to the victims’ compensation changes..... 4**
- 5 Lower payments ..... 5**
  - 5.1 Transitional arrangements..... 6
  - 5.2 Discretion ..... 8
- 6 Domestic violence ..... 8**
  - 6.1 Recognition payments for domestic violence ..... 8
  - 6.2 Assessment of domestic violence as a ‘series of related acts’ ..... 9
  - 6.3 Inappropriate assessment of domestic violence as series of related acts ..... 10
  - 6.4 Requirements regarding reporting to a government agency ..... 11
  - 6.5 Awareness of right to claim ..... 12
  - 6.6 ALRC’s recommendations regarding domestic violence and victims’ compensation ..... 12
- 7 Limitation periods ..... 14**
  - 7.1 Limitations, transitional arrangements and access to recognition payments ..... 15
- 8 Conclusion ..... 16**

# 1 Introduction

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to provide a submission to the NSW Department of Justice in its statutory review of the *Victims Rights and Support Act 2013* (NSW) (the VRS Act).

PIAC notes that the NSW Department of Justice is conducting the review in order to determine whether the policy objectives of the VRS Act remain valid and whether the terms of the VRS Act remain appropriate for securing those objectives.

The policy objectives of the VRS Act include the following:

- to recognise and promote the rights of victims of crime;
- to establish a scheme for the provision of support for victims of acts of violence;
- to enable financial support paid and recognition payments made under the Victims Support Scheme to be recovered from persons found guilty of the crimes giving rise to the payments;
- to give effect to an alternative scheme under which a court may order the person it finds guilty of a crime to pay compensation to any victim of the crime; and
- to impose a levy on persons found guilty of crimes for the purpose of funding the Victims Support Scheme.<sup>1</sup>

In this submission, PIAC will consider the background to the changes to the victims' compensation scheme and briefly address the key areas in which it considers the VRS Act is not achieving its policy objectives:

- inadequacy of awards;
- inappropriate assessment of domestic violence as a series of related acts;
- limitation periods.

## 2 Summary of recommendations

### ***Recommendation 1 – Increase recognition payment awards***

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*PIAC recommends that the amounts of recognition payments be increased.*

### ***Recommendation 2 – Discretionary payment to be allowed***

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*PIAC recommends that there be legislative amendment to allow, in special circumstances, the decision-maker to award an additional discretionary payment up to a certain maximum. This would include considering any additional relevant factors, including but not limited to:*

- *The vulnerability of the person/s involved;*
- *The severity of the act/s;*
- *The severity of the impact upon the person/s involved.*

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<sup>1</sup> NSW Department of Justice, 'Statutory review of the *Victims Rights and Support Act 2013* (NSW)', available at [http://www.justice.nsw.gov.au/justicepolicy/Pages/lpclrd/lpclrd\\_consultation/review-victims-rights-support-act-2013.aspx](http://www.justice.nsw.gov.au/justicepolicy/Pages/lpclrd/lpclrd_consultation/review-victims-rights-support-act-2013.aspx) (accessed 28 June 2016).

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**Recommendation 3 – Increase awards available for domestic violence**

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PIAC recommends that victims of domestic violence should have access to higher awards under the scheme. This could be implemented through a number of options:

- Increasing the amounts available under Category D awards;
- Creating a special category relating to domestic violence.

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**Recommendation 4 – Remove ‘related acts’**

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PIAC recommends that all acts of violence, whether multiple or not, should be recognised, and that provisions regarding ‘related acts’ be removed.

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**Recommendation 5 – Requirements for ‘documentary evidence’**

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PIAC recommends that the review consider how any requirement for ‘documentary evidence’ in proving a claim, can more appropriately support and reflect the lived experience of victims of domestic violence.

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**Recommendation 6 – Provide information on rights to make an application**

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PIAC recommends that any person presenting for treatment at a hospital for a violent act, or reporting such an incident at a police station, should be provided with information regarding their rights to make an application under the VRS Act.

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**Recommendation 7 – Implement the 2010 recommendations of the Australian Law Reform Commission**

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PIAC recommends that the proposals put forward by the Australian Law Reform Commission in its 2010 report *Family Violence – Improving Legal Frameworks in relation to victims’ compensation*, should be implemented by the current review.

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**Recommendation 8 – Provide discretion for out-of-time applications**

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PIAC recommends that decision-makers be given discretionary powers to consider applications that are out of time. This should include a specific positive assumption that leave should be given in cases of domestic violence or sexual assault, unless the decision maker is satisfied that there are not sufficient grounds to do so.

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**Recommendation 9 – Facilitate equal access to recognition payments**

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PIAC recommends that in order to improve access to recognition payments, additional transitional arrangements should provide for individuals who make a claim for compensation under the VRS Act for an act of violence that occurred prior to the commencement of that Act, to be entitled to the same level of recognition payment that would have previously been available under the repealed Act had their application been lodged closer in time to the relevant act/s of violence.

### **3 The Public Interest Advocacy Centre**

PIAC is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from NSW Trade and Investment for its work on energy and water, and from Allens for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

#### **3.1 PIAC's work on victims' compensation**

PIAC provides legal assistance to individuals who have been victims of crime. This occurs largely through our Homeless Persons Legal Service (HPLS) and includes assisting clients who have been the victims of domestic violence.

Victims' compensation is one of the most common civil matters in HPLS' casework. From January 2013 to December 2015, HPLS provided assistance in 226 victims' compensation matters. This represented 6.6 per cent of the total civil casework of HPLS over this period, and was the fourth most common civil issue addressed.

On the basis of our experience providing legal advice and assistance to people experiencing homelessness, PIAC is aware of the importance of the victims' compensation scheme. People experiencing homelessness are disproportionately represented among victims of violent crime. A 2007 study undertaken in Sydney found that 48 per cent of homeless respondents had suffered

at least one episode of violence in the previous year.<sup>2</sup> By contrast, among the housed population, 5 per cent had been the victim of violence within that same period of time.<sup>3</sup>

In 2012, PIAC's HPLS provided a submission to the review of the NSW victims' compensation scheme.<sup>4</sup>

## 4 Background to the victims' compensation changes

The previous legislation that provided for statutory compensation for victims of crime was the *Victims Support and Rehabilitation Act 1996* (NSW) (the repealed Act). The repealed Act provided higher levels of compensation than available under the *Victims Rights and Support Act 2013* (NSW).

In May 2013, 34 organisations signed an urgent appeal to the UN Special Rapporteur on Violence Against Women, Ms Rashida Manjoo, following the introduction of the Victims Rights and Support Bill 2013 (NSW).<sup>5</sup>

The Bill was passed on 30 May 2013. Lawyers who support domestic violence victims expressed concern. Anna Cody, Chairperson of Community Legal Centres NSW commented:

By passing this Bill the NSW Government has taken a huge step backwards in the struggle against sexual assault, child abuse and domestic violence.<sup>6</sup>

Janet Loughman, Principal Solicitor, Womens Legal Services NSW said:

Many victims tell us that no amount of money can ever compensate for their experiences. However, in Australia we do put dollar figures on injuries, including pain and suffering. We do this in an attempt to redress the injustice suffered by victims of violence and to show that we care about them. We do this to show that as a society we are opposed to violence and in favour of a safe and healthy community. Reducing this compensation to a paltry figure sends the opposite message.<sup>7</sup>

PIAC notes that while transitional provisions were made to support individuals who had applied under the previous scheme, this was temporary only. Many individuals who now seek assistance as a victim of crime have lower entitlements than available under the former scheme, with little of the discretionary powers that were available under transitional arrangements.

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<sup>2</sup> Study conducted by Larney S, Conroy, E, Mills, K, Burns, L and Teesson, M 'Factors associated with violent victimisation among homeless adults in Sydney, Australia,' (2009) 22(4) *Australian and New Zealand Journal of Public Health* 347-51 at 349, referred to by Catherine Robinson, *Rough Living, Surviving Violence and Homelessness* (2010) at 15, available at <http://www.piac.asn.au/publication/2011/01/rough-living>

<sup>3</sup> Figure recorded by the NSW Crime and Safety Survey (Australian Bureau of Statistics 2007, Cat. No. 4509.1 p.3)

<sup>4</sup> See Anastasia Coroneo, PIAC, 'Review of NSW's Victim Compensation Scheme', 30 April 2012, available at [http://www.piac.asn.au/sites/default/files/publications/extras/12.04.30\\_review\\_of\\_nsws\\_victims\\_compensation\\_scheme.pdf](http://www.piac.asn.au/sites/default/files/publications/extras/12.04.30_review_of_nsws_victims_compensation_scheme.pdf) (accessed 4 July 2016).

<sup>5</sup> Correspondence from Community Legal Centres NSW to the UN Special Rapporteur on Violence Against Women, Ms Rashida Manjoo, 'Urgent appeal to the UN Special Rapporteur on Violence Against Women on the introduction of the *Victims Rights and Support Bill 2013* in New South Wales, Australia', 17 May 2013, available at [http://www.clcnsw.org.au/public\\_resource\\_details.php?resource\\_id=386](http://www.clcnsw.org.au/public_resource_details.php?resource_id=386) (accessed 28 June 2016).

<sup>6</sup> Community Legal Centres NSW, Media release: 'Community Legal Centres NSW dismayed by passing of Bill abolishing NSW Victims Compensation Scheme', 30 May 2013, available at [http://www.clcnsw.org.au/public\\_resource\\_details.php?resource\\_id=389](http://www.clcnsw.org.au/public_resource_details.php?resource_id=389) (accessed 21 July 2016).

<sup>7</sup> Ibid.

## 5 Lower payments

Following the changes to NSW victims' compensation in 2013, the available awards for recognition payments are much lower, and in PIAC's view no longer provide adequate recognition and support for victims.

Under the repealed Act, individuals could claim up to \$50,000. Under the VRS Act, the highest recognition payment available is \$15,000.<sup>8</sup> This amount is restricted to Category A claims, which involve narrow criteria. Category A claims are payable following the death of a person who was a victim of an act of violence, and are payable to a family member who was financially dependent on the person immediately prior to their death.<sup>9</sup>

The maximum amount available for Category B and Category C recognition payments are \$10,000 and \$5,000 respectively. The lowest form of payment, a Category D payment, allows for a maximum of \$1,500.<sup>10</sup> Category D still involves traumatic incidents: persons who have been the victim of an indecent assault; an attempted sexual assault involving violence that did not result in serious bodily injury; a robbery involving violence; or an assault not resulting in grievous bodily harm.<sup>11</sup>

While recognising that the statutory scheme can not emulate the types of payments available under common law, these amounts are still very low and in PIAC's view, fail to promote and recognise the rights of victims of crime: one of the policy objectives of the scheme.

### Case study – Andrew

Andrew\*<sup>12</sup> instructed HPLS to make a victims' compensation claim for him as a result of an assault he suffered one evening while walking home. The assault left him with a broken ankle, which required surgery and which caused him a continuing disability.

Andrew spent six nights in hospital getting his ankle treated while a fixation was inserted during surgery. He was certified as unfit for his normal activities for a period of two weeks after the assault. He was traumatised by what happened to him that night and reported suffering from Post Traumatic Stress Disorder in addition to major depression.

Andrew's application for victims' compensation was assessed twice; once under the VRS Act and then again under the repealed Act in accordance with the legislation.

Under the previous Act, he was awarded \$12,000 for his ankle injuries. Under the VRS Act, had his application not been assessed as transitional, he would have qualified for a recognition payment of only \$5,000. This would not have been commensurate with the disruption his injuries caused to his life.

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<sup>8</sup> See *Victims Rights and Support Regulation 2013* (NSW), reg 12(a).

<sup>9</sup> See *Victims Rights and Support Act 2013* (NSW), s36(1)(a).

<sup>10</sup> See *Victims Rights and Support Regulation 2013* (NSW), reg 12(e).

<sup>11</sup> See *Victims Rights and Support Act 2013* (NSW), s35(4).

<sup>12</sup> \* indicates pseudonym.

### **Case study – Saxon**

Saxon\* was at a barbeque in 2014 to celebrate New Year's Eve. During the barbeque, an acquaintance threw kerosene on him 'as a joke'. The kerosene subsequently caught fire and Saxon sustained third degree burns on a large portion of both of his arms and one leg.

Saxon was in hospital for a month following the accident. He required surgery and two skin grafts.

His application for compensation was lodged under the VRS Act and is yet to be determined. However, it is expected that he will not receive an award greater than \$5,000. This is not commensurate with the severity of his injuries.

## **5.1 Transitional arrangements**

From 1 September 2015, transitional arrangements were passed, providing that a person whose application for statutory compensation was lodged but not finally determined under the repealed Act, was eligible to make an application to have the application reassessed.<sup>13</sup> This transitional arrangement ceases on 31 August 2016.<sup>14</sup>

Prior to these arrangements, a special grant of \$5,000 was available for eligible individuals who had made an application under the repealed Act.<sup>15</sup> This only applied, however, to individuals who lodged their claim under the previous scheme, within the prescribed period for the relevant act of violence.

The additional payment effectively recognised that the reduced payments under the new scheme resulted in awards/recognition payments that did not provide the same level of appropriate recognition of the victim's pain and suffering as under the old scheme.

### **Case study – Simon**

Simon\* was assaulted in early 2009. He was pushed onto his bed and repeatedly punched. As a result of the assault he suffered fractured nasal and orbital bones and also lost a tooth.

Simon received a recognition payment under category C of \$5,000, as a victim of an assault resulting in grievous bodily harm.

Simon also received a special grant of \$5,000, as he was a primary victim of an act of violence who lodged his application under the previous Act within 2 years from the date of the act of violence. This led to Simon receiving a total grant of \$10,000.

### **Case study – Caroline**

Caroline\* was pushed to the ground by an assailant whilst she was arguing with her partner. She suffered fractured and bruised ribs.

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<sup>13</sup> *Victims Rights and Support Regulation 2015* (NSW) reg 19(1).

<sup>14</sup> *Victims Rights and Support Regulation 2015* (NSW), reg 20(1).

<sup>15</sup> *Victims Rights and Support Act 2013* (NSW), Schedule 2, cl 5(1) - (3); see also *Victims Rights and Support Regulation 2015* (NSW), reg 18(2).



Caroline applied under the repealed Act, but was assessed under the transitional provisions. She received a recognition payment under category D of \$1,500, as a victim of an assault that did not result in grievous bodily harm.

Caroline also received a special grant of \$5,000, as she was a primary victim of an act of violence who lodged her application under the repealed Act within 2 years from the date of the act of violence. This led to Caroline receiving a total grant of \$6,500.

### **Case study – Tim**

Tim\* was stabbed at a premises in western Sydney in early 2011. He sustained a collapsed lung in the assault.

Tim received a recognition payment under category C of \$5,000, as a victim of an assault resulting in grievous bodily harm.

Tim also received a special grant of \$5,000, as he was a primary victim of an act of violence who lodged his application under the repealed Act within 2 years from the date of the act of violence. This led to Tim receiving a total grant of \$10,000.

### **Case study – Christine**

Christine\* was the victim of a sexual assault in her own home, committed by a neighbour. She sustained an injury as a result of the assault.

Christine received a recognition payment under category C of \$5,000, as a victim of a sexual assault.

Christine also received a special grant of \$5,000, as she was a primary victim of an act of violence who lodged her application under the repealed Act within 2 years from the date of the act of violence. This led to Christine receiving a total grant of \$10,000.

Individuals no longer have access to the type of additional support formerly available via special grants. In all of these examples, drawn from our casework, the amounts that the individuals would receive in similar circumstances today are significantly lower.

As more victims of crime receive low recognition payments, it will become even more apparent to individuals and the community that the amounts are not sufficient to support victims to recover from the impact of acts of violence.

The current review must address the effect of this on the policy objectives of the scheme. Any future review will be too late to appropriately remedy the situation and to ensure greater fairness for victims.

If the NSW Government fails to increase the amounts available now, any later remedy will exacerbate unfairness across categories of injury between those individuals who claim under the current scheme, and those who claim under any future amended scheme. This will also further complicate the inequality of rights to recognition payments between individuals who claim now, and those who claim within 10 years.

### ***Recommendation 1 – Increase recognition payment awards***

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*PIAC recommends that the amounts of recognition payments be increased.*

## **5.2 Discretion**

Currently, there is no power to award discretionary amounts in special circumstances. This is problematic as decision-makers are limited by the restrictive categories of compensable injury within the VRS Act, and little flexibility is available for an individual to seek a higher award, even where extenuating circumstances exist.

### ***Recommendation 2 – Discretionary payment to be allowed***

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*PIAC recommends that there be legislative amendment to allow, in special circumstances, the decision-maker to award an additional discretionary payment up to a certain maximum. This would include considering any additional relevant factors, including but not limited to:*

- *The vulnerability of the person/s involved;*
- *The severity of the act/s;*
- *The severity of the impact upon the person/s involved.*

## **6 Domestic violence**

The VRS Act as it currently stands does not address the needs of victims of domestic violence, and is a step backwards from the repealed Act.

### **6.1 Recognition payments for domestic violence**

Under the repealed Act, domestic violence was a category of compensable injury in its own right,<sup>16</sup> consisting of injury resulting from an act that occurred in the commission of a domestic violence offence, and/or injury arising from the intimidation or stalking of a person in apparent contravention of an apprehended violence order.<sup>17</sup> ‘Domestic violence offence’ was specifically defined.<sup>18</sup>

Under the repealed Act, the standard amount of compensation for a compensable injury for domestic violence ranged from a minimum of \$7,500 to \$10,000.<sup>19</sup> This followed recognition in 2000 that the former minimum amount of compensation for domestic violence and sexual assault category 1; \$2,400, was too low.<sup>20</sup>

While under the transitional arrangements it was possible for claimants who had lodged their applications under the former scheme to recover a special grant of \$5,000, there is no provision for additional awards within the VRS Act.

Claimants making a claim for domestic violence under the VRS Act now often receive Category D recognition payments, which is a maximum of \$1,500. In PIAC’s view, this is too low and fails to appropriately recognise the seriousness and nature of domestic violence.

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<sup>16</sup> See *Victims Support and Rehabilitation Act 1996* (NSW), Schedule 1, cl 7A.

<sup>17</sup> *Victims Support and Rehabilitation Act 1996* (NSW), Schedule 1, cl 7A(1)(a)-(b).

<sup>18</sup> See *Victims Support and Rehabilitation Act 1996* (NSW), Schedule 1, cl 7A(3).

<sup>19</sup> *Victims Support and Rehabilitation Act 1996* (NSW), Schedule 1, cl 10.

<sup>20</sup> See *Victims Compensation Amendment (Compensable Injuries) Regulation 2000* (NSW), available at <http://www.legislation.nsw.gov.au/regulations/2000-368.pdf> (accessed 7 July 2016).

One of the policy objectives of the VRS Act was to enable the recovery of amounts from persons found guilty of associated crimes. The very low amount payable to victims of domestic violence lessens the impact of this and undermines the policy objectives of the Act.

Recognition payments assist people to rebuild their lives in many ways. However, as the potential outcome is such a low amount, many individuals may choose not to apply as the potential outcome will not significantly benefit or assist them, or appropriately recognise the trauma that they have sustained.

PIAC submits that if claimants were able to obtain a more significant outcome, then perhaps more people would seek compensation. Such amounts also make the process less meaningful, especially in cases of significant trauma.

For an individual preparing an application for support under the VRS Act, engaging with trauma has its own costs.

### ***Recommendation 3 – Increase awards available for domestic violence***

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*PIAC recommends that victims of domestic violence should have access to higher awards under the scheme. This could be implemented through a number of options:*

- *Increasing the amounts available under Category D awards;*
- *Creating a special category relating to domestic violence.*

## **6.2 Assessment of domestic violence as a ‘series of related acts’**

Section 23 of the VRS Act outlines eligibility for support under the scheme, which provides that a primary, secondary or family victim, or a carer of a primary victim, of an act of violence is eligible for support.

Section 19 of the VRS Act defines ‘act of violence’ as:

an act or series of related acts, whether committed by one or more persons:

- (a) that has apparently occurred in the commission of an offence, and
- (b) that has involved violent conduct against one or more persons, and
- (c) that has resulted in injury or death to one or more of those persons.

‘Violent conduct’ extends to sexual assault and domestic violence.<sup>21</sup>

A ‘series of related acts’ constitutes a single act of violence<sup>22</sup> and is defined as:

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.

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<sup>21</sup> *Victims Rights and Support Act (NSW)*, s19(3); sexual assault and domestic violence is defined further in s19(8).

<sup>22</sup> *Victims Rights and Support Act 2013 (NSW)*, s19(7).

This is unless, if in the opinion of the Tribunal or the Commissioner, having regard to the particular circumstances of those acts, they ought not to be treated as related acts.<sup>23</sup> This appears to provide some discretionary power to the Tribunal or Commissioner.

### **6.3 Inappropriate assessment of domestic violence as series of related acts**

The definition of ‘series of related acts’ appears to directly prejudice victims of domestic violence. The characteristics of the ‘series of related acts’ are reflective of domestic violence: committed against the same person; over a period of time by the same person; or for any other reason the acts were related to each other.

This definition has the effect that many acts of violence are treated as one act of violence and, consequently, victims of domestic violence may receive low recognition payments for prolonged periods of violence.

Characterising acts of domestic violence as a series of related acts, means that an individual who has endured a number of violent acts from a former partner, or a number of violent acts from the same person over a long period of time, no matter the length of time, will receive approximately the same recognition payment as an individual who endured one act of violence.

In short, twenty years of violence is not treated substantially differently to two acts of violence. In PIAC’s view, this is manifestly unfair.

The policy objectives of the scheme include: to enable financial support paid and recognition payments made to be recovered from persons found guilty of the crimes giving rise to the payments; and to give effect to an alternative scheme under which a court may order the person it finds guilty of a crime to pay compensation to any victim of the crime.

The way in which domestic violence is currently assessed means that the amounts that are able to be recovered from persons who are found guilty, are token in nature.

This does not appear to be in keeping with the NSW government’s strong position on combating domestic violence,<sup>24</sup> or recommendations made by the Australian Law Reform Commission to improve legal frameworks in relation to family violence.

The difference in outcomes for victims of domestic violence are clearly illustrated by the following examples from our casework.

#### **Case study – Vanessa**

Vanessa\* claimed victims’ compensation under the *Victims Support and Rehabilitation Act 1996* (NSW). Vanessa had suffered domestic violence and sexual abuse at the hands of her partner from 1992 – 2010. Her assessor concluded that she was the victim of an act of violence, but the assault did not result in grievous bodily harm.

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<sup>23</sup> *Victims Rights and Support Act 2013* (NSW), s19(5).

<sup>24</sup> See ‘NSW Government announced \$300m budget funding package to tackle domestic violence’, *ABC News*, updated 11 June 2016, available at <http://www.abc.net.au/news/2016-06-11/sexual-assault-funding-announcement-nsw-government/7502282> (accessed 25 July 2016).

Vanessa received a recognition payment under category D of \$1,500, as a victim of an assault that did not result in grievous bodily harm.

Vanessa also received a special grant of \$5,000, as she was a primary victim of an act of violence who lodged her application under the repealed Act within 2 years from the date of the act of violence. As a result, she received a total grant of \$6,500.

### **Case study – Verity**

Verity\* claimed victims' compensation under the *Victims Support and Rehabilitation Act 1996* (NSW) in respect of two incidents of domestic violence that occurred from the same offender. The first incident occurred in 1991, and the second incident occurred in early 2005.

The assessor found the claims to be related incidents spanning a period of time, and therefore part of the one series of related acts.

The assessor found that Verity was a victim and sustained injury as a result of domestic abuse.

Verity received a recognition payment under category D of \$1,500, as a victim of an assault not resulting in grievous bodily harm.

While the claim was lodged under the repealed Act, Verity's claim was assessed under the VRS Act, as the claim was lodged outside of 2 years from the last date of violence. Verity was therefore not eligible for a special grant.

### **Case study – Felicity**

Felicity\* was the victim of physical assault during the course of a relationship with her partner, and also after the relationship ended. She was the victim of numerous violent incidents from 1986 – 2003. After the relationship ended, she was also the victim of ongoing threatening behaviour and stalking from the same assailant.

Felicity claimed victims' compensation under the VRS Act. The assessor found that on the balance of probabilities, the evidence established that Felicity was a primary victim of an act of violence consisting of related acts.

Felicity received a recognition payment under category D of \$1,500, as a victim of an assault not resulting in grievous bodily harm.

## ***Recommendation 4 – Remove 'related acts'***

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*PIAC recommends that all acts of violence, whether multiple or not, should be recognised, and that provisions regarding 'related acts' be removed.*

## **6.4 Requirements regarding reporting to a government agency**

Under section 39(1) of the VRS Act, an application under the scheme is required to be accompanied by documentary evidence that is sufficient to support, on the balance of probability, the applicant's claim to be a victim of an act of violence.<sup>25</sup> Under section 39, 'without limiting subsection (1)', documentary evidence can include a police or medical report 'sufficient to

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<sup>25</sup> *Victims Rights and Support Act 2013* (NSW), s39.

support, on the balance of probabilities, the applicant's claim to be a victim of domestic violence'.<sup>26</sup>

The provision 'without limiting subsection (1)' is important, as it permits other evidence not falling within s39(2) to be provided.

For individuals who are victims of domestic violence, reporting to a government agency carries strong risks. This includes the very serious risk of repercussion from the perpetrator, to both the victim and to their children. Often reporting to a government agency will only occur in the most extreme circumstances, or where the individual has an escape plan.

For individuals seeking victims' compensation, the fact that the abuse was not reported is a difficult hurdle to overcome.

In our casework experience, many incidents of violence or abuse are not formally reported to police. However, some examples of documentary evidence include: court documents, for example, an Apprehended Violence Order (AVO) or Apprehended Domestic Violence Order, or an interim or final AVO order; photographic evidence of injuries sustained (such as bruising or a black eye); ambulance or hospital reports; or a report from a social worker or bona fide case worker written while the victim was resident at a women's refuge.

It is important that the definition of documentary evidence is sufficiently wide to acknowledge other forms of documentary evidence, and that a claimant's application is not dismissed on the basis that there was no reporting to police.

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***Recommendation 5 – Requirements for 'documentary evidence'***

*PIAC recommends that the review consider how any requirement for 'documentary evidence' in proving a claim, can more appropriately support and reflect the lived experience of victims of domestic violence.*

## **6.5 Awareness of right to claim**

Ideally, everyone who reports an act of violence to police that has a potential claim under the scheme, should be referred to the scheme. However, in our casework experience, this does not always happen. In order for the scheme to achieve its aims, appropriate agencies should be encouraged to make relevant referrals.

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***Recommendation 6 – Provide information on rights to make an application***

*PIAC recommends that any person presenting for treatment at a hospital for a violent act, or reporting such an incident at a police station, should be provided with information regarding their rights to make an application under the VRS Act.*

## **6.6 ALRC's recommendations regarding domestic violence and victims' compensation**

The Australian Law Reform Commission (ALRC), in its 2010 report, *Family Violence – Improving Legal Frameworks*, noted the significant financial obstacles faced by victims of family violence:

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<sup>26</sup> *Victims Rights and Support Act 2013* (NSW), s39.

Victims of family violence are likely to incur medical, counselling, legal and housing expenses, as well as education and child care expenses, and may have been subject to economic abuse as an element of family violence. In practice, these costs may constitute a significant barrier for victims in accessing the legal system.

An important method of addressing these financial concerns is through victims' compensation. For most victims the only practical method of financial redress is through statutory victims' compensation schemes, funded by state and territory governments.<sup>27</sup>

The ALRC asserted that 'Australian state and territory governments should amend their victims' compensation legislation to ensure the legislative provisions do not unfairly discriminate against victims of family violence'.<sup>28</sup>

At the time, the ALRC pointed to NSW as an example of a model to be adopted by other jurisdictions, deeming 'domestic violence' to be an act of violence and a specific form of injury.<sup>29</sup> Unfortunately, while NSW previously acted as a model for other jurisdictions regarding providing compensation to victims of domestic violence, this was undermined by the introduction of the VRS Act.

The ALRC recommended that state and territory legislation should be amended so that 'the mere fact that the same offender committed the crime does not mean the crimes are "related"'.<sup>30</sup> The ALRC also importantly noted that:

'to treat all criminal incidents of family violence as if they constituted a "single" incident discriminates unfairly against victims of family violence. Further, state and territory legislation should allow a victim to object if claims are to be treated as 'related'.<sup>31</sup>

The ALRC's recommendations in relation to victims' compensation ought to be considered by the Department in relation to the current review, some of which we replicate here:

#### **'Proposal 19–4**

State and territory victims' compensation legislation should:

- (a) provide that evidence of a pattern of family violence may be considered in assessing whether an act of violence or injury occurred;
- (b) define family violence as a specific act of violence or injury, as in s 5 and the Dictionary in the *Victims Support and Rehabilitation Act 1996* (NSW) and cl 5 of the *Victims of Crime Assistance Regulation* (NT); or
- (c) extend the definition of injury to include other significant adverse impacts, as is done in respect of some offences in ss 3 and 8A of the *Victims of Crime Assistance Act 1996* (Vic) and s 27 of the *Victims of Crime Assistance Act 2009* (Qld).

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<sup>27</sup> Australian Law Reform Commission, *Family Violence – Improving Legal Frameworks* (2010) at 228, available at (accessed 7 July 2016).

<sup>28</sup> *Ibid*, at 227.

<sup>29</sup> *Ibid*, at 227.

<sup>30</sup> *Ibid*, at 228.

<sup>31</sup> *Ibid*, at 228.

### **Proposal 19–5**

State and territory victims' compensation legislation should provide that:

- (a) acts are not 'related' merely because they are committed by the same offender; and
- (b) applicants should be given the opportunity to object if multiple claims are treated as 'related', as in s 4(1) of the *Victims of Crime Assistance Act 1996* (Vic) and s 70 of the *Victims of Crime Assistance Act 2009* (Qld).

### **Proposal 19–6**

State and territory victims' compensation legislation should not require that a victim report a crime to the police, or provide reasonable cooperation with law enforcement authorities, as a condition of such compensation for family violence-related claims...

### **Proposal 19–10**

State and territory victims' compensation legislation should ensure that time limitation clauses do not apply unfairly to victims of family violence. These provisions may take the form of providing that:

- (a) decision makers must consider the fact that the application involves family violence, sexual assault, or child abuse in deciding to extend time, as set out in s 31 of the *Victims of Crime Assistance Act 2006* (NT); or
- (b) decision makers must consider whether the offender was in a position of power, influence or trust in deciding to extend time, as set out in s 29 of the *Victims of Crime Assistance Act 1996* (Vic) and s 54 of the *Victims of Crime Assistance Act 2009* (Qld).<sup>32</sup>

### ***Recommendation 7 – Implement the 2010 recommendations of the Australian Law Reform Commission***

*PIAC recommends that the proposals put forward by the Australian Law Reform Commission in its 2010 report Family Violence – Improving Legal Frameworks in relation to victims' compensation, should be implemented by the current review.*

## **7 Limitation periods**

In its submission to the 2012 review of the victims' compensation scheme, PIAC recommended:

...against the imposition of a 20-year 'final limitation' period. However, in the event that such a provision is adopted, [PIAC] strongly recommends that some guided discretion should be maintained to grant extensions in exceptional cases.

PIAC recommends that the existing discretions in the Act regarding limitation periods (s 26) should be retained.<sup>33</sup>

Under section 40 of the VRS Act, the general limitation period for claims is within two years of the act of violence. PIAC notes and welcomes the fact that under the VRS Act there is no limitation

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<sup>32</sup> Ibid, at 229.

<sup>33</sup> PIAC, above n 2, at 3.



period for claims for a recognition payment in which a person was a victim of a sexual offence and under 18 years of age.<sup>34</sup>

However, section 40 also makes provision for an extension of time for victims of domestic violence, child abuse or sexual assault – so that such applications for a recognition payment must be made within 10 years after the relevant act of violence (or, if the victim was a child when the act of violence occurred, within 10 years after the day on which the child concerned turns 18 years of age).<sup>35</sup>

Under section 26 of the repealed Act, an application that was lodged out of time may have been accepted with the leave of the Director. While the onus was on the applicant to establish whether there was good reason for leave to be granted, in cases of sexual assault, domestic violence or child abuse, there was a positive assumption that leave should be given, unless the Director was satisfied that there was no good reason to do so.<sup>36</sup>

The VRS Act does not provide similar discretion in decisions regarding claims that are out-of-time to victims of domestic violence and sexual assault.

The ALRC noted in its 2010 report that:

...decision-makers should be required to consider, when deciding whether to extend the time for making an application, the fact that a claim is made on the basis of family violence, sexual assault, or child abuse (as is done in NSW and the Northern Territory), or the fact that the offender was in a position of power, influence, or trust (as in Victoria and Queensland).<sup>37</sup>

### ***Recommendation 8 – Provide discretion for out-of-time applications***

*PIAC recommends that decision-makers be given discretionary powers to consider applications that are out of time. This should include a specific positive assumption that leave should be given in cases of domestic violence or sexual assault, unless the decision maker is satisfied that there are not sufficient grounds to do so.*

## **7.1 Limitations, transitional arrangements and access to recognition payments**

The passing of the VRS Act has inherently disadvantaged individuals who may have wished to make a claim for ongoing long-term violence or were abused as a child, as while individuals have access to a 10-year limitation period, they do not retain the rights to the same level of recognition payment that they would have received under the repealed Act. This means that individuals who suffered long term abuse or highly traumatic abuse that has taken years to identify or escape from, will receive the lower awards available under the VRS Act, rather than the amounts they would otherwise have been entitled to had their applications been lodged under the repealed Act.

For example, while there is no limitation period for claims for a recognition payment where the person was a victim of child sexual abuse, an individual is constrained by the amounts available

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<sup>34</sup> *Victims Rights and Support Act 2013* (NSW), s40(7).

<sup>35</sup> *Victims Rights and Support Act 2013* (NSW), s40(5).

<sup>36</sup> *Victims Support and Rehabilitation Act 1996* (NSW), s26(3)(a), (b).

<sup>37</sup> ALRC, above n 27, at 228.

under the VRS Act, even if the abuse was continuously occurring at the time of the operation of the repealed Act.

Similarly, a person who was subject to domestic violence for a continuous long-term period from 2006 - 2016, is only able to make a claim for a recognition payment under the VRS Act. The amounts available to them are significantly lower than that available under the repealed Act. The transitory arrangements that were previously available will cease in 2016, and are not applicable to applications made under the VRS Act.

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***Recommendation 9 – Facilitate equal access to recognition payments***

*PIAC recommends that in order to improve access to recognition payments, additional transitional arrangements should provide for individuals who make a claim for compensation under the VRS Act for an act of violence that occurred prior to the commencement of that Act, to be entitled to the same level of recognition payment that would have previously been available under the repealed Act had their application been lodged closer in time to the relevant act/s of violence.*

## **8 Conclusion**

PIAC commends the NSW Government for the decisive action that it has taken in combatting domestic violence. PIAC submits that it would be appropriate for minor amendments to the victims' compensation scheme to be made in order that the scheme more appropriately assist victims of domestic violence. PIAC also submits that it would be appropriate to revise the amounts available for reparation payments.