

Statutory Review

Victims Rights and Support Act 2013

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About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is a leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

Our priorities include:

- Reducing homelessness, through the Homeless Persons' Legal Service
- Access for people with disability to basic services like public transport, financial services, media and digital technologies
- Justice for First Nations people
- Access to sustainable and affordable energy and water (the Energy and Water Consumers' Advocacy Program)
- Fair use of police powers
- Rights of people in detention, including equal access to health care for asylum seekers (the Asylum Seeker Health Rights Project)
- Improving outcomes for people under the National Disability Insurance Scheme
- Truth-telling and government accountability
- Climate change and social justice.

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Introduction

The Homeless Persons' Legal Service (HPLS) was established by PIAC in 2004. HPLS provides free legal advice to people experiencing or at risk of homelessness at 16 clinics in the Sydney and Hunter regions. HPLS has provided legal assistance to more than 8,000 people on over 11,000 occasions.

In 2009, PIAC established its homeless consumer advisory committee StreetCare, whose members have lived experience of homelessness. StreetCare is a diverse group, including women and men of different ages, Aboriginal people, and representatives from inner Sydney, outer suburbs and rural and regional areas. With support from PIAC, StreetCare provides direct input from people with a lived experience of homelessness into government policy making and law reform, to tackle the structural determinants of homelessness.

We thank the Department of Communities and Justice for the opportunity to provide input into the statutory review of the *Victims Rights and Support Act 2013* (NSW) (The Act). Our submission is based on our experience providing legal assistance to victims of crime who are experiencing or at risk of homelessness. HPLS also provides legal assistance to people experiencing homelessness or at risk who have been a perpetrator and face restitution orders.

HPLS endorses the joint submission of organisations working to support victim-survivors of crime coordinated and lodged by the Women's Legal Service, and strongly commend its recommendations.

1. The importance of a trauma informed, survivor centric, easily accessible scheme

The Victims Support Scheme (the Scheme) plays a vital role in supporting and promoting the rights of victims of crime in NSW. It provides counselling and much needed financial assistance in recognition of harm caused by a violent crime and to pay towards expenses incurred as a result.

The policy objectives of the Act; to provide timely support to victim-survivors, to recognise the harm and trauma caused, and provide financial support and rehabilitation remain valid. The terms of the Act are broadly appropriate to achieve these objectives. However there are opportunities to make changes to improve the Act and its operation.

Specifically, there are opportunities to improve the accessibility and transparency of the Scheme. Further, an increase to the amount of recognition payment would better recognise the severity and social impact of violence, particularly of domestic and family violence and sexual violence.

Requirement to separately prove injury in VSS applications

The Victims Rights and Support Act should be amended to remove the requirement to separately prove injury in Victims Support applications. The requirement to separately prove injury in Victims Support applications is unnecessary, hinders access to the scheme, and has potential to re-

traumatisate victims of crime. Given that the Victims Support scheme is based on a recognition and support model rather than a compensation model, it is also not appropriate to require victims of crime to provide evidence of their injury. This requirement is especially redundant in circumstances where the perpetrator has been convicted of a crime. We submit that reasonable likelihood should be the standard of proof for determining eligibility to Victims Support. This is consistent with the standard applied to applications to the National Redress Scheme.

The case and evidence for this change is detailed in the July 2022 joint position statement coordinated by the Women's Legal Service sent to the NSW Attorney General, the Hon Mark Speakman SC MP and the NSW Minister for Women's Safety and Prevention of Domestic and Sexual Violence, the Hon Natalie Ward, MLC.

Recommendation 1 Legislate the removal of the requirement to separately prove injury in VSS applications

**Making the scheme more accessible to people experiencing homelessness:
Banking details and ID requirements**

Currently, applicants to the Scheme must provide identification documents and banking details at the initial stage of lodging their application.

HPLS submits that this requirement is a barrier for people experiencing homelessness trying to gain access to the Scheme. People experiencing homelessness who are rough sleeping or in temporary accommodation often lose identity documents or have them stolen. People experiencing homelessness may not have access to a bank account or change their banking details between lodgment of the application and receipt of the support payments. Furthermore, providing banking details at the time of application can create an expectation that the application will be accepted and payment will be made. When this does not occur, it can cause great disappointment and distress for people experiencing financial hardship and homelessness.

In cases of domestic violence and financial abuse, the requirement to provide bank details when lodging the application may also lead to perpetrators benefitting from payments.

Greater flexibility should be adopted by Victims Services regarding identification documentation and provision of banking details. A wider range of identity documents, for example MIN numbers and other identity documents, should be accepted at any stage of the application process rather than just the initial stage. There should also be an option for applicants to provide banking details after a successful determination rather than when an application is lodged. This would improve access to the scheme for HPLS clients and more broadly people experiencing homelessness.

Recommendation 2 Remove the requirement to provide banking details in the application form consistent with recommendation 3.6 of the final report of the Second Year Review of the National Redress Scheme.

Recommendation 3 *Victims Services adopts a more flexible approach to identity documents, accepting a wider range of identity documents and enabling applicants to provide identification documentation at a later time rather than at the time of application.*

Recommendation 4 *Victims Services allows the identification documentation requirement to be waived in appropriate circumstances, including for people experiencing homelessness.*

Increasing recognition payments

In our experience, a one-off payment in recognition of a violent crime can have a significant and long-lasting impact on a victim-survivor. Not only can this payment support victims-survivors to begin the journey toward recovery, but for people experiencing homelessness and financial hardship, who are disproportionately victims of violent crime and exposed to violence, recognition payments can be an opportunity to exit homelessness and rebuild their lives.

Case study: Recognition payments have helped Simone rebuild her life.

Simone is a woman in her fifties. She was a victim of sexual assault by both her father and people she did not know. As a result, she suffers from post traumatic stress disorder, has issues regulating her emotions, paranoid thoughts, and difficulties functioning in society.

After confronting her father about the abuse, she became homeless.

HPLS assisted Simone to collect evidence and make separate applications for Victims Support for counselling and recognition payments for the harm she suffered. In recognition of various acts of violence, she was awarded counselling and \$25,000.

These payments have allowed Simone to begin rebuilding her life, and recognise the harm she has suffered.

Recognition and support to victims of crime to recover and rebuild their lives are the core of the Victims Support Scheme and must be continued and strengthened.

HPLS recommends the amount of recognition payments is increased, especially in the context of high inflation. We also support the recommendation 10 of the sector joint submission coordinated by the Women's Legal Service, which outlines more specifically how to provide greater recognition of domestic violence through changes to recognition payments.

Recommendation 5 *Increase all recognition payments and index them to inflation*

Recommendation 6 Implement recommendation 10 of the sector joint submission regarding better recognition of domestic violence through higher recognition payments

Time limits to make applications for financial support or a recognition payment

The time limits for victims of crime to make an application for financial support or a recognition payment under s 40 prevent many victim-survivors from accessing their entitlements. Some people do not become aware that they have a claim until it is too late. Others struggle to do so within the timeframes because of their personal circumstances including the trauma they are experiencing as a result of the harm they have suffered.

Case study: Adam almost missed out on support and recognition

Adam is in his thirties. Adam has been a victim of crime because he is homeless, but he is also homeless because he is a victim of crime. Adam suffered grievous bodily harm after he was attacked by someone at a gathering with other people experiencing homelessness. This person continued to assault and threaten Adam in the following weeks and months, and told him to leave the area. As a result, Adam felt he had no choice but to relocate. This has prolonged and compounded his homelessness because he lost access to his usual services and support networks.

Adam's ongoing homelessness and other personal circumstances meant that Adam did not seek assistance to make an application for Victims Support until almost two years after he was assaulted. With the assistance of HPLS, the application was lodged on the date the limitation period expired.

The counselling and recognition payment has helped Adam getting back on track. He told HPLS that this was the first time in his life that he had had money in his bank account, that it was such a relief and this has helped him live a less stressful life.

Adam was lucky to have lodged the claim just in time, but many of our clients are not so lucky, and miss out on their entitlements.

Recommendation 7 Remove time limits for making Victims Support applications

Remove all time limits for making Victims Support applications.

Alternatively, remove at least time limits for victim-survivors of sexual, domestic and family violence as well as victim-survivors of modern slavery in relation to Victims Support applications

a. Remove upper time limits on recognition payments for victims of domestic violence, sexual assault and child abuse as well as victim-survivors of modern slavery.

b. Remove the 2-year time limit for financial assistance for victims of domestic violence, sexual assault, child sexual abuse and child abuse as well as victim-survivors of modern slavery including for loss of actual earnings and medical and dental expenses.

There should also be discretion to apply out of time instead of the strict current limits.

Supporting victim-survivors to collect evidence

HPLS lawyers regularly assist clients to collect evidence for victims support applications. This is to ensure our clients are able to access their entitlements in a timely manner.

However, the changes made to the legislation in July 2020, effectively shifting the burden of collecting evidence to victim-survivors, have impacted on the ability of many to access the Scheme, particularly those that do not have access to legal or other support to make the application.

Victims Services should administer and deliver the Scheme in a more pro-active way to ensure greater accessibility. Victims Services must provide greater support to victims of crime applying, particularly those experiencing disadvantage including homelessness. The Scheme is an administrative scheme, not a judicial process. Victims-survivors should be adequately supported by the department to access the scheme. The burden should be on Victims Services to gather the evidence needed to establish that an act of violence has occurred and the applicant is entitled to support and recognition.

Recommendation 8 Victims Services returns to collecting evidence or funds services to undertake this work and reimburses services for associated costs

The costs associated with collecting evidence such as obtaining medical reports or making Government Information (Public Access) (GIPA) requests can be a barrier to people accessing their entitlements. There should be amendments to enable Victim Services to pay third parties for such expenses.

Recommendation 9 Legislate amendments to enable Victims Services to pay third parties for Government Information (Public Access) Act 2009 (access to information) expenses and other evidentiary requirements such as medical reports separate to financial assistance.

Time limit to gather documentary evidence

Collecting evidence to support a claim under the scheme within the required timeframes is especially challenging for people experiencing homelessness. Often, people experiencing homelessness have to manage competing priorities such as finding shelter and food. Storing documents securely is also difficult and loss or theft of documents is common, especially for people living in temporary accommodation (TA) or who are rough sleeping. Because their lives are transient, many of our clients will commence applications, but will become uncontactable. The 12 months maximum period to provide documentary evidence can cause their applications to lapse under s 41A of the Act. This period is no longer appropriate considering Victims Services does no longer assist applicants to collect documentary evidence and complete their application. The period of time to attach supporting documentation should be extended beyond 12 months.

Recommendation 10 Provide for longer periods to provide supporting evidence under s 41A

Amend s 41A (1)(a) of the Act so that applicants have 24 months or more to provide supporting evidence.

Improve access to economic loss payments

Financial assistance for loss of earnings is very difficult to access for victims of crime experiencing homelessness or at risk of homelessness. If employed, our clients often rely on casual, precarious employment. Proving loss of earnings requires victim-survivors to prove they were rostered to work, and to get the full particulars of economic loss from the employer. This is almost impossible for people in precarious, casual employment. Access to economic loss payments should be improved and simplified to reflect the nature of the economic loss faced by people experiencing disadvantage.

Recommendation 11 Improve access to economic loss payments

- a. Victim Services actively supports victim-survivors to evidence claims of economic loss or provide appropriate referrals when they are unable to do so.*
- b. Improve access to economic loss payments for victim-survivors engaged in casual work.*
- c. Clarification and simplification of the calculation of loss of actual earnings and that the method of calculation is embedded in the victims support legislation. Further consultation specific to this issue is required.*
- d. The type of evidence is not stipulated as this can be a barrier to access, for example, where the employer is the alleged perpetrator (eg modern slavery).*

2. Ensuring procedural fairness

Need for clear decision making guidelines and adequate assessor training

Clear guidelines regarding how assessors make decisions, what checklists they use and the evidence they require should be publicly available. It is essential assessors are adequately trained and provided with clear decision making guidelines so that the right decision is taken initially rather than following internal review. Reasons for a decision should be clearly explained in all decisions to ensure procedural fairness.

Recommendation 12 Require Victims Services or its managing agency or Minister to publish policies and guidelines they rely on to make decisions.

Recommendation 13 Legislate the requirement for Victims Services to note all evidence considered and provide reasons for their decisions ensuring that decision-makers provide applicants with detailed information to justify their decision in plain English, and that the reasons outline the evidence relied upon to reach the decision.

Removing prescribed forms of evidence

Section 39 of the *Victims Rights and Support Act 2013* (NSW) sets out the documentary evidence required to support an application for support. This includes reports to police, to government agencies, and non government agencies funded to provide support to victims of crime. It also includes medical, dental and counselling reports used to prove injury.

We suggest amendments be made to this requirement to remove the requirement of prescribed forms of evidence. Applicants should be required to provide sufficient evidence to meet the standard of proof of 'reasonable likelihood' without having to use prescribed forms of evidence.

Recommendation 14 The form of evidence to support a Victims Support application should not be prescribed.

NB: HPLS strongly supports the two following recommendations developed by the sector supporting victim-survivors to ensure procedural fairness. The next two paragraphs are copied from the sector joint policy positions regarding the statutory review of the Act.

Victims Services does not currently advise applicants or their representatives of the earliest date upon which their matter will be determined. This has led to matters being determined prior to all supporting evidence being lodged. Applicants are then required to seek an internal review of the decision to have their further evidence considered. The lack of due process can further traumatise victim-survivors. The issue is easily rectified by Victims Services informing the applicant when their matter is due to be determined and allowing the applicant the opportunity to provide further supporting evidence.

Recommendation 15 Victims Services informs applicant/legal representative/advocate in writing of the earliest date by which a matter will be determined.

Victims Services is no longer able to provide applicants access to police records. Applicants are unable to address any issues arising from the police report of the act of violence without reading the relevant report. On appeal to the NSW Civil and Administrative Tribunal, Victims Services do not automatically provide the police records as evidence they rely on to make their decision. Procedural fairness requires an applicant to be able to see the evidence relied upon for Victims Services to make their decision. A Summons is required to be issued. This causes delays in proceedings. This issue could be addressed by police allowing Victims Services to share police reports with the applicant/legal representative/advocate at no charge.

Recommendation 16 Ensure applicants, legal representatives and advocates have access to all evidence upon which VS relies to make a decision

3. Increasing the transparency and accountability of the scheme

The Commissioner of Victims Rights has diverse functions under s 10 of the Act, including:

- providing information to victims of crime under s 10 (1) (a)
- to promote and oversee the implementation of the Charter of Victims Rights under s 10 (1) (c)
- to conduct reviews or inquiries on issues related to victims of crime under s 10 (1) (g)

- to consider and determine applications for victims support under s 10 (1) (i) and;
- to encourage the 'effective and efficient' delivery of support services under s 10 (1) (b).

In our view, some of these functions are in conflict. Since the Commissioner is also the Executive Director of Victim Services, s 10 (1) (g) means the Commissioner is effectively reviewing itself and its own organisation. This is not appropriate. The role of the Commissioner as an information provider and advocate for victim-survivors, is in conflict with the Commissioner's duty to ensure the effectiveness and efficiency of the scheme. The Act should be amended to separate these functions and create an independent Commissioner of Victims Rights.

Recommendation 17 Create an independent Commissioner of Victims Rights

Separate the functions of the current Commissioner of Victims Rights that are in conflict through legislative amendment between an independent Commissioner of Victims Rights and a Secretary of Victim Services or equivalent, and appoint an independent Commissioner of Victims Rights.

Improving consultation mechanisms

Proper consultation with victim-survivors and the services that work with them is essential to design and deliver trauma informed, victim centered, efficient victim support services. The statutory review should include diverse, pro-active opportunities for consultation in addition to calls for submissions as part of the formal process.

HPLS also strongly supports improvement of consultation mechanisms regarding the operation and implementation of the Scheme and other related issues.

Recommendation 18 Stronger consultation before making changes to Victims Support Scheme

The Commissioner Victims Rights to improve consultation mechanisms by requiring that proper consultation is undertaken before Victim Services makes changes to policy. These consultation processes must include ensuring the Victims Advisory Board (VAB) works collaboratively with the Victims of Crime Interagency (VoCI) and other appropriate mechanisms with avenues for community organisations to raise issues at VAB meetings and the publishing of VAB and VoCI minutes.

Recommendation 19 Ensure proper consultation of people with lived experience in the statutory review

Ensure meaningful consultation in this review to hear about the experiences of priority populations, including First Nations people, refugee and migrant communities including people on temporary visas experiencing violence, people with disability, LGBTIQ+ communities, people who are homeless, people with lived experience of prison, people in regional, rural and remote areas, older people and younger people and for priority populations and the services supporting them to be consulted and have input into proposed solutions.