

Mr Brendan Thomas  
Deputy Secretary  
Justice Strategy and Policy  
160 Marsden Street  
Locked Bag 5111  
PARRAMATTA NSW 2156

  
Dear Mr Thomas

**Re: Review of the Victims Rights and Support Act 2013**

Thank you for your invitation to provide comment to inform the review of the *Victims Rights and Support Act 2013*.

NSW Health has significant interest in the health, safety and recovery of victims of violent crime and the recognition of the harm they have suffered as a result of these crimes. The review of the *Victims Rights and Support Act* is a welcome opportunity to consider the needs of these victims in relation to financial support and the compensation which facilitates, amongst other things, access to services that address long term recovery from the impacts of crime, and in particular from trauma.

I am pleased to provide you with a submission (attached) on behalf of NSW Health. I look forward to your advice on the outcome of this important legislative review.

Thank you again for bringing this opportunity to my attention. For further information related to this submission, please contact Ms Danielle Clark, Manager Domestic and Family Violence, Office of Kids and Families, NSW Ministry of Health, 9391 9636 or [dclar@doh.health.nsw.gov.au](mailto:dclar@doh.health.nsw.gov.au).

Yours sincerely



Elizabeth Koff  
Secretary, NSW Health

Encl. 

## **Submission: Statutory review of the operation of the *Victims Rights and Support Act 2013*.**

NSW Health has significant interest in the health, safety and recovery of victims of violent crime and the recognition of the harm they have suffered as a result of these crimes.

While NSW Health supports the overall objectives of the *Victim's Rights and Support Act 2013* (the Act) some areas have been identified in which the terms and implementation of the Act may fail to properly secure those objectives.

### **1. Background to reform of Victims Compensation**

In his second reading speech in the Legislative Council, the then Attorney-General made the following statements regarding the background to the introduction of the *Victim Rights and Support Act*:

Instead of reducing everything to a lump sum compensation payment, the focus of the Victims Support Scheme will instead be on providing a package of *practical and financial support that is tailored to victims' individual needs and provided to victims at the time they need it*, while still providing a lump sum payment in recognition of the trauma experienced by victims of crime.

The Commissioner [of Victim's Rights] will be appointed as the Head of Victims Services [to] oversee the Victims Support Scheme and will otherwise assist victims of crime in exercising their rights. The Commissioner will promote and oversee the implementation of the NSW Charter of Victims' rights to help Government and non-government agencies to improve their compliance with the charter and receive complaints about breaches.

### **2. Objectives of the Act**

- 1) To recognise and promote the rights of victims of crime, pursuant to Part 2 of the Act.
- 2) To establish a scheme for the provision of support for victims of acts of violence, pursuant to section 17 of the Act.
- 3) To enable financial support paid and recognition payments made under the Scheme to be recovered from persons found guilty of the crimes giving rise to the payments, pursuant to section 57 of the Act.
- 4) (a) To enable restraining orders to be obtained to prevent persons who may be, or are, subject to restitution orders from disposing of property so as to avoid paying restitution, and  
(b) To enable orders to be made setting aside certain transactions contravening restraining orders or entered into for the purpose of avoiding payment of restitution, pursuant to section 78 of the Act.
- 5) 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 pursuant to section 91 of the Act.

### 3. Comments on Objectives of the Act

There is a focus in the Objectives in relation to the recovery of compensation from those guilty of a crime which may act as a barrier for victims of crime, particularly victims of domestic and family violence, sexual assault and child abuse, to seek support and rehabilitation who may have fears or concerns about financial implications for family members or retributions from offenders.

**Recommendation:** *NSW Health suggests that the needs of victims may be better secured if the Act were expanded to include overarching 'principles of administration' that reflected the Charter of Victims Rights.*

### 4. Strict time limits

Strict time limits apply to making applications under the Act, and, unlike previous legislation, there is no provision for leave to be granted outside the timeframes.

NSW Health is concerned that the two year time limit for child victims of abuse (*excluding* sexual assault) on turning 18 years for financial support and 10 year time limit for claims for recognition payments may not be sufficient for child victims with a history of trauma.

While children and young people respond to abuse and other traumatic events differently, complex trauma occurring from chronic child maltreatment (including traumatic brain injury) or sexual abuse may have particularly strong effects on the developing brain, interfering with a person's capacity to integrate information, leading to long-term effects such as cognitive, behavioural, physical and mental health problems.

These long-term health issues reduce the likelihood that some child abuse survivors will have the capacity or readiness to lodge support applications within the strict required time limits and there may be circumstances where there are legitimate reasons for delay. This has been raised in Issues Papers developed by the *Royal Commission into Institutional Responses to Child Sexual Assault*.

Strict time limits are also problematic for adult victims of domestic and family violence and sexual assault, who may delay their disclosure of abuse for a considerable period for a number of reasons, including fear of increased violence from the perpetrator, or lack of support to escape a violent relationship.

**Recommendation:**

- 1) *NSW Health suggests that consideration is given to allowing greater flexibility and discretion for child abuse survivors applying for support outside of the required time-limits.*
- 2) *NSW Health suggests that consideration is given to removing time limits for recognition payments and for financial support for victims of domestic and family violence and victims of sexual assault.*



## 5. Wait-times

While NSW Health acknowledges that there has been a significant improvement in timeframes for processing applications for victims of crime under the Act, it is noted that in 2014, the average wait-time for the determination of financial assistance for *immediate needs* was approximately 2.5 months and the average wait-time for a determination of a recognition payment was four months.<sup>1</sup>

Victims Services 2014/15 'data profiles' indicate that the majority of payments for financial assistance are made for immediate relocation, immediate security upgrade, funeral costs and medical costs. NSW Health submits that a 2.5 month delay on determinations for immediate needs payments, particularly of the kind outlined above is problematic and may contribute toward further risk of victimisation, particularly for those victims escaping on-going violence.

In the second reading speech introducing the Act,<sup>2</sup> the Honourable Mr Hazzard stated that it was "simply not good enough" for payments to victims of crime to be made "long after the bills for medical treatment, funeral expenses and the costs of relocating out of harm's way have been met". Mr Hazzard continued that "having to wait such a long time undermines the very spirit of the scheme, which was designed to help rehabilitate victims of violent crime". Mr Hazzard acknowledged the significant reduction in compensation amounts payable under the new scheme, however emphasised that victims would be better served by the new Act, as it now emphasised up-front practical and financial assistance at a time when it's needed most.

It is possible that current delays in processing applications for financial assistance mean that the objectives of the Act are not being secured, and may be undermined by implementation difficulties.

In the 13 years prior to establishment of the new scheme, the former Victims Compensation Tribunal released detailed annual reports and published wait-times. This public reporting was a useful measure of the effectiveness of the scheme and consideration should be given to reinstating this process.

***Recommendation:*** NSW Health supports the reduction of wait-times for processing financial payments by Victims Services, particularly applications for immediate needs assistance and improvement of public accountability through regular publication of wait-times.

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<sup>1</sup> [https://www.parliament.nsw.gov.au/la/papers/Pages/qaprofiles/victims-rights-and-support-act-2013\\_209429.aspx](https://www.parliament.nsw.gov.au/la/papers/Pages/qaprofiles/victims-rights-and-support-act-2013_209429.aspx)

<sup>2</sup> <https://www.parliament.nsw.gov.au/bills/DBAssets/bills/SecondReadSpeechLA/596/2R%20VICTIMS%20RIGHTS%20AND%20SUPPORT%20BILL%202013.pdf>

## 6. Documentary evidence requirements

Section 39 of the Act states that applications for victims support must be accompanied by documentary evidence sufficient to support, on the balance of probability, the applicant's claim to be a victim of an act of violence.

According to reports from clients of Local Health Services, some genuine victims of crime have been unable or reluctant to lodge applications or had applications dismissed due to lack of documentary evidence or due to issues with how NSW Police Force has documented or responded to a crime, injury or contact with a victim.

For example, according to the NSW Recorded Crime Statistics<sup>3</sup> between March 2014 and March 2015 there were 11,170 incidences of sexual assault or sexual indecency reported to NSW Police. As sexual assault is already significantly underreported (less than 1 in 5 of those who experience sexual assault reporting the crime to the Police)<sup>4</sup> it is concerning that in 2014/15 Victims Services received only 2,411<sup>5</sup> applications for financial assistance and counselling from primary victims of sexual assault. This represents less than 22% of all police *reported* assaults and probably less than 4% of all *actual* assaults. Interestingly, the number of sexual assault support applications (~2,411) is closely aligned with the number of *charged* sexual assault offenses (2,567),<sup>6</sup> which may suggest police decisions on whether or not sufficient evidence exists to pursue criminal charges (noting the much higher standard of proof required in criminal proceedings) may be impacting a victim's decisions on whether or not to pursue compensation and support applications, notwithstanding the much lower evidentiary burden required under the Act.

It is acknowledged that the majority of sexual assaults are not reported to authorities or even disclosed at all. Victims of sexual assault can face an apparently impossible evidentiary burden when preparing victims support applications, particularly in circumstances where there is a significant time delay between the assault and disclosure, a lack of medical or official evidence, inadequacies with police documentation, or police decisions not to pursue charges. The long-term impacts of child sexual assault may have resulted in some victims having negative experiences with police (for examples arrests for substance abuse) resulting in reluctance

NSW Health sexual assault services report that some victims of recent sexual assault and historical abuse find it difficult to make claims under the Act, particularly where acts of violence are not immediately reported, or where the victim and perpetrator were known to each-other. These issues are further burdened by section 44 of the Act that allows the Commissioner to refuse or reduce the payment if the crime was not reported to the police

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<sup>3</sup> [http://www.bocsar.nsw.gov.au/Documents/RCS-Quarterly/NSW Recorded Crime March 2016.pdf](http://www.bocsar.nsw.gov.au/Documents/RCS-Quarterly/NSW%20Recorded%20Crime%20March%202016.pdf)

<sup>4</sup> Australian Bureau of Statistics. Personal Safety Survey. 2012

<sup>5</sup> [http://www.victimsservices.justice.nsw.gov.au/Pages/vss/vs\\_publications\\_brochures\\_reports/vs\\_publicationsserviceproviders.aspx](http://www.victimsservices.justice.nsw.gov.au/Pages/vss/vs_publications_brochures_reports/vs_publicationsserviceproviders.aspx)

<sup>6</sup> <http://www.bocsar.nsw.gov.au/Documents/CCS-Annual/ccs2014.pdf>



within a reasonable time, or the victim did not co-operate with the police in the prosecution process.

For victims of sexual assault, deciding who to tell is an important part of the disclosure process and a victim's disclosure experience will be significantly impacted by the reaction of the recipients. It has been the experience of NSW Health that the handling of sexual assault reports by police can have a significant impact on victim's decisions on whether or not to pursue victim's support and the subsequent success of applications lodged. For example, in 2014/15 Victims Services dismissed or gave conditional approval to only 40% of all financial support applications for primary victims of sexual assault, largely due to insufficient documentary evidence.<sup>7</sup>

In some circumstances the victim has experienced significant further distress and trauma, including where unfavourable determinations are made by the NSW Commissioner of Victims Rights, or where Victims Services staff have been perceived by victims and their advocates to undermine abuse disclosures. The importance of support and belief during disclosures and subsequent system processes by victims of historical abuse has also been noted by the current Royal Commission.

It should be noted that the documentary evidence requirements also make it difficult for some victims of domestic and family violence (DFV) to make a successful claim under the Act. As with sexual assault, the majority of DFV is not reported to Police. The most recent data from the ABS *Personal Safety, Australia* survey estimates that less than half (42 per cent) of females who have experienced previous partner violence since the age of 15 have ever contacted Police about violence from a previous partner.<sup>8</sup> The proportion is even lower in cases of current partner violence, with just one in five females (20%) ever contacting Police about violence from a current partner.<sup>9</sup>

**Recommendations:**

- 1) *Consideration is given to reducing the evidentiary burden of current documentary requirements for victims of domestic and family violence, and victims of recent sexual assault and historical abuse under the Act.*
- 2) *Victims Services proactively take steps to encourage victims to seek support.*
- 3) *Victims Services staff are adequately trained to validate abuse disclosures and recognise these as an important first step toward a victim's recovery*
- 4) *Victims Services Staff proactively liaise with other sexual assault service providers to support victims through the application process.*

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<sup>7</sup> [http://www.victimsservices.justice.nsw.gov.au/Documents/Profile\\_2014-15%20Fin%20Supp.pdf](http://www.victimsservices.justice.nsw.gov.au/Documents/Profile_2014-15%20Fin%20Supp.pdf)

<sup>8</sup> ABS, *Personal Safety, Australia, 2012*, Cat. No. 4906.0, Table 26

<sup>9</sup> ABS, *Personal Safety, Australia, 2012*, Cat. No. 4906.0, Table 25

## 7. Difficulties preparing victims support applications

Under the old scheme, victims of crime were able to access payments for legal costs associated with preparing an application. When the Act was introduced, it was said that victims would no longer have a need for legal assistance as Victims Services staff would assist with applications and prepare an appropriately tailored support package.<sup>10</sup>

It has been reported that it has been difficult for victims to make contact with staff at Victims Services, which is possibly unsurprising given the high volume of calls to the Victims Access Line (VAL) (over 87,500 calls in the 2014/15 financial year.)<sup>11</sup> When contact has been established victims are generally encouraged to submit their own applications given staff are unable to provide legal advice on the more technical aspects of the Act.

Information available to guide victims to self-complete applications is limited, with these difficulties reflected in one of the most common application dismissal reasons: that expenses claimed were ineligible, suggesting that actual victims of violent crime who are entitled to support are having their claims dismissed because the *type* of support sought was incorrect according to the Act.

One NSW Health sexual assault service commented on a victim's personal struggle to complete an application form. The victim's trauma symptoms acted as a major obstacle to completing the required paperwork, including triggering of childhood sexual assault experiences, difficulty finding time while parenting and working, lack of concentration, and frequent forgetfulness. This example demonstrates that those who need the support of Victims Services the most may be among the least able to complete the application process, in terms of cognition, memory, concentration and organisation.

As a consequence, victims, especially those living with a disability, victims with limited or no English, limited literacy, or those that simply do not understand or have difficulty expressing their rights (often due to the trauma they have experienced) may not receive their full entitlements under the Act.

### **Recommendations:**

- 1)** *Consideration is given to providing fees for support or legal services to assist victims with Victims of Crime Support applications.*
- 2)** *Victims Services considers providing detailed guidance to victims self-completing applications, including making available specific types of support and evidentiary examples and simplifying the application process.*
- 3)** *Consideration is given to providing greater flexibility for eligible victims to self-define the type of immediate support they require.*

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<sup>10</sup><https://www.parliament.nsw.gov.au/bills/DBAssets/bills/SecondReadSpeechLC/596/2R%20Victims%20Rights.pdf>

<sup>11</sup>[http://www.justice.nsw.gov.au/Documents/Annual%20Reports/DoJ\\_Annual\\_Report\\_2014-15.pdf](http://www.justice.nsw.gov.au/Documents/Annual%20Reports/DoJ_Annual_Report_2014-15.pdf)



- 4) *Victims Services consider providing additional support measures for those victims living with a disability, mental health issues, with limited or no English, limited literacy or those victims who have difficulties understanding or expressing their rights.*
- 5) *Victims Services Staff proactively liaise with other sexual assault service providers to support victims through the application process.*

## **8. Appeals Processes**

An applicant who is aggrieved by a victims support decision may seek a review pursuant to Division 7 of the Act. The review process is important as it allows for the correction of errors made by the decision-maker when determining a victims support and recognition entitlements.

The Victims Support Scheme removes the right of victims to appeal to the Administrative Decisions Tribunal (now the NSW Civil and Administrative Tribunal) by replacing it with an internal review process conducted by Senior Assessors on delegation from the Commissioner of Victims Rights. Victims can seek an *external* review of a decision in relation to recognition payments only, with absolute final decisions regarding the approval of counselling and financial support applications resting exclusively with the Commissioner of Victims Rights.

Under the old scheme, the Victims Compensation Tribunal determined 573 appeals from decision-makers, of which 40% were successful.

Under the new scheme, in the 2014/15 financial year, 171 applications for counselling were dismissed (2%), 2,051 applications for financial assistance were dismissed (53%) and 990 applications for recognition payments were dismissed (13.3%).<sup>12</sup>

Success rates for internal *appeals* no longer appear to be published by Victims Services. NSW Health notes some concern in relation to the very high overall dismissal rate for financial assistance claims. NSW Health seeks a better understanding of the internal decision-making processes in regards to appeals, as this information would assist services supporting victims with applications.

It has also been reported that victims and services seeking guidance in relation to the appeals processes from Victims Services staff have been given inaccurate or incomplete information. NSW Health is concerned that the perceived lack of transparency in decision-making and internal review processes may have a negative impact on victims.

### ***Recommendations:***

- 1) *Victims Services regularly publish internal review statistics.*

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<sup>12</sup> [http://www.victimsservices.justice.nsw.gov.au/Pages/vss/vs\\_publications\\_brochures\\_reports/vs\\_publicationsserviceproviders.aspx](http://www.victimsservices.justice.nsw.gov.au/Pages/vss/vs_publications_brochures_reports/vs_publicationsserviceproviders.aspx)



- 2) *Consideration is given to establishing processes for the external review of financial support applications.*

## **9. Effectiveness of Approved Counselling Services**

While Approved Counsellors are usually helpful and available, NSW Health services have commented on the limited services they can provide due to requirements of Victims Services.

Victims of violent crime frequently have urgent practical issues that need to be addressed prior to undertaking a therapeutic intervention. For example, victims escaping domestic and family violence may be experiencing homelessness, an issue that would need to be addressed by the counsellor to ensure the victim feels safe enough to engage in a therapeutic process. A victim with substance abuse issues should be referred to specialised drug and alcohol services to have these issues addressed prior to attempting an effective therapeutic intervention for trauma.

NSW Health services have indicated that Victims Services counsellors can provide only two services: face-to-face counselling and report writing. Counsellors cannot provide case management and are reluctant to take on extra commitments (such as reporting to the Child Protection Helpline, making referrals or responding to mental health crises) because the remuneration structure for counsellors does not include these tasks.

Some counsellors have asked clients to limit their counselling sessions to matters related directly from the act of violence, disregarding experiences of complex trauma.

Counsellors are also unable to provide family sessions with family members who are not considered victims, which in the context of trauma is highly effective. For these reasons, NSW Health services can be disinclined to refer clients to Victims Services, knowing that a more holistic, case management or family-based intervention is needed.

***Recommendation:*** *Consideration is given to allowing greater flexibility for Counsellors to be paid for undertaking a more holistic counselling, court support and case-management intervention.*

## **10. Domestic and Family Violence**

Section 35(2) of the Act recognises the impact of on-going sexual assault and makes a higher “Category B” payment for this. NSW Health is concerned that the impact of on-going domestic and family violence has not been recognised in the Act, with on-going threats of violence and assaults not resulting in grievous bodily harm made a much lower “Category D” payment. While victims are able to submit multiple applications, it has been our experience that Victims Services would dismiss these claims as ‘related’ incidents pursuant to Section 19 of the Act.

**Recommendation:** *Category B payments are expanded to include on-going domestic and family violence.*

## **11. Charter of Victims Rights and Complaints Processes**

The Commissioner of Victims Rights was appointed to receive complaints about breaches, assist victims of crime in exercising their rights and promote and oversee the implementation of the Charter of Victims' Rights (the Charter) to help Government and non-government agencies with their compliance.

A clear complaint mechanism is crucial to deal effectively with breaches of the Charter. NSW Health is concerned that all verbal complaints are directed through the generalist Victims Access Line (VAL) and that there is no longer distinct telephone line for victims or services to contact around breaches to the Charter.

**Recommendation:** *Victims Services re-establishes a distinct Victims' Charter Enquiries and Complaints Line.*

## **12. Making of Restitution Orders**

The seeking of restitution against offenders can be a significant barrier to victims seeking support and recognition through the Scheme and can lead to serious safety concerns for victims of violence who may be placed at risk of retribution by the offender.

In the 2014/15 financial year, Victims Services issued 2,119 provisional orders with 10 orders pay in full.<sup>13</sup> As the majority of offenders are clearly unable or unwilling to pay the full amount, there is a risk of a cycle of debt, financial difficulties and unemployment; all well known risk factors for re-offending and escalation of violence. This could be particularly derailing for young or vulnerable offenders.

NSW Health is concerned that victims will not make support and recognition claims because the offender may be made aware of their claim through restitution proceedings. Victims may fear for their safety, believing that the offender would try to seek retribution and would try to re-enter their lives and recommence the cycle of violence. This is especially concerning for victims of domestic and family violence, amongst others.

While it is noted that in some circumstances a victim of crime can request Victims Services waive restitution proceedings, this information does not appear to be available on the Victims Services website, and of the thousands of victims of family violence and sexual assault who applied for support in 2014/15, it is concerning that only 12 victims requested that restitution not be pursued against the offender.<sup>14</sup>

The making of restitution orders can act as a serious deterrent preventing some of the most vulnerable victims from accessing victims' compensation.

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<sup>13</sup> [http://www.victimsservices.justice.nsw.gov.au/Documents/profile\\_2014-15\\_restitution.pdf](http://www.victimsservices.justice.nsw.gov.au/Documents/profile_2014-15_restitution.pdf)

<sup>14</sup> [http://www.victimsservices.justice.nsw.gov.au/Documents/profile\\_2014-15\\_restitution.pdf](http://www.victimsservices.justice.nsw.gov.au/Documents/profile_2014-15_restitution.pdf)

### **Recommendations:**

- 1) *Victims Services publish detailed guidance regarding the process for victims to request a waiver of restitution proceedings*
- 2) *Greater consideration is given to the wishes of victims in the making of restitution orders against offenders.*

### **13. Conclusion**

NSW Health welcomes the opportunity to provide a submission on the statutory review of the operation of the *Victims Rights and Support Act 2013* (the Act). While NSW Health supports the overall objectives of the *Victim's Rights and Supports Act 2013* some areas have been identified in which the terms and implementation of the Act may fail to properly secure those objectives.

Further enhancements to implementation and operation will better meet the objective of the Act and improve the on-going health, safety and recovery of victims of violent crime.