

The Shopfront

YOUTH LEGAL CENTRE

Policy Reform and Legislation
Department of Communities and Justice
Locked Bag 5000
Parramatta NSW 2124

7 July 2022

By Email
policy@justice.nsw.gov.au

Dear Sir/Madam

Statutory Review of Victims Rights and Support Act 2013 (Victims Act): Submission from the Shopfront Youth Legal Centre

1 Introduction

We are writing to you in response to the statutory review of the Victims Act. We note that you are assessing whether the policy objectives of the Victims Act remain valid and whether the terms of the Victims Act remain appropriate for securing those objectives.

We note that one of those objectives is to "*recognise and promote the rights of victims of crime*". In our view the opportunity to fully participate in the scheme established by the Victims Act (**Victims Support Scheme**), regardless of disadvantaged background, intellectual disability or youth is one of those rights of victims of crime.

2 About the Shopfront Youth Legal Centre

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people aged 25 and under. The Shopfront has been operating since 1993 and is a joint project of the law firm Herbert Smith Freehills, Mission Australia and The Salvation Army.

The Shopfront's clients come from a range of cultural backgrounds, including a sizeable number of indigenous young people. Common to most of our clients is the experience of homelessness: most have been forced to leave home due to abuse, neglect, domestic violence or extreme family dysfunction. This leaves them extremely vulnerable and traumatised and unable to protect themselves.

Moreover, most of our clients have limited formal education and therefore lack adequate literacy, numeracy and vocational skills. A substantial proportion also have a serious mental health problem or an intellectual disability, often co-existing with a substance abuse problem. These young people have difficulty successfully navigating the different bureaucracies related to housing, health care and income support, in addition to managing their legal issues.

The Shopfront represents and advises young people on a range of legal issues, with a particular emphasis on criminal law. Most of the young people we assist as criminal defendants are also victims of abuse with unresolved trauma.

We have assisted numerous clients to pursue victims' compensation claims, in particular claims for domestic violence and sexual assault, which in the main relate to their history of child abuse.

3 General comments on the Victims Support Scheme

We refer to our letter dated 22 June 2016 in response to the previous statutory review (**Statutory Review Response 2016**) and our letter to the Commissioner of Victims Rights in relation to the changes implemented on 1 July 2020 dated 2 March 2021 (**Submissions on 1 July 2020 Changes**) (copies enclosed for convenience of reference). We repeat the submissions made in each of these letters in relation to this Statutory Review.

In our view, based on our experience with many vulnerable young people, almost all of the issues, problems and concerns raised in the Statutory Review Response 2016 remain unaddressed. In addition, the implementation of the changes on 1 July 2020 (during a Global Pandemic) have made it even more difficult for vulnerable young people to access Victims Support.

4 Specific comments

Many of these comments were addressed in detail in the Statutory Review Response 2016 (enclosed) so we will just briefly raise these issues again in this submission as many of them continue to remain unaddressed and have not been remedied during the past 6 years.

4.1 Reduced payments for trauma suffered by victims of sexual assault and domestic violence

One of our primary concerns is the significantly reduced payments for domestic violence and sexual assault victims, including victims of child sexual assault. For the reasons stated above, our client group are mostly not in a position to take advantage of the financial assistance packages and are therefore completely reliant upon the Recognition Payments for compensation for the trauma and injury they have suffered.

In our submission, these reductions ignore and undervalue the trauma suffered by these victims. This is particularly the case for victims of prolonged child sexual assault, who would have suffered multiple counts of abuse during a critical period in their lives.

Compensation payment for pain suffered is a symbolic recognition of a public wrong and an important part of addressing violent crime in our society. The huge reduction in payments for victims of these forms of violence has detrimental effects on a victim's ability to reclaim their life, but more importantly, in contrast to the current level of community and media concern about domestic violence, also sends a clear message that this is not important to us as a society.

4.2 Failure to recognise psychological trauma, particularly in victims of domestic violence coupled with the requirement to show grievous bodily harm in order to receive the higher recognition payment

We repeat the submissions in the Statutory Review Response 2016. The requirement that a victim of domestic violence must prove that they have suffered grievous bodily harm (GBH) in order to receive the higher payment, coupled with the refusal to recognise severe psychological trauma as a form of GBH continues to be problematic.

For example, a young woman can be beaten every day for years and suffer extensive bruising and lacerations and severe psychological trauma and be awarded \$1,500, whilst someone who is hit once in the jaw and goes to hospital receives more than 3 times that amount.

We consider that there is a simple solution which could resolve this situation of manifest injustice. Section 35(3) of the Victims Act could be amended to add an additional act of violence to the category C Recognition Payment which would provide for "domestic violence". We note that there is already a definition of "domestic violence" in s19(8) of the Victims Act.

4.3 Restricted time limits for claims

Our experience in the past 9 years has been that the imposition of 10-year time limits for victims' claims for recognition payments for domestic violence, sexual assault and child abuse (not including child sexual assault) is negatively affecting our client group.

Many of our clients are young people who are currently dealing with the results of a childhood and early adulthood consisting of physical abuse, substance abuse, homelessness and mental health issues. It is unfortunate but very common for many of them to find themselves in domestic relationships with violent partners.

Also, we are finding that these homeless and disadvantaged young adults (ie those over 18 years old) are often victims of sexual assaults. They spend their twenties and thirties trying to repair and rehabilitate their lives, before being able to deal with the trauma of their late adolescence and early twenties.

Also, there is no clear definition of 'child abuse' in the Victims Act, unlike sexual assault and domestic violence. In our experience, it seems to be an arbitrary decision made by officers at Victims Services whether an incident is classified as child abuse or not and therefore whether it is accepted as being within time.

We submit that this can be cured by a simple amendment to section s40 (7) of the Victims Act so that domestic violence, sexual assault and child abuse are included in the list of acts of violence for which there are no time limits. Alternatively, instead of just an open-ended application period, the Victims Act could provide for a similar procedure to that found in the Old Act, ie the imposition of a time limit but an ability to apply for leave to file an application out of time in certain circumstances and a presumption that such leave should be granted.

4.4 Lapsing of Claims under s 41A of the Act

Although concerns were raised in Parliament when this provision was included in the Victims Act, it was our experience as a matter of practice, that prior to 1 July 2020, the Commissioner seemed to be exercising the discretion appropriately and Victims Services assisted in acquiring the evidence including Approved Counselling Reports so this was not a pressing issue for our client group.

Impact of Changes made on 1 July 2020

Amongst other things, the changes implemented on 1 July 2020 included a requirement that all evidence in support of an application must be provided to Victims Services within 12 months of the lodging of the application under threat of a person's claim being closed. To quote "The Victims Support Scheme: a detailed guide" produced by Victims Services (www.victimsservices.justice.nsw.gov.au/Documents/bk19_vss-guide-details.pdf)

"If you do not give us your reports within 12 months of lodging your application, your claim will be closed".

Although Victims Services say that it is open to victims to relodge their lapsed applications, for many this is not a realistic option given the strict and inflexible time limits for lodging claims (discussed above).

Victims Services claim that they are relying upon s 41 A to support this power. We would dispute that s 41A provides an absolute power to close claims after 12 months, but that it is a discretion which needs to be exercised properly. In our submission, the way this is currently being managed in practice is problematic as there seems to be no room for proper exercise of the discretion.

Further, in our experience over the last 2 years, vulnerable victims of violence, including victims of sexual assault and domestic violence are receiving letters basically threatening them with closure of their claims if they don't provide certain types of evidence within a specified time frame. Effectively, Victims Services have abdicated from the responsibility to assist these vulnerable people to access supporting evidence and then blame them when they are unable to do so within a specified time frame.

We remind you that accessing records within a particular time frame, particularly from Government Departments is not necessarily within an individual's power or control. This is particularly so, when dealing with homeless young people, as there can often be lengthy delays in getting consents signed and in dealing with bureaucracies who often want applications for information amended or limited in scope or impose extra costs. All of these concerns can impact on the timely collection, analysis and submission of supporting evidence.

Further, the changes to the way in which Approved Counsellors are accessed in addition to placing the onus on the victim to request such a report has meant that many young people have not been able to use this service to support their claims within the time limit or at all.

Given that in our experience, the Department of Communities and Justice (DCJ) are taking up to and sometimes more than 18 months to provide records to applicants under CLARA, a simple solution would be to amend s 41A so as to make the relevant time period 2 years.

This is consistent with other time frames within the Victims Act and allows vulnerable victims of crime a more reasonable time period to try and access government and non government records in addition to counselling reports.

4.5 Legal assistance

In the document titled "The Victims Support Scheme: a detailed guide" produced by Victims Services (www.victimsservices.justice.nsw.gov.au/Documents/bk19_vss-guide-details.pdf) applicants are told that they do not need lawyers.

As discussed above, many of our clients suffer from intellectual disabilities, mental health issues and very low levels of literacy. All of them are 25 years old or under. It is virtually impossible for them to navigate the Victims Support Scheme by themselves, in particular in relation to the factors described in s44 of the Victims Act. A failure to properly address these factors could result in a reduction or refusal of the claim. This would be manifestly unjust.

We refer to the description of other areas where this can impact our client group in the Statutory Review Response 2016 and state that they are still relevant today.

Impact of Changes made on 1 July 2020

As discussed in the Submissions on 1 July 2020 Changes, the changes made on 1 July 2020 effectively flipped the onus for provision of supporting evidence from Victims Services to the victims of crime.

In particular, we note that under the changes, medical and other records, including hospital records, must now be obtained by the victim. This change not only puts the onus on the victim to locate and identify evidence but also to pay the costs of retrieving this evidence. This all has to be done in a tight time frame in relation to certain acts of violence.

Given that one of the justifications for not needing legal assistance was that Victims Services would assist in the acquisition of supporting evidence, we find the decision to refuse to do so is not only acting against the spirit of the legislation but also the objects of the Victims Act.

4.6 Internal Reviews

Although the Victims Act was changed to extend the time period for the lodging of an Internal Review Application to 90 days, Victims Services are applying this time limit in a way that in our submission is not supported by s 49 of the Victims Act. We remind you that the amendment was made so that vulnerable people who were unable to access support or legal advice within the original 28 day period (for a variety of reasons such as homelessness or in custody), would have additional time to lodge the application form and to seek assistance.

The relevant parts of Section 49 provide that:

(2) *The application must be made within 90 days after the day on which the applicant is given notice of the decision maker's decision.*

(3) *An application for an internal review must be in writing and state fully the grounds of the application.*

Until recently, it was the practice of Victims Services consistent with the provisions of the Victims Act, that one lodged the Internal Review Application Form (stating the grounds of the application) within the specified 90 day and once this was lodged then one could request more time in order to source any additional materials (from Government Departments etc) and provide submissions in support of the application.

Section 49 of the Victims Act does not, in our view, require that all submissions and additional evidence must be lodged within the 90 day time period.

However we note that "The Victims Support Scheme: a detailed guide" produced by Victims Services (www.victimsservices.justice.nsw.gov.au/Documents/bk19_vss-guide-details.pdf) now states that:

"You have 90 days after the day you were given notice of the decision to lodge a complete application for internal review".

This is not consistent with the provisions of the Victims Act, nor the spirit of that Act.

Further, if a claim has been dismissed or reduced because of an alleged lack of certain specific evidence (such as DCJ records which are almost impossible to acquire within 90 days), it does not give the victim time to properly support the application for an Internal Review.

4.7 Domestic violence victims (including recipients of Immediate Needs Support Packages) afraid of retribution.

We repeat our submissions on this issue contained in the Statutory Review Response 2016 and state that this issue still remains of concern.

This particular issue seems to have been further aggravated for victims of domestic violence who are accessing the Immediate Needs Support Packages.

Firstly, we would like to say that in our experience (which is quite limited), the Immediate Needs Support Packages are providing a much needed service, and vulnerable young people are able to use these awards to get out of dangerous situations.

However, our clients report that these applications are often made in a hurry, by social workers or the victims themselves, usually to support the vulnerable person to get out of a dangerous situation as a matter of urgency. The few who come to our service afterwards, have expressed to us that they did not understand the implications of restitution (noting that Victims Services have stated that there is no need for lawyers), and were in a desperate need for the assistance. The common refrain is that they are still terrified of the perpetrator finding out about the claim. If a request is made for restitution to be waived, then, in our recent experience, it is the practice of Victims Services to withhold the award until the decision is made.

A solution would be that there should be a presumption that restitution is automatically waived if the victim is awarded an Immediate Needs Support Package.

Or at the very least, an amendment either allowing the victim to be consulted on whether restitution should be made or at the very least be able to tick a box requesting that their details remain anonymous. This may not assist in all cases but it may provide comfort to some vulnerable people.

5 Conclusion

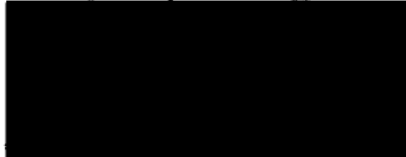
A strong victims' compensation scheme that is equally accessible to every member of society, is important in empowering victims, recognising their pain and suffering and for

recognition that there has been a public wrong. Victims' compensation is important not just to victims but also for a fair and just society.

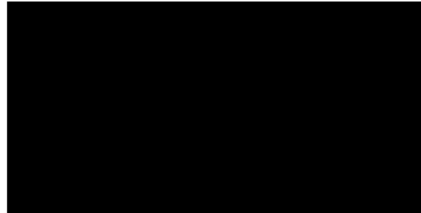
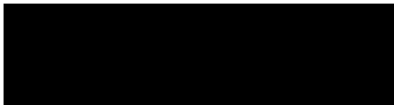
The issues raised and the proposals outlined in this letter would, in our submission, assist towards achieving this goal.

We therefore urge you to carefully undertake the review of the current scheme taking into account the suggestions contained in this submission.

Yours faithfully



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The Shopfront Youth Legal Centre



Senior Solicitor
The Shopfront Youth Legal Centre



The Shopfront

YOUTH LEGAL CENTRE

The Director,
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22 June 2016

Dear Sir/Madam

Statutory Review of Victims Rights and Support Act 2013 (Victims Act): Submission from the Shopfront Youth Legal Centre

1 Introduction

We are writing to you in response to the review of the Victims Act. We note that you are assessing whether the policy objectives of the Victims Act remain valid and whether the terms of the Victims Act remain appropriate for securing those objectives.

We note that one of those objectives is to "*recognise and promote the rights of victims of crime*". In our view the opportunity to fully participate in the scheme established by the Victims Act (**Victims Support Scheme**), regardless of disadvantaged background, intellectual disability or youth is one of those rights of victims of crime.

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The Shopfront's clients come from a range of cultural backgrounds, including a sizeable number of indigenous young people. Common to most of our clients is the experience of homelessness: most have been forced to leave home due to abuse, neglect, domestic violence or extreme family dysfunction. This leaves them extremely vulnerable and traumatised and unable to protect themselves.

Moreover, most of our clients have limited formal education and therefore lack adequate literacy, numeracy and vocational skills. A substantial proportion also have a serious mental health problem or an intellectual disability, often co-existing with a substance abuse problem. These young people have difficulty successfully navigating the different bureaucracies related to housing, health care and income support, in addition to managing their legal issues.

The Shopfront represents and advises young people on a range of legal issues, with a particular emphasis on criminal law. Most of the young people we assist as criminal defendants are also victims of abuse with unresolved trauma.

We have assisted numerous clients to pursue victims' compensation claims, in particular claims for domestic violence and sexual assault, which in the main relate to their history of child abuse.

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3 General comments on the Victims Support Scheme

Although we understand that certain categories of victims have expressed satisfaction with the Victims Support Scheme we are writing these submissions on behalf of our client group, ie homeless and disadvantaged young people. For this client group, participation in the Victims Support Scheme without legal assistance is still a difficult and daunting process.

Also, since most of our clients' claims relate to historical child abuse or domestic violence, they are not in a position to take advantage of the financial assistance packages as there are specific time limits (2 years from the act of violence or 2 years from the victim's 18th birthday) and almost all of the financial assistance packages relate to expenses incurred or lost wages, which are not applicable to victims of historical child abuse nor in the most part to homeless young people. They are therefore completely reliant upon the Recognition Payments to compensate them for the trauma they have suffered. These Recognition Payments are substantially less than the amounts awarded for equivalent claims under the Old Act.

We also note that one of the main justifications for the establishment of the Victims Support Scheme and consequent reduction in these compensation payments was that it would allow faster processing of claims. Although this was the case initially, in our experience, especially in the past 12 months, the delays between lodgement of an application and receiving a determination have now stretched out to approximately 12 months or longer, particularly if the claim relates to childhood abuse and is reliant upon police or FACS files.

4 Specific comments

4.1 Reduced payments for trauma suffered by victims of sexual assault and domestic violence

One of our primary concerns is the significantly reduced payments for domestic violence and sexual assault victims, including victims of child sexual assault. For the reasons stated above, our client group are mostly not in a position to take advantage of the financial assistance packages and are therefore completely reliant upon the Recognition Payments for compensation for the trauma and injury they have suffered.

In our submission, these reductions ignore and undervalue the trauma suffered by these victims. This is particularly the case for victims of prolonged child sexual assault, who would have suffered multiple counts of abuse during a critical period in their lives.

Compensation payment for pain suffered is a symbolic recognition of a public wrong and an important part of addressing violent crime in our society. The huge reduction in payments for victims of these forms of violence has detrimental effects on a victim's ability to reclaim their life, but more importantly, in contrast to the current level of community and media concern about domestic violence, also sends a clear message that this is not important to us as a society.

We do note that the removal of the concept of compensable injury and the related Schedule of Injuries and threshold requirements has benefitted the victims of one-off violent assaults by strangers or unrelated perpetrators. However, a victim of domestic violence who is over the age of 18 years can only receive a recognition payment of \$1500, unless he/she can prove they suffered grievous bodily harm. This produces some anomalous results. For example, a young woman who is beaten every day by her partner, suffering bruises, lacerations and psychological trauma is seen as less worthy of a higher recognition payment than someone who was in a brawl and was punched in the jaw.

We find it difficult to understand how, after working so hard to recognise that domestic violence is a serious issue and to implement significant strategies such as the NSW Domestic Violence Justice Strategy and the recent amendments to the *Crimes (Domestic and Personal Violence) Act*, the government now appears to be giving greater recognition to "public" acts of violence.

4.2 Failure to recognise psychological trauma, particularly in victims of domestic violence coupled with the requirement to show grievous bodily harm in order to receive the higher recognition payment

The requirement that a victim of domestic violence must prove that they have suffered grievous bodily harm (GBH) in order to receive the higher payment, coupled with the refusal to recognise severe psychological trauma as a form of GBH is producing some patently unjust results.

As described above, a young woman can be beaten every day for years and suffer extensive bruising and lacerations and severe psychological trauma and be awarded \$1,500, whilst someone who is hit once in the jaw and goes to hospital receives more than 3 times that amount.

We note that many of our client group who are claiming for domestic violence, in particular past domestic violence, do not qualify for the financial assistance packages, ironically due to their circumstances of homelessness and disadvantage.

Case Study

When she was only 22 years old, Nancy was in a violent relationship with the father of her young child. After months of beatings, including one hospital attendance with a suspected broken collar bone, she left him.

He then asked to meet with her to discuss some financial issues. Nancy didn't want him to know where she lived so she agreed to meet him at a friend's house. He parked outside the house and she got into the car to talk to him. He then drove her to a waterfront location. He kept drinking alcohol while they spoke. He became angered and demanded that they resume their relationship. He threatened to punch her in the head if she opened the door.

He then drove his car erratically, at speed. He went through a red light and he drove on the wrong side of the road, forcing other cars off the road. He said that he and Nancy were going to die. He bashed her head against the dashboard repeatedly. She tried to call Police and he took her mobile phone and threw it from the car.

At one point Nancy took an opportunity to pull on the handbrake. The car spun around. When it stopped she jumped from the car. She landed awkwardly and hurt her ankle. She flagged down an oncoming car and it started to drive her to the Police Station. The ex-partner followed that car and bashed into it from behind with his car while it drove.

He was eventually charged and convicted of kidnapping and other offences. Despite the months of beatings and her traumatic ordeal in the car, Nancy received a mere \$1,500 recognition payment.

We consider that there is a simple solution which could resolve this situation of manifest injustice. Section 35(3) of the Victims Act could be amended to add an additional act of violence to the category C Recognition Payment which would provide for "domestic violence". We note that there is already a definition of "domestic violence" in s19(8) of the Victims Act.

4.3 Restricted time limits for claims

Our experience in the past 3 years has been that the imposition of 10-year time limits for victims' claims for recognition payments for domestic violence, sexual assault and child abuse (not including child sexual assault) is negatively affecting our clients.

Many of our clients are young people who are currently dealing with the results of a childhood and early adulthood consisting of physical abuse, substance abuse, homelessness and mental health issues. It is unfortunate but very common for many of them to find themselves in domestic relationships with violent partners.

Also, we are finding that these homeless and disadvantaged young adults (ie those over 18 years old) are often victims of sexual assaults. They spend their twenties and thirties

trying to repair and rehabilitate their lives, before being able to deal with the trauma of their late adolescence and early twenties.

Also, there is no clear definition of 'child abuse' in the Victims Act, unlike sexual assault and domestic violence. In our experience, it seems to be an arbitrary decision made by officers at Victims Services whether an incident is classified as child abuse or not and therefore whether it is accepted as being within time.

Case Study

Alex is a young Aboriginal woman who suffered child abuse and neglect as a young girl. She is currently 23 years old and suffering from mental health issues and homelessness. Although she is aware that victims support exists she has instructed us that it is too traumatic for her and she is not able to deal with her childhood at the moment. She does not know when she will be physically and mentally in a position to do so, but it is concerning that once she reaches 28 years old (ie in 5 years' time) she will lose her rights to claim compensation.

We submit that a simple amendment to section s40(7) of the Victims Act so that domestic violence, sexual assault and child abuse are included in the list of acts of violence for which there are no time limits. Alternatively, instead of just an open-ended application period, the Victims Act could provide for a similar procedure to that found in the Old Act, ie the imposition of a time limit but an ability to apply for leave to file an application out of time in certain circumstances and a presumption that such leave should be granted.

4.4 Requirement to report act of violence to police or government agency

We note that this requirement has a particular impact on our client group and can result in quite distressing results.

Many of our clients have had negative experiences with police and government agencies and therefore instead report their crime to support services, many of which are non-government agencies. It is our experience that many of our clients, particularly those who were victims of child abuse, have been told all of their lives that they will not be believed. Therefore it takes a relationship of great trust before a victim is able to have the confidence to disclose what happened to them.

In these circumstances, many young people disclose their experiences of sexual abuse or domestic violence to counsellors, psychologists, refuge workers, social workers, employers and family members, none of which are acceptable to the Commissioner. We find ourselves advising young people who have made numerous contemporaneous disclosures that they do not have a claim for compensation whilst a person who was lucky enough to have a sympathetic public school teacher or DOCS worker can make a single disclosure and lodge a claim.

We consider that the documentary requirements should be expanded in order to encompass reports or records, at the very least, from organisations that receive some form of government funding, but preferably to all documents that evidence an act of violence and injury that meet the civil standard of proof.

Case Study

Karen is only 19 years old. Since she can remember, Karen's mother has been extremely violent towards Karen. As a result of the mother's behaviour, the family was evicted from their home and moved in with the grandfather. The family was again made homeless because of the mother's substance abuse and violence and they moved around a lot. Karen does not remember any DOCS or police involvement with the family. Karen has disclosed the abuse to her psychologist, her case worker at Weave Youth, Family and Community, her GP and workers at the Glebe Pathways Day Program.

Karen told her psychologist that she recalled daily physical abuse by her mother which was so severe she was unsure whether she would survive. When her injuries were severe enough to warrant medical attention, Karen's mother refused to let her go to hospital, or on the very few occasions that she went, she was too scared to tell anyone.

Despite making repeated disclosures of the abuse to different reputable professionals, Karen does not have a report from police or a Government Agency as defined in the Victims Act and is therefore unable to lodge a claim.

4.5 Legal assistance

In the document titled "The Victims Support Scheme: a detailed guide" produced by Victims Services (www.victimsservices.justice.nsw.gov.au/Documents/bk19_vss-guide-details.pdf) applicants are told that they do not need lawyers and that "You will be allocated a support coordinator to assist with your claim and get evidence"

As discussed above, many of our clients suffer from intellectual disabilities, mental health issues and very low levels of literacy. All of them are 25 years old or under. It is virtually impossible for them to navigate the Victims Support Scheme by themselves, in particular in relation to the factors described in s44 of the Victims Act. A failure to properly address these factors could result in a reduction or refusal of the claim. This would be manifestly unjust.

Case Study

Marvin is a homeless young man who suffers from schizophrenia. He made a claim for victims compensation for severe injuries suffered as a result of an altercation at a party. He didn't report the assault until 2 days afterwards, due to having been detained at a medical centre and at the hospital for over 18 hours (he did not realise that delay was an issue, nor did he have the capacity to explain this delay in his application for compensation). He also didn't attend any follow-up appointments with police to make his statement or to provide assistance in the investigation of the assault. He was therefore at risk of losing some or all of his recognition payment under s 44 of the Victims Act.

Marvin's lawyer carried out an investigation into his medical history and obtained a psychiatric report which described some of Marvin's symptoms and also his circumstances at that time (ie homelessness). Detailed submissions were prepared which explained that any of Marvin's failures were due to his homelessness and his mental health problems. The Assessor accepted these submissions and awarded Marvin the entire recognition payment.

There are other areas where our client's lack of literacy and sophistication, combined with (in our experience) the lack of knowledge of the support co-ordinator at Victims Services, can lead to an injustice. We set out some examples below:

- (a) **Claims rejected as out of time:** The online application form does not contain an option to describe a claim as 'child abuse'. The only option if the perpetrator was not in a domestic relationship with the child such as a teacher, counsellor or even a stranger, is 'assault'. We note that several clients have received letters telling them that their claims were rejected as being out of time. In response, we have sent detailed submissions proving that the assault/s should be classified as child abuse and the claim/s has then been accepted. Clients tell us that had they received the letter of rejection of a claim on this basis (without having access to legal advice), it would not only be very distressing but that they would not necessarily have the requisite knowledge nor feel capable of challenging this decision.
- (b) **Internal Reviews:** Our clients have received a large number of Notices of Decision either rejecting that client's application for a recognition payment or awarding a client with a lower recognition payment than their claim deserves. Also we have received decisions where a recognition payment has been reduced due to s 44 considerations. In each of these situations we have advised the client to seek an internal review and we have provided submissions to the reviewing Assessor on issues of fact and law that the previous Assessor may have missed. We have been successful in all of our requests for Internal Reviews on behalf of our clients.

However, some of the issues are quite complex and require an understanding of the relevant law in order to even recognise that one has a right of review. The letter that Victims Services sends out with successful and unsuccessful claims contains one sentence on Internal Reviews; "If you would like this decision to be reviewed, you must apply to us in writing within 28 days of this letter being sent". There is no suggestion to seek legal advice or otherwise and most people, but particularly our client group, are not in a position to make that assessment themselves. Nor are they necessarily capable of fulfilling the requirements of s49 (3) of the Victims Act which provides that "An application for an internal review must be in writing and state fully the grounds of the application" particularly within the statutory time limit of 28 days.

We have made enquiries to the support co-ordinators at Victims Services and been informed that if a client calls up asking for advice about a decision, that client is referred to the Review team (who are not lawyers) and given information on the steps to take to seek an internal review. There is no advice given on the merits of the decision and in fact we have been told that no case support officer is in a position nor qualified to question an Assessor's decision nor explain to a vulnerable young person the reasoning behind the decision.

Given the time limit of 28 days with no option to apply for leave to extend that time, vulnerable people are placed at a significant disadvantage when attempting to properly access their entitlements for support. This is particularly true for people in custody or with mental health issues or other circumstances of disadvantage.

Case Study

Jack was a young Aboriginal man with a long history of physical and sexual abuse. He was severely traumatised and had made several applications for victims support. One of his applications related to years of sexual abuse by a well-known paedophile ring when he was a teenage boy.

Despite accepting without objection that Jack was sexually assaulted by older men at a very young age and that he had suffered psychological harm as a result of these sexual assaults, the Assessor rejected the application stating that there was not sufficient evidence to prove that it is more likely than not that the acts of violence occurred. The Assessor went on to say that even if he/she found that Jack was entitled to a recognition payment, the Assessor would decide that "taking into account the provision of section 44(1)(a) of the Act that an award should not be made." This decision was apparently based upon "the applicant's behaviour during the subject period directly or indirectly contributed to the injury he sustained." i.e. he wasn't able to escape the paedophile ring and kept returning. This decision was not only wrong and victim-blaming but it was extremely distressing for Jack.

Jack was in custody during the relevant time and was not in a position to assess whether this decision was legally correct or not, certainly not within 28 days. Fortunately he had access to legal assistance from the Shopfront. We advised him to seek an internal review of this decision and that we would prepare detailed submissions on his behalf within the relevant time period. He instructed us to do so and ultimately received a recognition payment of \$10,000.

We submit that for vulnerable and traumatised young people, with a background of significant disadvantage and homelessness, it is just not possible for them to understand and analyse their decision and to successfully argue in support of their entitlements.

In addition the inflexibility of the 28 days to lodge a request for an internal review unfairly impacts on people who are homeless or in custody as the current phrase in s 49(2) of the Victims Act that the 28 days runs from the day on which the applicant is "given notice" rather than the day on which the

applicant received notice of the decision, means that many people are unaware of their rights to an internal review until after the time has expired.

The time limit restriction could be resolved by a simple amendment to section 549 (2) of the Victims Act so that the 28 days commences from the day on which the applicant **received** [our emphasis] the notice of the decision.

Alternatively, instead of a completely inflexible time period, the Victims Act could provide for a similar procedure to that found in the Victims Support and Rehabilitation Act 1996 (**Old Act**), ie the imposition of a time limit but an ability to apply for leave to file a request for an internal review out of time in certain circumstances and a presumption that such leave should be granted.

As stated above, in our opinion, based on our lengthy experience working with vulnerable young people, the deliberate omission of any system to provide for and pay for legal advice and assistance for this vulnerable group has severely disadvantaged them and unfairly impacted on their ability to access their full entitlements for Victims Support.

4.6 Domestic violence victims afraid of retribution

We refer to the Commissioner's discretion to make a provisional order for restitution against convicted perpetrators under section 59 of the *Victims Rights and Support Act 2013* (NSW). Section 59(1) relevantly provides:

"If the Commissioner is of the opinion that, before or after an approval for the giving of financial support or making of a recognition payment is given, a person has been convicted of a relevant offence, the Commissioner may make a provisional order for restitution against the person. "

In our experience, particularly with vulnerable victims of domestic violence either by ex-partners or family members, the first question they ask is "will the perpetrator find out about any claims for compensation?"

One answer is that they will, if the perpetrator has been convicted of an offence relating to the act of violence being claimed. They will be issued with a provisional order of restitution which amongst other things, includes the **name of their victim** and **how much they have been awarded**.

The fact that a violent offender will learn that his/her victim has received money is terrifying to most victims of domestic violence. For many of them, particularly those who due to circumstances such as having children in common or family members, it is an insurmountable obstacle to making or progressing a claim.

What makes this circumstance even more galling is that these victims, unlike many instances of domestic violence, have made the courageous step of reporting the violence against the perpetrator to the Police, and in many cases given evidence, which has therefore made a conviction possible. We submit that it is simply against the interests of justice for domestic violence victims to be effectively denied their opportunity for compensation under the Victims Support Scheme because they have reported crimes to the Police and convictions have been successfully made against their offenders.

We note that it is possible to provide submissions together with evidence to the Commissioner seeking an assurance that restitution claims will not be made. We have done this successfully on behalf of several clients. However, as discussed above, many victims, on the advice of Victims Services, do not seek legal advice.

Our understanding from talks given by the Commissioner is that collection of monies through the Restitution process accounts for only a small percentage of funding for the Victims Support Scheme. In these circumstances, perhaps this injustice can be resolved by a simple amendment either allowing the victim to be consulted on whether restitution should be made or at the very least be able to tick a box requesting that their details remain anonymous. This may not assist in all cases but it may provide comfort to some vulnerable people.

4.7 Restitution

As a legal service for young people we also provide advice on restitution debts. The imposition of a restitution debt on a young person, particularly when they are starting to find employment or to rehabilitate themselves can be a financial disaster for that young person. In our experience, the offence behind the restitution debt usually relates to a time when the young person was a child and was homeless or otherwise extremely vulnerable.

The Victims Act is different to its predecessor in that it does not provide a right of appeal against a final order for restitution, unless a written notice of objection has been lodged within 28 days of the notice being served. Service can be personally or by post.

Since most of our clients are homeless or transient, they rarely receive the original notice of the provisional order and hence are not in a position to serve a notice of objection within the relevant time period. Any appeals to the NCAT are also limited to matters where a notice of objection has been lodged. Thus a young homeless person is unfairly disadvantaged and has all of their rights to object and to appeal to higher authorities removed based on their unfortunate circumstances. Under the previous scheme, there was a section allowing a final order for restitution to be set aside in certain circumstances.

Again, it is our submission that this anomaly could be corrected by adding a clause in similar terms to s56 of the Old Act.

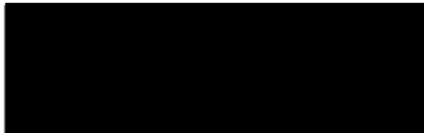
5 Conclusion

A strong victims' compensation scheme that is equally accessible to every member of society, is important in empowering victims, recognising their pain and suffering and for recognition that there has been a public wrong. Victims' compensation is important not just to victims but also for a fair and just society.

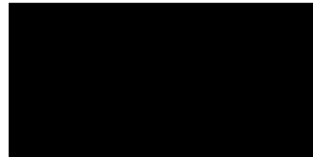
The issues raised and the proposals outlined in this letter would, in our submission, assist towards achieving this goal.

We therefore urge you to carefully undertake the review of the current scheme taking into account the suggestions contained in this submission.

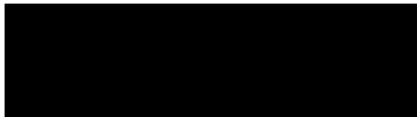
Yours faithfully



Principal Solicitor
The Shopfront Youth Legal Centre



Senior Solicitor
The Shopfront Youth Legal Centre



Dear Commissioner

Review of the changes implemented since 1 July 2020.

We are writing to you in relation to the review of the changes implemented by Victims Services since 1 July 2020.

1 About The Shopfront Youth Legal Centre

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people aged 25 and under. The Shopfront has been operating since 1993 and is a joint project of the law firm Herbert Smith Freehills, Mission Australia and The Salvation Army.

The Shopfront's clients come from a range of cultural backgrounds, including a sizeable number of indigenous young people. Common to most of our clients is the experience of homelessness: most have been forced to leave home due to abuse, neglect, domestic violence or extreme family dysfunction. This leaves them extremely vulnerable and traumatised and unable to protect themselves.

Moreover, most of our clients have limited formal education and therefore lack adequate literacy, numeracy and vocational skills. A substantial proportion also have a serious mental health problem or an intellectual disability, often co-existing with a substance abuse problem. These young people have difficulty successfully navigating the different bureaucracies related to housing, health care and income support, in addition to managing their legal issues.

We have assisted numerous clients to pursue victims' compensation claims, in particular claims for domestic violence and sexual assault, which in the main relate to their history of child abuse.

2 Concerns about the policy change

Set out below are our submissions on how the changes have had a detrimental impact on our client group, who are some of the most vulnerable people in our community. Given that it has only been 8 months since the changes were implemented and much of that period was during the "shutdown", we can only provide a limited response, however it is our view that as everything opens up, the detrimental impacts of the changes will possibly increase.

We remind the Commissioner that Section 40 of the *Victims Rights and Support Act 2013* (Victims Act) contains strict time limits for the lodging of applications. We also note that Victims Services has repeatedly stated that there is no requirement for legal assistance in relation to the lodging and completion of these applications.

2.1 Determining Claims for Recognition Payments in a timely manner

We were told that the changes would result in quicker determinations of claims. We concede that once claims have been determined, the payments have been processed much faster than when we were required to have Acceptance of Payment and Direct

Credit Authority Forms signed. However we are still encountering delays and inconsistencies in relation to the order in which claims are determined. We are still waiting for claims that were lodged prior to July 2020, for which submissions and evidence have been sent in (although no formal listing date given) to be determined. When we ask, we are told that there are many claims awaiting determination and no indication can be given as to when these claims will be looked at.

Meanwhile, a few clients who lodged claims both before and after July 2020 have had all of their claims determined promptly.

Regarding claims lodged after July 2020, we were told that claims will be determined in accordance with the time that all the evidence has been provided and not in the order of the lodging of applications. However some clients are receiving decisions within a few weeks of lodging the evidence and other clients are still waiting. It would be good if there could be some clarification around how Victims Services is determining in what order claims are being assessed.

2.2 Requirements to provide a “government identification document” and bank account details

The changes have meant that in order to lodge an application for Victims Support a young person must provide at the time of lodging the application, a “government identification document” and bank account details. We have a number of clients in custody who do not have access to identity documents or bank account details, assuming that they even possess these documents in the first place. We note that this can be a problem with the strict time limits as by the time they are able to arrange identity documents and bank accounts, the time limits could have expired. We have also been told by other lawyers that this is a particular problem for clients in regional areas, who don't have easy access to government departments. We remind the Commissioner that our experience involves young people who have access to free legal advice, which is not the case for the majority of young people who are victims of crime.

2.3 Difficulty and cost of retrieving records

In addition to the above requirements, applicants for victims support have only 12 months to identify, request and most importantly pay for documents supporting the claim.

This can amount to an almost impossible or insurmountable hurdle for a homeless person, with no place to store their papers and limited access to funds to pay to retrieve records (which prior to the changes was the responsibility of Victims Services). That is assuming that they have access to the internet and sufficient literacy to review the files and comply with the requirements within the time limit.

We note that under the changes medical and other records, including hospital records, must be obtained by the victim. This change not only puts the onus on the victim to locate and identify evidence but also to pay the costs of retrieving this evidence. This all has to be done in a tight time frame in relation to certain acts of violence and in majority of cases, without legal assistance.

Also, despite assurances from Victims Services, it is not clear when or how to claim reimbursement of these costs. There are strict 2-year time limits on claims for financial assistance, even though the time limits for claiming recognition payments in relation to certain claims are significantly longer. Additionally, the financial assistance button on the application form requires uploading of invoices in order to proceed further on the application. At the time of lodging the application, such invoices may not be available and once again there are strict time limits in order to claim this assistance.

For example, if a person was physically assaulted multiple times by a domestic partner and went to hospital on several occasions, they would have 10 years from the last act of violence to claim a recognition payment. However they would only have 2 years from that date to claim financial assistance. The person would need the hospital records plus police

records in order to be successful in the claim. Therefore if the person was not in a position to make a claim for Victims Support for 2½ years then the costs of the police and hospital records would not be able to be reimbursed. Prior to the changes, Victims Services retrieved police and hospital records on behalf of the applicant.

2.4 Providing all of the evidence within 12 months of lodging applications

Given that it has not been 12 months yet, our clients have not yet experienced the consequences of failing to meet this timetable. Also we note that s41A of the Victims Act states that the application only lapses if the Commissioner decides that the applicant does not have a valid reason for failing to provide that evidence, which obviously has not been tested yet.

However during the 8 months that the new policies have been in place we have noticed that the issues with costs described above and accessing counselling described below, can impact on the timing of collecting evidence. Also, when dealing with homeless young people, there can often be lengthy delays in getting consents signed and in dealing with bureaucracies who often want applications for information amended or limited in scope or impose extra costs. All of these concerns can impact on the timely collection, analysis and submission of supporting evidence.

Again we remind the Commissioner that our clients have access to legal assistance in managing these hurdles however many of those in our client group are trying to deal with this by themselves.

2.5 Reports from Approved Counsellors

Further, if an applicant needs to rely upon the report of an Approved Counsellor as evidence of injury, it seems that they are required to jump through several hoops to do so, prior to the time limit running out.

First they need to make an application for Approved Counselling. They also need to provide a government identification document at that time.

Once they have received the necessary approval they need to go online and choose a counsellor and make their own appointment.

Assuming that they have ample access to the internet and phone credit and that the appointment is available in a timely fashion, they also need to ask the Approved Counsellor to provide a report sufficient to support an Application for Victims Support. Only then can they ask for their claim to be determined.

Case workers have been reporting to us that there are a number of technical hitches which have been thwarting people from accessing counselling. Prior to the changes, once an application for victims support was lodged, one could call up Victims Services Counselling and receive an approval letter complete with a name and phone number of a counsellor.

Now the case workers are having to make multiple calls on behalf of clients and report being told that the details on the list on the Victims Services website are incorrect or the counsellor cannot take any further clients. This was not our experience prior to July 2020.

Of course many victims of crime do not have case workers or lawyers to assist them in this process.

Case Study

Annie is a young single mother who was the victim of domestic violence by her now ex partner. Annie stated that she was ready to start counselling which was a big step for her. Luckily for Annie she is supported by a case worker. The case worker informed me that she and Annie have called approximately 20 different counsellors from the Approved Counsellors list on the website. She said that many told her that they had closed their books or could not take any more clients or that the information on the list was out of date

as regards area. She also said that many of the counsellors responded quite brusquely as they reported that they had been inundated with calls from people desperately seeking counsellors.

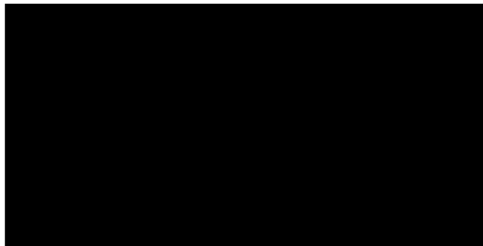
The case worker stated that apart from the inconvenience to Annie and herself, for Annie, it impacted her mental health, as each call was like another rejection. To date she still has not found a counsellor in her area and therefore cannot complete her claim.

3 Conclusion

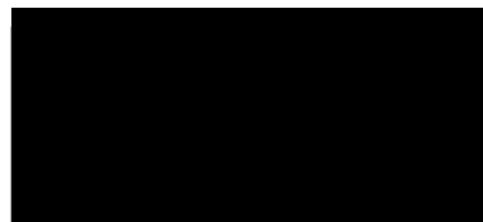
When the Victims Support Scheme was launched a lot was made of the fact that Victims Services would be identifying, paying for and retrieving the evidence so that there was no need for lawyers. As you can see from the above comments, the effect of these changes is to put these obligations back on the shoulders of a person at a time when they are most vulnerable, in an effort to promote efficiency. It also seems that there has not been any marked improvement in efficiency apart from limiting the ability for vulnerable people to lodge applications and complete their claims.

A strong victims' compensation scheme that is equally accessible to every member of society, is important in empowering victims, recognising their pain and suffering and for recognition that there has been a public wrong. Victims' compensation is important not only to victims but also for a fair and just society.

Yours sincerely



Principal Solicitor



Senior Solicitor