



Our Ref: XXXXXXX

[Redacted]
Policy, Reform and Legislation
Department of Communities and Justice



26 August 2022

Dear [Redacted]

Please accept our submission to the Statutory Review of the *Victims Rights and Support Act 2013* (The Act). Thank you for the opportunity to tender our submission after the deadline.

1) Summary of Submissions

I submit the policy objectives of the Act in Parts 2 and 4 remain valid. I also submit several terms of the Act and *Victims Support Regulations 2019* (the regulations) are inappropriate to meet the policy objectives in Parts 2 and 4.

Further, I argue several provisions of the Act in Part 4 Divisions 3, 5 and 6 and their attendant regulations undermine the Charter of Victims Rights itself and the objectives of Part Four of the Act.

2) Terms of Reference

I note the terms of reference in the background paper are to consider the following questions:



MEMBER OF
THE LAW SOCIETY
OF NEW SOUTH WALES





- *Do the policy objectives of the Act remain valid? And;*
- *Do the terms of the Act remain appropriate to meet those policy objectives?*

Because of my professional background and lived experience in this submission I focus on the policy objectives of Part 2 (The Charter of Victims Rights) and Part 4 (The Victims Support Scheme).

3) Do the Policy Objectives of the Act Remain Valid?

- *Part 2*

I submit the objective for Part 2 (Recognising and promoting the rights of victims of crime) remains valid and commend the government for enshrining a rights based approach to supporting Victims of Crime in New South Wales (NSW), consistent with the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.

- *Part 4*

The objective for Part 4 'Establishing a scheme for the provision of support for victims of acts of violence' is also valid and I commend the State's recognition of its role in supporting victims of crime.

4) Do the terms of the Act remain appropriate to meet those policy objectives?

- *Part 2*

I submit that the rights in the Charter are not being upheld by Victims Services because of several terms within the Act, regulations and its internal policy, at the expense of victims. I submit that the terms disproportionately disadvantage victims of child sexual assault.

- *Part 4*

I submit that the terms of the Act and regulations are inappropriate to facilitate the objective for Part 4 which I discuss below.

5) Experience in navigating the Victims Support Scheme

I was sexually assaulted on several occasions as a child in 1993. I made two applications for a recognition payment and received two category B payments and counselling. I am currently unable to access financial assistance (economic loss) under the scheme.

In my professional sphere I assist many applicants to access support under the Victims Support Scheme as the Principal Solicitor of Violet Co Legal and Consulting. In this role I



routinely assist clients, primarily victims of sexual assault and child sexual assault, to apply for recognition payments, financial assistance and counselling.

6) Relevant rights under the Charter in Part 2

I note the following rights in the Charter:

- S 6.1 'A victim will be treated with courtesy, compassion, cultural sensitivity and respect for the victim's rights and dignity.'
- S 6.17 'A victim of a crime involving sexual or other serious personal violence is entitled to make a claim under the Victims Support Scheme.'
- S 6A.2 'A victim will be treated with respect and compassion, having regard to the fact that proceedings may touch on painful or tragic events in the victim's life and cause the victim to experience further grief and distress.'

In addition I note:

- S 7(1) The Charter is to 'govern the treatment of victims in the administration of the affairs of the State;' and
- S 7(2) 'Any agency or person exercising official functions in the administration of the affairs of the State (other than judicial functions) must...have regard to the Charter of Victims Rights in addition to any other relevant matter.'

7) What terms of the Act are inappropriate to meet the policy objectives:

- S 19
I submit applicants should not have to separately prove injury and endorse the open letter attached dated 22 July 2022.
- S 40(1)
Two years is inadequate time for applicants to claim economic loss. This is not enough time to process the act of violence, let alone seek assistance to make a claim and gather required documentation to access financial support. This is especially the case for victims of child sexual assault. I argue the operation of s 40 and s 39 disproportionately disadvantages child victims of sexual assault as they do not account for the extended disclosure and recovery period.

In particular I note:

- Most survivors of childhood sexual assault report in their 40's - if at all.



- Economic loss occurs at stages of emotional trauma and acute mental episodes - for me my economic loss directly linked to the child sexual assaults occurred from 2018 onwards.
 - Because of the way access to financial assistance is structured under the current scheme I am barred from recovering the economic loss I suffered and the \$7,000 I spent on measures necessary for my healing.
 - I believe these time limits are unfair and prejudice victims of child sexual assault. I was not cognitively able to come to terms with the trauma to apply in time for financial assistance.
 - I note most applicants in my position aged 18-20 do not have significant income, and hence very little, if any, economic loss.
 - Many of our clients are barred from making a claim for economic loss or do not have records to substantiate this claim.
- **S39 (4)(b)**

Applicants should not require a statement from the employer substantiating the period of absence from work. This is highly triggering for applicants and inconsistent with s 6.1 and 6.17 of the Act. Some applicants do not want to obtain these records from employers as it may trigger distressing flashbacks from this period of time.
 - **Regulation 8**

The counselling service is accessed by the most vulnerable members of the community and currently there are significant delays in accessing an approved counsellor, especially in regional areas. The quality of support varies significantly. I recommend the rate paid by Victims Services for counselling should be increased to incentivise psychologists to become approved counsellors. I also recommend that the approved counselling service be broadened to include restorative justice processes (I endorse and refer you to Transforming Justice Australia's submissions to this review).

Internal procedure of Victims Services that undermines Part 2

- **The burden on applicants to access counselling and medical reports**

The change in internal process on accessing records and the adverse impact this has on victims has been discussed at length by advocates within the community (please refer to the open letter by Community Legal Centres NSW [here](#) on the impact of this burden on victims.) This procedure undermines the rights enshrined in 6.1, 6.17 and 6A.2 in the charter. I believe responsibility should be reverted back to Victims Services to promote alignment with the objectives of Parts 2 and 4 of the Act.



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9) Recommendations

I recommend the following:

- 1) Remove the requirement for applicants to separately prove injury and adopt the recommendations in the open letter attached dated 22 July 2022.
- 2) Remove the limitation period in s 40(1) of the Act for all types of financial support (not only out of pocket expenses) for primary victims of child sexual assault.

Applicants should be able to claim for loss of wages from anytime after the abuse, to account for the nature of first disclosure and the varying factors affecting each applicant's journey of healing.

- 3) Lower the bar for demonstrating loss of earnings for primary applicants who are child abuse victims in accessing economic loss.

Namely, I recommend the removal of the requirement of a statement from the employer in s 39 (4)(b) substantiating the period of absence from work. Applicants should not be required to discuss their matter with a previous employer to obtain this statement as it is triggering for applicants. I recommend allowing applicants to submit a statutory declaration on the period of absence from work suffered as a result of this abuse.



And in relation to Internal Policy noting the Charter applies to internal practice of the Department under s 7:

- 4) By extension of the right's protected in 6A.2 of the Charter I call for a reinstatement of the practice of the department, so they can access medical, counselling and police records on behalf of the applicant. The applicant should not bear the psychological burden and cost of accessing these documents. This practice treats the victim with respect and compassion, having regard to the fact that accessing these records 'may touch on painful or tragic events in the victim's life and cause the victims to experience further grief and distress'
- 5) To address the shortage of counsellors, especially in regional areas, the amount paid to counsellors should be increased in regulation 8 to incentivise clinical psychologists to become approved counsellors under the scheme.
- 6) Part 2 of the regulations should be amended to include restorative practitioners as approved counsellors under the scheme. I fully endorse the submissions of Transforming Justice Australia to this review.
- 7) Conduct training for report writers in public and private settings so applicants do not need to retell their traumatic experiences in order to access recognition payments they may be entitled to under the scheme.

My recommendations above will make the scheme more accessible, trauma aware and healing informed for applicants who are child sexual victims. Importantly, I believe the recommendations above promote the objectives in Parts 2 and 4.

I welcome the opportunity to discuss this submission with your team or participate in any forthcoming roundtable discussions. Please do not hesitate to contact me via email at

[REDACTED]

Kind regards,

[REDACTED]

Director and Principal Solicitor

[REDACTED]

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